

# ARTICLES 104 AND 105

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## ARTICLES 104 AND 105

### 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 connexion 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 this study follows that of the previous studies in the *Repertory* and its *Supplements Nos. 1 and 2*. Several new subsections or lesser subdivisions have been added, however, and a few subheadings which were included previously have been deleted. In the Analytical Summary of Practice under Article 104, in the material covering the question of the international personality of the Organization, the right of the United Nations to operate aircraft, as well as to sail vessels, under its own flag is now dealt with (II A 2 a and b). Under Article 105 (1) in connexion with the privileges and immunities of the Organization, there is new material concerning immunity from legal process of persons appearing as witnesses before United Nations organs (II B 2 c). Under Article 105 (2) in connexion with the privileges and immunities of representatives of Members, there is a new entry on the nationality of representatives and the grant of privileges and immunities (II C 1 b), and the material pertaining to privileges and immunities (II C 1 c) is now listed under four categories: "At conferences held under United Nations auspices"; "Personal inviolability and immunity from arrest"; "Currency or exchange facilities"; and "Legal status of premises". Also under Article 105 (2) there is a new entry on the privileges and immunities of observers of non-member States (II C 2). To the coverage on the qualification or extension of specific privileges and immunities of officials of the Organization has been added further material on immunity from legal process and on exchange facilities (II C 3 b ii (a) and (d)). There is a new subsection as well dealing with the

privileges and immunities of members of the United Nations peace-keeping operations in the Congo, Cyprus and West New Guinea (West Irian) and with the status of military observers (II C 6).

2. In addition to the previous studies of Articles 104 and 105 in the *Repertory* and its *Supplements Nos. 1 and 2*, the Secretariat has published a comprehensive study on the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency (IAEA) concerning their status, privileges and immunities<sup>1</sup> to assist the International Law Commission in a study of the question of relations between States and inter-governmental international organizations requested under General Assembly resolution 1289 (XIII) of 5 December 1958. That material has been used extensively in the preparation of this study.

<sup>1</sup> *Yearbook of the International Law Commission, 1967*, vol. II (United Nations publication, Sales No.: 68.V.2), pp. 154-324. The Secretariat has also published in the United Nations Legislative Series two volumes entitled *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*. The first volume (ST/LEG/SER.B/10; United Nations publication, Sales No.: 60.V.2) contains material relating either to international organizations in general or to the United Nations in particular and includes texts supplied or collected by the end of December 1959. The second volume (ST/LEG/SER.B/11; United Nations publication, Sales No.: 61.V.3) contains material relating to the specialized agencies and other intergovernmental organizations. Since 1962, treaty provisions concerning the legal status of the United Nations and other material relevant to the privileges and immunities of the Organization have been published in the United Nations Juridical Yearbooks.

## I. GENERAL SURVEY

### \*\*A. Operation of Charter provisions

#### B. Implementation of Articles 104 and 105

##### 1. BY GENERAL CONVENTION

3. Thirty-four Member States became parties to the Convention on the Privileges and Immunities of the United Nations (referred to hereafter as the "General Convention") during the period from 1 September 1959 to 1 September 1966. The accessions of five of those Members contained reservations regarding certain provisions of the General Convention (see the annex to the present study). In a communication received on 25 November 1960, the Government of New Zealand gave notice of the withdrawal of the reservation<sup>2</sup> made upon deposit of its instrument of accession in 1947. The total number of parties had reached ninety-five on 1 September 1966.

##### 2. BY SPECIAL AGREEMENTS ON PRIVILEGES AND IMMUNITIES

###### a. *With non-member States*

4. In connexion with the United Nations Technical Conference on the International Map of the World on the Millionth Scale, held in Bonn in August 1962, the Federal Republic of Germany, a non-member State undertook "to accord to the United Nations, to representatives of its Members to the Conference, and to all its officials irrespective of nationality, privileges and immunities no less favourable than she accords with respect to any specialized agency under the Convention on the Privileges and Immunities of the Specialized Agencies,<sup>3</sup> to which the Federal Republic was a party.

###### b. *With Member States*

5. In connexion with the United Nations Operation in the Republic of the Congo, an agreement relating to the legal status, facilities, privileges and immunities of the United Nations Organization in the Congo<sup>4</sup> was concluded between the United Nations and the Government of the Republic of the Congo on 27 November 1961. That agreement was designed to determine the details of the application of the basic agreement of 27 July 1960 and was closely modelled on the Status Agreement with Egypt governing the United Nations Emergency Force (UNEF), but also contained clauses largely comparable to provisions in the General Convention. The agreement provided that upon signature it would be deemed to have taken effect as from the date of arrival of the first elements of the United Nations Force in the Congo.

6. In an exchange of letters on 31 March 1964, an agreement concerning the status of the United Nations Peace-Keeping Force in Cyprus<sup>5</sup> was reached between the United Nations and the Government of the Republic of Cyprus.

7. Agreements concluded by the United Nations with Ethiopia regarding the headquarters of the United Nations Economic Commission for Africa (ECA) in Addis Ababa<sup>6</sup> and with Niger concerning the establishment of a sub-regional office of ECA at Niamey<sup>7</sup> were complementary to the General Convention and provided for privileges and immunities appropriate to Headquarters Agreements.

##### 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

8. On 6 November 1959 an agreement for the establishment and maintenance of a United Nations Memorial Cemetery in Korea<sup>8</sup> was concluded between the United Nations and the Republic of Korea. According to the agreement the provisions regarding privileges and immunities in the General Convention would apply to the Cemetery, to the United Nations Custodian and other United Nations officials and employees, with the proviso that claims should not be made for privileges and immunities from jurisdiction for locally recruited persons assigned to hourly rates or for privileges and immunities other than those referred to in section 18 (a) of the General Convention.

9. In connexion with the construction of the United Nations building at Santiago, Chile, an agreement with the Government of Chile was reached in an exchange of notes dated 6 July and 5 August 1960.<sup>9</sup> According to that agreement the General Convention, to which Chile was a party, would be applicable to the construction and work to be undertaken on the site.

10. The privileges and immunities of the officials and experts of the Organization appointed to serve with the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders were defined in an agreement concluded with the Government of Japan on 15 March 1961.<sup>10</sup> Under that agreement those officials and experts were accorded the privileges and immunities specified under articles V, VI and VII of the General Convention.

<sup>5</sup> *Ibid.*, vol. 492, I, No. 7187, p. 27.

<sup>6</sup> United Nations, *Treaty Series*, vol. 317, I, No. 4597, p. 101. The agreement came into force on 15 December 1958, the date of its ratification on behalf of the Government of Ethiopia.

<sup>7</sup> United Nations, *Treaty Series*, vol. 536, I, No. 7793, p. 3. The agreement came into force on 2 June 1964, upon notice of ratification by the Government of the Niger.

<sup>8</sup> United Nations, *Treaty Series*, vol. 346, II, No. 565, p. 289.

<sup>9</sup> G A (XV), Annexes, a.i. 57, A/4535, pp. 1 and 2.

<sup>10</sup> United Nations, *Treaty Series*, vol. 397, I, No. 5706, p. 199.

<sup>2</sup> For the text, see United Nations *Treaty Series*, vol. 11, No. 4, p. 406.

<sup>3</sup> United Nations, *Treaty Series*, vol. 434, II, No. 597, p. 258.

<sup>4</sup> *Ibid.*, vol. 414, I, No. 5975, p. 229.

11. An agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian), signed on 15 August 1962,<sup>11</sup> provided that for the purposes of the agreement the General Convention would be applicable to United Nations property, funds, assets and officials.

12. A large number of agreements were concluded between the United Nations and States for the purpose of making arrangements for the holding of United Nations conferences, seminars or other meetings in those host States.<sup>12</sup> Such agreements generally provided that the General Convention would be applicable in respect of the conference, seminar or meeting to representatives of States and officials of the United Nations attending the conference, seminar or meeting, would enjoy the privileges and immunities provided under that Convention, while officials of the specialized agencies would be granted the privileges and immunities under the Convention on the Privileges and Immunities of the Specialized Agencies. All such host agreements provided for the right of entry into and exit from the host State for all participants and all persons performing functions in connexion with the conference, seminar or meeting, and also accorded to them such privileges and immunities, facilities and courtesies as were necessary for the independent exercise of their function in connexion with the conference, seminar or meeting. Those provisions were intended to cover representatives of the information media, representatives of non-governmental organizations and other persons invited to the conference, seminar or meeting, whom the General Convention did not mention.

13. Examples of such host agreements are the Agreement between the United Nations and the Government of India on the organization in India of a seminar on freedom of information, signed 19 February 1962, the Agreement between the United Nations and the Government of Japan on a human rights seminar in Tokyo, signed 11 April 1962, and the Agreement between the United Nations and the Government of Sweden relating to a human rights seminar in Stockholm, signed 1 June 1962.<sup>13</sup>

14. Some host agreements, however, contained provisions on privileges and immunities which represented variations from the general practice outlined in paragraph 12 above, so as to adapt to circumstances peculiar to the particular State in which the conference was to be held. Thus, for the United Nations Conference on Diplomatic Intercourse and Immunities, which was held in Vienna, Austria, from 2 March to 14 April 1961, the agreement<sup>14</sup> between the United Nations and the Government of Austria provided, in brief, as follows:<sup>15</sup> (1) The General Convention, to which Austria was a party, should be applicable with respect to the Conference. (2) Representatives attending the Conference and those officials of the United Nations

connected with the Conference would be accorded the same privileges and immunities as those accorded to representatives to the International Atomic Energy Agency (IAEA) and its officials of comparable rank under the Headquarters Agreement between the Republic of Austria and IAEA. (3) Representatives of States non-members of the United Nations would enjoy the same privileges and immunities as representatives of States Members. (4) Observers for the specialized agencies and other intergovernmental organizations invited to the Conference would enjoy the same privileges and immunities as United Nations officials of comparable rank. (5) The Conference area was deemed to constitute United Nations premises, and access thereto would be under the control and authority of the United Nations. (6) Austrian authorities would impose no impediment to transit to and from the Conference of all persons attending the Conference, including representatives of the press and other information media, as well as other persons invited to the Conference; any visa required would be granted promptly without charge. The Agreement between the United Nations and the Government of Austria regarding the United Nations Conference on Consular Relations,<sup>16</sup> held in Vienna, Austria, from 4 March to 20 April 1963, contained similar provisions.

15. The United Nations Expanded Programme of Technical Assistance and the United Nations Special Fund were merged on 1 January 1966, pursuant to General Assembly resolution 2029 (XX) of 22 November 1965, to form the United Nations Development Programme (UNDP). The agreements which had been concluded with Governments, prior to the formation of the United Nations Development Programme (UNDP), concerning technical assistance under the Expanded Programme, and agreements during the same period concluded with Governments concerning Special Fund assistance were not affected by the merger and continued in force. Such agreements contained clauses relating to privileges and immunities, as was noted in earlier studies in the *Repertory* and its *Supplements Nos. 1 and 2*.

16. The agreements concluded with Governments subsequent to the formation of UNDP concerning assistance under the Technical Assistance component of UNDP were substantially identical to the agreements which were concluded with Governments (prior to the formation of UNDP) concerning technical assistance under the Expanded Programme, and they contained similar provisions on privileges and immunities.

