

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 fulfilment 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 fulfilment 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. This study follows the outline of the previous studies in the *Repertory and Supplements Nos. 1, 2 and 3*. Some subsections have been deleted, for example that concerning the question of the right of the United Nations to sail vessels or operate aircraft under its own flag. The lack of new material for the period under review has been indicated by placing two asterisks next to the respective heading. The efforts of the International Law Commission and the Sixth Committee of the General Assembly concerning draft articles for a convention on the representation of States in their relations with international organizations are briefly covered under the appropriate headings. Under Section II B, 2, a, (vi) a new heading: "Immunity from censorship of United Nations public information material" has been added.

I. GENERAL SURVEY

**A. Operation of Charter provisions

B. Implementation of Articles 104 and 105

1. BY GENERAL CONVENTION

2. 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 1966 to 31 December 1969. The accession of one of those Members contained reservations regarding certain provisions of the General convention (see the annex to the present study). The total number of parties had reached 101 on 31 December 1969.

2. BY SPECIAL AGREEMENTS ON PRIVILEGES AND IMMUNITIES

**a. *With non-Member States*

b. *With Member States*

3. In connexion with the convening of the eighth session of the United Nations Economic Commission for Africa (ECA) in Lagos an Agreement was concluded between the United Nations and Nigeria on 7 February 1967¹ which provided for the application, with respect

to the session, of the General Convention. The Agreement enumerated officials of the United Nations performing functions in connexion with the session, representatives of members and associate members and representatives and observers from other States Members of the United Nations, who were to be covered by the relevant articles of the Convention.

4. By an exchange of notes an Agreement came into force on 8 April 1967 between the United Nations and Romania,² making the General Convention applicable to the joint meetings of the Committee for Programme and Co-ordination (CPC) and the Administrative Committee on Co-ordination (ACC), which were held at Bucharest from 5 to 7 July 1967.

5. The Agreement concluded on 13 April 1967 between the United Nations and the Republic of Austria regarding the headquarters of the United Nations Industrial Development Organization (UNIDO) in Vienna³ was complementary to the General Convention and provided for privileges and immunities appropriate to a headquarters agreement.

6. It is to be noted that in the Agreement of 18 November 1966 between Venezuela and the United Nations regarding the arrangements for the twelfth session of the Economic Commission for Latin America

¹United Nations, *Treaty Series*, vol. 590, No. 8544, p. 25.

²*Ibid.*, vol. 594, I, No. 8602, p. 159.

³*Ibid.*, vol. 600, I, No. 8679, p. 93.

(ECLA) at Caracas⁴ no reference was made to the General Convention. Instead, it was provided that a Venezuelan act, dealing with immunities and prerogatives of foreign diplomatic officials, should be extended by special resolution of the Government to the participants in the session.

3. BY PROVISIONS ON PRIVILEGES AND IMMUNITIES CONTAINED IN OTHER AGREEMENTS CONCLUDED WITH MEMBER AND NON-MEMBER STATES BY UNITED NATIONS PRINCIPAL OR SUBSIDIARY ORGANS WITHIN THEIR COMPETENCE

7. On 14 June 1967 a provisional agreement was reached by an exchange of letters between the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and Israel concerning assistance to Palestine refugees. It was agreed in principle that the General Convention, to which Israel was a party, should govern the relations between the Government and UNRWA in all that concerns the functions of UNRWA.⁵

8. On 22 April 1968, after termination of the old Agreement,⁶ a new Agreement was reached between the United Nations Children's Fund (UNICEF) and the Government of Syria, making, *inter alia*, the General Convention applicable.⁷

9. On 2 July 1968 a Memorandum of Understanding between the United Nations and Nigeria on the carrying out of studies for economic co-operation in West Africa was signed. It provided that members of the United Nations team would be accorded all the rights, immunities and privileges which are usually accorded to United Nations officials and experts assigned to work with the Federal Government of Nigeria.⁸

10. The application of the General Convention to a number of installations or institutes and centres was agreed upon, by an exchange of notes or more formal agreement. These included the establishment of the United Nations Social Defence Research Institute in Rome on 15 January 1968⁹ and the establishment and operation of the Asian Statistical Institute in Tokyo by an Agreement signed on 9 September 1969.¹⁰

11. In other agreements relating to installations, the General Convention is not made applicable *per se*, but only some of its articles. Such a provision was used, for example, in the Agreement of 14 November 1968 between the United Nations and the United Arab Republic relating to the continuation and extension of the Regional Center for Demographic Research and Training in Cairo.¹¹

12. The United Nations continued to conclude a large number of agreements with Member States for the purpose of making arrangements for the holding of United Nations conferences, seminars or other meetings in those host States.¹² Those agreements generally provided that the General Convention would be applicable to the meeting. The standard provision used reiterated

that the privileges and immunities contained in articles V and VII of the General Convention would apply to officials of the United Nations, whereas officials of the specialized agencies would be covered by the respective articles of the Convention on the Privileges and Immunities of the Specialized Agencies. All participants and all persons performing functions in connexion with the meeting would enjoy such privileges and immunities, facilities and courtesies as were necessary for the independent exercise of those functions as well as the rights of entry into and exit from the host State for non-nationals of that State. 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 India regarding the arrangements for the Second United Nations Conference on Trade and Development to be held in New Delhi, signed on 4 November 1967,¹³ and the Agreement between the United Nations and the United Kingdom of Great Britain and Northern Ireland relating to the seminar on freedom of association to be held in London, signed on 8 and 12 March 1968.¹⁴

14. Deviating from this practice, several agreements dealing with conferences in Austria referred to the Agreement between the United Nations and the Republic of Austria regarding the headquarters of UNIDO.¹⁵ One version of the article relating to privileges and immunities, as used for example in the Agreement regarding the arrangements for the United Nations Conference on the Exploration and Peaceful Uses of Outer Space,¹⁶ reads as follows:

"VII. Privileges and Immunities

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

"(2) Representatives of Member States attending the Conference and officials of the United Nations concerned with the Conference shall be accorded the same privileges and immunities provided for in sections 23, 27 and 28 respectively of the Agreement between the United Nations and the Republic of Austria regarding the Headquarters of UNIDO, dated 13 April 1967.

