

ARTICLES 104 AND 105

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ARTICLES 104 AND 105

TEXT OF ARTICLE 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

TEXT OF ARTICLE 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.
2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in 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. This *Supplement* maintains the general structure, format and headings used in earlier studies of Articles 104 and 105 in the *Repertory* and *Supplements Nos. 1 to 8*.
2. In 1946, pursuant to Article 105 (3) of the United Nations Charter, the General Assembly (the “GA”) approved a Convention on the Privileges and Immunities of the United Nations (hereinafter the “General Convention”). The preamble to the Convention reaffirms Article 104 and Article 105, paragraph 1 and 2 of the Charter. The Convention elaborates upon the legal capacity, privileges and immunities set out in Article 104 and 105 of the UN Charter.

3. This *Supplement* provides a list of new parties who acceded or succeeded to the General Convention, as well as a review of the agreements concluded by the United Nations with parties and non-parties to the General Convention which make reference to the General Convention and or Articles 104 and 105 of the United Nations Charter.

4. The analytical summary of practice analyzes the privileges and immunities of the Organization, representatives of Member States, Non-Member States maintaining permanent observer missions, observers of non-Member States, officials, experts on mission and members of United Nations peacekeeping operations or observer missions.

I. GENERAL SURVEY

A. Implementation of Articles 104 and 105

1. BY GENERAL CONVENTION

5. In the period under review in this *Supplement* four Member States became parties to the General Convention. No reservations to the General Convention were made by these States (See Annex I below). By 31 December 1999 there were 141 parties to the General Convention.

2. BY AGREEMENTS ON PRIVILEGES AND IMMUNITIES

6. In the period under review, the United Nations concluded more than 66 agreements on privileges and immunities with parties and non-parties to the General Convention. Of those agreements, 4 were concluded with non-parties, of which 1 was a non-Member State at the time of conclusion. The majority of the agreements were concerned with technical cooperation and assistance, the establishment of United Nations offices, centres or institutions, arrangements for United Nations meetings, sessions, workshops or training courses held outside headquarters and the establishment of United Nations peacekeeping operations or observer missions. A table of the agreements that the United Nations concluded during the period under review appears at Annex II.

(a) *Technical cooperation and assistance agreements*

7. Most of the agreements entered into by United Nations programmes and funds concerned technical cooperation and assistance. The majority of these agreements referred to, and confirmed, the application of the General Convention. Agreements concluded were generally based in their Model Standard Basic Assistance Agreements.

8. The United Nations Children's Fund (UNICEF) concluded 4 Basic Cooperation Agreements (BCA) during the period under review.¹ Privileges and immunities were based on the 1992 Basic Cooperation Agreement² which deals with the privileges,

¹ See Annex II for the list of agreements concluded by UNICEF.

² E/ICEF/BCA.

immunities, rights and facilities of UNICEF, its officials,³ experts on mission,⁴ persons performing services for UNICEF,⁵ access facilities,⁶ locally recruited personnel assigned to hourly rates,⁷ facilities in respect of communications⁸ and the waiver of privileges and immunities.⁹ There were some variations from the Model in the agreements concluded with certain States. For example, the Agreement with Nepal in 1996, which provided that locally recruited personnel “[b]e entitled to the privileges as may be agreed upon between the Parties”.¹⁰

9. The United Nations Development Programme (UNDP) continued to use its Standard Basic Assistance Agreement (SBAA)¹¹ in concluding agreements with 3 Governments during the period under review. Provisions on privileges and immunities are contained in articles IX and X of the SBAA. A few variations were noted in the agreements concluded between the UNDP and Governments. One variation in the agreement with Government of Honduras in 1995¹² occurs in article IX, paragraph 3 adding that the Government would provide to the resident representative the same diplomatic privileges and immunities as those granted to heads of diplomatic missions. Article IX, paragraph 3 of the Model SBAA provides: “Members of the UNDP mission in the country may be granted such additional privileges and immunities as may be necessary for effective

³ Article XIII.

⁴ Article XIV.

⁵ Article XV.

⁶ Article XVI.

⁷ Article XVII.

⁸ Article XVIII.

⁹ Article XX.

¹⁰ *United Nations Juridical Yearbook, 1997*, pp. 90

¹¹ See *United Nations Yearbook, 1973*, pp. 24-26.

