

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 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 connection with the Organization.
3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

INTRODUCTORY NOTE

1. In 1946, pursuant to Article 105(3), the General Assembly approved a Convention on the Privileges and Immunities of the United Nations (hereinafter the "General Convention"). The preamble to the General Convention reproduced the provision of Article 104 and paragraphs 1 and 2 of Article 105; the Convention itself elaborated on the legal capacity, privileges and immunities of the Organization and the privileges and immunities of the representatives of Members, the officials of the United Nations and the experts on missions for the United Nations. As in previous *Supplements*, this review provides a list of new Members that have acceded to the General Convention, as well as a review of the many special agreements with Member States or non-member States acting as host countries to the United Nations or its organs that made reference to the provisions of the General Convention. Relevant actions taken by the General Assembly and the United Nations Administrative Tribunal are also presented.

2. In the period under review, the United Nations concluded more than 300 agreements with Member States. About half of those agreements concerned technical cooperation and assistance. Approximately 70 agreements regulated arrangements for United Nations meetings, conferences and training courses held outside established headquarters. Issues relating to United Nations personnel and the United Nations Joint Staff Pension Fund were the subject of roughly 50 agreements; and more than 20 dealt with headquarters matters. Of the remaining agreements, around 20 concerned the environment and natural resources. There were 5 peacekeeping and disaster relief agreements.

3. Of the agreements referred to above, two thirds were signed between a programme, an agency or a fund of the

United Nations, on behalf of the United Nations, and a Member State. Programmes, agencies and funds are constituent parts of the United Nations and as such they do not enjoy a legal personality separate from the Organization. Among these agencies, programmes and funds: United Nations Capital Development Fund, United Nations Development Programme (UNDP), United Nations Children's Fund (UNICEF), United Nations Environment Programme (UNEP) and United Nations Revolving Fund for Natural Resources Exploration.

4. Between 1979 and 1984, the United Nations or its programmes, agencies and funds also concluded 34 agreements with non-members. These included agreements with observers accredited to the United Nations as well as international organizations. The agreements concerned, *inter alia*, the following: technical cooperation and assistance, information exchange, United Nations personnel and United Nations pension fund, financial matters and telecommunications. Observer States included the Democratic People's Republic of Korea and Kiribati; intergovernmental organizations included the Organization of the Islamic Conference, the Commission of the European Communities and the Liptako-Gourma Authority. Among the international organizations that concluded agreements with the United Nations were: United Nations Economic, Social and Cultural Organization (UNESCO), International Labour Organization (ILO), Food and Agriculture Organization of the United Nations (FAO), World Health Organization (WHO), International Bank for Reconstruction and Development (IBRD) and Organization for Economic Cooperation and Development (OECD).

I. GENERAL SURVEY

****A. Operation of Charter provisions****B. Implementation of Articles 104 and 105**

1. BY GENERAL CONVENTION

5. Four Member States became parties to the Convention on the Privileges and Immunities of the United Nations during the period from 1 January 1979 to 31 December 1984. The accession of one of the Members contained reservations regarding certain provisions of the General Convention (see annex below). The total number of parties had reached 120 on 31 December 1984.

2. BY SPECIAL AGREEMENTS ON PRIVILEGES AND IMMUNITIES

**** (a) With non-member States****(b) With Member States**

6. The Agreement between the United Nations and Argentina concerning the office of the Economic Commission for Latin America (ECLAC) in Buenos Aires was concluded on 9 April 1979.¹ It provided that the office and its international staff members shall enjoy all the rights, privileges and immunities established by the Convention on the Privileges and Immunities of the United Nations.

7. In the Agreement between the United Nations and Mexico² concerning arrangements for the 1979 session of the UNICEF Executive Board, to be held at Mexico City, the Convention on the Privileges and Immunities of the United Nations was made applicable with respect to the session.

8. The Agreement between the United Nations and Turkey concerning arrangements for the sixth session of the Committee on Natural Resources, to be held at Istanbul from 5 to 15 June 1979, came into force on 15 May 1979.³ It provided that the Convention on Privileges and Immunities of the United Nations and the Convention on Privileges and Immunities of the Specialized Agencies would be applicable to the session.

9. In agreements between the United Nations and Canada,⁴ the United Nations and Yugoslavia,⁵ the United Nations and Mexico,⁶ and the United Nations and Ethiopia,⁷ regarding arrangements for the fifth, seventh, eighth and tenth sessions, respectively, of the World Food Council, the Convention on Privileges and Immunities of the United Nations was made applicable with respect to all four sessions.

10. The Agreement between the United Nations and Iraq relating to the headquarters of the Economic Commission for Western Asia (ECWA)⁸ came into force on 31 August 1979, making applicable the Convention on the Privi-

leges and Immunities of the United Nations to the Economic Commission for Western Asia.

11. The Agreement between the United Nations and Indonesia regarding arrangements for the sixteenth session of the Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas, to be held at Bandung from 7 to 18 September 1979, came into force on 3 September 1979.⁹ It provided that the Convention on the Privileges and Immunities of the United Nations would be applicable with respect to the session.

12. The Agreement between the United Nations and India regarding arrangements for the Third General Conference of UNIDO, to be held at New Delhi from 21 January to 8 February 1980, was signed at Vienna on 12 November 1979.¹⁰ It provided that the Conventions on the privileges and immunities of the United Nations and of the specialized agencies, respectively, would be applicable with respect to the Conference.

13. The Agreement between the United Nations and the Philippines regarding the arrangements for the 1980 session of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization¹¹ was signed at New York on 11 January 1980. It provided that the Conventions on the privileges and immunities of the United Nations and of the specialized agencies, respectively, as well as the Agreement on the Privileges and Immunities of IAEA, would be applicable with respect to the Conference.

14. In Agreements between the United Nations and Mexico¹² and the United Nations and the Philippines¹³ regarding arrangements for the sixth and eighth sessions of the Commission on Transnational Corporations, respectively, the Convention on the Privileges and Immunities of the United Nations was made applicable with respect to both sessions.

15. The Agreement between the Government of Lebanon and the United Nations on the temporary headquarters of the Economic Commission for Western Asia¹⁴ came into force on 13 August 1980, making applicable the Convention on the Privileges and Immunities of the United Nations to ECWA.

16. The Third Supplemental Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations came into force on 10 December 1980.¹⁵ It extended the privileges and immunities of the United Nations, officials of the United Nations and representatives of the Members of the United Nations to the additional premises described in the annexes to the Agreement.

17. The Agreement between the United Nations and Panama concerning the arrangements for the Extraordinary Plenary Meeting of the United Nations Council for Namibia¹⁶

¹United Nations Juridical Yearbook, 1979, p. 20.

²Ibid.

³Ibid., p. 22.

⁴Ibid., p. 27.

⁵United Nations Juridical Yearbook, 1981, p. 17.

⁶United Nations Juridical Yearbook, 1982, p. 37.

⁷United Nations Juridical Yearbook, 1984, p. 14.

⁸United Nations Juridical Yearbook, 1979, p. 10.

⁹Ibid., p. 28.

¹⁰Ibid., p. 30.

¹¹United Nations Juridical Yearbook, 1980, p. 26.

¹²Ibid., p. 37.

¹³United Nations Juridical Yearbook, 1982, p. 43.

¹⁴United Nations Juridical Yearbook, 1980, p. 21.

¹⁵Ibid., p. 18.

¹⁶United Nations Juridical Yearbook, 1981, p. 21.

was signed and approved at Panama City on 3 June 1981. It made the Conventions on the privileges and immunities of the United Nations and of the specialized agencies, respectively, applicable to the meeting.

18. In Agreements between the United Nations and the Philippines¹⁷ and the United Nations and Finland,¹⁸ regarding arrangements for the fourth and sixth sessions, respectively, of the Commission on Human Settlements, the Convention on the Privileges and Immunities of the United Nations was made applicable with respect to both sessions.

19. The Agreement between the United Nations and Italy regarding arrangements for the session of the Interim Committee on New and Renewable Sources of Energy came into force on 6 June 1982,¹⁹ making applicable to the session the Convention on the Privileges and Immunities of the United Nations.