"(3) . . ."

15. The agreements with Governments relating to the technical assistance¹⁷ and the Special Fund¹⁸ sector of the United Nations Development Programme (UNDP) continued to be concluded in accordance with the respective model revised standard agreement, which contains articles on "facilities, privileges and immunities", which in turn make the Convention on Privileges and Immunities applicable.

16. The Agreement on technical assistance of 3 May 1969 between the United Nations, the ILO, FAO, UNESCO, ICAO, WHO, ITU, WMO, IAEA, UPU and IMCO, and Spain, which at the time was not a party to the General Convention, included an arti-

⁴*Ibid.*, vol. 588, I, No. 8529, p. 243.

⁵*Ibid.*, vol. 620, I, No. 8955, p. 186.

⁶*Ibid.*, vol. 136, No. 1830, p. 17.

⁷*Ibid.*, vol. 634, I, No. 9063, p. 207.

⁸*Ibid.*, vol. 639, No. 9146, p. 81.

⁹*Ibid.*, vol. 635, I, No. 9070, p. 13.

¹⁰*Ibid.*, vol. 693, No. 9930, p. 271.

¹¹*Ibid.*, vol. 654, I, No. 9371, p. 341.

¹²Provisions on privileges and immunities of these agreements are reproduced in the *United Nations Juridical Yearbook* for 1966, 1967, 1968 and 1969.

¹³United Nations, *Treaty Series*, vol. 609, I, No. 8824, p. 3.

¹⁴*Ibid.*, vol. 632, No. 9014, p. 121.

¹⁵See footnote 3 above.

¹⁶United Nations, *Treaty Series*, vol. 637, No. 9117, p. 193.

¹⁷See *United Nations Juridical Yearbook*, 1967, p. 73.

¹⁸*Ibid.*, 1963, p. 31.

cle V, which substantially embodied the relevant provisions of that Convention.¹⁹

17. The agreements concluded with Governments concerning operational assistance followed the model standard agreement containing provisions on privileges and immunities.²⁰

18. The agreements concerning the activities of UNICEF concluded with a number of Governments continued to contain provisions on privileges and immunities making applicable the Convention on Privileges and Immunities of the United Nations.²¹

19. The basic agreements between the United Nations and the Food and Agriculture Organization of the United Nations (FAO), on behalf of the World Food Programme (WFP) and a number of Governments contained provisions on "facilities, privileges and immunities".²² The following annex accompanied the Basic WFP Agreement with Bolivia²³ signed at La Paz on 14 March 1968:

"In order to clarify the contents of article V, paragraph 1, of the Basic Agreement of which this annex is an integral part, it is hereby stated that that paragraph shall not mean that the government of Bolivia shall afford personnel of the World Food Programme and persons rendering services on its behalf privileges or immunities, but merely that it shall grant certain

¹⁹*Ibid.*, 1969, p. 19.

²⁰*Ibid.*, 1970, p. 35.

²¹*Ibid.*, 1965, p. 32.

²²*Ibid.*, 1971, p. 23.

²³*Ibid.*, 1972, p. 27; see also *ibid.*, p. 28, for the Agreement with Bolivia.

facilities which are required for the speedy and efficient execution of projects.

"To facilitate the interpretation of the relevant paragraph, certain examples are given below:

- "(i) Prompt and free issuance of the requisite visas, permits and authorizations;
- "(ii) Access to sites where projects are being executed and all the necessary rights;
- "(iii) Right to move freely within the national territory and to enter or leave it to the extent necessary for the proper execution of projects;
- "(iv) Favourable rate of exchange in the absence of a free market."

4. BY OTHER DECISIONS AND ACTIONS OF UNITED NATIONS ORGANS

20. In resolution 2328 (XXII) of 18 December 1967 dealing with the question of diplomatic privileges and immunities the General Assembly, *inter alia*, deplored all departures from the respective rules of international law. It urged Member States to accede to the General Convention and, regardless of accession, to take every measure necessary to secure the implementation of the privileges and immunities accorded under Article 105 of the Charter of the United Nations.²⁴

²⁴G A (XXII), Suppl. No. 16, A/6716, p. 83. The background to this resolution is described in section C below, under Article 105 (2), paras. 40-45.

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 continued to enter into contracts without meeting serious difficulties regarding that capacity. It was noted in regard of UNRWA:

"The very fact that UNRWA is a substantial importer, purchaser and transporter of supplies, and the occupier of premises in the various host States means that the Agency is continually concerned with commercial and other private law matters. It is rarely involved in litigation in the host States and even the procedures for arbitration, which are a common and necessary part of its thousands of contracts (necessary in view of its jurisdictional immunity), are rarely used. This is symptomatic of the general goodwill which exists in its relations in this field."²⁵

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

**c. *Capacity to institute legal proceedings*

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

²⁵*Ibid.*, Suppl. No. 13, para. 2, UNRWA report.