17. The agreements concluded with Governments subsequent to the formation of UNDP concerning assistance under the Special Fund component of UNDP were substantially identical to the agreements which were concluded with Governments (prior to the formation of UNDP) concerning Special Fund assistance, and they contained similar provisions on privileges and immunities.

18. The United Nations Children's Fund (UNICEF) continued to negotiate with various Governments agreements concerning its activities. These contained clauses relating to privileges and immunities.

<sup>11</sup> *Ibid.*, vol. 437, I, No. 6311, p. 273.

<sup>12</sup> Provisions on privileges and immunities of these agreements are reproduced in the United Nations Juridical Yearbooks, 1962-1966.

<sup>13</sup> United Nations Juridical Yearbook, 1962 (ST/LEG/8 (mimeographed)), fascicle 1, pp. 55-57.

<sup>14</sup> United Nations, *Treaty Series*, vol. 394, I, No. 5666 p. 28.

<sup>15</sup> *Ibid.*, pp. 32-34.

<sup>16</sup> United Nations, *Treaty Series*, vol. 452, I, No. 6513, p. 262.

#### 4. BY OTHER DECISIONS AND ACTIONS OF UNITED NATIONS ORGANS

19. By virtue of the authority vested in the Secretary-General by article VII of the Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea (West Irian), and by virtue of General Assembly resolution 1752 (XVII) of 21 September 1962 authorizing the Secretary-General to carry out the tasks entrusted to him in that Agreement, the Secretary-General issued a General Directive<sup>17</sup> establishing a United Nations Security

<sup>17</sup> *United Nations Juridical Yearbook*, 1964, p. 36.

Force in West New Guinea (West Irian) and defining its rights and duties.

20. On 15 July 1963 and 25 April 1964, respectively, the Secretary-General issued Regulations for the United Nations Force in the Congo<sup>18</sup> and for the United Nations Peace-keeping Force in Cyprus.<sup>19</sup> Those Regulations affirmed the international character of the Forces as subsidiary organs of the United Nations and defined their rights and duties.

<sup>18</sup> See ST/SGB/ONUC/1 (mimeographed).

<sup>19</sup> *United Nations Juridical Yearbook*, 1964, p. 177.

## 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

21. During the period under review, the United Nations and its organs entered into numerous contracts without meeting any serious difficulties regarding the United Nations' capacity to contract.

##### b. Capacity to acquire and dispose of movable and immovable property

22. The capacity to acquire and dispose of movable and immovable property, granted to the United Nations under section 1 (b) of the General Convention, was widely recognized by Member and non-member States.<sup>20</sup>

23. In a letter<sup>21</sup> replying to an inquiry from a savings and loan association of New York City concerning the purchase of premises by the United Nations, the Office of Legal Affairs stated:

"The United Nations, under Article 104 of its Charter, enjoys in the territory of each of its Member States 'such legal capacity as may be necessary for the exercise of its functions . . .'. This provision has in the United States been implemented through the International Organizations Immunities Act, which provides that 'International organizations shall, to the extent consistent with the instrument creating them, possess the capacity — (i) to contract; (ii) to acquire and dispose of real and personal property; . . .' (22 USCA, section 288a, (a)); and the United Nations has been designated in Executive Order No. 8698 as a public international organization for the purpose of this Act. New York State Legislation provides that the United Nations may acquire by gift, devise or purchase any land or

<sup>20</sup> In one case, a Member State, when acceding to the General Convention in 1962, made the following reservation: "The United Nations and its organs shall not be entitled to acquire immovable property in Mexican territory, in view of the property regulations laid down by the Political Constitution of the United Mexican States" (see the annex to this study p. 73, under Mexico).

<sup>21</sup> *United Nations Juridical Yearbook*, 1964, p. 223.

interest in land within the State useful in carrying on the functions of the Organization (McKinney's New York States Law, section 59 — i and j)."

24. After referring to General Assembly resolution 1934 (XVIII) under which the Secretary-General was requested to take steps to establish a United Nations training and research institute, later known as the United Nations Institute for Training and Research, for which the property in question was to be used for office space, the letter concluded that the lease and leasehold estate and the execution of the papers required for that purpose were valid exercises of the Organization's powers under the Charter and within its legal capacity recognized under United States Federal and New York State Legislation.

##### c. Capacity to institute legal proceedings

25. In 1960 UNICEF brought legal proceedings in Mexico following the embezzlement of parts of its funds. In a memorandum the Office of Legal Affairs set forth the legal foundations for UNICEF's capacity to do so, as Mexico was then not yet a party to the General Convention, concluding that "in accordance with Article 104 of the Charter and Article VIII of the Agreement of 20 May 1954 between Mexico and UNICEF, the latter has the right to institute legal proceedings in Mexico".<sup>22</sup>

#### 2. THE QUESTION OF INTERNATIONAL PERSONALITY OF THE ORGANIZATION

The right of the United Nations to sail vessels or operate aircraft under its own flag.

##### a. Vessels

26. The United Nations on occasion operated vessels under the United Nations flag. In 1961 the Director of the Legal Division of IAEA notified the Legal Counsel of a proposal which had been made to allow intergovernmental organizations to act as licensing States under the draft Convention on the Liability of Operators of Nuclear Ships. The reply of the Legal

<sup>22</sup> *Yearbook of the International Law Commission*, 1967, vol. II, p. 217, para. 42.

Counsel, dated 24 May 1961, summarized past United Nations practice and indicated some of the problems which would be posed by the establishment of a maritime register by the United Nations.

"While these examples appear of small import in comparison with the licensing and operation of a nuclear ship, indications are not wanting that the United Nations or specialized agencies might have occasion to navigate their own vessels, under their own flags, for considerable periods of time. Thus I understand that some thought has been given to the use by UNESCO of international oceanographic vessels, for research purposes, using the United Nations flag as the maritime flag. Co-operative ventures of a similar nature may eventually become a commonplace in the work of international organizations.

"The establishment of a maritime register by the United Nations involves certain problems, such as those relating to the exercise of criminal and civil jurisdiction over the crews, which have perhaps so far limited the examples in which ships have been navigated under the United Nations flag alone."<sup>23</sup>

27. In a memorandum dated 31 July 1963 to the Associate Director of the Bureau of Operations of the United Nations Special Fund, the Office of Legal Affairs recommended that for purposes of identification all vessels used in a Special Fund fishery project should fly the United Nations flag in addition to their maritime flag.<sup>24</sup>

#### b. Aircraft

28. Where the United Nations found the use of aircraft necessary, they were generally chartered from airlines of were made available by Governments. These aircraft retained their national registration and marks, but in some instances, they were painted white and bore United Nations markings, as in the case of aircraft used by the United Nations Emergency Force (UNEF). The agreement of 8 February 1957 between the United Nations and the Government of Egypt concerning the status of UNEF in Egypt provided, in paragraph 21, that service vehicles, vessels and aircraft should carry a distinctive United Nations identification mark and licence, which should be notified by the Commander to the Egyptian authorities, and should not be subject to registration and licensing under the laws and regulations of Egypt.<sup>25</sup> A similar provision was included in paragraph 12 of the Provisional Arrangement of 1 May 1957 between the United Nations and Lebanon concerning the UNEF Leave Centre in Lebanon.<sup>26</sup>

29. On a few occasions the United Nations has owned aircraft. An aircraft owned by the United Nations was used for approximately a year, from 1950 to 1951, for the purpose of servicing the supply and personnel requirements of the United Nations Commission in Korea. The aircraft, which was not

registered by the United Nations bore United Nations markings.<sup>27</sup>

30. Between 1960 and 1963 the United Nations purchased a number of aircraft for its operation in the Congo. While in United Nations ownership, the aircraft bore United Nations markings<sup>28</sup> and were exempt from the requirements of Congolese law relating to the registration of aircraft, by reason of the Agreement between the United Nations and the Republic of the Congo. The Agreement provided in paragraph 32 that United Nations vehicles, aircraft and vessels should carry a distinctive United Nations identification mark and should not be subject to the registration or licensing prescribed by Congolese laws or regulations. Paragraph 21 of the Agreement concerning the status of the United Nations Peace-keeping Force in Cyprus<sup>29</sup> contained a similar provision.

31. The United Nations also bought aircraft while acting as Executing Agency for the United Nations Special Fund.<sup>30</sup> For example, in 1961 an aircraft was purchased for use in the Special Fund's Mineral Survey Project in Chile. At the time of purchase, the aircraft was registered in the United States. When the registration expired in consequence of the sale, the United Nations re-registered the aircraft in the United States. In 1962 the United Nations bought an aircraft for the Special Fund's Survey of Metallic Mineral Deposits in Mexico and registered it in Mexico. For the Special Fund's Karnali River Hydroelectric Development Project in Nepal, the United Nations bought an aircraft in 1963 and registered it in Nepal.

32. Provisions concerning the use of the United Nations flag were contained in paragraph 7 (b) of the General Directive concerning the United Nations Security Force in West New Guinea (West Irian).<sup>31</sup> The Agreement relating to the legal status, facilities, privileges and immunities of the United Nations Organization in the Congo<sup>32</sup> and the Agreement concerning the status of the United Nations Peace-keeping Force in Cyprus<sup>33</sup> contained similar provisions in paragraphs 26 and 20 respectively.

## B. Article 105 (1)

### 1. SCOPE OF THE TERM "THE ORGANIZATION"

33. In its resolution 1456 (XIV) of 9 December 1959, the General Assembly recalled that, as a subsidiary organ of the United Nations, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) enjoyed the benefits of the General Convention.

<sup>27</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 215, para. 34.

<sup>28</sup> *Ibid.*, para. 35.

<sup>29</sup> See para. 6 above.

<sup>30</sup> *Ibid.*

<sup>31</sup> See para. 19 above.

<sup>32</sup> See para. 5 above.

<sup>33</sup> See para. 6 above.

<sup>23</sup> *Ibid.*, p. 214, para. 31.

<sup>24</sup> *United Nations Juridical Yearbook, 1963*, pp. 180 and 181.

<sup>25</sup> United Nations, *Treaty Series*, vol. 260, I, No. 3704, p. 72.

<sup>26</sup> United Nations, *Treaty Series*, vol. 266, I, No. 3827, p. 130, para. 12.

## 2. PRIVILEGES AND IMMUNITIES OF THE ORGANIZATION

a. *Property funds and assets*

34. The Agreement relating to the legal status, facilities, privileges and immunities of the United Nations Organization in the Congo contained the following provisions in article 15.<sup>34</sup>

“15. The United Nations, its property and assets and the property and assets in the Congo of the States participating in the United Nations Force shall be immune from every form of legal process, from search and requisition and from any other form of governmental interference. The documents of the United Nations and of the participating States shall be inviolable, wherever they may be.”

The Agreement provided in article 31 that the United Nations should have the right to the use of roads, bridges, waterways, port facilities and airfields without payment of dues, tolls or charges by way of registration or otherwise, except for charges collected directly or remuneration for specified services.