¹² *United Nations Juridical Yearbook, 1995*, p. 119.

exercise by the mission of its functions.”¹³ It is further stipulated that the Government shall also grant to the representatives of United Nations subsidiary organs within the UNDP mission “additional privileges and immunities for the effective exercise of their functions, in accordance with international law, as are granted by the Government to members of diplomatic missions of comparable ranks. Such additional privileges and immunities shall be specified in an exchange of letters between the Government and UNDP.”¹⁴ In the agreement with Croatia variation occurs with respect Article IX of the SBAA wherein it is provided that “all persons, other than government nationals employed locally and all locally recruited personnel, performing services of UNDP, a specialized agency or IAEA who are not covered by paragraphs 1 and 2 in the service of UNDP shall be granted the privileges and immunities afforded to UN officials under the General Convention.”¹⁵

10. Other technical assistance agreements that were concluded in the review period covered issues such as de-mining;¹⁶ Secretariat of the Vienna Convention and 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (UNEP);¹⁷ and other forms of technical cooperation;¹⁸ and generally refer to and confirm the application of the General Convention.

(b) *By United Nations office agreements*

¹³ *United Nations Yearbook, 1973*, pp. 24-26.

¹⁴ *United Nations Juridical Yearbook, 1995*, p. 119.

¹⁵ *Agreement with Croatia, United Nations Juridical Yearbook, 1996*, p 100.

¹⁶ *United Nations Juridical Yearbook, 1998*, pp. 100-103.

¹⁷ *Ibid, 1998*, pp. 81-85.

¹⁸ *United Nations Juridical Yearbook, 1999*, pp. 84-87.

11. During the period under review, 18 agreements were concluded relating to the establishment of United Nations offices, centres or institutions (See Annex II). The application of the General Convention to these offices, centres and institutions was confirmed in each of the agreements. The variations in the agreements are discussed below.

12. One agreement with the Czech Republic related to the establishment of an information centre.¹⁹ This agreement confirmed the application of the General Convention and privileges and immunities granted to UN officials. Some variations also arose with regard to the privileges and immunities afforded to the different categories of staff of the information centre namely: UN officials assigned to the centre; the Director of the Centre; and locally recruited Czech nationals. Article VI, paragraph 1 (2) draws a distinction between the privileges and immunities granted to Czech nationals or those with permanent resident status in the Czech Republic, with respect to the right to import for personal use and exemption from taxation on income derived by them from sources outside the Czech Republic and exemption from “taxes and duties in accordance with Czech laws relating to diplomatic missions accredited to the Czech Republic.”²⁰ Under Article VI, paragraph 3 the Director of the Centre, his spouse and family, were afforded, in addition to the privileges and immunities afforded to other United Nations officials assigned to the Centre, “the privileges and immunities, exemptions and facilities normally accorded to heads of diplomatic missions.”²¹

¹⁹ *United Nations Juridical Yearbook, 1999*, pp. 57-61.

²⁰ *Ibid.*, p. 59.

²¹ *Ibid.*

13. In 1994 an agreement between the United Nations and the Government of Italy regarding the use by the United Nations of premises on military installations in Italy for the support of peacekeeping, humanitarian and related operations.²² The agreement confirms the application of the General Convention. Article XVII of the agreement provides that staff assigned to the premises by the UN shall be afforded the privileges and immunities set out in Article V and VI of the General Convention. With respect to both UN officials and experts on mission Article XVII, paragraph 1(a) provides that both categories of personnel shall: “Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity. This immunity from legal process shall continue to be accorded after the persons concerned are no longer officials of the United Nations.”²³

14. Agreements establishing UN institutions and offices in host states notably include the establishment of the headquarters of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Other bodies include a statistical institute, headquarters of UNV Programme, UN Desertification Convention Secretariat, the UN Regional Centre for Peace and Disarmament, the United Nations Centre for Human Settlement, among others. [see Annex II]

15. Agreements relating to the headquarters of the International Criminal Tribunal for Rwanda²⁴ and the International Criminal Tribunal for the Former Yugoslavia with the host states, Tanzania and the Netherlands, generally confirmed the application of the

²² *United Nations Juridical Yearbook, 1997*, pp. 55.

²³ *Ibid*, p. 56.

²⁴ *United Nations Juridical Yearbook, 1995*, pp. 69 – 81.