B. Article 105 (1)

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

2. PRIVILEGES AND IMMUNITIES OF THE ORGANIZATION

a. *Property, funds and assets*

22. It was stated in the preamble of the Agreement between the United Nations and the Republic of Austria regarding the headquarters of UNIDO²⁶ that the General Convention to which the Republic of Austria was a party, *ipso facto* was applicable to UNIDO, but that it was desirable to conclude an agreement complementary to that Convention to regulate questions not envisaged in it arising as a result of the establishment of the UNIDO headquarters in Vienna. The agreement contained the following provisions in article III, section g (a):

"The headquarters seat shall be inviolable. No officer or official of the Republic of Austria, or other person exercising any public authority within the Republic of Austria, shall enter the headquarters seat to perform any duties therein except with the consent of, and under conditions approved by, the Executive Director."

23. In 1968 the Office of Legal Affairs was asked to give its views on the situation when a court of law, in the execution of a judgement against a staff member for a debt owed by him, attempts to require UNIDO to pay a part of the salary of the staff member to his creditor. The Office of Legal Affairs regarded that such a pro-

²⁶See footnote 3 above.

ceeding with respect to UNIDO was null and void.²⁷ It pointed out that service of the court order upon UNIDO was a legal process from which UNIDO was immune, in virtue of section 2 of the General Convention and section 9 (a) of the UNIDO headquarters Agreement.²⁶ Furthermore, the salary to be seized was, before it was paid to the staff member, a part of the assets of UNIDO. Therefore the proceeding would constitute a seizure of the assets of UNIDO from which it was exempt by virtue of section 3 of the General Convention. The Office of Legal Affairs continued to present the practice that had been followed by the United Nations in such cases:

“Accordingly, the following practice has been followed with respect to garnishments and other court orders similarly reporting to direct the Organization, as employer, to make regular payments out of a staff member’s salary directly to a judgement creditors. The court order, if received, is returned to the creditor (or court official) with the explanation of the Organization’s immunity and also the United Nations policy concerning private legal obligations of staff members. As for the staff member, he is requested—usually by his Personnel Officer—to settle the matter in such a way, either by payment or further court action, as to avoid any further embarrassment to the United Nations. Even if he disclaims the debt or intends to appeal the judgement, he is required, as a matter of proper conduct, to take whatever legal steps would ordinarily be necessary to delay any direct action vis-à-vis his salary; for the Organization tries to avoid involvement in the question of the validity of court judgements concerning staff in their unofficial capacity.”²⁷

(i) *Exemption from taxation and customs duties*

24. The question whether a tax is direct or indirect continued to be of interest.²⁸ Advising a Resident Representative in a Member State on the possibility of a claim for refund of a central excise duty paid by his office on the purchase of gasoline for official vehicles, the Office of Legal Affairs again pointed to the distinction between a tax which is part of the price to be paid and a tax which is stated separately on the invoices. In the latter case, the duty would be a direct tax of which the United Nations is exempt under section 7 (a) of the General Convention. In the former case, section 8 would apply, allowing a refund for “important” purchases. The fact that the purchases were made on a recurrent basis and that the amounts involved were sizeable were considered positive elements in the determination of whether there was an important purchase. The Resident Representative was therefore advised to secure from the Government a refund of the “central excise duties.”²⁹

25. The Agreement between the United Nations and the Republic of Austria regarding the headquarters of UNIDO stipulated that UNIDO, its assets, income and other property shall be exempt from all forms of taxation, provided, however, that such tax exemption shall

not extend to the owner or lessor of any property rented by the UNIDO.³⁰ It continued:

“(b) In so far as the Government, for important administrative considerations, may be unable to grant to the UNIDO exemption from indirect taxes which constitute part of the cost of goods purchased by or services rendered to the UNIDO, including rentals, the Government shall reimburse the UNIDO for such taxes by the payment, from time to time, of lump sums to be agreed upon by the UNIDO and the Government. It is, however, understood that the UNIDO will not claim reimbursement with respect to minor purchases. With respect to such taxes, the UNIDO shall at all times enjoy at least the same exemptions and facilities as are granted to Austrian governmental administrations or to chiefs of diplomatic missions accredited to the Republic of Austria, whichever are the more favourable. It is further understood that the UNIDO will not claim exemption from taxes which are in fact no more than charges for public utility services.”

26. By an exchange of letters dated 7 and 24 July 1967, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the French Republic agreed on provisions covering the reimbursement of indirect taxes to the Organization. The provisions constitute a new method of application of the relevant article of the Agreement regarding the headquarters of UNESCO and its privileges and immunities.³¹

27. Commenting on a UNDP lease agreement on the territory of a Member State which contained a clause putting an obligation on the tenant (UNDP) to pay for waste removal and “any other service”, the Office of Legal Affairs first assumed that the services in question were rendered by the municipality concerned. The Office then reiterated its view that when services furnished by municipalities are charged not according to the value of the services but according to property evaluation or other independent criteria, the payment thus made constitutes a tax. It was therefore suggested that the Resident Representative of UNDP should seek exemption from these charges if they were billed according to real estate evaluation and not according to the service actually rendered. It was also pointed out that taxes levied for municipal services such as street lighting, street cleaning, removal of waste, were different from the “public utility charges” which are not subject to exemption pursuant to section 7 (a) of the General Convention. As public utilities *par excellence* were to be considered gas, water and electricity, supervised by government bodies, when the costs as billed were no more than the *quid pro quo* for commodities or services rendered.³²

(ii) *Favourable rates of exchange*

28. The Agreement between the United Nations and the Republic of Austria concerning the headquarters of UNIDO contained the following section 17 (b):

“The Government shall assist the UNIDO to obtain the most favourable conditions as regards exchange rates, banking commissions in exchange transactions and the like.”³³

²⁷United Nations Juridical Yearbook, 1968, p. 216.