20. The Agreement between the United Nations and Jamaica relating to the establishment in Jamaica of a United Nations office of the Special Representative of the Secretary-General for the Law of the Sea, for the servicing of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, was concluded on 7 March 1983,²⁰ providing for the application of the Convention on the Privileges and Immunities of the United Nations to the office.

21. The Agreement between the United Nations and Yugoslavia on the arrangements for the sixth session of UNCTAD came into force on 14 April 1983,²¹ making applicable to the session the Convention on the Privileges and Immunities of the United Nations.

22. The exchange of letters constituting an agreement between the United Nations and Austria concerning arrangements for the twenty-seventh session of the Committee on the Peaceful Uses of Outer Space came into force on 30 April 1984, contained the following paragraph:

"[T]he provisions of the Headquarters Agreement for UNIDO, signed on 13 April 1967, shall apply *mutatis mutandis* to the twenty-seventh session of the Committee on the Peaceful Uses of Outer Space."²²

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

23. The application of the General Convention to a number of institutes and centres was agreed upon by formal agreement or an exchange of notes. These included the establishment of the International Research and Training Institute for the Advancement of Women in Santo Domingo, Dominican Republic, on 31 March 1981;²³ the establishment and operation of the United Nations information centre in Bangladesh, on 25 August 1981;²⁴ the establishment of the Helsinki Institute for Crime Preven-

tion and Control in Finland, on 23 December 1981;²⁵ and the establishment of the Integrated Supply Center of UNICEF in Copenhagen, on 12 April 1983.²⁶

24. The United Nations continued to conclude a large number of agreements for the purpose of making arrangements for the holding of United Nations conferences, seminars or other meetings.²⁷ These agreements generally provide that the General Convention shall be applicable to the meeting, conference or seminar. The standard provision used reiterates that the privileges and immunities contained in articles V, VI and VII of the General Convention shall apply to officials and experts of the United Nations whereas officials and experts of the specialized agencies are 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 connection with the conferences, seminars or meetings shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of those functions as well as the right of entry into and exit from the host country for non-nationals of that State. Those provisions are intended to cover representatives of the information media, representatives of non-governmental organizations and other persons invited to the conferences, seminars or meetings for whom no provision has been made in the General Convention.

25. Examples of such host agreements are the Agreement between the United Nations and the Syrian Arab Republic concerning arrangements for the United Nations Training Seminar on Remote Sensing of Earth Resources, concluded in New York on 1 August 1979;²⁸ the Agreement between the United Nations and Denmark regarding the arrangements for the World Conference of the United Nations Decade for Women: Equality, Development and Peace, signed at New York on 2 July 1980;²⁹ the Agreement between the United Nations and Argentina concerning a United Nations Regional Seminar on Remote Sensing Applications and Satellite Communications for Education and Development, signed at New York on 16 April 1981;³⁰ the Exchange of Letters on 23 and 31 March 1982 between the United Nations and Malta concerning arrangements for the Seminar on the Question of Palestine;³¹ the Agreement between the United Nations and Bulgaria concerning arrangements for the European Regional Preparatory Meeting for the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held at Sofia, from 6 to 10 June 1983.³²

26. Some Host Agreements, however, contained provisions on privileges and immunities which represented variations from the general practice outlined in paragraph 24 above, so as to adapt to or benefit from the legal circumstances peculiar to the particular State in which the conference was being held.

¹⁷*Ibid.*, p. 15.

¹⁸*United Nations Juridical Yearbook*, 1983, p. 25.

¹⁹*United Nations Juridical Yearbook*, 1982, p. 35.

²⁰*United Nations Juridical Yearbook*, 1983, p. 10.

²¹*Ibid.*, p. 28.

²²*United Nations Juridical Yearbook*, 1984, p. 21.

²³*United Nations Juridical Yearbook*, 1981, p. 8.

²⁴*Ibid.*, p. 9.

²⁵*United Nations Juridical Yearbook*, 1982, p. 22.

²⁶*United Nations Juridical Yearbook*, 1983, p. 18.

²⁷Provisions on privileges and immunities of these agreements are reproduced in the *United Nations Juridical Yearbook*, 1979-1984.

²⁸*United Nations Juridical Yearbook*, 1979, p. 26.

²⁹*United Nations Juridical Yearbook*, 1980, p. 34.

³⁰*United Nations Juridical Yearbook*, 1981, p. 20.

³¹*United Nations Juridical Yearbook*, 1982, p. 31.

³²*United Nations Juridical Yearbook*, 1983, p. 8.

27. Agreements with Austria fall into the latter category because it hosts the headquarters of UNIDO. Thus, reference is made in conference/seminar agreements to the provisions on privileges and immunities contained in the UNIDO Headquarters Agreement. Moreover, agreements with Austria also deviate from the standard provisions inasmuch as personnel assigned to hourly rates do not enjoy functional immunity.

28. For example, the agreement for the United Nations Conference on Science and Technology for Development, held at Vienna from 20 to 31 August 1979,³³ provided:

"1. The provisions relating to privileges and immunities in the Agreement between the United Nations and the Republic of Austria regarding the Headquarters of UNIDO shall be applicable with regard to the Conference. The Convention on the Privileges and Immunities of the United Nations is hereby not affected.

"2. Representatives of States and of the United Nations Council for Namibia invited to attend the Conference, officials of the United Nations performing functions in connection with the Conference, representatives of the specialized agencies, the International Atomic Energy Agency and other intergovernmental organizations invited to attend the Conference and experts on mission for the United Nations at the Conference shall enjoy the same privileges and immunities as are accorded to the representatives to meetings of UNIDO, to officials of UNIDO and to experts on mission for UNIDO, respectively, under the Agreement outlined in paragraph 1.

"3. Without prejudice to the provisions of paragraph 2 of this article, representatives referred to in article II (c) and (d) and invited by the United Nations to attend the Conference shall enjoy immunity from legal process in respect of words spoken or written or any acts performed by them in their official capacity in connection with the Conference.

"4. Personnel provided by the Government under article XI of this Agreement, with the exception of those who are assigned to hourly rates, shall enjoy immunity from legal process in respect of words spoken or written or any act performed by them in their official capacity in connection with the Conference.

"5. Without prejudice to the preceding paragraphs of this article, observers from non-governmental organizations invited by the United Nations to the Conference shall enjoy immunity from legal process in respect of words spoken or written or any act performed by them in the exercise of their functions in connection with the Conference.

"6. The Government shall ensure that no impediment is imposed on transit to and from the Conference of the following categories of persons invited by the United Nations to attend the Conference: representatives of Governments and of the United Nations Council for Namibia and their immediate families; officials and experts of the United Nations and their immediate families; representatives referred to in article II (c) and (d) and invited to the Conference and their immediate families, representatives of the press or of radio, television, film or other information agencies accredited by the United Nations in its discretion after consultation with the Government, and other persons officially invited to the Conference by the United Nations.

"7. All persons referred to in this article and all persons performing functions in connection with the Conference who are not nationals or residents of Austria shall have the right of entry into and exit from Austria. Visas and entry permits, where required, shall be granted free of charge, as speedily as possible and, when applications are made at least two and a half weeks before the opening of the Conference, not later than two weeks before the date of the opening of the Conference. If the application for the visa is not made at least two and a half weeks before the opening of the Conference, the visa shall be granted not later than three days from the receipt of the application.

"8. During the Conference, including the preparatory and final stages of the Conference, the buildings and areas referred to in article III shall be deemed to constitute United Nations premises, and access thereto shall be subject to the authority and control of the United Nations."

29. The Agreement concerning arrangements for the Second United Nations Conference on the Exploration and Peaceful Uses of Outer Space, held at Vienna from 9 to 21 August 1982,³⁴ provided as follows:

"Privileges and Immunities

"22. All representatives of States and of the United Nations Council for Namibia participating in the Conference in accordance with paragraph 1(a) and (b) of this Agreement shall enjoy the privileges and immunities provided to representatives of Member States under UNIDO's Headquarters Agreement, signed 13 April 1967.

"23. Observers referred to in paragraph 1 (c) and (d) of this Agreement shall enjoy immunity from legal process in respect of words spoken and written and of any act performed by them in their official capacity in connection with the Conference.