General Convention to the premises of the Tribunals and their related offices, in addition to the various categories of personnel assigned to them. Given institutional links between the two institutions the agreement with the Netherlands with regard to the activities and proceedings of the International Criminal Tribunal for Rwanda in the Netherlands should apply, *mutates mutandis*, the pertinent provisions on immunities and privileges as the Agreement between the Kingdom of the Netherlands concerning the headquarters of the International Criminal Tribunal for the Former Yugoslavia,²⁵ concluded on 29 July 1994.²⁶ They highlight provisions on:

- 1) “The Judges of the Appeals Chamber and the Prosecutor residing in The Hague will enjoy the privileges and immunities as mentioned in article XIV of the Agreement;
- 2) Staff of the liaison office in the Hague will enjoy the privileges and immunities mentioned in article XV of the Agreement;
- 3) Staff and persons performing missions for the Rwanda Tribunal not forming part of the liaison office in The Hague shall enjoy the privileges and immunities mentioned in article XVII of the Agreement.”²⁷

16. The Agreement between Tanzania concerning the headquarters of the International Criminal Tribunal for Rwanda,²⁸ largely replicates the Agreement between the Kingdom of the Netherlands concerning the headquarters of the International Criminal Tribunal for

²⁵ *United Nations Juridical Yearbook, 1994*, pp. 10 – 22.

²⁶ *United Nations Juridical Yearbook, 1996*, pp. 51-52.

²⁷ *United Nations Juridical Yearbook, 1996*, pp. 51-52.

²⁸ *United Nations Juridical Yearbook, 1995*, pp. 69-82.

the Former Yugoslavia with a few minor variations. One such variation occurs in Article XV (2) of the agreement with Tanzania wherein staff of P4 rank and above, as opposed to P5 rank are to be accorded the privileges, immunities and facilities afforded to diplomatic staff of comparable rank.²⁹ Another variation occurs in Article XV (3) with respect to Tanzanian nationals in excluding them from the right to import and export limited quantities for personal consumption, free from excise and customs duties; in addition to the right to import a motor vehicle free of customs and excise duties and value-added tax.³⁰

17. During the period under review agreements relating to UNV generally confirmed the applicability of the General Convention to UNV as a subsidiary organ of the United Nations.³¹ In the agreement with Germany on the relocation of UNV headquarter to Bonn of 1995. Under Article 5 of the agreement UNVs were “granted the privileges, immunities and facilities under Section 17, 18, 20 and 21 of article V, and article VII of the General Convention.”³²

18. In an agreement with Jordan on the establishment of the International Cooperation Office (IOC) of the United Nations University – International Network on Water, Environment and Health of 1999 the General Convention was generally confirmed.³³ Article IX, paragraph 3(c) differentiates however between the privileges and immunities granted to ICO personnel who are citizens or permanent residents in providing that

²⁹ *United Nations Juridical Yearbook, 1995*, p. 76.

³⁰ *United Nations Juridical Yearbook, 1996*, p. 76.

³¹ *United Nations Juridical Yearbook, 1995*, pp. 82-94.

³² *Ibid*, p. 89.

³³ *United Nations Juridical Yearbook, 1999*, pp. 77-83.

personnel of ICO shall: “Be immune form national service obligations unless they are citizens of the Hashemite Kingdom of Jordan or permanent residents in the Hashemite Kingdom of Jordan ...”³⁴

(c) *By UNHCR Cooperation Agreements*

19. Five agreements were concluded between the United Nations High Commissioner for Refugees (UNHCR) and host States.³⁵ These agreements were generally based on the Model UNHCR Co-operation Agreement but contain some variations.³⁶ The memorandum stated that the Model might need to be adjusted to specific UNHCR requirements in a given host country in the light of local legal and political systems and was also subject to the agreement of the individual government concerned.³⁷ Articles VII to XV of the Model UNHCR Co-operation Agreement dealt with the privileges, immunities, rights and facilities of UNHCR, its officials, locally recruited personnel, experts on mission and persons performing services on behalf of UNHCR.

20. The agreements concluded with China,³⁸ Moldova,³⁹ Kuwait⁴⁰ and the Ukraine⁴¹ contained variations to the Model. For example, in the agreement with China no privileges and immunities were granted with regard to “persons performing services” on

³⁴ *United Nations Juridical Yearbook*, 1999, p. 81.

³⁵ See annex II.

³⁶ UNHCR/IOM/79/89.

³⁷ *Ibid*, at para. 3.

³⁸ *United Nations Juridical Yearbook*, 1995, pp. 132-138.

³⁹ *United Nations Juridical Yearbook*, 1998, pp.121-129.

⁴⁰ *United Nations Juridical Yearbook*, 1996, pp. 103-108.