²⁸See for example the report of the Commissioner-General of UNRWA, G A (XXII), Suppl. No. 13, para. 5.

²⁹United Nations Juridical Yearbook, 1966, p. 224; the same questions were dealt with in a memorandum to the Chief of the Field Operations Service, Office of General Services, *ibid.*, 1967, pp. 315-316.

³⁰United Nations, *Treaty Series*, vol. 600, No. 8679, p. 106, article VII, sect. 16 (a).

³¹United Nations Juridical Yearbook, 1967, pp. 80-81.

³²*Ibid.*, 1968, p. 184.

³³United Nations, *Treaty Series*, vol. 600, I, No. 8679, p. 110.

**** (iii) Exemption from inspection of property**

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

29. The UNIDO headquarters Agreement with Austria contained an article on the extraterritoriality of the headquarters seat and the effects thereof.³⁴

30. The Commissioner-General of UNRWA reported that in general the inviolability of the premises of the agency was respected.³⁵ In cases of incursions the Agency protested to the authorities and presented claims in a number of them.

31. On 28 August 1969, the Second Supplemental Agreement regarding the Headquarters of the United Nations was concluded between the United Nations and the United States in order to include newly leased premises within the Headquarters District in addition to the area defined in annex I and the First Supplement to the said Agreement.³⁶

(v) Police protection of United Nations premises

32. During the period under review agreements relating to meetings continued to include provisions on police protection both similar to the one reprinted in the last issue of the *Repertory*³⁷ and with different wording, such as for example in article XIV of the Agreement of 18 November 1966 between the United Nations and Venezuela regarding the arrangements for the twelfth session of ECLA at Caracas:

“The Government shall take any measure necessary to maintain order within the Conference area and its environs, to ensure the efficient functioning of the Conference and to prevent outside interference of any kind. The Government shall provide such security and police forces as are required for that purpose and for the protection of persons attending the Conference.”³⁸

The UNIDO headquarters Agreement contained sections on the protection of the headquarters seat.³⁹

(vi) Immunity from censorship of United Nations public information material

33. In 1969, the Office of Legal Affairs was asked by the Chief of Centre Services, External Relations Division, Office of Public Information, whether United Nations films could be submitted to censorship in a specific Member State. The Office replied that the United Nations was not in a position to submit its films to censorship since this would be contrary to Article 105 of the Charter and sections 3, 4 and 7 (c) of the General Convention. The sections are as follows:

“Section 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition,

confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

“Section 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

“Section 7. The United Nations . . . shall be . . .

“(c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.”

The Office of Legal Affairs pointed out that a demand to censor United Nations films would constitute interference prohibited by section 3. Since United Nations films are a part of United Nations documentation, censorship therefore would also be a violation of section 4, which provides for inviolability of documentation “wherever located”. Finally, United Nations films are also covered by the exemption under section 7 (c) since they are a part of United Nations publications. Concerning a possible distinction between United Nations films intended “for screening in commercial cinemas” and films “shown at public or private group screenings”, the view was held that no such distinction should be made, since it was a long-established principle that distribution of United Nations public information material may take place through commercial channels.⁴⁰

b. Facilities in respect of communications

34. The director of a United Nations Information Centre in a Member State raised the question whether the authorities of that State should grant press rates to cablegrams emanating from the Centre. The Office of Legal Affairs answered in the affirmative concerning “press telegrams”, which, according to international regulations, are “telegrams, the text of which is made up for information and news for publication in newspapers and other periodical publications or for radio sound or television broadcasting”. According to section 9 of the General Convention, “the United Nations shall enjoy in the territory of each Member . . . press rates for information to the press and radio”. The Office of Legal Affairs also suggested that with regard to telegrams which were not in the nature of press telegrams, the Information Centre should enjoy, under section 3, treatment not less favourable than that accorded by the Government to any other Government including its diplomatic missions in the matter of rates and taxes.⁴¹

35. The 1967 UNIDO headquarters Agreement contained the following clause (section 13 (b)):

“The UNIDO shall have the right to use codes and to dispatch and receive correspondence and other official communications by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.”⁴²

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

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

36. Section 21 of the UNIDO Agreement⁴² provides in respect of members of permanent missions, representatives, UNIDO officials, etc.:

³⁴See footnote 3 above.

³⁵G A (XXIII), Suppl. No. 13, para. 7.

³⁶G A (XXV), Suppl. No. 1, A/8001, p. 230; also United Nations, *Treaty Series*, vol. 687, No. 147, p. 408.

³⁷*Repertory, Supplement No. 3*, vol. IV, under Articles 104 and 105, para. 55; see, for example, Agreement between the United Nations and the Government of Nigeria regarding the arrangements for the eighth session of the Economic Commission for Africa, United Nations, *Treaty Series*, vol. 590, No. 8544, p. 30 (article IV).

³⁸United Nations, *Treaty Series*, vol. 588, No. 8529, p. 256.

³⁹See footnote 3 above, sects. 10-11.

⁴⁰*United Nations Juridical Yearbook*, 1969, pp. 205-206.