"24. Personnel provided by the Government under paragraph 14 of this Agreement, with the exception of those who are assigned to hourly rates, shall enjoy immunity from legal process in respect of words spoken or written and of any act performed by them in their official capacity in connection with the Conference. Such immunity shall, however, not apply in case of an accident caused by vehicle, vessel or aircraft.

"25. Observers from interested intergovernmental or non-governmental organizations participating in the Conference in accordance with paragraph 1(g) and (h) of this Agreement shall enjoy immunity from legal process in respect of words spoken or written and of any act performed by them in the exercise of their official functions in connection with the Conference."

30. The Agreement between the United Nations and Austria regarding the arrangements for the 1983 United Nations Conference on Succession of States in respect of State Property, Archives and Debts, to be held at Vienna from 1 March to 8 April 1983,³⁵ included the following provisions:

³³*Ibid.*, p. 25.

³⁴*United Nations Juridical Yearbook*, 1982, p. 31.

³⁵*United Nations Juridical Yearbook*, 1983, p. 8.

"ARTICLE XIII

"Privileges and Immunities

"1. The provisions relating to privileges and immunities in the agreement between the United Nations and the Republic of Austria regarding the Headquarters of UNIDO shall be applicable with regard to the Conference. The Convention on the Privileges and Immunities of the United Nations is hereby not affected.

"2. All representatives of States and of the United Nations Council for Namibia participating in the Conference in accordance with article II, paragraph I(a) and (b), of this Agreement shall enjoy the privileges and immunities provided to representatives of Member States under UNIDO's Headquarters Agreement, signed 13 April 1967.

"3. Observers referred to in article II, paragraph I(c) and (d), of this Agreement shall enjoy immunity from legal process in respect of words spoken and written and of any act performed by them in their official capacity in connection with the Conference.

"4. Personnel provided by the Government under article XI of this Agreement, with the exception of those who are assigned to hourly rates, shall enjoy immunity from legal process in respect of words spoken or written and of any act performed by them in their official capacity in connection with the Conference. Such immunity shall, however, not apply in case of an accident caused by vehicle, vessel or aircraft."

31. The two latter agreements provide for another deviation from the standard text: immunity for local personnel does not apply in case of an accident caused by vehicle, vessel or aircraft.

32. The agreements concluded with Governments relating to assistance by UNDP followed the Standard Basic Assistance Agreement containing provisions on privileges and immunities.³⁶ Owing to the particular legal circumstances of Albania, the exchange of letters constituting an agreement between the United Nations (UNDP) and Albania concerning assistance by UNDP, which came into force on 5 February 1981, contained provisions similar to those of the Standard Basic Assistance Agreement and further provided that, "pending the adherence of the Government of Albania to the Convention on the Privileges and Immunities of the International Atomic Energy Agency, the Government of Albania undertakes to extend the application of the provisions of the Convention on the Privileges and Immunities of the United Nations to the specialized agencies and the International Atomic Energy Agency (IAEA) acting as Executing Agencies of UNDP, their property, funds and assets and to their officials and all other persons performing services on their behalf."³⁷

33. The agreements concluded with a number of Governments concerning the activities of the United Nations Children's Fund contained provisions on privileges and immunities similar to those of the Revised Model Agreement.³⁸ Special provisions were included in agreements with Governments that had not yet acceded to the Conven-

³⁶See, for example, *United Nations Juridical Yearbook, 1973*, pp. 24-25.

³⁷*United Nations Juridical Yearbook, 1981*, p. 35.

³⁸See, for example, *United Nations Juridical Yearbook, 1965*, pp. 31-32.

tion on the Privileges and Immunities of the United Nations. For example, the Agreement between the United Nations Children's Fund and the Republic of Seychelles contained the following provisions:³⁹

"Article VII. Privileges and Immunities

"The Government shall apply the provisions of the Seychelles Act of 1980 which will exempt UNICEF (as an organ of the United Nations), its property, funds, assets and officials from taxes, fees, tolls or duties on supplies and equipment furnished by UNICEF so long as they are used in accordance with the plans of operations.

"Upon accession of the Republic of Seychelles, in its own right, to the Convention on the Privileges and Immunities of the United Nations, the Government will apply the provisions of that Convention to UNICEF, its officials, staff, property and funds."

34. The Basic Agreements between the United Nations and the Food and Agriculture Organization of the United Nations on behalf of the World Food Programme and a number of Governments also contained provisions on facilities, privileges and immunities.⁴⁰

35. The agreements relating to the United Nations Revolving Fund for Natural Resources Exploration concluded with a number of Governments also contained provisions on privileges and immunities.⁴¹

4. BY OTHER DECISIONS AND ACTIONS OF UNITED NATIONS ORGANS

36. During the period under review, the safety of international civil servants became of concern. In his 1980 annual report to the General Assembly on the work of the Organization,⁴² the Secretary-General stated his "concern about the security of international civil servants and about the imperative need for Member States to comply with their obligations under the Convention on the Privileges and Immunities of the United Nations." Subsequently the Fifth Committee debated the issue of privileges and immunities in Article 105.⁴³ Two examples of comments are presented below:

"[T]he distinction between acts performed in an official capacity and those performed in a private capacity lay at the heart of the concept of functional immunity"⁴⁴

"The very great majority of officials of the United Nations and the specialized agencies were accorded functional rather than diplomatic immunities [under the law of international immunities]. That distinction was significant both from the point of view of the scope and

³⁹United Nations, *Treaty Series*, vol. 1195, No. 18976, pp. 281, 284 (1980).

⁴⁰These provisions are similar to those reproduced in *United Nations Juridical Yearbook, 1971*, p. 23.

⁴¹*United Nations Juridical Yearbook, 1979*, pp. 35-36.

⁴²G A (35), Supplement No. 1 (A/35/1).

⁴³See G A (36), 5th Comm., 41st mtg.; Assistant Secretary-General for Personnel Services, para. 36; 52nd mtg.; Mexico, para. 55; 53rd mtg.; Liberia, para. 74; 59th mtg.; Mauritania, para. 23; Union of Soviet Socialist Republics, para. 74; Ethiopia, para. 80. G A (37) 5th Comm., 41st mtg., Denmark, para. 1; Netherlands, para. 6.

⁴⁴G A (36) 5th Comm., 51st mtg., German Democratic Republic, para. 1.

content of the immunity and because of the fundamentally different character of the two types of immunity. While diplomatic immunity attached to the person, the functional immunity of international officials was organizational. Thus, section 20 of the Convention on Privileges and Immunities of the United Nations provided that "[p]rivileges and immunities are granted to officials of the United Nations in the interests of the United Nations and not for the personal benefit of the individuals themselves."⁴⁵

37. Five resolutions were adopted pursuant to the need for respect for the privileges and immunities of officials of the United Nations and the specialized agencies.

38. In its resolution 35/212 of 17 December 1980, the General Assembly appealed to all Member States to respect the privileges and immunities accorded to officials of the United Nations and the specialized agencies by the Convention on the Privileges and Immunities of the United Nations and the Convention on Privileges and Immunities of Specialized Agencies. It further requested the Secretary-General to submit a report to the General Assembly containing any cases in which the international status of the staff members of the United Nations or of the specialized agencies had not been fully respected.⁴⁶ In its resolution 36/232 of 18 December 1981, the Assembly appealed "to any Member State which ha[d] placed under arrest or detention a staff member of the United Nations . . . to enable the Secretary-General . . . to visit and converse with the staff member to apprise himself of the grounds for the arrest or detention, including the main facts and formal charges, to enable him also to assist the staff member in arranging for legal counsel and to recognize the functional immunity of a staff member visited by the Secretary-

General . . . in conformity with international law and in accordance with the provisions of the applicable bilateral agreements between the host country and the United Nations." The Assembly further requested the Secretary-General "to ensure that the staff observe the obligations incumbent upon them".⁴⁷

39. In its resolution 37/236 A of 21 December 1982, the General Assembly reaffirmed the two above-mentioned resolutions.⁴⁸ In its resolution 37/236 B of the same date, the Assembly called upon the Secretary-General "to take measures without delay to establish the whereabouts of, to find out the charges made against and to arrange a meeting with the officials of the United Nations Relief and Works Agency for Palestine Refugees in the Near East incarcerated by the Israeli authorities in Lebanon, in order to obtain their earliest release".⁴⁹

40. In its resolution 38/230 of 20 December 1983, the General Assembly again reaffirmed the previous resolutions and called upon the Secretary-General, as chief administrative officer of the Organization, to continue personally to act as the focal point in promoting and ensuring the observance of the privileges and immunities of officials of the United Nations.⁵⁰

41. In its resolution 39/244 of 18 December 1984, the General Assembly reaffirmed all previous resolutions and urged the Secretary-General to give priority, through the United Nations Security Coordinator and the other special representatives, to the reporting and prompt follow-up of cases of arrest, detention and other possible matters relating to the security of officials of the United Nations and the specialized agencies and related organizations.⁵¹

⁴⁷G A resolution 36/232.