⁴¹ *United Nations Juridical Yearbook* 1998, , pp. 113-120.

behalf of UNHCR.⁴² A variation occurs in Article 5, which requires the consent of the government of China if UNHCR wishes to increase the number of UNHCR officials or experts on mission assigned to the office.⁴³ Variations were made to article VII (1), on privileges and immunities, which solely covered UN officials to the exclusion of experts on mission. Article VIII (1) provides for immunity from legal process, save where immunity is expressly waived, however it excludes the final sentence contained in the Model Agreement “it being understood that this waiver shall not extend to any measure of execution.” Assets are excluded from article VIII (1) and (2) on inviolability of the UNHCR office, property, funds and assets. Further, article VIII (4) also fails to provide that UNHCR funds, property and assets are exempt from direct taxation.⁴⁴ Further variations include the exemption of UNHCR from excise duties and taxation on purchase of movable and immovable property for official use. Other variations occur with regard to UNHCR exemption from financial controls, regulations or moratoria, in particular with regard funds, and foreign currency.⁴⁵ Article X and XII of the agreement with China only provided privileges and immunity to UNHCR officials and experts on mission above Grade P2 level and to the exclusion of nationals of China.⁴⁶ With respect to experts on mission no mention is made to the inviolability of all their papers and documents; and the right to use codes and receive papers by courier or in sealed bags.⁴⁷ Immunity from personal arrest or detention was not extended to UN officials.⁴⁸

⁴² *United Nations Juridical Yearbook*, 1995, pp. 134. See articles VI and XIII of the Model Cooperation Agreement. UNHCR/IOM/79/89.

⁴³ *United Nations Juridical Yearbook*, 1995, p. 134.

⁴⁴ *Ibid*, p. 135.

⁴⁵ *Ibid*

⁴⁶ *Ibid*, p. 136.

⁴⁷ *Ibid*, p. 137.

⁴⁸ *Ibid*, p. 136.

21. The most common variation in these agreements was the failure to include the provision from article VIII, paragraph 7, of the Model that the “UNHCR shall enjoy the most favourable legal rate of exchange”.⁴⁹ The agreement with the Ukraine does not make reference to Article VII, paragraph 5 of the Model agreement which provides that: “[w]hile UNHCR will not, as a general rule claim exemption from excise duties and from taxes on the sale of movable property ... nevertheless, when UNHCR is making [important] purchases for official use of property on which such duties and taxes [...] are chargeable, the Government will, grant exemption there from [whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax].”⁵⁰ The agreement with Kuwait fails to include a provision similar Article VIII (4) of the Model Agreement on the issue of direct taxation.⁵¹ A variation occurs in the agreement with Kuwait with respect to inviolability of official communications and correspondence of UNHCR and censorship on such, which is not provided for.⁵²

22. A common variation occurs with respect to article X, paragraph 2(a) and article XII, paragraph 1(b) of the Model Agreement, that the immunity of UNHCR officials and experts on mission from legal process in respect of words spoken and written and all acts performed by them in their official capacity would “continue even after termination of employment with UNHCR”.⁵³ Another common variation, evident in the agreements with China and Kuwait, is the absence of a provision on the privileges and immunities of

⁴⁹ See article VIII, para. 7, Agreement with the Ukraine, *United Nations Juridical Yearbook*, 1998, p. 117; Agreement with Kuwait, *United Nations Juridical Yearbook*, 1996, pp. 103-108.

⁵⁰ UNHCR/IOM/79/89.

⁵¹ Agreement with Kuwait, *United Nations Juridical Yearbook*, 1996, p. 103-108.

⁵² Agreement with Kuwait, *United Nations Juridical Yearbook*, 1996, p. 103-108.

⁵³ See article 10, para. 2 (a) and article 12 (b), Agreement with the Ukraine, *United Nations Juridical Yearbook*, 1998, p. 117; article X, paragraph 1 (a) and article XI, para. 2, Agreement with China, *United Nations Juridical Yearbook*, 1995, pp 136-137.

“persons performing services on behalf of UNHCR”.⁵⁴ Other variations included the non-exemption of Kuwaiti citizens from some of the privileges and immunities specified for UNHCR officials – specifically, the “immunity from personal arrest, detention or seizure of personal property” and “inviolability of their place of residence, as well as their vehicles, documents, manuscripts and all their personal effects.” Furthermore Kuwaiti citizens are not exempted from military service obligations.⁵⁵ Specific reference is not made to the privileges and immunities of locally recruited personnel “assigned the hourly rates” in either the agreement with Kuwait or the agreement with China.⁵⁶