⁴¹*Ibid.*, 1966, p. 225.

⁴²See footnote 3 above.

“(a) The Government shall take all necessary measures to facilitate the entry into and sojourn in Austrian territory and shall place no impediment in the way of the departure from Austrian territory of the persons listed below; it shall ensure that no impediment is placed in the way of their transit to and from the headquarters seat and shall afford them any necessary protection in transit.

“(d) No activity performed by any person referred to in sub-section (a) in his official capacity with respect to the UNIDO shall constitute a reason for preventing his entry or his departure from the territory of the Republic of Austria or for requiring him to leave such territory.”

C. Article 105 (2)

1. PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES OF MEMBERS

37. The area of representation of States in their relations with international organizations including their privileges and immunities has, for a number of years, attracted the attention of the International Law Commission and of the Sixth Committee of the General Assembly, following General Assembly resolutions on the matter.⁴³ During the period under review, the Commission started considering draft articles for a Convention.⁴⁴

38. The draft articles considered by the Commission from 1968 onward⁴⁵ were divided into four parts:

Part I. General provisions

Part II. Permanent missions to international organizations

Part III. Delegations to organs of international organizations and to conferences convened by international organizations

Part IV. Permanent observers from non-member States to international organizations.

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

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

c. *Privileges and immunities*

(i) *At conferences held under United Nations auspices*

39. The Agreement of 4 November 1967 between the United Nations and India regarding the arrangements for the Second United Nations Conference on Trade and Development provided in article VII:

⁴³For the historical background, see *Yearbook of the International Law Commission*, 1968, vol. II, p. 193, paras. 9 ff.

⁴⁴The initial draft articles with commentaries were set out by the Special Rapporteur to the Commission, *Yearbook of the International Law Commission*, 1968, vol. II, p. 119.

⁴⁵See *Yearbook of the International Law Commission*, 1968, vol. II, document A/7209/Rev.1, chap. II A, para. 19, B, C, D and E; *ibid.*, 1969, vol. II, document A/7610/Rev.1, chap. II B; the “Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character” was adopted by the United Nations Conference on the Representation of States in their Relations with International Organizations on 14 March 1975, A/CONF.67/18/Add.1.

“(1) The Convention on the Privileges and Immunities of the United Nations, to which India is a party, shall be applicable with respect to the Conference. In particular, the Government will accord to all representatives attending the Conference and to all officials of the United Nations connected with the Conference the privileges and immunities set forth in articles IV and V of the said Convention.

“(2) Representatives of States non-members of the United Nations, but members of UNCTAD, shall enjoy the same privileges and immunities as are accorded to representatives of States Members of the Organization.

“ . . . ”⁴⁶

(ii) *Personal inviolability and immunity from arrest*

40. In 1967, prominent members of the delegation of Guinea to the fifth special emergency session of the General Assembly who were returning by plane were arrested and subsequently detained in the Ivory Coast. The arrest took place during an unscheduled landing in Abidjan. It included the Guinean Minister of Foreign Affairs, the Permanent Representative of the Republic of Guinea to the United Nations, and a Universal Postal Union (UPU) official from Guinea and his family. On 14 August 1967 the Secretary-General reported to the Security Council and to the general membership on the situation.⁴⁷ On 20 and 27 September 1967 the Secretary-General, under rule 15 of the rules of procedure of the General Assembly, requested the inclusion of an additional item in the agenda of the twenty-second session of the General Assembly.⁴⁸

41. Following repeated efforts of the Secretary-General to obtain the release of the above-mentioned Guinean nationals detained at Abidjan and his endeavours, in the exercise of his good offices, to obtain the release of a number of nationals of the Ivory Coast detained by the Government of Guinea, the detained persons were released. Nevertheless, the Secretary-General considered that an important question of principle had arisen concerning the privileges and immunities specified in Article 105 of the Charter of the United Nations and in section 11 of the General Convention, and that failure to reaffirm those provisions could set an undesirable precedent.⁴⁸

42. At its 1592nd plenary meeting, held on 25 October 1967, the General Assembly decided to include the following item in the agenda of its twenty-second session:

“98. Question of diplomatic privileges and immunities:

“(a) Measures tending to implement the privileges and immunities of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations and the privileges and immunities of the staff and of the Organization itself, as well as the obligations of States concerning the protection of diplomatic personnel and property;

“(b) Reaffirmation of an important immunity of representatives of Member States to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations.”⁴⁹

⁴⁶United Nations, *Treaty Series*, vol. 609, No. 8824, p. 3.

⁴⁷S C, 22nd yr., Suppl. for July-Sept. 1967, S/8120.

⁴⁸G A (XXII), Annexes, a.i. 98, A/6832 and Rev.1.

⁴⁹G A (XXII), Annexes, a.i. 98, A/C.6/381, p. 3.