⁴⁸G A resolution 37/236.

⁴⁹G A resolution 37/236B

⁵⁰G A resolution 38/230.

⁵¹G A resolution 39/244.

⁴⁵G A (36) 5th Comm., 59th mtg.; Under-Secretary-General, the Legal Counsel, paras. 2 and 3.

⁴⁶G A resolution 35/212.

II. ANALYTICAL SUMMARY OF PRACTICE

A. Article 104

1. LEGAL CAPACITY OF THE ORGANIZATION IN THE TERRITORY OF MEMBER OR NON-MEMBER STATES

42. On 22 March 1983, the Legal Counsel responded to a request as to whether the World Disarmament Campaign Fund could be made a beneficiary of the estate by will of a citizen of the United States. The Legal Counsel stated that although the Fund itself was not a legal entity enjoying juridical personality, the United Nations as an Organization did have juridical personality and was capable of receiving bequests. That capacity was legally inferred from Article 104.⁵²

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

B. Article 105(1)

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

2. PRIVILEGES AND IMMUNITIES OF THE ORGANIZATION

43. Article 105(1) grants the United Nations, as an Organization, certain privileges and immunities within the sovereign territory of Member States. The General Convention further defines the commercial practices which are encompassed by the general language in the Charter. In practice, many of the special agreements contain articles that give specific attention to some of the relevant privileges and immunities. Additionally, the United Nations Administrative Tribunal and the Legal Counsel render opinions on individual facts which provide further aid in understanding the parameters of Article 105.

(a) *Property, funds and assets*

44. Article 6 of the Agreement between the United Nations and Jamaica relating to the establishment in Jamaica of a United Nations Office of the Special Representative of the Secretary-General for the Law of the Sea stated the following:

⁵²United Nations Juridical Yearbook, 1983, p. 210.

"The Government shall apply, *mutatis mutandis*, to the property, funds and assets of the Office wherever they are and by whomsoever held the provisions of the Convention, especially with regard to the following:

(a) Immunity from legal process except where the Office may have expressly waived immunity in a certain case, it being understood that this waiver shall not extend to any measure of execution of legal actions;

(b) Immunity from search, confiscation, seizure or expropriation in any form of executive, administrative or legislative enforcement action;

(c) Holding of funds and currencies of any kind and opening of accounts in any currency it desires . . ."⁵³

(i) *Exemption from taxation and customs duties*

45. Article VII, Freedom from taxation, section 14 of the Agreement between the United Nations and Greece regarding the Headquarters of the Coordinating Unit for the Mediterranean Action Plan, stated that:

"(a) The Unit, its assets, income and other property shall be exempt from all forms of direct taxes, provided, however, that such tax exemption shall not extend to the owner or lessor of any property rented by the Unit and that the Unit will not claim exemption from taxes which are, in fact, no more than charges for public utility services."⁵⁴

46. Another example is article XII, import duties and tax, of the Agreement between the United Nations and the Philippines regarding arrangements for the eighth session of the Commission on Transnational Corporations:

"1. The Government shall allow the temporary importation tax- and duty-free of all equipment, including technical equipment accompanying representatives of information media, and shall waive import duties and taxes on supplies necessary for the session.

"2. The Government hereby waives import and export permits for the supplies needed for the session and certified by the United Nations to be required for official use at the session."⁵⁵

47. In 1981, the Office of Legal Affairs commented on the decision of a Member State to levy a 10 per cent charge on services rendered in connection with certain transactions by United Nations offices or staff.⁵⁶ The Legal Counsel quoted the language of the General Convention, which reads:

"The United Nations, its assets, income and other property shall be: . . . Exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services."

48. The conclusion was that the "service fee" was not calculated on the basis of the actual services rendered, but levied directly on the United Nations as a tax for the purpose of defraying the administrative expenses incurred by the Government in connection with its Diplomatic Services Office.

49. In another opinion, the Legal Counsel responded to a decree issued in a Member State which provided for

a foreign fiscal certificate and included citizens of that Member State on United Nations official travel status in the category of persons required to acquire and pay for such a certificate:

"Such travel tax . . . is a direct tax on the United Nations from which the Organization is exempt in accordance with the Convention on Privileges and Immunities of the United Nations. A tax of this kind places a direct burden on United Nations funds . . ."⁵⁷

(ii) *Favourable rates of exchange*

50. Section 6.02 of the Agreement between the United Nations (United Nations Revolving Fund for Natural Resources Exploration) and Cyprus,⁵⁸ which came into force on 15 January 1979, provided that:

"The Government shall in particular grant to the Fund and to any persons, firms or organizations (including their officials or staff) acting on behalf of the Fund in carrying out the Project or any part thereof, the following rights and facilities:

. . .

(iii) The most favourable rate of exchange."

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

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

51. Article V, Premises, of the Agreement between the United Nations University and Finland regarding the World Institute for Development Economics Research, provided that:

"3. (a) The premises of the Institute shall be inviolable. No officer or official of Finland or other person exercising any public authority within Finland shall enter the premises of the Institute to perform any official duties therein except with the express consent of, and under conditions approved by, the Director, or at his request. The service of legal process, including the seizure of private property, shall not take place within the premises except with the express consent of, and under conditions approved by, the Director.

(b) The Institute shall not permit its premises to become a refuge from justice for persons who are avoiding arrest or service of legal process or against whom an order of extradition or deportation has been issued by the appropriate authorities."⁵⁹

52. The Agreement between the United Nations and Mexico⁶⁰ concerning arrangements for the 1979 session of the UNICEF Executive Board, which came into force on 15 May 1979, contained the following provision:

"For the purpose of the application of the Convention on the Privileges and Immunities of the United Nations, the conference premises referred to in article VI above shall be deemed to constitute premises of the United Nations and access thereto shall be under its control and authority."

⁵³United Nations, *Treaty Series*, vol. 1261, No. 20736, p. 343 (1982).

⁵⁴*Ibid.*, vol. 1338 (1983), pp. 126 and 129.

⁵⁵*Ibid.*, vol. 1281, No. 22436, p. 469 (1982).

⁵⁶United Nations *Juridical Yearbook*, 1981, p. 159.

⁵⁷United Nations *Juridical Yearbook*, 1983, p. 217, p. 218.

⁵⁸United Nations, *Treaty Series*, vol. 1122, No. 17435, p. 19 (1979).

⁵⁹Agreement signed on 4 February 1984.

⁶⁰United Nations, *Treaty Series*, vol. 1136, No. 17814, p. 237 (1979).

53. Another example is the Agreement between the United Nations and Iraq⁶¹ relating to the headquarters of the United Nations Economic Commission for Western Asia, which came into force on 31 August 1979 and contained the following provision (article 3, para. 4):

“The headquarters shall be inviolable. Government officers and officials shall not enter the headquarters to perform their official duties except upon the agreement of or at the request of the Executive Secretary and under conditions agreed to by him.”