35. The Agreement between the United Nations and the Government of the Republic of Cyprus<sup>35</sup> provided in article 23 that the United Nations Peace-keeping Force in Cyprus (UNFICYP) as a subsidiary organ of the United Nations, should enjoy the status, privileges and immunities of the Organization in accordance with the Convention on the Privileges and Immunities of the United Nations. Article 23 also provided that the provisions of article 11 of the Convention relating to property, funds and assets should apply to the property, funds and assets of Participating States used in Cyprus in connexion with the national contingents serving in the United Nations Force. Article 33 of the Agreement provided that UNFICYP should have 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, throughout Cyprus.

36. During the period under review UNICEF entered into agreements with various Governments concerning its activities in their respective countries. The agreements, which were based on a revised model agreement,<sup>36</sup> contained a provision on privileges and immunities, according to which the Government concerned undertook, among other matters, to apply to UNICEF as an organ of the United Nations, and to its property, funds and assets the provisions of the General Convention. It also undertook not to levy taxes, fees, tools or duties on supplies and equipment furnished by UNICEF so long as they were used in accordance with the Plan of Operations for the particular project.

37. The agreements concluded between the Participating and Executing Agencies of the United Nations Development Programme (UNDP) and Governments concerning assistance under the Technical Assistance component of UNDP contained a clause on privileges

and immunities. This was similar to the clause on privileges and immunities contained in the agreements which, prior to the formation of UNDP, were concluded with Governments concerning assistance under the Expanded Programme of Technical Assistance. In terms of the clause the Government concerned undertook to apply to the Participating and Executing Agencies, to their property, funds and assets, and to their officials, including technical assistance experts:

In respect of the United Nations, the General Convention; in respect of the specialized agencies, the Convention on the Privileges and Immunities of the Specialized Agencies; and in respect of the International Atomic Energy Agency, the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.<sup>37</sup>

38. The agreements which were concluded between UNDP and Governments concerning assistance from the Special Fund component of UNDP contained a clause on privileges and immunities. This was similar to the clause on privileges and immunities contained in the agreements which, prior to the formation of UNDP, were concluded with Governments concerning assistance from the United Nations Special Fund. In terms of the clause the Government concerned agreed to apply:

To the United Nations and its organs, including the United Nations Development Programme (Special Fund), its property, funds and assets, and to its officials, the provisions of the General Convention; and to each specialized agency acting as an Executing Agency, to 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. Should the International Atomic Energy Agency act as an Executing Agency, the Government undertook to apply to its property, funds and assets and to its officials and experts, the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.

The clause also provided that in appropriate cases where required by the nature of the project, the Government and UNDP (the Special Fund component) could agree that immunities similar to those specified in the General Convention and the Convention on the Privileges and Immunities of the Specialized Agencies should be granted by the Government to a firm or organization, and to the personnel of any firm or organization, which might be retained by either UNDP (the Special Fund component) or an Executing Agency to execute or to assist in the execution of a project. Such immunities should be specified in the Plan of Operation relating to the project concerned.<sup>38</sup>

i. *Exemption from taxation and customs duties*

39. The Agreement relating to the legal status, facilities, privileges and immunities of the United Nations Organization in the Congo provided that the United Nations, its property and assets, and the pro-

<sup>34</sup> United Nations, *Treaty Series*, vol. 414, I, No. 5975, pp. 237, 239 and 245.

<sup>35</sup> United Nations, *Treaty Series*, vol. 492, I, No. 7187, p. 70. See also *ibid.*, vol. 555, No. 7187, p. 261.

<sup>36</sup> See *United Nations Juridical Yearbook*, 1963, p. 27.

DP/4, section IX-C, p. 16.

<sup>38</sup> *Ibid.*, p. 25.



perty and assets of the States participating in the Force should be:

“(a) Exempt from taxes of every kind. It is understood, however, that the United Nations shall not request exemption from taxes that do not exceed the mere remuneration of services performed by public utilities.

“(b) Exempt from customs duties and from prohibitions or restrictions on imports and exports relating to articles imported by or on behalf of the United Nations or by the participating States in application of any part of the United Nations programme in the Congo. The right of the United Nations to import goods free of duty includes the right to import certain articles for sale exclusively to members of the Force and to officials of the United Nations, in service institutes and canteens. It is understood, however, that articles thus imported free of duty shall not be resold on Congolese territory to third parties, save at conditions approved by the Government.

“(c) Exempt from customs duties and from prohibitions and restrictions on imports and exports in respect of their publications.”<sup>39</sup>

40. The annual reports<sup>40</sup> of the Commissioner-General of UNRWA stated that a number of difficulties persisted in regard to the application to UNRWA of some of the facilities and exemptions which were due to it as a subsidiary organ of the United Nations and were necessary for the fulfilment of its task. For example, the Agency had been subjected to certain taxes, charges and restrictions from which it was legally immune. On those occasions the Agency had endeavoured to assert its immunity from taxes and custom duties on its assets, income and other property.

41. In 1954 the Legal Counsel, in a letter to the Ministry of Foreign Relations of Argentina, sought exemption from a 10 per cent tax on steamship passages between Argentina and foreign ports. After some correspondence, the Government of Argentina acceded to that request in Decree No. 9307 of 7 September 1962.<sup>41</sup>

42. A Technical Assistance Board (TAB) representative reported in 1962 that the Government of the Member State in which he was stationed had required all TAB personnel to pay tolls at booths which had been set up on the roads in that country. It was stated that the tolls were a means of raising funds. The Office of Legal Affairs advised that the United Nations should be exempt from such tolls as regards its own vehicles and in respect of journeys on official business undertaken by United Nations personnel.<sup>42</sup>

43. The question whether a tax on circulation of motor vehicles which a Member State sought to impose

on official vehicles of the United Nations operated in that country was a direct or an indirect tax for the purposes of section 7 (a) of the General Convention, was dealt with in a letter of 5 February 1964 from the Legal Counsel to the permanent representative of a Member State.<sup>43</sup> As the tax was payable directly by the United Nations, it was concluded that it was a direct tax within the meaning of section 7 (a) of the Convention.

44. In connexion with the consideration of the budget estimates by the General Assembly at its seventeenth session in 1962, the Legal Counsel provided the Fifth Committee, at its request, with detailed information concerning the taxes paid by the United Nations in the various countries in which it had offices.<sup>44</sup> He stated that the legal basis for the exemption of the United Nations from taxation by Member States, apart from internal laws, was found in Article 105 of the Charter, the Convention on Privileges and Immunities of the United Nations and such special agreements as might be applicable. After citing section 7 of the Convention which provided for exemption for the United Nations from “all direct taxes” and from customs duties in respect of articles imported by the United Nations for its official use, he reported that States which had ratified or acceded to the Convention had, on the whole, fulfilled the obligation to grant exemption to the United Nations. On occasion, a difference of opinion might arise on the meaning or scope of the Convention. One such difference might be over the meaning of the term “official use”. If, for instance, the United Nations dispatched a film or recording it had itself produced as a part of its public information operation to a distributing agent for distribution in a Member State, there might be disagreement on whether the material so dispatched was for the “official use” of the United Nations. With regard to the excise and sales taxes which formed part of the price to be paid for goods, the Convention accorded no exemption to the United Nations but provided a generally available means for the remission or return of the amount of the taxes. The Legal Counsel referred in that connexion to one case where a Government concerned had authorized a number of its bureaux to supply goods for official use of the United Nations without the addition of a purchase tax to the selling price.

45. In 1964 when a question of stamp taxes arose in respect of UNEF, the Legal Counsel, after pointing out that the question had been a controversial one, stated:<sup>45</sup>

“In the legislation of certain States it is true that stamp taxes are classified as indirect taxes. However, the interpretation of the term ‘direct taxes’ in the Convention on the Privileges and Immunities of the United Nations cannot depend on the terminology used in the various national, legal or fiscal systems, but should be given a uniform interpretation for all Member States. It is our understanding that direct

<sup>39</sup> United Nations, *Treaty Series*, vol. 414, I, No. 5975, p. 239, para. 16. A provision on service institutes also appeared in para. 23 of the Agreement concerning the status of the United Nations Peace-keeping Force in Cyprus.

<sup>40</sup> G A (XX), Suppl. No. 13, para. 31; G A (XXII), Suppl. No. 13, paras. 14 and 15.

<sup>41</sup> *Yearbook of the International Law Commission 1967*, vol. II, p. 243.

<sup>42</sup> *Ibid.*, pp. 243 and 244.

<sup>43</sup> *United Nations Juridical Yearbook, 1964*, p. 221.

<sup>44</sup> G A (XVII), 5th Com., 982nd mtg., paras. 1-8. The full text of the Legal Counsel's statement was reproduced in document A/C.5/972 (mimeographed).

<sup>45</sup> *United Nations Juridical Yearbook, 1964*, p. 220, para. 2.

taxes are those paid directly by the United Nations and under this definition stamp taxes are direct taxes. This conclusion is based in part on the fact that the records of the San Francisco conference indicate that Article 105 of the Charter was intended to preclude any Member State from increasing the financial burdens of the Organization. In implementation of this Article, the Convention on the Privileges and Immunities of the United Nations excluded by section 7 those taxes paid directly by the United Nations and provided in section 8 for the refund or remission of indirect taxes included in the price of goods. Thus, sections 7 and 8 taken together were intended to cover the entire field of taxes to which the United Nations might otherwise have been subjected."

He added that where the amount involved in stamp taxes had been small, it had not been considered administratively feasible to press for recognition of the exemption.

46. A Member State which levied on insurance policies a substantial stamp tax payable by the purchaser at the time of sale, imposed this tax on a United Nations subsidiary organ established within its territory. During discussions the Ministry of Foreign Affairs took the position that, under section 7 (a) of the General Convention, the organ was not entitled to recovery of the money already paid, but indicated that the tax would not be charged in future sales to the organ. In an exchange of letters the United Nations dealt with an argument raised regarding the meaning of the term "*impôt direct*" within the French legal system, which was in force in the State in question:

"It is understood, however, that because the French text uses the term '*impôt direct*' which in the French legal system has a narrower meaning than the term 'direct taxes' in the English text, it has been argued that Section 7 (a) does not cover stamp taxes. The characterization given to a tax in a particular municipal law system cannot be controlling in the application of the provisions of the Convention on the Privileges and Immunities of the United Nations which must be interpreted uniformly in respect of all Member States. Otherwise there would be inequality of treatment between Members."<sup>46</sup>

47. As stated above, the Agreement relating to the legal status, facilities, privileges and immunities of the United Nations in the Congo<sup>47</sup> and the Agreement concerning the status of the United Nations Peace-keeping Force in Cyprus<sup>48</sup> accorded to the United Nations exemption from taxation and the use of roads, bridges, waterways, port facilities and airfields without payment of dues, tolls or charges.

#### ii. Favourable rates of exchange

48. Under article V, paragraph 2 of the model revised standard agreement concerning technical assistance,<sup>49</sup> Governments undertook to give the Organizations, their experts and other officials the benefit

of the most favourable legal rate of conversion of currency.