The item was referred to the Sixth Committee. There was general agreement in the statements made that diplomatic privileges and immunities were important for the maintenance of friendly relations between States and for the effective functioning of international organizations. Many speakers noted that:

"It had been recognized since the earliest times that the representatives sent on behalf of one State to another should enjoy a special status so as to enable them to perform their functions under conditions of adequate security and without being subject to pressure or constraint on the part of transit or receiving States. The same considerations applied, *mutatis mutandis*, in the case of representatives of Member States to the United Nations and with respect to the Organization itself and its staff. The development of international organizations since 1945, the availability of rapid means of transport and the increase in the number of independent States had, indeed, all served to emphasize the significance of the relevant international rules and agreements."⁵⁰

One representative remarked that privileges and immunities were not a favour which was granted but a prerequisite for the fulfilment of diplomatic functions, and they were designed to ensure the maintenance of official contracts at all times. In view of the central position of the United Nations in present-day international relations, all speakers supported the unequivocal reaffirmation by the General Assembly of the importance of scrupulous respect for privileges and immunities.⁵⁰

43. The Legal Counsel, speaking as the representative of the Secretary-General, made a statement⁵¹ regarding fundamental points in connexion with privileges and immunities. He explained that the General Convention was a convention *sui generis* and that according to its section 35, which provided that the convention "shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this second convention", the obligation ran from each Member to the Organization. He pointed out that the Organization could not function properly if representatives of Members were prevented from performing their functions or from travelling to and from meetings. The Organization had a clear interest in assuring the privileges and immunities. It therefore seemed elementary that the rights of representatives should properly be protected by the organization and not left entirely to bilateral actions of the States immediately involved. Therefore, the Secretary-General would continue to feel obligated to assert the rights and interests of the Organization on behalf of representatives of Members as the occasion may arise. Should a difference with respect to such rights arise between the United Nations and a Member, it would be subject for an advisory opinion of the International Court of Justice (ICJ) under section 30 of the General Convention, since it was clear that the United Nations may be one of the "parties" referred to in section 30.

44. The Legal Counsel stressed three points: in the first place, as he pointed out, Article 105, paragraphs 1 and 2, imposed an obligation on all Members

of the United Nations to accord such privileges and immunities as were necessary for the fulfilment of the purposes of the Organization or for the independent exercise of the functions of representatives and officials, irrespective of whether or not they had acceded to the convention, whose purpose was only to determine the details of the application of Article 105, paragraphs 1 and 2. He then underlined that the Convention in effect provided the minimum privileges and immunities that the Organization required in all Member States. Therefore, additional privileges and immunities necessary for special situations had been provided for by special agreements such as at Headquarters in New York or for peace-keeping or development missions in various areas of the world. Finally, 96 members had acceded to the Convention while, in most of the remaining Member States as well as in some non-member States, the provisions of the Convention had been made applicable by special agreements. It could be said that the standards and principles of the Convention had been so widely accepted that they had become a part of the general international law governing the relations of States and the United Nations.

45. On 18 December 1967 the following resolution was adopted by the General Assembly:

"The General Assembly

" . . .

"1. Reaffirms the provisions of Article 105 of the Charter of the United Nations and section 11 of the Convention on Privileges and Immunities of the United Nations;

"2. Urgently requests all Member States to ensure that representatives of Member States to the principal and subsidiary organs of the United Nations enjoy, during their journey to and from the place of meeting, the privileges and immunities to which they are entitled".⁵²

** (iii) *Currency or exchange facilities*

** (iv) *Legal status of premises*

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

46. Repeatedly, in the period under review the Secretary-General referred to the status of observers.⁵³ For example, in 1967, in the introduction to his annual report, he remarked *inter alia*:

"In my introduction to last year's annual report, as well as in previous years, I have already expressed my strong feeling that all countries should be encouraged and enabled, if they wish to do so, to follow the work of the Organization more closely by maintaining observers at the Headquarters of the United Nations, at Geneva and in the regional economic commissions.

" . . .

"Were the Assembly, perhaps on the initiative of a Member State, to study the questions involved, I am sure that it would be possible formally to establish the status of observer and to draw up legal rules permitting non members to follow items of interest to them in the United Nations."⁵⁴

⁵⁰*Ibid.*, a.i. 98, A/6965, p. 9.

⁵¹*Ibid.*, a.i. 98, A/C.6/385, pp. 4-5.

⁵²G A resolution 2328(XXII).

⁵³For the position of the Organization as regards permanent observers of non-member States, see *Repertory, Supplement No. 3*, vol. IV, under Article 105 (2), para. 85.

⁵⁴G A (XXII), Suppl. No. 1A, A/6701/Add.1, para. 168.

47. As indicated above⁵⁵ the question of the rights, including privileges and immunities, of permanent observers was under consideration during the deliberations of the International Law Commission and the Sixth Committee of the General Assembly concerning the representation of States in their relations with international organizations.⁵⁶ Concerning privileges and immunities, opinions among delegations varied as to where distinctions were to be drawn between special missions, permanent missions, permanent observer missions and delegations to organs of international organizations or to conferences convened by international organizations.

3. PRIVILEGES AND IMMUNITIES OF OFFICIALS OF THE ORGANIZATION

a. Categories of officials

48. During the period under review a Member State sought to exclude locally recruited United Nations staff of its nationality from the provisions of the General Convention.⁵⁷

b. Privileges and immunities

** (i) General provisions

(ii) Qualification or extension of specific privileges and immunities

** (a) Immunity from legal process

(b) Exemption from national income taxation

49. In an opinion dated 16 October 1969⁵⁸ the Office of Legal Affairs replied to a question from the Office of the Controller, as to whether a Member State party to the General Convention is entitled to enforce a law providing that United Nations emoluments of staff members were to be taken into account in establishing the rate of tax on their non-exempt income. The opinion stated that it was not permissible for such a State to make use of United Nations emoluments for tax purposes. Reference was made to section 18 (b) of the General Convention, Article 105 of the Charter, and also to the reasoning underlying a judgement by the Court of Justice of the European Communities concerning a substantially identical article of the Protocol on the Privileges and Immunities of the European Coal and Steel Company.