(v) *Police protection of United Nations premises*

54. Article IV, Protection of the headquarters, of the Agreement between the United Nations and Jamaica provided that:

“(a) The appropriate Jamaican authorities shall exercise due diligence to ensure that the tranquillity of the headquarters is not disturbed by any person or group of persons attempting unauthorized entry into or creating disturbance in the immediate vicinity of the headquarters, and shall provide on the boundaries of the headquarters such police protection as may be required for these purposes;

(b) If so requested by the Director, the appropriate Jamaican authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters.”⁶²

55. The aforementioned Agreement between the United Nations and Iraq relating to the headquarters of the United Nations Economic Commission for Western Asia, which came into force on 31 August 1979, contained the following provision:

“The appropriate Iraqi authorities shall exercise due diligence to ensure that the tranquillity of the headquarters is not disturbed by the unauthorized entry of persons or group of persons from outside or by disturbances in its immediate vicinity.”⁶³

56. Another example is in the Agreement between the United Nations and Bangladesh regarding the establishment of a United Nations information centre⁶⁴ in Bangladesh, which came into force on 25 August 1981 and contained the following clause:

“The appropriate Bangladesh authorities shall exercise due diligence to ensure the security and protection of the premises of the Centre and its staff.”

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

57. With regard to the imposition by a Member State of clearance procedures regarding United Nations materials emanating from the United Nations information centre within its territory, the Office of the Legal Counsel stated that, according to both the Charter and the Convention on the Privileges and Immunities of the United Nations, the United Nations cannot be subjected to censorship by a Member State.⁶⁵ As property and assets of the Organization, the materials are immune from interference by executive, administrative, judicial and/or legislative action.

(b) *Facilities in respect of communications*

58. The Agreement between the United Nations and Iraq relating to the headquarters of the United Nations Economic Commission for Western Asia, which came into force on 31 August 1979, contained the following clause:

“COMMUNICATION FACILITIES

“1. For postal, telephone and telephoto communications, the Government shall accord to the Commission a treatment equivalent to that accorded to all other Governments including their diplomatic missions, or to other intergovernmental organizations in regard to any priorities, tariffs and charges on mail, cablegrams, telephotos, telephone calls and other communications, as well as rates for news reported to the press and radio as may be accorded.

“2. The Government shall secure the inviolability of the official correspondence of the Commission and shall not apply any censorship to such correspondence. Such inviolability shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound recordings dispatched to or by the Commission.

“3. The Commission shall have the right to use codes and to dispatch and receive its correspondence and other materials by courier or in sealed bags, which shall have the same privileges and immunities as diplomatic couriers and bags.

“4. (a) The United Nations is authorized to operate at the headquarters of the Commission one point-to-point telecommunications circuit in a generally easterly direction and one point-to-point circuit in a generally western direction between the headquarters and other United Nations radio stations;

(b) Subject to the necessary authorization from the General Assembly and with the agreement of the Government as may be included in a supplementary agreement, the United Nations may also establish and operate at the headquarters of the Commission:

(i) Its own short-wave sending and receiving radio broadcasting facilities (including emergency link equipment), which may be used on the same frequencies (within the tolerances prescribed for the broadcasting service by applicable Iraqi regulations) for radiograph, radiotelephone and similar services;

(ii) Such other radio facilities as may be specified by supplementary agreement between the United Nations and the appropriate Iraqi authorities;

(c) The United Nations shall make arrangements for the operation of the services referred to in this article with the International Telecommunication Union, the appropriate agencies of the Government and the appropriate agencies of other affected Governments with regard to all frequencies and similar matters;

(d) The facilities provided for in this article may, to the extent necessary for efficient operation, be established and operated outside the headquarters of the Commission with the consent of the Government.”⁶⁶

⁶¹Ibid., vol. 1144, p. 230 (1979).

⁶²Ibid., vol. 1338, p. 127 (1983): p. 129.

⁶³Ibid., vol. 1144, No. 17956, p. 213 (1979), p. 231, article 3 (7) (a).

⁶⁴Ibid., vol. 1248, p. 176 (1981).

⁶⁵United Nations Juridical Yearbook, 1981, p. 154.

⁶⁶United Nations, *Treaty Series*, vol. 1144, No. 17956, p. 213 (1979): p. 233, article 5.

**** (c)** *Immunity 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*

59. The agreement between the United Nations and Iraq relating to the headquarters of the United Nations Economic Commission for Western Asia,⁶⁷ which came into force on 31 August 1979, contained the following provision:

“Article 4

“Freedom of access to the headquarters

“1. The competent Iraqi authorities shall not impede the transit to or from the headquarters of persons holding official posts therein or of persons invited thereto in connection with the official work and activities of the Commission upon their arrival in or departure from Iraq.

“2. The Government undertakes, for this purpose, to allow the entry into and residence in Iraq of the persons listed hereunder during their assignment or during the performance of their duties for the Commission, without charging visa fees and without delay, formalities upon departure from Iraq of:

(a) Representatives of the members of the Commission to the conferences and meetings convened in the headquarters country, including alternate representatives, advisers, experts and staff, as well as their spouses and dependent members of their families;

(b) Commission officials and experts, as well as their spouses and dependent members of their families;

(c) Officials of the United Nations or any of its specialized agencies or the International Atomic Energy Agency who are assigned to work for the Commission and those who have official duties with the Commission, as well as their spouses and dependent members of their families;

(d) Persons on mission for the Commission but who are officials of the Commission, as well as their spouses and dependent members of their families;

(e) All persons invited to the headquarters on official business.

“3. Without prejudice to the special immunities which they may enjoy, persons referred to in paragraph 2 above may not be forced by the Iraqi authorities to leave Iraqi territory unless they abuse their recognized residence privileges by exercising an activity outside their official capacity with the Commission, and subject to the provisions mentioned hereunder:

(a) No action to force the persons referred to in paragraph 2 above to leave Iraqi territory may be taken without the consent of the Minister for Foreign Affairs, who shall consult with the Executive Secretariat prior to giving the consent;

(b) Persons enjoying the diplomatic privileges and immunities under this Agreement may not be requested to leave Iraqi territory except in accordance with the practices and procedures applicable to diplomats accredited to the Government;

(c) It is understood that persons referred to in paragraph 2 above shall not be exempt from the reasonable application of quarantine or other health regulations.”

C. Article 105(2)

1. PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES OF MEMBERS

**** (a)** *The expression “resident representative of the United Nations” as used in the Headquarters Agreement*

**** (b)** *Nationality of representatives and the granting of privileges and immunities*

(c) *Request made by the host State for the departure from its territory of a permanent representative to the United Nations*

60. Article IV, section 13(b), of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (“Headquarters Agreement”)⁶⁸ preserves the right of the United States to compel the departure of a member of a mission accredited to the United Nations for abuse of the privileges of residence. Such an action must be authorized by the Secretary of State “after consultation with” the Member State concerned, the Secretary-General or the principal executive officer of a specialized agency, as appropriate. In paragraph 7 of its resolution 33/95 of 16 December 1978, the General Assembly requested the Secretary-General to discuss with the United States procedures for such consultations. The Secretary-General submitted a report on these discussions⁶⁹ to the Committee on Relations with the Host Country. In the report, the Secretary-General noted that the United States Mission to the United Nations had stated that it had been and would be its consistent practice not only to consult with the Member State concerned when it requested the departure of a diplomat, but also to inform the Secretary-General of any such request and the developments subsequent thereto. The United States Mission had further observed that a process of consultation under section 13(b)(1) of the Headquarters Agreement implied a meaningful exchange of views in the sense that full opportunity should be afforded to each participant to express his considered opinion on the subject of the consultations and make recommendations thereon. It had also pointed out that, as previously stated by the Legal Counsel of the United Nations, the expression “after consultation with” did not mean “with the concurrence of.”⁷⁰

61. The Committee on Relations with the Host Country considered the Secretary-General’s report at its 80th meeting, on 7 November 1979. The representative of the USSR noted that the report failed to indicate the response of the Secretariat to the views expressed by the United States. He therefore expressed doubt about whether General Assembly resolution 33/95 had been fully respected.⁷¹ The Legal Counsel then made several supplementary

⁶⁸Ibid., vol. 11, p. 11, 22-25 (1947).

⁶⁹Document A/AC.154/181, reproduced in G A (34), Supplement No. 26 (A/34/36), para. 30.

⁷⁰A summary of the report appears in *ibid.*, para. 31.

⁷¹Ibid., para. 32.