49. The model agreement concerning assistance from the Special Fund contained a similar provision in article VIII, paragraph 4 (d).<sup>50</sup>

50. The Agreement relating to the legal status, facilities, privileges and immunities of the United Nations Organisation in the Congo provided that the Government should, if requested by the United Nations, make available to the United Nations, against reimbursement in United States dollars or other currency mutually acceptable, Congolese currency required for the use of the United Nations activities and programme in the Congo, including the pay of the members of national contingents, at the most favourable official rate of exchange.<sup>51</sup> The Agreement concerning the status of the United Nations Peace-keeping Force in Cyprus contained a similar provision.<sup>52</sup>

#### \*iii. Exemption from inspection of property

##### iv. Control and authority of the United Nations over its premises

51. In 1966, following the acquisition by the United Nations of premises outside the Headquarters District as originally defined, the United Nations and the United States entered into a Supplemental Agreement in order to include those premises within the Headquarters District in addition to the area defined in annex 1 to the Headquarters Agreement.<sup>53</sup>

52. During the negotiation of the Supplemental Agreement, in response to an inquiry raised by a Member State about the inviolability of United Nations premises, the Office of Legal Affairs prepared an *aide-mémoire* setting out the grounds for the inviolability of rented premises no less than for those owned by the Organization.<sup>54</sup>

53. Under paragraph 19 of the Agreement concerning the status of the United Nations Peace-keeping Force in Cyprus, the headquarters, camps and other premises provided by the Government of Cyprus for the use of that Force in Cyprus, although Cypriot territory, were to be inviolable and subject to the exclusive control and the authority of the Commander, who alone might consent to the entry of officials to perform duties on such premises.<sup>55</sup> The Agreement relating to the legal status, facilities, privileges and immunities of the United Nations Organization in the Congo contained similar provisions in paragraph 24.<sup>56</sup>

54. In 1961 a United Nations employee was arrested outside the Headquarters District and indicted for larceny committed within the Headquarters of the United Nations. The Office of Legal Affairs informed the judge trying the case that since the United Nations had no regulation in the field of criminal law, there

<sup>50</sup> *Ibid.*, p. 31.

<sup>51</sup> United Nations, *Treaty Series*, vol. 414, I, No. 5975, p. 241, para. 21.

<sup>52</sup> *Ibid.*, vol. 492, I, No. 7817, p. 76, para. 35.

<sup>53</sup> *United Nations Juridical Yearbook*, 1966, p. 27.

<sup>54</sup> *United Nations Juridical Yearbook*, 1965, p. 219.

<sup>55</sup> United Nations, *Treaty Series*, vol. 492, I, No. 7187, p. 68.

<sup>56</sup> *Ibid.*, vol. 414, I, No. 5975, p. 241.

<sup>46</sup> *Yearbook of the International Law Commission*, 1967, vol. II, p. 243.

<sup>47</sup> See para. 34 above.

<sup>48</sup> See para. 35 above.

<sup>49</sup> *United Nations Juridical Yearbook*, 1963, pp. 27 and 28.

was no objection, under sections 7 and 8 of the Headquarters Agreement, to the case being determined according to local law.<sup>57</sup>

v. *Police protection of United Nations premises*

55. Various agreements relating to conferences and other meetings held under the auspices of the United Nations contained provisions on police protection. For instance, article III of the agreement of 29 January 1963 between the United Nations and Austria regarding the arrangements for the Vienna Conference on Consular Relations read as follows:

“The Government shall furnish at its expense such police protection as may be required to ensure the efficient functioning of the Conference without interference of any kind. While such police services shall be under the direct supervision and control of a senior officer provided by the Government, this officer shall work in close co-operation with the responsible United Nations official so as to ensure a proper atmosphere of security and tranquility.”<sup>58</sup>

b. *Facilities in respect of communications*

56. The Agreement relating to the legal status, facilities, privileges and immunities of the United Nations Organization in the Congo contained provisions on communications broadly similar to those of article III of the General Convention. It further specified that:

The United Nations was entitled to make arrangements through its own facilities for the sorting and transport of private mail addressed to or dispatched by members of the Force;

The United Nations was authorized to install and operate in the Congo, radio sending and receiving stations to be connected with the United Nations radio network;

The United Nations was to enjoy throughout the Congo the right of unrestricted communication by radio, telephone, telegram or any other means.<sup>59</sup>

57. Under the Agreement concerning the status of the United Nations Peace-keeping Force in Cyprus, the Force enjoyed the facilities in respect of communications provided in article III of the General Convention. The Agreement further prescribed facilities similar to those described in the preceding paragraph.<sup>60</sup>

c. *Immunity from legal process of persons appearing as witnesses before United Nations organs*

58. The question of immunity from legal process of persons appearing as witnesses before United Nations organs arose in connexion with the investigation into the conditions and circumstances of the death of the Secretary-General, Mr. Dag Hammarskjöld.

59. The Rhodesian authorities, in discussions with the United Nations Commission of investigation, indicated that the laws of the Federation relating to the attendance of witnesses could not be made appli-

cable to the hearings of the Commission without special legislation, which could not be enacted in time for the United Nations hearings. Consequently, it would not be possible for the Commission to subpoena witnesses, administer oaths or commit for contempt. The authorities further expressed the view that it would not be possible to treat the statements of witnesses to the Commission as “privileged”.

60. No particular difficulties were envisaged with respect to the first three points. The Rhodesian authorities gave the assurance that all officials desired by the Commission would appear on request and that assistance would be given in obtaining the voluntary appearance of witnesses. In fact, while attendance could not be compelled, there was not a single instance in which a witness requested by the Commission did not appear, and in some cases witnesses were brought many miles to be available to the Commission.

61. The Commission was, however, concerned at the suggestion that the testimony of witnesses who appeared before it might not be privileged. In its view a witness appearing before a United Nations Commission should enjoy immunity from legal process as a result of such appearance. This privilege was enjoyed under the general principles of law and in accordance with Article 105 of the Charter of the United Nations. Without prejudice to the legal position, the Rhodesian authorities gave assurances that there would be no governmental action against any person by reason of his appearance and/or testimony before the United Nations Commission.<sup>61</sup>

d. *Right of transit and freedom of access to the United Nations Headquarters District or conference area*

62. In 1960 a problem arose regarding the attendance of the representative of Israel at the sixteenth session of the Economic Commission for Asia and the Far East which had been arranged to open in Karachi on 17 February 1960. The Government of Israel informed the Secretary-General of its intention to be represented in a consultative capacity, under paragraph 9 of the Commission's terms of reference, and requested his assistance in obtaining the necessary visa. The Government of Pakistan indicated to the Secretary-General that it was not disposed to issue a visa to the representative of Israel for the purpose of attending the session. The Secretary-General therefore took steps, in consultation with the Chairman of the Commission and the Interim Committee on the Programme of Conferences of the Economic and Social Council, to hold the session in a place where all Member States could attend.<sup>62</sup>

63. In 1963 the fifth of session the Economic Commission for Africa (ECA) had before it a draft resolution inviting all African States to refuse to grant visas to representatives of South Africa and Portugal in order to prevent them from attending conferences and meet-

<sup>57</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 233.

<sup>58</sup> United Nations, *Treaty Series*, vol. 452, I, No. 6513, p. 264.

<sup>59</sup> *Ibid.*, vol. 414, I, No. 5975, p. 245.

<sup>60</sup> *Ibid.*, vol. 492, I, No. 7187, p. 74.

<sup>61</sup> Report of the Commission of Investigation into the conditions and circumstances resulting in the tragic death of Mr. Dag Hammarskjöld and of members of the party accompanying him (G A (XVII), Annexes, a.i. 22, A/5069 and Add.1, paras. 54-56).

<sup>62</sup> *Yearbook of the International Law Commission, 1967*, vol. II, pp. 188 and 189.

ings. The Secretary-General sent the following cable to the Executive Secretary of the Commission:

"Please circulate the following message quote I have been informed that the submission of a draft resolution is under consideration by certain delegations which would invite all African States, members of the Economic Commission for Africa, to refuse to grant visas to representatives of the Republic of South Africa and Portugal to prevent them from attending conferences and meetings. I must respectfully draw attention to the fact that such resolution would invite action in violation of Article 105 of the Charter and Article IV of the Convention on the Privileges and Immunities of the United Nations. Such action would also be contrary to the established practice of the United Nations, based on the Charter principle of sovereign equality of all its Members, that all Members of the United Nations are entitled to attend meetings of its organs wherever they may be held. Any derogation from this fundamental principle and from the universally recognized practice would not only be legally unacceptable but would create a dangerous precedent which might be copied by other host States. Action such as that contemplated in a draft resolution of this kind would be disruptive to the functioning of United Nations organs. Moreover consideration of such a draft resolution is without question outside the terms of reference of the Commission."<sup>63</sup>

The Commission took the above opinion into account and modified the resolution accordingly.<sup>64</sup>

64. In 1963, at the request of the Fourth Committee of the General Assembly, the Legal Counsel gave an opinion on the question of the right of transit to the Headquarters District in connexion with the question of hearing Mr. Henrique Galvão concerning territories under Portuguese administration.<sup>65</sup> In that opinion, the provisions of the Headquarters Agreement relating to the right of transit to the Headquarters District were analysed as follows:<sup>66</sup>

"Section 11 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (General Assembly resolution 169 (II)) provides that the federal, state or local authorities of the United States shall not impose any impediments to transit to or from the Headquarters district of (among other classes of persons) persons invited to the Headquarters district by the United Nations on official business. While such a person is in transit to or from the Headquarters district, the appropriate American authorities are required to accord him any necessary protection.

"Apart from police protection, therefore, the obligations imposed on the host Government by the Headquarters Agreement are limited to assuring the right of access to the Headquarters and an eventual right of departure. The Headquarters Agreement

does not confer any diplomatic status upon an individual invitee because of his status as such. He therefore cannot be said to be immune from suit or legal process during his sojourn in the United States and outside of the Headquarters district.

"Two other provisions of the Headquarters Agreement serve to reinforce the right of access to the Headquarters. Section 13 (a) specifies that the laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privilege of transit to the Headquarters district. This provision, however, clearly assures admission to the United States without conferring any other privilege or immunity during the sojourn. Similarly, section 13 (b) interposes certain limitations on the right of the host Government to require the departure of persons invited to the Headquarters district while they continue in their official capacity; but this plainly relates to restrictions on the power of deportation and not, conversely, on a duty to bring about departure. Moreover, section 13 (d) makes clear that, apart from the two foregoing restrictions, 'the United States retains full control and authority over the entry of persons or property into the territory of the United States and the conditions under which persons may remain or reside there'.

"It is thus clear that the United Nations would be in no position to offer general assurances to Mr. Galvão concerning immunity from legal process during his sojourn in the United States...".

65. It was also pointed out in the opinion that there was no precedent in the history of the Headquarters Agreement which would indicate whether an application of Federal Regulations of the United States restricting departure of an alien, by reason of proceedings against him not related to his presence at the United Nations, would constitute an impediment to transit "from the Headquarters district" within the meaning of section 11 of the Agreement. Nor was there any precedent which would indicate whether compliance by the American Federal Government with the terms of an extradition treaty would conflict with the right of transit of an invitee from the Headquarters District.<sup>67</sup>

66. The Fourth Committee requested the Secretary-General, with the Government of the United States, to take the necessary steps to ensure the safety of petitioners coming to the United States to testify before committees of the United Nations during their transit to and from the Headquarters as well as during their stay in New York.<sup>68</sup>

67. In order to obtain assurance that Member States would not raise requests for extradition in respect to petitioners and other persons invited to United Nations Headquarters, or to regional or other major offices of the United Nations during a period of time reasonably related to the invitation, the Secretary-General addressed an inquiry<sup>69</sup> to all Member States. The majority of replies gave appropriate assurances.<sup>70</sup>

<sup>63</sup> *Ibid.*, p. 189.