(c) Immunity from national service obligations

50. The UNIDO headquarters Agreement⁵⁹ contains the following section 27 (g):

“Officials of the UNIDO shall enjoy within and with respect to the Republic of Austria the following privileges and immunities:

“(g) Exemption from national service obligations, provided that, with respect to Austrian nationals, such exemption shall be confined to offi-

ciala whose names have, by reason of their duties, been placed upon a list compiled by the Executive Director and approved by the Government; provided further that should officials, other than those listed, who are Austrian nationals, be called up for national service, the Government shall, upon request of the Executive Director, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption of the essential work of the UNIDO.”

(d) Exchange facilities

51. Section 27 (h) of the UNIDO headquarters Agreement⁵⁹ grants officials:

“Freedom to acquire or maintain within the Republic of Austria or elsewhere foreign securities, foreign currency accounts, and other movable and, under the same conditions applicable to Austrian nationals, immovable property; and at the termination of their UNIDO employment, the right to take out of the Republic of Austria through authorized channels without prohibition, or restriction, their funds in the same currency and up to the same amounts as they had brought into the Republic of Austria.”

(e) Exemptions from customs duties

52. Section 27 (j) of the UNIDO Headquarters Agreement⁵⁹ grants officials:

“The right to import for personal use, free of duty and other levies, prohibitions and restriction on imports:

“(i) Their furniture and effects in one or more separate shipments, and thereafter to import necessary additions to the same;

“(ii) One automobile every four years; and

“(iii) Limited quantities of certain articles for personal use or consumption and not for gift or sale; the UNIDO may establish a commissary for the sale of such articles to its officials and members of delegations. A supplemental agreement shall be concluded between the UNIDO and the Government to regulate the exercise of this right.”

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

53. Section 28 of the Agreement between the Republic of Austria and UNIDO regarding the headquarters of UNIDO⁵⁹ provides:

“In addition to the privileges and immunities specified in Section 27:

“(a) The Executive Director shall be accorded the privileges and immunities, exemptions and facilities accorded to Ambassadors who are heads of missions;

“(b) A senior official of the UNIDO, when acting on behalf of the Executive Director during his absence from duty, shall be accorded the same privileges and immunities, exemptions and facilities as are accorded to the Executive Director;

“(c) Other officials having the professional grade of P-5 and above, and such additional categories of

⁵⁵See para. 38 above.

⁵⁶See for example: *Yearbook of the International Law Commission*, 1968, vol. II, document A/7209/Rev.1, chap. II D, para. 28; *ibid.*, 1969, vol. II, document A/7610/Rev.1, chap. II A, para. 17.

⁵⁷For details, see para. 56 below.

⁵⁸*United Nations Juridical Yearbook*, 1969, pp. 227-228.

⁵⁹See footnote 3 above.

⁵⁹See footnote 3 above.

officials as may be designated, in agreement with the Government, by the Executive Director in consultation with the Secretary-General of the United Nations on the ground of the responsibilities of their positions in the UNIDO, shall be accorded the same privileges and immunities, exemptions and facilities as the Government accords to members having comparable rank of the staffs of chiefs of diplomatic missions accredited to the Republic of Austria.”

(iv) *The question of privileges and immunities of locally recruited personnel*

54. The Syrian Arab Republic enacted a decree of 1 August 1967 that had the effect of excluding all locally recruited United Nations staff of Syrian nationality in Syria from the privileges and immunities of the General Convention, other than the exemption from taxation of UNRWA staff.⁶⁰ In a memorandum to the Government of 15 May 1968,⁶¹ the General Counsel of UNRWA explained the precise scope and the effect of privileges and immunities granted to locally recruited United Nations staff. He pointed out that privileges and immunities in general are granted to officials in the interest of the United Nations and not for the personal benefit of the individuals themselves. Their basic purpose was to ensure the independence of the individual in all that concerns his official acts. The locally-recruited personnel no less than internationally recruited personnel are staff within the meaning of Article 101, paragraph 1, of the Charter. In accordance with General Assembly resolution 76 (I) of 7 December 1946, privileges and immunities under section 18 of the General Convention applied to all officials of the United Nations, except to those who were both locally recruited and assigned to hourly rates. Locally-recruited staff, however, do not enjoy the same extent of privileges and immunities as do expatriate staff, recruited abroad. The always relevant categories were the following: immunity from legal process, exemption from taxation on salaries and emoluments, immunity from national service obligations. In spite of their memorandum, difficulties persisted.⁶² Other problems referred to by the Commissioner-General of UNRWA in his reports during the period under review included, for example, the detention of locally recruited staff in the territories occupied by a member State after the June 1967 hostilities.⁶³

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

55. The Agreement between the United Nations and Chile concerning the UNICEF Regional Office for the Americas⁶⁴ contained the following clause:

“4. The privileges and immunities accorded under this Agreement are granted in the interests of UNICEF and not for the personal benefit of the individuals concerned. The Executive Director shall waive the immunity of any official in any case where, in his opinion, such immunity impedes the course of justice and can be waived without prejudice to the interests of UNICEF.

⁶⁰G A (XXII), Suppl. No. 13, para. 8.

⁶¹United Nations Juridical Yearbook, 1968, pp. 213-215; G A (XXIII), Suppl. No. 13, para. 2.

⁶²G A (XXIV), Suppl. No. 14, para. 144.

⁶³G A (XXIII), Suppl. No. 13, para. 5; see also G A (XXIV), Suppl. No. 14, para. 145.

⁶⁴United Nations, *Treaty Series*, vol. 596, No. 8635, p. 215, article VII.