⁶⁷Ibid., pp. 232-233.

observations in connection with the report. With respect to the meaning of the term "consultation" in the context of section 13(b)(1) of the Headquarters Agreement, the Legal Counsel did not find any discrepancy between the view of the United States and that of the Secretariat. The Legal Counsel recalled that the Headquarters Agreement did not require the host country to undertake prior consultations with the Secretary-General in cases involving representatives of Member States. In practice, however, a host Government wishing to take measures against a member of a mission of a sending State had informed the international organization concerned of the measures contemplated and the reasons for such action.⁷²

62. In July 1982, the United States requested the departure of two members of the Permanent Mission of Cuba to the United Nations on the ground of abuse of the privileges of residence within the scope of section 13(b) of the Headquarters Agreement. More specifically, the Permanent Representative of the United States to the United Nations contended that the two diplomats had violated the United States Trading With the Enemy Act, thereby abusing their privileges of residence. The Cuban Mission characterized that action as contrary to the Headquarters agreement and an offence against Cuba.⁷³ At the 96th meeting of the Committee on Relations with the Host Country, in 1983, the United States representative explained that five members of the Cuban Mission had been expelled during the last five months for engaging in espionage and violating the Trading With the Enemy Act in order to acquire classified information. The observer of Cuba noted that, since the time of the Cuban revolution, the United States had tried to stifle the Cuban voice by resorting to hostility and acts of aggression, including the harassment of Cuban personnel, the restriction of their movement, and their expulsion, actions against which Cuba wished to register the strongest complaint. The observer also stated that the United States had accused those expelled of "hostile intelligence activities", but had never corroborated that accusation, which Cuba rejected.⁷⁴

(d) *Privileges and Immunities*

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

63. The Agreement of 3 December 1982 between the United Nations and Jamaica regarding the final part of the eleventh session of the Third United Nations Conference on the Law of the Sea⁷⁵ provided the following:

"The Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1976, to which Jamaica is a party, shall be applicable in respect of the Conference. In particular, the representatives of States . . . shall enjoy the privileges and immunities provided under article IV of the Convention."

64. The Agreement between the United Nations and Austria of 3 February 1983 regarding arrangements for the 1983 Conference on Succession of States in respect of State Property, Archives and Debts provided:

"All representatives of States and of the United Nations Council for Namibia participating in the Conference in accordance with article II, paragraph I(a) and (b), of this Agreement shall enjoy the privileges and immunities provided to representatives of Member States under UNIDO's Headquarters Agreement, signed 13 April 1967."⁷⁶

(ii) *Personal inviolability and immunity from arrest*

65. On 17 January 1979, the Deputy Permanent Representative of the USSR to the United Nations and the Second Secretary of the USSR Mission were detained by local police in the state of Georgia, United States. They had been travelling in a vehicle marked with a diplomatic licence plate, and the reason given for their detention was that they had violated traffic regulations. The USSR Mission contended that one of the diplomats had been held at the police station for three hours and that the State Department representative with whom he spoke had not taken steps to put an immediate stop to the illegal actions of the local authorities. The United States Mission responded that the diplomats had not been placed under arrest but were detained for driving at excessive speed. It further contended that, as soon as the State Department was made aware of the situation, a request was made for dismissal of charges because of diplomatic immunity and the diplomats had been allowed to proceed.⁷⁷

66. On 2 February 1980, the Deputy Permanent Representative of the USSR to the United Nations was stopped by the police while travelling in a car with diplomatic licence plates on Long Island. He was detained for 25 minutes by the police. The USSR Mission registered a strong protest against the measures, which it viewed as against the generally accepted rules of international law and the obligations of the United States under international agreements. The United States Mission replied that the police officer had stopped the car for travelling at excessive speed, and that the officer had requested assistance from a supervisor once the Ambassador had identified himself. After the supervisor arrived and verified the Ambassador's diplomatic status, he was allowed to proceed without a summons. The United States Mission reminded the USSR Mission that the Vienna Convention on Diplomatic Relations required diplomatic officials to obey the laws of the host country, which included speed limits. The USSR Mission responded that it doubted the need to call a supervisor to verify the Ambassador's credentials, and objected to the excessive period of 25 minutes that he was detained.⁷⁸

67. In September 1982, a member of the Permanent Observer Mission of the Democratic People's Republic of Korea was accused of committing a criminal act in New York. Warrants subsequently were issued for the member's arrest by New York town and county courts.⁷⁹ At the 92nd meeting of the Committee on Relations with the Host Country, the Deputy Permanent Observer of the DPRK stated that, in his delegation's view, permanent observer missions enjoyed complete immunity, including immunity from the criminal jurisdiction of the host country.⁸⁰ The

⁷²Ibid., para. 33.

⁷³G A (37), Supplement No. 26 (A/37/26), paras. 11-12.

⁷⁴G A (38), Supplement No. 26 (A/38/26), paras. 19-21.

⁷⁵United Nations, *Treaty Series*, vol. 1295, p. 211 (1982): pp. 215-216, article XI.

⁷⁶Ibid., vol. 1299, No. 21592, p. 285 (1983).

⁷⁷G A (34), Supplement No. 26 (A/34/26), para. 40.

⁷⁸G A (35), Supplement No. 26 (A/35/26), paras. 23-25.

⁷⁹G A (37), Supplement No. 26 (A/37/26), paras. 21-26.

⁸⁰Ibid., paras. 26-27.

representative of the United States responded that permanent observer missions enjoyed only functional immunity, namely, immunity from arrest resulting directly from the discharge of those specific functions for which the mission had been permitted into the United States.⁸¹ Having been requested by the representative of Costa Rica to provide a legal opinion, the Legal Counsel noted that the Office of Legal Affairs had provided legal opinions in 1975 and 1976 that advanced the view of functional immunity for observers of an intergovernmental organization. While the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations contained stricter rules on the privileges and immunities of observers from non-member States, it was not yet in force and did not represent the accepted customary international law standard since many host countries of international organizations did not support it. In the view of the Office of Legal Affairs, the obligation to recognize functional immunity was stipulated in general terms in Article 105 of the Charter of the United Nations and such immunity was to be extended to permanent observer missions.⁸² The representative of the USSR felt that the opinion of the Legal Counsel was not convincing since it was based upon an analogy to the privileges and immunities accorded to observer missions of international organizations, while the representatives of observer missions to the United Nations were representatives of States. He also mentioned that the provisos of the 1975 Vienna Convention should be duly taken into account.⁸³ Following that meeting, the Committee's Bureau considered the matter and agreed that a pragmatic approach should be taken to resolve it.⁸⁴ At the 98th meeting of the Committee, in 1984, the Chairman reported that an arrangement had been found and that the member of the DPRK mission had left the country.⁸⁵

(iii) *Immunity from legal process*

68. In its 1984 Report, the Committee on Relations with the Host Country noted that the prosecution of lawbreakers involved in attacks against missions and their diplomatic staff had been difficult when a requirement of the case mandated that a diplomat give evidence in court as a witness, since such testimony could result in the waiver of diplomatic privileges and immunities in certain instances. It was noted that, in accordance with United States jurisprudence, the direct giving of evidence might be connected with a waiver of diplomatic immunity because of the constitutional right of the accused to confront witnesses against him. The report reiterated the often-expressed concern of the representative of the USSR that effective punishment of lawbreakers should, in accordance with obligations under international law, be assured without making such punishment dependent upon the waiver of diplomatic privileges and immunities. In order to examine the question further, the Committee arranged for a presentation on the topic by the United States Attorney for the Southern District of New York. Following the presentation, a contact group of interested missions met and formulated a

series of questions to explore the possibility of having recourse to the gathering of admissible evidence from a diplomat outside formal court proceedings. Those questions were forwarded to the United States Mission with the request that competent authorities provide answers to them.⁸⁶