<sup>64</sup> See ECA resolution 84 (V) (E S C (XXXVI), Suppl. No. 10, p. 46.

<sup>65</sup> See also this *Supplement* under Articles 73 and 103.

<sup>66</sup> G A (XVIII), Annexes, a.i. 23, p. 6, A/C.4/621, paras. 3-6.

<sup>67</sup> *Ibid.*, para. 9.

<sup>68</sup> G A (XVIII), 4th Com., 1481st mtg., paras. 53 and 54.

<sup>69</sup> *United Nations Juridical Yearbook, 1964*, pp. 219 and 220.

<sup>70</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 288, para. 354.

### C. Article 105 (2)

#### I. PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES OF MEMBERS

##### a. *The expression "resident representatives to the United Nations" as used in the Headquarters Agreement*

68. The interpretation of section 15 (2) of the Headquarters Agreement became an issue in the Santiesteban case in 1962.<sup>71</sup> In discussions with the United States authorities, the United Nations maintained that the wording of section 15 (2) and the arrangements which had been previously established did not support the contention, made by the United States authorities, that provision for the agreement of all three parties involved, (namely the Secretary-General, the United States and the Member State) extended to requiring the consent of all three to each individual resident member of a State's mission to the United Nations. As subsequent practice proved, the necessary agreement of the parties was settled in principle by the original establishment of the diplomatic list, specifying the categories of mission staff (as opposed to lists of individuals) who were entitled to privileges and immunities under section 15. Cases which occurred in the past related to the eligibility of the person or persons concerned as mission staff rather than to the question of whether the United States could decline to grant diplomatic privileges to an admittedly eligible person. Moreover, any argument that the immunity in question was not available until the notification procedure had been completed would place all members of missions in an entirely exposed position in the period between their arrival and the completion of their "processing" by the United States.

69. Following discussions with the United States, and without prejudice to any question of the interpretation to be given to section 15 (2) of the Headquarters Agreement, the Secretary-General transmitted a note to all permanent missions to the United Nations on 31 July 1964, setting out arrangements designed to reduce or eliminate delay between the arrival of members of the staff of permanent missions and their being placed on the diplomatic list by the host Government.

70. The Agreement between the United Nations and Ethiopia regarding the Headquarters of the United Nations Economic Commission for Africa (ECA)<sup>72</sup> provided that resident representatives of Governments to ECA should be entitled to the same privileges and immunities as the Government accorded to diplomatic groups accredited to it.<sup>73</sup>

##### b. *Nationality of representatives and the grant of privileges and immunities*

71. In a number of instances a host State has sought to deny diplomatic privileges and immunities to a representative on the ground that he did not possess

the nationality of the State he was representing but that of a third State.

72. In one case in 1963 the United States mission contended that, since possession of the nationality of the sending State was one of the conditions for the granting of diplomatic status in Washington, that condition also applied in respect to members of permanent missions by virtue of the wording of section 15 of the Headquarters Agreement. Referring to that point, the United Nations Chief of Protocol wrote as follows:

"We recognize, of course, that diplomatic practice authorizes the requirement by a receiving State of its consent for the appointment by a sending State to its diplomatic mission of a national of a third State. We are therefore ready to assume that the United States Government can impose the condition described in your letter in respect of diplomatic personnel to be accredited to it. Manifestly, it would be of direct significance to the United States Government whether a diplomat dealing with the Department of State has the nationality of the State which he represents. By contrast, the United Nations remains in doubt whether such a policy on the part of the host Government is a 'corresponding condition' within the meaning of Section 15. It appears to us that the relationship between the obligation on the part of the United States to confer diplomatic privileges and the degree of interest which it could claim in the nationality of diplomatic personnel dealing not with the United States but only with the United Nations and with other missions of Members is too tenuous for such conditions at the United Nations Headquarters to be treated as corresponding to those in Washington."<sup>74</sup>

73. In correspondence regarding a further case in 1964, the United Nations drew attention to the fact that, although under article 8 of the Vienna Convention on Diplomatic Relations and article 22 of the Vienna Convention on Consular Relations, a receiving State might object to the appointment by the sending State of a non-national, no restriction could be placed on the immunities enjoyed once the appointment had been made. The United States was not a receiving State, nor apparently had it objected to the appointment as such of the person concerned.<sup>75</sup>

74. At the United Nations office at Geneva, the Swiss Government granted diplomatic privileges and immunities to a non-Swiss national appointed to represent a third State, but refused to grant more than functional privileges to its own nationals appointed as the permanent representatives of other States.<sup>76</sup>

##### c. *Privileges and immunities*

###### i. *At conferences held under United Nations auspices*

75. The examples given below illustrate the practice followed in respect of privileges and immunities granted to representatives of Members in the case of conferences held under United Nations auspices.

<sup>71</sup> For the facts of the case, see *Yearbook of the International Law Commission 1967*, vol. II, p. 172, paras. 56-59. See also para. 80 below.

<sup>72</sup> United Nations, *Treaty Series*, vol. 317, I, No. 4597, p. 108.

<sup>73</sup> Article V, section 10 (b).

<sup>74</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 175, para. 83.

<sup>75</sup> *Ibid.*, para. 84.

<sup>76</sup> *Ibid.*, para. 85.

76. The Agreement of 27 February 1961 between the United Nations and Austria regarding the arrangements for the Vienna Conference on Diplomatic Intercourse and Immunities provided in article VI that:

“(1) The Convention on the Privileges and Immunities of the United Nations, to which the Republic of Austria is a party, shall be applicable with respect to the Conference.

“(2) The Government will accord representatives attending the Conference . . . the same privileges and immunities as accorded to representatives to . . . the International Atomic Energy Agency, under the Headquarters Agreement between the Republic of Austria and the IAEA.”<sup>77</sup>

77. The Agreement of 23 August 1961 between the United Nations and Italy regarding the arrangements for the United Nations Conference on New Sources of Energy<sup>78</sup> provided in article X for the application of the General Convention.

78. In an exchange of letters of 24 July 1962 between the United Nations and the Federal Republic of Germany regarding the privileges and immunities to be accorded in respect of the United Nations Technical Conference on the International Map of the World on the Millionth Scale, the Federal Republic of Germany understood, with respect to the Conference, to accord privileges and immunities to representatives of Members “no less favourable than she accords with respect to any Specialized Agency under the Convention on the Privileges and Immunities of the Specialized Agencies”. In particular it was agreed that:

“5. Representatives and Observers of States Members or non-members of the United Nations invited to the Conference shall enjoy such other privileges, immunities and facilities in accordance with section 11 (g) of the Convention on the Privileges and Immunities of the United Nations.”<sup>79</sup>

#### ii. *Personal inviolability and immunity from arrest*

79. Various incidents involving the personal inviolability of representatives have occurred from time to time. In 1961 one Member State inquired whether United Nations protection could be provided for a member of its permanent mission in view of possible threats to his safety. The Secretary-General replied that protection *qua* police protection could not be provided outside the Headquarters District; it was thought that a security officer, unarmed and not in uniform, might possibly be assigned to accompany a member of a mission or delegation if such a course was justified. In 1962 the permanent representative of another Member State complained that he had been the subject of abuse from the driver of a passing car; the United States authorities investigated the case, suspended the licence of the driver and conveyed his apologies to the representative concerned.<sup>80</sup>

<sup>77</sup> United Nations *Treaty Series*, vol. 394, I, No. 5666, p. 32. See also *ibid.*, vol. 452, I, No. 6513, p. 266.

<sup>78</sup> *Ibid.*, vol. 405, I, No. 5819, p. 8. See also *ibid.*, vol. 472, I, No. 6840, p. 180.

<sup>79</sup> United Nations, *Treaty Series*, vol. 434, II, No. 597, pp. 258-260.

<sup>80</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 179, para. 100.

80. The question of the arrest of a member of the staff of a permanent mission was amongst the issues raised in the Santiesteban case.<sup>81</sup> The Cuban authorities protested to the United States authorities and to the Secretary-General on the grounds that the arrest was in violation of the diplomatic immunities conferred upon the diplomatic staff of permanent missions under section 15 (2) of the Headquarters Agreement. The subsequent discussion with the United States dealt mainly, however, with the question of whether or not Mr. Santiesteban already enjoyed diplomatic privileges and immunities at the time of his arrest.<sup>82</sup>

81. In 1964, following an attack by a number of persons upon the First Secretary of the Mauritanian mission, the representatives of fifty-five Member States sent a joint letter to the Secretary-General expressing their grave concern. It was stated that the First Secretary had been attacked “because he was a diplomat and because he was coloured”. The signatories declared that the continued repetition of such incidents was the cause of “serious misgivings” as to the conditions required in order for them to live normal lives and to carry out their work as diplomats. In a letter to the Secretary-General, the United States representative recalled that United States officials had already expressed regrets and apologies to the Mauritanian mission and Government. The New York City police authorities had acted promptly on being informed of the incident and had located and arrested four boys, aged 16 to 19, who were believed to have been guilty of the attack. The District Attorney was prepared to prosecute if the First Secretary (who was the principal available witness) would agree to testify, so as to satisfy the requirements of local law. From statements given to the police by the arrested boys it appeared that the identity of the First Secretary had been unknown to them and that he was in fact believed, on account of language unfamiliarities, to be a member of a group with whom those arrested had been engaged in a dispute.<sup>83</sup>

#### iii. *Currency or exchange facilities*

82. Article IV, section 11 (e) of the General Convention grants representatives:

“The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions.”

That provision was generally applied without serious difficulty, though on occasion the possibility had arisen that steps taken to freeze the assets in the United States of a particular Government might be applied against the bank account maintained in order to conduct the business of the permanent mission of the State concerned. With reference to such a contingency, the Legal Counsel advised the Deputy Chef de Cabinet in 1963 as follows:

“. . . It is our view that it is not permissible for the host Government to interfere with the legitimate

<sup>81</sup> See para. 68 above.

<sup>82</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 179, para. 101.

<sup>83</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 179, para. 102.

activities of the permanent missions to the United Nations by preventing these missions or their personnel from using funds on deposit in this country. From the legal standpoint, this is a matter covered by paragraph 2 of Article 105 of the Charter, which provides that representatives of Members shall enjoy in the territory of each Member such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization. It is also relevant that in resolution 257 (III) the General Assembly recognized that the presence at the seat of the Organization of permanent missions serves to assist in the realization of the purposes and principles of the United Nations . . .”.

The United States did not in fact apply restrictions against the accounts maintained by the permanent missions in question.<sup>84</sup>

#### iv. *Legal status of premises*

83. The Legal Counsel, in a letter to the Legal Adviser of one of the specialized agencies in 1964, summarized practice at United Nations Headquarters as follows:

“There is no specific reference to mission premises in the Headquarters Agreement and the diplomatic status of these premises therefore arises from the diplomatic status of a resident representative and his staff. The United States has taken the position that offices having the status of a permanent mission can only be established after a permanent representative (resident representative in the terms of the Headquarters Agreement) is appointed. Their stand in this connexion, however, has not involved questions concerning the location of the office.