“5. UNICEF and its officials shall co-operate at all times with the Chilean authorities to facilitate the proper administration of justice, ensure the observance of police regulations and prevent the occurrence of any abuse in the exercise of the privileges and immunities conferred by this Agreement.”

56. In 1969 the question arose whether the Secretary-General's delegation of authority to the Administrator of UNDP and to the Executive Director of UNICEF could be viewed as including authority to permit staff members to waive privileges and immunities of the United Nations. The Office of Legal Affairs explained, in an opinion of 11 July 1969, that the authority to waive privileges and immunities was vested exclusively in the Secretary-General, that this authority was not a personnel matter and that without an express provision on this point, no such delegation could be inferred from the delegation of power relating to administration of the Staff Regulations and Rules on appointment and selection of staff. The opinion of the Office of Legal Affairs also covered the general policy of the Organization regarding the waiver of privileges and immunities.⁶⁵

57. In 1969 the Deputy Field Director of UNRWA had been declared *persona non grata* and asked by the Syrian Government to leave the country. The Agency stated its concern in a note verbale and denied that the Government had the right, with respect to an official of the Agency, to invoke the doctrine of *persona non grata* by which a State, without establishing an abuse of privileges or giving any reason, may unilaterally require that a diplomat accredited to it leave the country. Nevertheless, the Syrian Government adhered to its decision. The Secretary-General took the matter up with the Minister of Foreign Affairs, referring to Articles 100, 101 and 105 of the United Nations Charter and to the procedure for consultation agreed to between them in 1967. While the official was finally posted elsewhere in view of the circumstances, the Secretary-General stated that, after considering the information he had requested from the Government, he was not satisfied that the officer in question had in any way acted contrary to his obligation as an international civil servant. In the future he would not consider the transfer of an Agency staff member except in accordance with the Agreement of August 1967.⁶⁶

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

58. In an exchange of letters between UNRWA and Israel on 14 June 1967, the latter agreed in principle to permit the free movement of UNRWA vehicles into, within and out of Israel and the areas in question; to permit the international staff of the Agency to move in, out and within Israel and the areas in question; to provide them with identity documents and any other passes that might be required; and to permit the local staff of the Agency to move within the areas in question under arrangements made or to be made with the military authorities.⁶⁷

59. In 1969, the Office of Legal Affairs outlined in a letter the international and United States law bases for the issuance of visas to members of the families of United Nations officials assigned in the United States as

⁶⁵United Nations Juridical Yearbook, 1969, pp. 224-225.

⁶⁶G A (XXV), Suppl. No. 13, para. 159; see also Secretariat Study, p. 289, for *persona non grata* doctrine.

⁶⁷United Nations, *Treaty Series*, vol. 620, No. 8955, p. 184.

well as the relevant procedure followed by the United Nations in such cases.⁶⁸

60. The Commissioner-General of UNRWA reported that difficulties continued in connexion with the travel of Agency staff members, such as the refusal to grant visas on United Nations laissez-passer and the denial of exit permits. Representations drawing attention to sections 24 and 25 of the General Convention were made to the competent Government.⁶⁹

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

61. In a memorandum of 15 September 1969⁷⁰ the Office of Legal Affairs replied to an inquiry about the status, privileges and immunities of the members of the Committee on the Elimination of Racial Discrimination and members of *ad hoc* conciliation commissions established under article 12 of the International Convention on the Elimination of All Forms of Racial Discrimination.⁷¹ The view was expressed that both groups were to be considered experts on missions for the United Nations within the meaning of sections 22, 23 and 26 of the General Convention and section 11 of the Headquarters Agreement with the United States, and that they were entitled to the privileges, immunities and facilities therein laid down.

⁶⁸United Nations Juridical Yearbook, 1969, pp. 225-226.

⁶⁹G A (XXV), Suppl. No. 13, para. 155.

⁷⁰United Nations Juridical Yearbook, 1969, pp. 207-210.

⁷¹United Nations, *Treaty Series*, vol. 660, p. 195.

****5. PRIVILEGES AND IMMUNITIES OF MEMBERS OF THE INTERNATIONAL COURT OF JUSTICE, THE REGISTRAR, OFFICIALS OF THE REGISTRY, ASSESSORS, AGENTS AND COUNSELS OF THE PARTIES AND OF WITNESSES AND EXPERTS**

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

Provisions relating to the United Nations Emergency Force

62. During the period under review no new status of forces agreement was concluded. In the telegram containing instructions for the withdrawal of the United Nations Emergency Force (UNEF) sent by the Secretary-General to the Commander of UNEF on 18 May 1967 the following clause was included:

“4. The Force does not cease to exist or (to) lose its status or any of its entitlements, privileges and immunities until all of its elements have departed from the area of its operation.”⁷²

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

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

⁷²United Nations Juridical Yearbook, 1967, p. 106.

ANNEX

Member States which became parties to the Convention on the Privileges and Immunities of the United Nations between 2 September 1966 and 31 December 1969⁷³

<i>State</i>	<i>Accession, notification of succession (d) ⁷⁴</i>
Guinea	10 January 1968
Ireland	10 March 1967
Lesotho	26 November 1969
Mali	28 March 1968
Malta	27 June 1968 (d)
Mauritius	18 July 1969 (d)

⁷³*Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions*, United Nations publication, Sales No. E.77.V.7, pp. 35-39.

⁷⁴The 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.

Chapter XVII
TRANSITIONAL SECURITY ARRANGEMENTS