** (iv) *Currency or exchange facilities*

** (v) *Legal status of premises*

(vi) *Immovable property of missions accredited to the United Nations*

69. At its 95th to 98th meetings, in 1983, the Committee on Relations with the Host Country considered the United States Foreign Missions Act. Section 205 of that legislation, which was enacted on 24 August 1982 and became effective on 1 October 1982, was extended by the Secretary of State to permanent missions accredited to the United Nations in New York. The Committee requested a legal opinion from the Legal Counsel on the application of section 205 to missions; the opinion was provided at its 97th meeting.⁸⁷ At the meeting, the Legal Counsel said that he intended to seek the assurances of the host country that it would apply section 205 to missions in a manner consistent with its obligations under international law.⁸⁸

70. In his note, the Legal Counsel stated that the Act was intended to regulate "the operation in the United States of foreign missions and public international organizations and the official missions to such organizations, including the permissible scope of their activities and the location and size of their facilities."⁸⁹ By a note verbale dated 19 January 1983, the United States Mission informed all permanent missions and offices of permanent observers to the United Nations that section 205 of the Act was applicable to them. Section 205(a) allowed the Secretary of State to require a mission to provide 60 days' notice prior to any proposed acquisition, or any proposed sale or other disposition, of any real property on behalf of such mission. If such notice was required, the mission might undertake the proposed action only if the mission was not notified within the 60-day period that the proposal had been disapproved. Section 205(b) permitted the Secretary of State to require that a mission divest itself of, or forego the use of, any property not acquired in accordance with the section. Subsection (b) also included a reciprocity provision that allowed the Secretary of State to require divestment of foreign mission property that exceeded limits placed on real property available to a United States mission in the sending State. Section 205(c) dealt with the situation of a foreign mission that had ceased conducting governmental activities in the United States and had not designated a protecting Power or other agent approved by the Secretary of State to be responsible for its property. In such a case, subsection (c)(1) permitted the Secretary of State to protect and preserve any property of the mission until a designation was made. If one year elapsed after activities had ceased and no designation had been made, subsection (c)(2) allowed the Secretary of State to dispose of the mission's property and remit the net proceeds to the sending

⁸¹Ibid., paras. 23, 28.

⁸²Ibid., para. 33.

⁸³Ibid., para. 34.

⁸⁴Ibid., para. 37.

⁸⁵G A (38), Supplement No. 26 (A/38/26), para. 58. See also two related documents of the Committee, A/AC.154/245 and A/AC.154/246.

⁸⁶G A (39), Supplement No. 26 (A/39/26), para. 50.

⁸⁷G A (38), Supplement No. 26 (A/38/26), paras. 35-40. The opinion (A/AC.154/R.1) is reproduced in *ibid.*, annex 1.

⁸⁸Ibid., para. 40.

⁸⁹Ibid., p. 16 (quoting section 201(a) of the Act).

State.⁹⁰ After analysing the above provisions, the Legal Counsel concluded that international law did not prohibit the extension and application of United States domestic legislation on real property to the permanent missions accredited to the United Nations. On the other hand, obligating permanent missions to submit to a waiting period of up to 60 days on real estate transactions, applying subsection (c)(2) to missions without the consent of the Government concerned and having recourse to the reciprocity concept underlying the Foreign Missions Act would all be at variance with the obligations of the host country under international law.⁹¹

(vii) *Movable property of representatives of Members*

71. At the 85th meeting of the Committee on Relations with the Host Country, in 1981, the Chairman read out a letter from the Permanent Representative of Spain to the United Nations noting that the problem of the towing of diplomatic vehicles had been discussed in the past by the Committee, which had concluded that, except in very exceptional circumstances such as the obstruction of fire hydrants, such vehicles could not be removed without violating the rules of international conduct. Moreover, the representative of Spain contended that the towing of diplomatic cars was not compatible with inviolability under the 1961 Vienna Convention except in emergency situations, a view with which the representatives of the USSR, Bulgaria, Costa Rica and Honduras concurred. The representative of the United Kingdom of Great Britain and Northern Ireland felt that the Vienna Convention did not exclude the towing of diplomatic cars. However, he noted that the practice of the United Kingdom was to tow such cars only when the vehicle was causing a serious obstruction that could not be overcome by moving it to an alternative position nearby and when extensive enquiries had failed to trace the driver. The representative of the United States regretted that New York City had instituted a new towing programme without advance consultation with the United States Mission and stated that the Mission would continue its efforts to assist all missions in conducting their business without disruption. At the 86th meeting, the Committee's Bureau expressed the view that current towing practices were unacceptable except in extremely dangerous situations, a term that still required definition. The representative of France expressed the view that, while appreciating the need to improve Manhattan traffic conditions, the impoundment of diplomatic vehicles did not seem to conform to the provisions of articles 22 and 30 of the 1961 Vienna Convention. The representative of the United States considered the four instances of towing in 1981 as compatible with the obligations of the United States under the Convention since all four cases noted in the representative of Spain's letter involved safety hazards.⁹²

72. At its 102nd and 103rd meetings, in 1984, the Committee on Relations with the Host Country considered the Foreign Mission Amendments Act, a United States law enacted on 12 November 1983. That law requires the head of a foreign mission, beginning on 1 February 1984, to

notify the United States Department of State of the lapse or termination of any liability insurance coverage held on motor vehicles, vessels and aircraft owned by a mission, a member of a mission or members of the family of such members. In the event that certain conditions were not met, the law permitted the State Department to impose a surcharge on a foreign mission in the amount of any unsatisfied liability or court-rendered judgement when it found that a mission, a member of a mission or a member of the family of such a member was at fault for personal injury, death or property damage arising out of the operation of a motor vehicle, vessel or aircraft in the United States and was not covered by liability insurance.⁹³ Some representatives expressed the view that the law was inconsistent with the Headquarters Agreement, the 1961 Vienna Convention on Diplomatic Relations and general international legal principles of immunity. The representative of the United States responded that the law did not violate the international obligations of the United States, but merely sought to ensure that missions had proper liability insurance in order to fulfil obligations under New York State rules.⁹⁴ As a response to that debate, the United States developed a new diplomatic motor vehicle programme. Under the programme, the federal Government would replace state authorities as the issuing authority for all diplomatic motor vehicle registrations and licence plates. A new fleet insurance policy, which would require a higher amount of liability coverage, would be implemented at a later stage.⁹⁵

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

73. During the period under review, the Legal Counsel rendered two opinions as to the scope of the privileges and immunities of observers to the United Nations. On 19 November 1979, the Legal Counsel was requested to give an opinion on the legal status of the Office of the Permanent Observer of the Palestine Liberation Organization (PLO) to the United Nations and whether the Palestine Liberation Organization would be required to comply with the City of New York's zoning laws if it purchased a townhouse to serve as both an office and a residence for the Observer in a residential zone in Manhattan. The Counsel replied that, as the Palestine Liberation Organization had been granted the legal status of observer in resolution 3237 (XXIX) of 22 November 1974, certain privileges and immunities attached in accordance with the provisions of the Headquarters Agreement between the United Nations and the host State. In the absence of any legal basis for an exemption, he concluded that the local zoning laws and regulations which applied to all properties, including those purchased by foreign Governments for official purposes, would apply also to any property purchased by the Palestine Liberation Organization in the Headquarters district.⁹⁶

74. In a statement made by the Legal Counsel at the 92nd meeting of the Committee on Relations with the Host Country, on 14 October 1982,⁹⁷ four topics were reviewed that outlined the scope of privileges and immunities of a

⁹⁰Ibid., pp. 16-17.

⁹¹Ibid., pp. 18-24. For a discussion of subsequent problems regarding the application of the Foreign Missions Act, see G A (39), Supplement, No. 26 (A/39/26), paras. 41-47.

⁹²G A (36), Supplement No. 26(A/36/26), paras. 27-28.

⁹³G A (39), Supplement No. 26 (A/39/26), para. 19.

⁹⁴Ibid., paras. 20-22.

⁹⁵Ibid., paras. 32, 36-39.

⁹⁶United Nations Juridical Yearbook, 1979, p. 169.

⁹⁷A/36/PV. 92.

permanent observer mission to the United Nations: (a) the institution of permanent observer missions; (b) the evolution of the legal basis of the institution of permanent observer missions; (c) the basis for the functional privileges and immunities of permanent observer missions; and (d) the necessity for and scope of the functional immunity of permanent observer missions. The Legal Counsel noted that, although the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 1975 was not yet in force, "for all practical purposes the status, privileges and immunities of permanent observer missions, as well as their diplomatic staff, are assimilated to that of permanent mission of Member States, including the inviolability of the premises of the mission and the personal inviolability of the members of the diplomatic staff of the mission."