“General Assembly resolution 257 (III) of 3 December 1948, on the permanent missions to the United Nations, likewise deals with the personnel of the Mission (credentials of a permanent representative, communication of appointment of the staff of a permanent mission, etc.) but does not deal with the office premises.

“In practice permanent missions do not inform us in advance of their intention to set up an office at a given location, and I understand do not inform the United States Mission, unless they desire assistance of some kind in obtaining the property or otherwise. They do of course advise us of the address of their office once it is established and of any changes of address. We publish the address in the monthly list of Permanent Missions. We also inform the United States Mission of new addresses, and the United States Mission is sometimes informed directly by the permanent mission, but there is no special procedure, consultation or acceptance, tacit or express, involved.”<sup>85</sup>

84. The Swiss Federal Authorities informed permanent missions at the United Nations Office at Geneva, in a circular note, that they had no objection in principle to one mission serving for the purposes of representing

the State concerned both at Berne and at the United Nations Office at Geneva, but that they would recognize such missions as an embassy only where the premises were situated in Berne.<sup>86</sup>

## 2. PRIVILEGES AND IMMUNITIES OF OBSERVERS OF NON-MEMBER STATES

85. Non-member States have sent permanent observers only to United Nations Headquarters and to the United Nations Office at Geneva. In a memorandum dated 22 August 1962, sent by the Legal Counsel to the then Acting Secretary-General, the position as regards permanent observers appointed by non-member States to United Nations Headquarters was summarized as follows:

### *“Policy of the Organization regarding Permanent Observers*

“1. In deciding whether or not to accord certain facilities to a Permanent Observer, it has been the policy of the Organization to make such facilities available only to those appointed by non-members of the United Nations which are full members of one or more specialized agencies and are generally recognized by Members of the United Nations.

### *“Legal basis for the institution of Permanent Observers*

“2. There are no specific provisions relating to Permanent Observers of non-member States in the United Nations Charter, in the Headquarters Agreement with the United States Government or in General Assembly resolution 257 (III) of 3 December 1948 relating to Permanent Missions of Member States. The Secretary-General referred to Permanent Observers of non-members in his report to the fourth session of the Assembly on Permanent Missions, but no specific action was taken by the Assembly either at that time or later to provide an express legal basis for the institution of Permanent Observers. It therefore rests purely on practice as so far followed.

### *“Facilities accorded to Permanent Observers*

“3. Since Permanent Observers of non-member States do not have an officially recognized status, facilities which are provided them by the Secretariat are strictly confined to those which relate to their attendance at public meetings and are generally of the same nature as those extended to distinguished visitors at United Nations Headquarters . . .

“4. No other formal recognition or protocol assistance is extended to Permanent Observers by the Secretariat. Thus no special steps are taken to facilitate the granting of United States visas to them and their personnel, nor for facilitating the establishment of their offices in New York. Communications informing the Secretary-General of their appointment are merely acknowledged by the Secretary-General or on his behalf and they are not received by the Secretary-General for the purpose of presentation of credentials as is the case for Permanent Representatives of States Members of the Organization.

<sup>84</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 182, paras. 126-128.

<sup>85</sup> *Ibid.* p. 187, para. 154.

<sup>86</sup> *Ibid.*, para. 155.

*“Permanent Observers and the question of privileges and immunities*

“5. Permanent Observers are not entitled to diplomatic privileges or immunities under the Headquarters Agreement or under other statutory provisions of the host State. Those among them who form part of the diplomatic missions of their Governments to the Government of the United States may enjoy immunities in the United States for that reason. If they are not listed in the United States diplomatic list, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities.”<sup>87</sup>

86. At the United Nations Office at Geneva, permanent observers of non-member States enjoy *de facto* the same privileges and immunities as permanent representatives (except in the case of permanent observers who are Swiss citizens).<sup>88</sup>

87. Representatives of non-member States specially invited to attend United Nations meetings or conferences must be granted, at the least, functional immunities and a right of entry into the host State, even if they attend only as observers. The Legal Counsel stated in a memorandum to the Secretary of the Special Political Committee in 1960 that a right of transit to the Headquarters District might be claimed for observers if they could be deemed to be “persons invited to the Headquarters District by the United Nations... on official business”, as envisaged by section 11 (5) of the Headquarters Agreement.<sup>89</sup>

### 3. PRIVILEGES AND IMMUNITIES OF OFFICIALS OF THE ORGANIZATION

#### a. Categories of officials

88. During the period under review a number of States sought to tax the salaries of their citizens who were United Nations employees stationed in the home country. As these officials, though locally recruited, were not assigned to hourly rates, the United Nations took the stand that they were exempt from taxation in respect of their United Nations salaries and emoluments by virtue of the terms of General Assembly resolution 76 (I) and of the General Convention. In a letter sent to the representative of one such State in 1964, the Legal Counsel indicated that all Member States which had acceded to the General Convention without reservation as to its provision on income tax exemption had invariably recognized that staff members of the United Nations, including those who were their own nationals, were entitled to the same income tax exemptions as accorded non-nationals. Among the eighty-six States Members of the United Nations which then had acceded to the Convention, only four had made a reservation at the time of accession so as to deny income tax exemption to officials of the United Nations, whether internationally or locally recruited, who were their own nationals. Only one of those reserving States, however, actually required its nationals

on the staff of the United Nations office in its territory to pay income tax. The letter concluded by stating that immunity from income taxation on United Nations salaries and emoluments for officials of the United Nations, irrespective of nationality or rank, was a well-established principle steadfastly adhered to by the Organization and that it had in fact been universally recognized or indirectly applied.<sup>90</sup>

89. In a case which arose later in 1964, the Member State concerned sought to tax nationals, residents and clerical staff regardless of nationality. In a letter dated 3 July 1964 to the permanent representative of the Member State, the Legal Counsel emphasized that, in accordance with General Assembly resolution 76 (I) all staff members of the United Nations, with the exception of those recruited locally *and* assigned to hourly rates, were officials of the United Nations and should be accorded the same privileges and immunities provided in the General Convention, including the right to exemption from income taxation.<sup>91</sup>

90. In 1963 a Member State proposed to accede to the General Convention subject to a reservation denying to any United Nations official of that State’s nationality any privilege or immunity under the Convention, suggesting that the proviso contained in article IV, section 15, of the Convention should also apply in respect of articles V and VI. In an *aide-mémoire* of 22 October 1963 to the permanent representative of the Member State, the Office of Legal Affairs gave the opinion that a close examination of the true legal operation of that reservation left no doubt that it was incompatible with the United Nations Charter.<sup>92</sup>

#### b. Privileges and immunities

##### \*\*i. General provisions

##### ii. Qualification or extension of specific privileges and immunities

###### (a) Immunity from legal process

91. In correspondence exchanged in 1965-1966 between the Director of the Bureau of Technical Assistance Operations and the Deputy Permanent Representative of a Member State to the United Nations concerning the privileges and immunities to be accorded to United Nations officials assigned to a seminar to be held in that State, the Deputy Permanent Representative stated: “The... authorities are ready and willing to accord privileges and immunities in accordance with article V and VII of the Convention on the Privileges and Immunities of the United Nations *with the exception however that the immunities will not apply in case of traffic infringements*”. In an opinion of 25 May 1966, the Office of Legal Affairs stated that that reservation was seen as, *per se*, unacceptable as it was tantamount to a modification of section 18 (a) of the General Convention.<sup>93</sup>

92. The Agreements between the United Nations and Ethiopia regarding the Headquarters of the Eco-

<sup>87</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 190, para. 169.

<sup>88</sup> *Ibid.*, para. 170.

<sup>89</sup> *Ibid.*, para. 171.

<sup>90</sup> *Ibid.*, p. 272, para. 289.

<sup>91</sup> *Ibid.*, pp. 272 and 273, para. 290.

<sup>92</sup> *United Nations Juridical Yearbook, 1963*, p. 188.

<sup>93</sup> *United Nations Juridical Yearbook, 1966*, p. 263, paras. 2 and 3.



conomic Commission for Africa (ECA)<sup>94</sup> and between the United Nations and Niger concerning the establishment of a sub-regional office of ECA<sup>95</sup> included among the privileges and immunities of officials "immunity from personal arrest or detention" and "immunity from seizure of their personal and official baggage". It also expressly provided that immunity from legal process in respect to official acts should continue notwithstanding that the person concerned might have ceased to be an official of the organization.<sup>96</sup>

**\*\* (b) Exemption from national income taxation**

**(c) Immunity from national service obligations<sup>97</sup>**

93. In 1962 a staff member informed the Office of Legal Affairs that when he left his home country in 1957, on recruitment by the United Nations to serve as an official at Headquarters, he had been required to furnish two guarantees, each of approximately \$1,200. They were to ensure that eventually he would return to the country, and that he would fulfil his military service obligations. The Office of Legal Affairs gave the opinion that the first guarantee was a restriction on the movement and exclusively international character of an official of the United Nations. This was inconsistent with the authority of the Secretary-General, under Articles 97, 100 and 101 of the Charter, to appoint, deploy and direct the staff of the Organization. The second guarantee was declared incompatible with section 18 (c) of the General Convention as constituting a form of national service obligation.<sup>98</sup>

**(d) Exchange facilities**

94. In a case which occurred in 1964, the Office of Legal Affairs advised that, since section 18 (e) generally imposed an obligation on a State party to the General Convention only in respect of officials resident there, no steps could be taken under that paragraph to request the removal of restrictions imposed on personal bank accounts maintained in one country by Technical Assistance Board officials stationed in another. The position would be different where accounts held by the United Nations itself were involved.<sup>99</sup>

**\*\* (e) Exemption from customs duties**

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

95. By an exchange of letters dated 5 and 11 April 1963,<sup>100</sup> section 16 of the 1946 Interim Arrangement with Switzerland on Privileges and Immunities of the United Nations was amended to read as follows:

"The Secretary-General and the Assistant Secretaries-General, and the officials assimilated to them,

shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law and international usage.

"In addition, officials in the categories which are specified by the Secretary-General, or by the persons authorized by him, and which are agreed to by the Swiss Federal Council, shall be accorded the privileges and immunities, exemptions and facilities accorded to diplomatic agents who are not heads of mission."

96. By Presidential Decree No. 12991 of 10 June 1963, Lebanon granted diplomatic privileges and immunities to all directors and assistant directors of UNRWA residing in Lebanon, and to all other United Nations officials in Lebanon with the rank of director or above.<sup>101</sup>

97. The Governments of Cyprus, Greece, Turkey and the United Kingdom, by separate exchanges of letters with the Secretary-General, agreed to extend to the United Nations Mediator in Cyprus and his staff the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law.<sup>102</sup> Dated respectively 30, 31 and 31 March and 2 April 1964, the Governments' letters were in response to letters from the Secretary-General dated 27 March 1964.