(d) *By conference agreements*

23. In accordance with paragraph 5, Part I, of the GA resolution 40/243 of 18 December 1985, which, *inter alia*, decided that “United Nations bodies may hold sessions away from their established headquarters...”,⁵⁷ the United Nations Secretariat issued an administrative instruction on 8 May 1987⁵⁸ providing guidelines to officials responsible for preparing and finalising agreements with Governments hosting United Nations conferences. The guidelines contained model provisions for privileges and immunities to be concluded in the form of an agreement⁵⁹ and in the form of an exchange of letters.⁶⁰ The Office of Legal Affairs was named responsible for the legal clauses in the

⁵⁴ Agreement with Kuwait, *United Nations Juridical Yearbook*, 1996, pp 103-108; Agreement with the China, *United Nations Juridical Yearbook*, 1995, p. 132-138.

⁵⁵ Article 9, Agreement with Kuwait, *United Nations Juridical Yearbook*, 1996, p. 107.

⁵⁶ See Agreement with the China, *United Nations Juridical Yearbook*, 1995, p. 132-138; Agreement with Kuwait, *United Nations Juridical Yearbook*, 1996, pp 103-108

⁵⁷ Paragraph 5 of GA resolution 40/243 of 18 December 1985.

⁵⁸ ST/AI/342.

⁵⁹ ST/AI/342, pp. 14-15.

⁶⁰ ST/AI/342, pp. 17-19. See also *Supplement No. 7, vol VII*, under this Article, at paras. 14-19 for information about the administrative instruction.

agreements. No modification might be made to the agreements without the approval of the Office of Legal Affairs.⁶¹

24. The United Nations concluded 30 agreements during the period under review for the purposes of making arrangements for the holding of United Nations sessions, meetings, seminars, workshops and trainings outside of headquarters.⁶² Two agreements were concluded with States that were not parties to the General Convention at the time of their conclusion.⁶³ The standard approach was to make the General Convention applicable between the parties for the purpose and duration of the conference.⁶⁴

25. The majority of the agreements were concluded by an exchange of letters and conformed in substance to the model provisions for privileges and immunities. However there are notable variations throughout the agreements, in particular with respect to Model Article XI. The main variation in the agreements concerns immunity from legal process for local personnel provided by the host country for the duration of the conference. In accordance with a long-standing and consistent practice of the Organization, all United Nations invitees and those performing functions for United Nations conferences, including local personnel provided by the host country, were entitled, as a minimum, to immunity from legal process in respect of words spoken or written and acts performed by them in connection with their participation in the conference. Such local personnel were entitled to enjoy this limited functional immunity

⁶¹ See paragraph 13 of ST/AI/342.

⁶² See annex II.

⁶³ Botswana, *United Nations Juridical Yearbook*, 1998, pp. 57-62; Sri Lanka, *United Nations Juridical Yearbook*, 1995, pp. 94-97.

⁶⁴ Botswana, *United Nations Juridical Yearbook*, 1998, pp. 57-62; Sri Lanka, *United Nations Juridical Yearbook*, 1990, pp. 94-97.

for the duration and purposes of the conference only. This practice was reflected in the model provisions for agreements concluded in the form of a treaty⁶⁵ or by exchange of letters.⁶⁶ During the period under review, some agreements did not contain any provision concerning local personnel provided by the host Government for the duration of the conference⁶⁷ and some agreements contained other minor variations on the model provisions.

26. The Agreement concluded with Indonesia in 1995, excluded Indonesian nationals from the privileges and immunities, provided for in article IV of the General Convention.⁶⁸ It also excluded Indonesian nationals, acting as United Nations officials from the privileges and immunities provided for under VI and VII of the Convention. Article XII, paragraph 1 of the Agreement with Indonesia provides:

“The Convention on Privileges and Immunities of the United Nations, adopted by the GA on 13 February 1946 to which Indonesia is a Party shall be applicable in respect of the Conference. In particular, the representatives of States and Intergovernmental organs referred to in article III, paragraph 1, above who are not Indonesian nationals shall enjoy the privileges and immunities under article IV of the Convention. The officials of the United Nations who are not Indonesian nationals performing functions in connection with

⁶⁵ Article XI, paragraph 3, ST/AI/342, p. 14.

⁶⁶ Para. (a) (iii), ST/AI/342, p. 18.

⁶⁷ See for example, Agreement with Japan, *United Nations Juridical Yearbook*, 1997, pp. 36-38; Agreement with the Federal Republic of Germany, Agreement with the People's Republic of China, *United Nations Juridical Yearbook*, 1999, pp. 65-67; *United Nations Juridical Yearbook*, 1999, pp. 30-32.