- (a) *Privileges and immunities of observers of intergovernmental organizations and other organizations having received a standing invitation to participate in the sessions and work of the General Assembly*

75. In 1982, the Legal Counsel responded to a request with respect to the privileges and immunities accorded to the representatives of intergovernmental organizations which had acquired observer status at the United Nations on the basis of a standing invitation issued to them by the General Assembly.⁹⁸ The Legal Counsel stated that "permanent observers of intergovernmental organizations are not entitled to diplomatic privileges and immunities under the Headquarters Agreement between the United Nations and the United States or under statutory provisions of the host State. At the same time, those permanent observers who form a part of the diplomatic missions of their Governments to the United Nations may enjoy immunities provided by the host State for such missions."

3. PRIVILEGES AND IMMUNITIES OF OFFICIALS OF THE ORGANIZATION

(a) *Categories of officials*

76. During the period under review, the Legal Counsel was asked in various instances to interpret the term "officials of the United Nations" in accordance with General Assembly resolution 76(I) of 7 December 1946, which extended the granting of the privileges and immunities referred to in articles V and VII of the Convention on the Privileges and Immunities of the United Nations "to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned hourly rates".

77. Accordingly, the Legal Counsel stated that Field Service Officers were staff members of the United Nations and therefore officials of the United Nations within the meaning of the Convention.⁹⁹ In other cases, he stated that language teachers, UNITAR fellows and part-time experts of the Human Rights Committee were not officials.¹⁰⁰

⁹⁸United Nations Juridical Yearbook, 1982, p. 207.

⁹⁹United Nations Juridical Yearbook, 1981, p. 162.

¹⁰⁰See, for example, United Nations Juridical Yearbook, 1983, p. 217.

(b) *Privileges and immunities*

** (i) *General provisions*

(ii) *Qualification or extension of specific privileges and immunities*

a. *Immunity from legal process*

78. The Legal Counsel responded as follows to the question as to whether the salaries or pensions of United Nations officials might be attached for the purpose of enforcing national court decisions:

"First, service of a court order is a legal process from which the United Nations is immune, and secondly, the proceeding would be tantamount to a seizure of the assets of the Organization. The United Nations Joint Staff Pension Fund is an organ of the United Nations, and its assets are the property of the Organization. However, these immunities are granted in the interests of the Organization and not for the personal benefit of the individual staff member. The staff member will be requested to settle the matter by whatever legal steps may be necessary as a matter of proper conduct and to avoid embarrassment to the United Nations."¹⁰¹

79. Similar language was given in the 1979 decision of the United Nations Administrative Tribunal pertaining to Judgement No. 245.¹⁰² The Applicant, residing in New York, had not received support payments from her ex-husband, a retired employee of the United Nations who had returned to his home State. She requested the Tribunal to direct the United Nations Joint Staff Pension Fund to honour the sequestration order issued by the New York State Supreme Court and to pay her, as receiver, any sums which had become payable as pension to her ex-husband. The court held that the United Nations Joint Staff Pension Fund was not bound to honor the sequestration order of the New York State Supreme Court as it enjoyed the same immunity from jurisdiction of domestic courts as the United Nations itself under the terms of Article 105 of the Charter and the Convention. However, "[t]he immunities and privileges attached to the United Nations by virtue of Article 105 are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff members who enjoy them for non-performance of their private obligations or failure to observe laws and police regulations".¹⁰³

b. *Exemption from national income taxation*

80. In a letter to the Director of a governmental agency,¹⁰⁴ the Legal Counsel responded to the question as to whether a Cooperation Agreement between the Economic Commission for Latin America and a Member State could be modified to render the Convention on the Privileges and Immunities of the United Nations inapplicable to officials of the nationality of that State. The modification involved taxing a staff member who is a citizen of the Member State. The Legal Counsel responded that "[The action] would have the effect of discriminating between United Nations officials on the ground of nationality,

¹⁰¹United Nations Juridical Yearbook, 1980, p. 200.

¹⁰²U.N.A.T., Judgement No. 245, Shamsee.

¹⁰³Regulation 1.8 of Regulations and Rules of the Staff of the United Nations, as reported in *ibid.*

¹⁰⁴United Nations Juridical Yearbook, 1980, p. 186.

thereby completely undermining the principle of equality of treatment of staff members.”

81. Administrative Tribunal Judgment No. 237 related to an applicant requesting tax reimbursement on a partial lump sum commutation of pension benefits. The Applicant, a United States national, retired from the Secretariat and opted for a one-third lump sum payment of his pension. The practice for years had been to reimburse retiring staff the national taxes on the one-third payment from the Tax Equalization Fund. The United States Mission to the United Nations questioned the propriety of the practice; the Secretary-General suspended the practice. That action had a financially adverse effect on the Applicant. The Applicant argued that “if there is one certain principle it is that no Member State may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other”. Although the United States had acceded to the Convention in 1970, it had made the following reservation:

“Paragraph (b) of section 18 regarding immunity from taxation . . . shall not apply with respect to United States nationals and aliens admitted for permanent residence.”¹⁰⁵

c. Immunity from national service obligations

82. Article V, section 18(c), of the Convention provides that officials are immune from national service obligations. There is no explicit provision regarding national service obligations of family members of those United Nations officials. The issue raised in 1980 was whether the State in which the official performed his official functions could call upon him and his family, being non-nationals, for compulsory national service. The Office of Legal Affairs responded that such action “puts the official in a situation where he might find it impossible to continue to serve in that country, thus leading to a request for transfer or repatriation, with consequent disruption of the UNDP assistance programme.”¹⁰⁶ Exemption from national service was not a favour to the individual, but for the purpose of assuring the Organization that its work is carried out without disruption.

***d. Exchange facilities*

***e. Exemption from customs duties*

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

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

83. Articles V and VII of the Convention granted privileges and immunities “to all staff of the United Nations,

with the exception of those who are recruited locally and are assigned to hourly rates”. In response to a request from UNICEF regarding who was exempt for taxation, the Legal Counsel stressed that unless staff were both locally recruited and assigned to hourly wages, they were entitled to the privileges and immunities outlined in the Convention.¹⁰⁷

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

84. Administrative Tribunal Judgement No. 326 involved an Applicant who requested the Tribunal to order the Secretary-General to rescind his decision refusing to allow the Applicant to sign a waiver of privileges and immunities in order to acquire permanent resident status in the United States. The Tribunal held that “conditions of employment in the United Nations did not a priori exclude any change in nationality during the period of service, but that Staff Rules and Regulations left it to the discretion of the Secretary-General . . . to act in a way which made a change in nationality during the time of the service possible or not”.¹⁰⁸

**** (c)** *United Nations laissez-passer and travel facilities*

****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 COUNSELS OF THE PARTIES, WITNESSES AND EXPERTS

****6.** PRIVILEGES AND IMMUNITIES OF MEMBERS OF UNITED NATIONS PEACEKEEPING OPERATIONS

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

D. Article 105(3)

ANNEX

Member States which became parties to the Convention on the Privileges and Immunities of the United Nations between 1 January 1979 and 31 December 1984

<i>State</i>	<i>Accession</i>
China	11 September 1979 ^a
Germany, Federal Republic of	5 November 1980
Seychelles	26 August 1980
Uruguay	16 February 1984

¹⁰⁷United Nations Juridical Yearbook, 1984, p. 187.

¹⁰⁸U.N.A.T. Judgement No. 326, Fischman .

^aThe Government of the People's Republic of China made reservations on article VIII, section 30, of the Convention.

¹⁰⁵U.N.A.T. Judgement No. 237, Powell .

¹⁰⁶United Nations Juridical Yearbook, 1980, p. 203, at p. 204.

Chapter XVII
TRANSITIONAL SECURITY ARRANGEMENTS¹

¹Articles 106 and 107 are to be reported in volume III of *Supplement No. 6*.

Chapter XVIII
AMENDMENTS