98. The same diplomatic treatment was accorded to the Commander of the United Nations Observation Operation along the Saudi Arabia-Yemen border and to all personnel serving under him, by an agreement of 23 August 1963 between the United Nations and Saudi Arabia.<sup>103</sup>

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

99. The Regulations for the United Nations Force in Cyprus provided that locally recruited personnel should not be subject to, or entitled to the benefits of, the Staff Regulations of the United Nations, but should be entitled to immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity as provided in section 18 (a) of the General Convention and should be exempt from taxes on their salaries and emoluments received from the Force and from national service obligations as provided in section 18 (b) and (c) of the Convention.<sup>104</sup>

100. The Regulations for the United Nations Force in the Congo provided that locally recruited personnel should be entitled only to immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity.<sup>105</sup>

<sup>94</sup> United Nations, *Treaty Series*, vol. 317, I, No. 4597, p. 108.

<sup>95</sup> United Nations, *Treaty Series*, vol. 536, I, No. 7793, p. 10.

<sup>96</sup> Article VI, section 9 (b), (c) and (a) respectively.

<sup>97</sup> For reservation by Nepal to the General Convention, see annex to this study.

<sup>98</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 274, para. 300.

<sup>99</sup> *Yearbook of the International Law Commission, 1967*, vol. II, pp. 278 and 279, para. 315.

<sup>100</sup> United Nations, *Treaty Series*, vol. 509, No. 8, pp. 309 and 311.

<sup>101</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 281.

<sup>102</sup> United Nations, *Treaty Series*, vol. 492, I, No. 7194, pp. 262, 268, 274, and 280.

<sup>103</sup> *Ibid.*, vol. 474, I, No. 6897, p. 156.

<sup>104</sup> *United Nations Juridical Yearbook, 1964*, p. 181, para. 20 (c).

<sup>105</sup> See ST/SGB/ONUC/1 (mimeographed), para. 20.

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

101. In 1963 the Foreign Ministry of a Member State requested the waiver of the immunity of a member of the United Nations Field Service who was involved in a car accident whilst driving on official duty. The United Nations requested the Government to provide, in support of its request, not a bare statement of the fact that an offence had been committed under the Penal Code, but a motivated statement of reasoning indicating the manner in which the course of justice might be impeded by the immunity, as well as any other facts which might help the Secretary-General to determine whether or not a waiver could be granted without prejudice to the interests of the United Nations.<sup>106</sup>

102. In a letter dated 4 November 1964 to the Legal Adviser of a United Nations mission concerning sale on the local market of goods originally imported duty-free by United Nations officials, the Legal Counsel indicated that that had always presented one of the more difficult problems and he pointed out that such goods could be sold only under conditions agreed upon with the Government of the country concerned.<sup>107</sup>

c. *United Nations laissez-passer and travel facilities*

103. In 1961, a Member State refused entry to United Nations and specialized agency officials of certain nationalities because of a political dispute with the countries concerned. The Secretary-General protested to the Government in 1961 and, after a further incident in 1963, wrote a second letter recalling the earlier communication and continued:

“... refusal of entry to United Nations and specialized agency personnel on official business presents a serious problem with respect to operations of the Organization and interference with the performance of the functions of its officials. Such interference in the case of United Nations officials is contrary to Article 105 of the Charter and to article 24 of the Convention on the Privileges and Immunities of the United Nations to which your Government is a party. As was pointed out, freedom for officials to travel is one of the most essential privileges which is necessary for the independent exercise of their functions in connexion with the Organization, and for the fulfilment of the purposes of the Organization. The United Nations cannot accept the view that privileges and immunities of international officials are in any way affected by their nationality...”

The Government concerned undertook to exempt United Nations and specialized agency officials of the nationalities in question from the restrictions otherwise imposed on persons of their nationality.<sup>108</sup>

104. In addition to the United Nations *laissez-passer* and the United Nations certificate, the United Nations also issues a “family certificate” in respect of the family of a United Nations official. The position

was described in the following letter, sent in 1963 by the United Nations in answer to a question raised by a permanent mission:

“It is quite clear that the Certificate in question is not regarded by the United Nations as an official ‘travel document’. The Family Certificate is really intended to show that the holder or holders are dependents of a United Nations staff member. Normally, the staff member would carry a United Nations *laissez-passer* and this would serve as identification for the family as well, when a staff member and family were travelling together. When the family were travelling apart, the *laissez-passer* would, of course, have to remain in the keeping of the staff member, and the dependents would be given a Family Certificate for identification and to show their connection with the United Nations.

“Dependents travelling with a Family Certificate should at all times carry their national Passport as well. Formally, when requesting visas we in this office would submit both the national Passport and the Family Certificate to the Consulate concerned and it would be entirely up to the Consulate as to whether they put the visa on the national Passport or on the Family Certificate. For our own purposes it makes no matter which course is adopted by the Consulates; we must, of course, leave it to the Embassy or Consulate concerned to do as they think best.

“The ‘United Nations Certificate’ is quite distinct from the Family Certificate and serves the purpose of identifying someone who is travelling on some special assignment connected with the United Nations although not actually a staff member of the Organization. For instance, it might occur that some technician or special adviser was engaged by the United Nations on a short-term mission which would not involve the traveller in being taken on as a regular United Nations Secretariat member. In such cases, the passenger would travel on his national passport and would be given a United Nations Certificate merely to identify him as undertaking a project for the Organization. In certain countries this Certificate has proved very helpful in enabling the holder to carry out the purposes of his assignment. But, as stated earlier, the holders of this Certificate are not regular staff members. Once again, we would leave it to the Consulate or Embassy concerned as to whether they put any necessary visas in the Passport or on the Certificate. The last-named document, like the Family Certificate, is not considered by us as an official travel document.”<sup>109</sup>

\*\*4. PRIVILEGES AND IMMUNITIES OF EXPERTS ON MISSION FOR THE UNITED NATIONS

\*\*5. 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

<sup>106</sup> For a general statement on waiver of privileges and immunities, see *United Nations Juridical Yearbook, 1964*, p. 263.

<sup>107</sup> *United Nations Juridical Yearbook, 1964*, p. 265.

<sup>108</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 290, para. 366.

<sup>109</sup> *Yearbook of the International Law Commission, 1967*, vol. II, p. 294, para. 379.

6. PRIVILEGES AND IMMUNITIES OF MEMBERS OF THE UNITED NATIONS PEACE-KEEPING OPERATIONS

a. Provisions relating to civil jurisdiction

i. Under the Status Agreement with the Congo

105. Members of the United Nations Force were not to be subject to any act of arrest, detention, seizure of personal property, or other form of legal process until after completion of the following procedures:

“(a) . . .

“(b) If as a result of any act performed by a member of the Force or an official in the course of his official duties, it is alleged that loss or damage that may give rise to civil proceedings has been caused to a citizen or resident of the Congo, the United Nations shall settle the dispute by negotiation or any other method agreed between the Parties; if it is not found possible to arrive at an agreement in this manner, the matter shall be submitted to arbitration at the request of either Party;

“(c) If evidence is submitted of the existence of an obligation at civil law binding upon or in favour of a member of the Force or an official serving under the United Nations in the Congo or a dependant of such member of the Force or official, and arising out of his presence in the Congo but not related to his official duties, the United Nations shall use its good offices to assist the parties in arriving at a settlement. If the dispute cannot be settled in this manner, or by any other agreed mode of settlement, it shall be submitted to arbitration at the request of either Party.”<sup>110</sup>

ii. Under the Status Agreement with Cyprus

106. Paragraph 12 of the Agreement provided:

“(a) Members of the Force shall not be subject to the civil jurisdiction of the courts of Cyprus 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 the Force and which involves a member of the Force and a Cypriot citizen, and in other disputes as agreed, the procedure provided in paragraph 38 (b) [on settlement by a Claims Commission] shall apply to the settlement.

“(b) In those cases where civil jurisdiction is exercised by the courts of Cyprus with respect to members of the Force, the courts or other Cypriot authorities shall grant members of the Force sufficient opportunity to safeguard their rights. If the Commander certifies that a member of the Force is unable because of official duties or authorized absence to protect his interests in a civil proceeding in which he is a participant the aforesaid court or authority shall at his request suspend the proceeding until the elimination of the disability, but for not more than ninety days. Property of a member of the Force which is certified by the Commander to be needed by him for the fulfilment of his official duties shall be free from seizure for the satisfaction of a judge-

ment, decision or order, together with other property not subject thereto under the law of Cyprus. The personal liberty of a member of the Force shall not be restricted by a court or other Cypriot authority in a civil proceeding, whether to enforce a judgement, decision or order, to compel an oath of disclosure, or for any other reason.

“(c) In the cases provided for in sub-paragraph (b) above, the claimant may elect to have his claim dealt with in accordance with the procedure set out in paragraph 38 (b) of these arrangements. Where a claim adjudicated or an award made in favour of the claimant by a court of Cyprus or the Claims Commission under paragraph 38 (b) of these arrangements has not been made satisfied, the Government may, without prejudice to the claimant's rights, seek the good offices of the Secretary-General to obtain satisfaction”.<sup>111</sup>

iii. Under the General Directive concerning the United Nations Security Force in West New Guinea (West Irian)

107. Under paragraph 7 (e) of the General Directive, all members of the United Nations Security Force were to be subject to local civil jurisdiction for acts performed outside the course of their duties.<sup>112</sup>

b. Provisions relating to criminal jurisdiction

i. Under the Status Agreement with the Congo

108. Under paragraph 9 of the Agreement, members of the United Nations Force were to be subject to the exclusive jurisdiction of their respective national States in respect of any criminal offences which might be committed by them in the Congo.<sup>113</sup>

ii. Under the Status Agreement with Cyprus

109. Paragraph 11 of the Agreement contained a provision similar to that described in paragraph 90 above.<sup>114</sup>

iii. Under the General Directive concerning the United Nations Security Force in West New Guinea (West Irian)

110. Under paragraph 7 (e) of the General Directive, all members of the United Nations Security Force were to be granted immunity for official acts performed in the course of their duties. In all other respects they were to be subject to the exclusive criminal jurisdiction of their national authorities.<sup>115</sup>

c. Military police: arrest, transfer of custody and mutual assistance

i. Under the Status Agreement with the Congo

111. Under paragraph 12 of the Agreement, the Supreme Commander of the United Nations Force was to take all appropriate measures to ensure the discipline and good order of its members. For that

<sup>111</sup> *Ibid.*, vol. 492, I, No., 7187, pp. 64-66.

<sup>112</sup> *United Nations Juridical Yearbook*, 1964, p. 39.

<sup>113</sup> *United Nations, Treaty Series*, vol. 414, I, No. 5975, p. 235.

<sup>114</sup> *Ibid.*, vol. 492, I, No. 7187, p. 64.

<sup>115</sup> *United Nations Juridical Yearbook* 1964, p. 39.