⁶⁸ *United Nations Juridical Yearbook*, 1995, pp. 127-132

the meeting shall enjoy the privileges and immunities provided under article V and VII of the Convention.”⁶⁹

27. Indonesian nationals, acting as “performing functions in connection with the meeting” were also not afforded the “privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the meeting”, granted to other persons of the same status.⁷⁰

28. In the agreements concluded with States during the period under review a notable variation was the granting in certain agreements of the privileges and immunities granted to United Nations experts on mission under Article VI and/or VII of the General Convention to certain categories of persons connected with the conference, workshop or seminar. The privileges and immunities under Article VI were extended to “participants invited by the United Nations”⁷¹, “participants attending”⁷², “experts and consultants”.⁷³ Other agreements went further by extending Article VII of the General Convention to such persons. For instance, the agreement with the Kingdom of the Netherlands of 1999, stipulates at Section VI, paragraph 1: “...experts and consultants referred to in paragraph II (l)(i) above shall enjoy the privileges and immunities under articles VI and VII of the Convention.” A similar provision is included in the Agreement with Romania of 1998.⁷⁴ Germany in its agreement, by exchange of letters, of 1999 specifically rejected the

⁶⁹ *Ibid*, p. 131.

⁷⁰ Article XII, paragraph 3, Agreement with Indonesia, *United Nations Juridical Yearbook*, 1995, p. 131.

⁷¹ Agreement with Saint Lucia, *United Nations Juridical Yearbook*, 1999, p. 26; Agreement with China, *United Nations Juridical Yearbook*, 1999, p. 31; Agreement with South Africa, *United Nations Juridical Yearbook*, 1996, p. 81; Agreement with Antigua and Barbuda, *United Nations Juridical Yearbook*, 1997, p. 27; Agreement with Fiji, *United Nations Juridical Yearbook*, 1998, p. 44.

⁷² Agreement with Germany, *United Nations Juridical Yearbook*, 1999, p. 66.

⁷³ Section VI, paragraph 1, Agreement with the Kingdom of the Netherlands, *United Nations Juridical Yearbook*, 1999, p. 107; See also Paragraph 6(b), Agreement with Nepal, *United Nations Juridical Yearbook*, 1996, p. 12; Article XI, paragraph 1, Agreement with Turkey, *United Nations Juridical Yearbook*, 1996, p. 37.

⁷⁴ Agreement with Romania, *United Nations Juridical Yearbook*, 1999, p. 61.

extension of Article VII of the General Convention, which relates to the UN laissez passer, to “participants attending the seminar”.⁷⁵ An agreement with the Government of Greece extends to privileges and immunities contained in Articles VI and VII of the General Convention to “[t]he representatives and /or observers of the Abkhaz authorities, invited by the United Nations to participate in the meeting...”.⁷⁶ In the Agreement with Italy of 1999, the privileges and immunities accorded under the Article VI of the General Convention were extended to “all the participants invited by the United Nations”.⁷⁷

29. Representatives of States were generally afforded the privileges and immunities set out in Article IV of the General Convention. In the Agreement with Italy of 1999, this was extended to: “[t]he representatives of States invited by the United Nations to participate in the conference and the members and observers of the Committee on the Exercise of the Inalienable Rights of the Palestinian People...”.⁷⁸ In the Agreement with Germany of 1995, under Article 11, paragraph of 2 the privileges and immunities under Article IV of the General Convention were extended to “representatives of observer States”.⁷⁹ Notably, however, variation occurs with regard to the representatives of States in the Agreement Kingdom of the Netherlands of 1999, Section VI, paragraph 2 of which provides that representatives of non-United Nations member States are excluded from the privileges and immunities provided for under Article IV, their being entitled solely to:

⁷⁵ Agreement with Germany, *United Nations Juridical Yearbook*, 1999, p. 67.

⁷⁶ Agreement with Greece, *United Nations Juridical Yearbook*, 1998, p. 63.

⁷⁷ Agreement with Italy, *United Nations Juridical Yearbook*, 1998, p. 86.

⁷⁸ Agreement with Italy, *United Nations Juridical Yearbook*, 1998, p. 86.

⁷⁹ Agreement with Germany, *United Nations Juridical Yearbook*, 1995, p. 11.