<sup>110</sup> *United Nations, Treaty Series*, vol. 414, I, No. 5975, p. 235, para. 10.

purpose United Nations military police might undertake the surveillance of the premises occupied by the United Nations, the areas in which the Force was deployed, and, in liaison with local authorities, wherever necessary, maintain such discipline and order. The military police was to have the power of arrest over members of the Force. Under paragraph 13, a member of the military personnel or an official serving under one of the Parties to the Agreement might not be arrested by the authorities of the other Party unless the competent authorities to whom he was responsible were unable to act with the necessary speed to apprehend him; however, a person apprehended in that way had to be delivered immediately to the nearest authority to whom he was responsible. Under paragraph 14, the United Nations and the Congolese authorities were to assist each other in the carrying out of all necessary investigations into offences which were of concern to either or both Parties, in the hearing of witnesses, and in the collection and production of evidence.<sup>116</sup>

ii. *Under the Status Agreement with Cyprus*

112. Paragraphs 14 to 18 of the Status Agreement with Cyprus contained provisions broadly similar to those of the Status Agreement with the Congo referred to in paragraph 111 above.<sup>117</sup>

iii. *Under the General Directive concerning the United Nations Security Force in West New Guinea (West Irian)*

113. The General Directive contained the following provision in paragraph 5 (c):

“The United Nations Commander shall provide for military police for any camps, establishments or other premises occupied by the contingents under his overall command, for such areas where those contingents are deployed in the performance of their functions and such other areas as he deems necessary. The military police shall have the power of arrest over members of the contingents under the overall command of the United Nations Commander”.<sup>118</sup>

d. *Taxation, customs and fiscal regulations*

114. Members of the United Nations Force in the Congo were exempt from direct taxes and from personal contributions. They had the right to import free of duty their personal effects when taking up their posts in the Congo and, subsequently, such articles as the United Nations administrative services might certify as being required by those persons by reason of their presence in the Congo under the United Nations. They were exempt from inspection of their personal baggage. On their departure from the Congo members of the Force were entitled to take with them such sums as were certified as having been received in pay and emoluments for service in the Congo.<sup>119</sup>

115. Members of the United Nations Force in Cyprus were exempt from taxation on the pay and

emoluments 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 free of duty their personal effects in connexion with their arrival in Cyprus. They were subject to the laws and regulations of Cyprus governing customs and foreign exchange with respect to personal property not required by them by reason of their presence in Cyprus with the Force. On departure from Cyprus, members of the Force might take with them such funds as were certified to have been received in pay and emoluments from their respective national Governments or from the United Nations. The Commander was to cooperate with Cypriot customs and fiscal authorities in ensuring the observance of the customs and fiscal laws and regulations of Cyprus by the members of the Force.<sup>120</sup>

e. *Entry and exit: identification*

116. Members of the United Nations Force in the Congo were exempt from passport and visa regulations and immigration inspection or restrictions. After their first entry into the territory of the Congo, the personal identity cards issued to them under the authority of the Special Representative of the Secretary-General were to be recognized as valid and sufficient identification. Members of the Force were bound to present their identity cards, if requested, but not to surrender them.<sup>121</sup>

117. Members of the United Nations Force in Cyprus were exempt from passport and visa regulations, immigration inspection and restrictions on entering or departing from Cyprus. They were also exempt from any regulations governing the residence of aliens in Cyprus, including registration, but were not considered as acquiring any right to permanent residence or domicile in Cyprus. Members of the Force were provided with personal identity cards issued by the Commander under the authority of the Secretary-General and were required to present, but not to surrender, their identity cards upon demand of such Cypriot authorities as might be mutually agreed upon between the Commander and the Government.<sup>122</sup>

f. *Right to bear arms*

118. Members of the United Nations Force in the Congo, while on duty, were entitled to possess and carry arms in accordance with the regulations applicable to them.<sup>123</sup>

119. Members of the United Nations Force in Cyprus had the right to possess and carry arms in accordance with their orders.<sup>124</sup>

g. *Status of military observers*

120. As to the status of military observers serving with a United Nations mission, an *aide-mémoire* dated

<sup>116</sup> United Nations, *Treaty Series*, vol. 414, I, No. 5975, p. 237.

<sup>117</sup> *Ibid.*, vol. 492, I, No. 7187, pp. 66-68.

<sup>118</sup> *United Nations Juridical Yearbook*, 1964, p. 38.

<sup>119</sup> United Nations, *Treaty Series*, vol. 414, I, No. 5975, pp. 239-241, paras. 18 and 23.

<sup>120</sup> *Ibid.*, vol. 492, I, No. 7187, pp. 72-74, paras. 26-28.

<sup>121</sup> United Nations, *Treaty Series*, vol. 414, I, No. 5975, p. 233, paras. 4 and 5.

<sup>122</sup> *Ibid.*, vol. 492, I, No. 7187, p. 62, paras. 7 and 8.

<sup>123</sup> *Ibid.*, vol. 414, I, No. 5975, p. 247, para. 39.

<sup>124</sup> *Ibid.*, vol. 492, I, No. 7187, p. 70, para. 22.

23 January 1964 from the Office of Legal Affairs of the United Nations to the permanent representatives of various Member States pointed out that the principle of *persona non grata* did not apply to United Nations staff or military observers.<sup>125</sup>

121. That principle was reiterated in a letter dated 21 October 1964 from the Office of Legal Affairs addressed to the permanent representative of a Member State. The letter also stated:

"It of course is not denied that a United Nations official or military observer, by abusing his privileges, may place himself in a position where a government may demand his withdrawal. But such demand can only be made for sufficient cause and the facts must be placed at the disposal of the Secretary-General and of the Head of the mission, in order that an independent decision can be made by the Organization."<sup>126</sup>

<sup>125</sup> *United Nations Juridical Yearbook*, 1964, p. 261.

<sup>126</sup> *Ibid.*, p. 262.

## 7. PRIVILEGES AND IMMUNITIES OF OPERATIONAL AND EXECUTIVE PERSONNEL

122. On 24 May 1966 an interpretation of article II, paragraphs 3 and 4 of the Operational and Executive Personnel Programme (OPEX) Model Agreement was given in a memorandum dated 24 May 1966 from the Office of Legal Affairs of the United Nations to the Senior Deputy Director of the Bureau of Technical Assistance Operations, Department of Economic and Social Affairs, on the question raised by an OPEX officer as to what functions might be regarded as incompatible with his special international status or with the purposes of the United Nations.<sup>127</sup>

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

<sup>127</sup> *United Nations Juridical Yearbook*, 1966, p. 264.

## ANNEX

### Member States which became parties to the Convention on the Privileges and Immunities of the United Nations between 1 September 1959 and 1 September 1966<sup>128</sup>

<i>State</i>	<i>Accession, notification of succession (d)</i> <sup>129</sup>
Algeria <sup>130</sup>	31 October 1963

With the following reservation:

"The Democratic and Popular Republic of Algeria does not consider itself bound by section 30 of the said Convention which provides for the compulsory jurisdiction of the International Court of Justice in the case of differences arising out of the interpretation or application of the Convention. It declares that, for the submission of a particular dispute to the International Court of Justice for settlement, the consent of all parties to the dispute is necessary in each case.

"This reservation also applies to the provision of the same section that the advisory opinion given by the International Court of Justice shall be accepted as decisive."

<i>State</i>	<i>Accession, notification of succession (d)</i>
Bulgaria <sup>131</sup>	30 September 1960

With the following reservation:

The People's Republic of Bulgaria does not consider itself bound by the provision of section 30 of the Convention which provides for the compulsory jurisdiction of the International

<sup>128</sup> *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions*. United Nations publication, Sales No. E.69.V.5, pp. 31-34.

<sup>129</sup> The symbol (d) immediately following the date appearing opposite the name of a State denotes a declaration by that State recognizing itself bound, as from the date of its independence, by the Convention, the application of which had been extended to its territory by a State then responsible for the conduct of its foreign relations. The date shown is the date of receipt by the Secretary-General of the notification to that effect,

<sup>130</sup> The Government of the United Kingdom of Great Britain and Northern Ireland notified the Secretary-General that it was unable to accept these reservations because in its view they were not the kind which intending parties to the Convention had a right to make (*ibid.*, pp. 33 and 34).

<sup>131</sup> See foot-note 130.

Court of Justice, and, with respect to the competence of the International Court in the case of differences arising out of the interpretation or application of the Convention, the position of the People's Republic of Bulgaria is that, for the submission of a particular dispute to the International Court for settlement, the consent of all parties to the dispute is necessary in each case. This reservation also applies to the provision of the same section that the advisory opinion given by the International Court shall be accepted as decisive.

<i>State</i>	<i>Accession, notification of succession (d)</i>
Cambodia	6 November 1963
Cameroon	20 October 1961 (d)
Central African Republic	4 September 1962 (d)
Congo (Brazzaville)	15 October 1962 (d)
Congo (Democratic Republic of)	8 December 1964
Cuba	9 September 1959
Cyprus	5 November 1963 (d)
Gabon	13 March 1964
Gambia	1 August 1966 (d)
Ivory Coast	8 December 1961 (d)
Jamaica	9 September 1963
Japan	18 April 1963
Kenya	1 July 1965
Kuwait	13 December 1963
Madagascar	23 May 1962 (d)
Malawi	17 May 1966
Mexico	26 November 1962

With the following reservations:

"(a) The United Nations and its organs shall not be entitled to acquire immovable property in Mexican territory, in view of the property regulations laid down by the Political Constitution of the United Mexican States.

"(b) Officials and experts of the United Nations and its organs who are of Mexican nationality shall enjoy, in the exer-

cise of their functions in Mexican territory, exclusively those privileges which are granted them by section 18, paragraphs (a), (d), (f) and (g), and by section 22, paragraphs (a), (b), (c), (d) and (f) respectively, of the Convention on the Privileges and Immunities of the United Nations, on the understanding that the inviolability established in the aforesaid section 22, paragraph (c), shall be granted only for official papers and documents.”

State

Accession, notification  
of succession (d)

Mongolia <sup>132</sup>

31 May 1962

With the following reservations:

“... the Mongolian People’s Republic does not consider itself bound by the provisions of section 30 of the said General Convention, which provide that any difference arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice;

“and in such a case the position of the Mongolian People’s Republic is that, for submission of a particular dispute to the International Court for settlement, the consent of all the parties to the dispute is necessary in every case.

“This reservation is equally applicable to the provision that the advisory opinion given by the International Court of Justice shall be accepted as decisive.”

<sup>132</sup> *Ibid.*

State

Accession, notification  
of succession (d)

Nepal

28 September 1965

With the following reservations:

“Subject to the reservation with regard to section 18 (c) of the Convention, that United Nations officials of Nepalese nationality shall not be exempt from service obligations applicable to them pursuant to Nepalese law; and

“Subject to the reservation <sup>133</sup> with regard to section 30 of the Convention, that any difference arising out of the interpretation or application of the Convention to which Nepal is a party, shall be referred to the International Court of Justice only with the specific agreement of His Majesty’s Government of Nepal.”

Niger	25 August 1961 (d)
Nigeria	26 June 1961 (d)
Peru	24 July 1963
Rwanda	15 April 1964
Senegal	27 May 1963 (d)
Sierra Leone	13 March 1962 (d)
Singapore	18 March 1966 (d)
Somalia	9 July 1963
Togo	27 February 1962 (d)
Trinidad and Tobago	19 October 1965
United Republic of Tanzania	29 October 1962
Upper Volta	27 April 1962
Yemen	23 July 1963

<sup>133</sup> *Ibid.*

**Chapter XVII**

**TRANSITIONAL SECURITY ARRANGEMENTS**