“immunity from legal process in respect of words spoken and written and any act performed by them in connection with their participation in the forum.”⁸⁰

30. Other variations occur in certain agreements with regards to “persons performing functions” in connection with conferences, workshops or seminars. While most agreements provided that such persons “shall enjoy the privileges, immunities and facilities necessary for the independent exercise of their functions in connection with the Conference.”⁸¹ While some minor variation occurs with respect to the wording of the provision in the various agreements, the 1999 Agreement with Germany specifically denies the granting of such privileges and immunities to this category of persons.⁸²

(e) *Peace-keeping and other mission agreements*

31. In paragraph 11 of its resolution 44/49 of 8 December 1989, the GA requested the Secretary-General to prepare a Model Status-of-Forces Agreement (SOFA) for peace-keeping operations between the United Nations and host countries. Further to this request, the Secretary-General prepared a Model SOFA which he annexed to his report of 9 October 1990.⁸³ The Model SOFA was intended to serve as a basis for the drafting of individual agreements to be concluded between the United Nations and countries on whose territory peace-keeping operations with troops were deployed pursuant to a mandate from the Security Council. As such it was subject to modifications agreed upon

⁸⁰ Agreement with the Kingdom of the Netherlands, *United Nations Juridical Yearbook*, 1999, p. 107.

⁸¹ Article XI, ST/AI/342, p. 15.

⁸² Agreement with Germany, *United Nations Juridical Yearbook*, 1999, pp. 65-67.

⁸³ A/45/594.

between the parties in each case.⁸⁴ The Model SOFA contained a number of provisions relating to privileges and immunities of the United Nations peace-keeping operation and its members.⁸⁵

32. During the period under review, 9 agreements were concluded between the United Nations and host countries where peace-keeping or other United Nations missions were deployed.⁸⁶ The Model SOFA was replicated, with minor variations, in the seven agreements concluded following its issuance: namely, the agreements with Haiti (UNMIH)⁸⁷ and with Angola (UNAVEM);⁸⁸ the agreement with Croatia (UNCRO);⁸⁹ the agreement with the Lebanon (UNIFIL);⁹⁰ the agreement with Sierra Leone (UNOMSIL);⁹¹ the agreement with Algeria (MINURSO);⁹² and the agreement with Morocco (MINURSO).⁹³

3. BY OTHER DECISIONS AND ACTIONS OF UNITED NATIONS ORGANS

33. During the period under review, the issue of security of missions and their personnel remained an issue of concern due to the increase in the number of United Nations

⁸⁴ A/45/594 of 9 October 1990, at para. 1.

⁸⁵ There are a number of provisions relating to the privileges and immunities of the operation. For example, part III is headed "Application of the Convention", paragraphs 16 to 17 refer to the facilities for the operation, paragraph 22 refers to the recruitment of local personnel and paragraphs 24-31 are under part VI headed "Status of the members of the United Nations peace-keeping operation".

⁸⁶ See Annex II.

⁸⁷ *United Nations Juridical Yearbook*, 1995, pp. 15-26.

⁸⁸ *Ibid.*, pp. 31-41.

⁸⁹ *Ibid.*, pp. 42-54.

⁹⁰ *Ibid.*, pp. 98-108.

⁹¹ *United Nations Juridical Yearbook*, 1992, pp. 52-60. Although the Agreement establishing the United Nations Transition Assistance Group in Namibia was concluded before the Model SOFA was issued, it was very similar to the Model. See *United Nations Yearbook*, 1989, pp. 14-24.

⁹² *United Nations Juridical Yearbook*, 1998, pp. 66-78.

⁹³ *Ibid.*, pp. 5-16.

officials arrested and detained, missing or abducted and killed.⁹⁴ More information can be found in the annual reports by the Secretary-General on this issue.⁹⁵

34. The GA issued resolutions in its resolutions calling upon the Secretary-General to promote and ensure observance of the privileges and immunities of officials of the United Nations.⁹⁶ During the period under review the Secretary-General and the respective executive heads of the organizations concerned continued to intervene with the competent authorities of Member States regarding cases of arrest, detention, abduction/disappearance or fatalities of United Nations officials.

35. A consolidated list of staff members under arrest and detention or missing at the end of each reporting period was set out in annex I of the Secretary-General's annual report on the respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations.

36. A note by the Secretary-General in 1995 highlighted the problem of security and safety of United Nations staff.⁹⁷ From the period of 1 July 1994 until 30 June 1995, 14 UN civilian staff members were killed. No figures were included on military personnel. Numerous others were subjected to harassment, kidnapped, hijacked and attacked.⁹⁸ The

⁹⁴ [note here concerns expressed in previous report] See A/C.5/51/3; A/C.5/52/2

⁹⁵ A/C.5/50/3; A/C.5/52/2; A/53/501

⁹⁶ A/RES/51/227 of 16 May 1997.

⁹⁷ A/C.5/50/3.

⁹⁸ Ibid, at para. 3.

arrest and detention of individuals was also a huge cause of concern. Specific mention was made of Rwanda.⁹⁹

37. A report by the Secretary-General, covering the period of 1 July 1996 to 30 June 1997, recounted that 22 civilian UN staff members lost their lives, forty seven others were taken hostage, and others were attacked, injured, abused, raped or harassed.¹⁰⁰ During the same period 59 UN officials were arrested or in detention.¹⁰¹ Rwanda was a cause of particular concern given the high number of arrests and detentions of officials.¹⁰² Taxation of officials was also an issue of concern for the United Nations Relief and Works Agency for Palestinian refugees and UNIFIL.

38. From 1 July 1997 to 30 June 1998, 22 UN staff members were killed, 33 UN personnel were abducted and 8 were held hostage.¹⁰³ Seven of the eight hostages were successfully recovered by the United Nations. As of 29 January 1998 the eighth episode of hostage taking remains unresolved – the whereabouts of the representative of the UNHCR, North Ossetia were still unknown.¹⁰⁴ The issue of detentions and arrests is still of significant concern. Some individuals had been detained for almost 20 years.¹⁰⁵

39. In various resolutions through the reporting period from 1995 to 1999 the GA deplored the injuring, killing, detention, arrests of UN officials, and called on Member

⁹⁹ A/C.5/50/3, at para. 5; See also Annex I for list of 54 persons detained or under arrest.

¹⁰⁰ A/C.5/52/2 of 24 September 1997, at para. 3.

¹⁰¹ Ibid, Annex I.

¹⁰² Ibid, at para. 6.

¹⁰³ A/53/501 of 21 October 1998, para. 5.

¹⁰⁴ Ibid, para. 6. Further details on the situations can be found in the report.

¹⁰⁵ Ibid, paras. 67-71. See also Annex II.

States to respect the privileges and immunities of its officials and humanitarian personnel. The GA also urged States to immediately release those detained and requested the Secretary-General to take the necessary measures to secure respect for the privileges and immunities of UN personnel.¹⁰⁶

II. ANALYTICAL SUMMARY OF PRACTICE

A. Article 104

40. On 17 November 1995 the Office of Legal Affairs provided a legal opinion on the ability of the United Nations Environmental Programme (UNEP) to take direct legal action against private entities of state members for environmental damage and damage to the ozone layer.¹⁰⁷ As a subsidiary organ of the United Nations the UNDP does not have its own separate legal personality, rather its legal personality and ability to institute legal proceedings is derived from that of the United Nations. Therefore, the Office of Legal Affairs advised that if UNEP instituted legal proceedings, it would be acting on behalf of the United Nations, and such action would require the prior authorization of the United Nations, and that the UNDP could still only act “within the limits of its competence.”¹⁰⁸

41. The United Nation’s immunity from legal process is derived from Article II, section 2 of the General Convention, save where it expressly waives this immunity. The Office of Legal Affairs was of the view that by filing of a law suit, acting through UNEP, the

¹⁰⁶ See for example GA Res 49/238 of 31 March 1995; GA Res 52/167 of 16 December 1997; GA Res 52/126 of 12 December 1997; GA Res 52/126 of 12 December 1997; GA Res 51/227 of 16 May 1997; GA Res 53/87 of 27 January 1999.

¹⁰⁷ *United Nations Juridical Yearbook, 1995*, p. 411-416.

¹⁰⁸ *Ibid*, p. 412.

United Nations “would in effect waive its immunity and therefore would no longer be immune from counter claims which could be filed by defendants.”¹⁰⁹ The Office of Legal Affairs concluded that court actions can put at risk the privileges and immunities of the United Nations, and therefore always require the prior express authorization of the Secretary-General. With regard to the specific case in question, the Office of Legal Affairs advised court action was not appropriate.¹¹⁰

B. Article 105 (1)

1. PRIVILEGES AND IMMUNITIES OF THE ORGANIZATION

42. Paragraph 1 of Article 105 grants the United Nations, as an Organization, such privileges and immunities within the territory of Member States as are necessary for the fulfillment of its purposes. In practice, during the period under review, while all the agreements concluded between the United Nations and host Governments referred to the general application of the General Convention, the majority of the agreements specifically referred to some of the privileges and immunities which applied.

Additionally United Nations Legal Counsel and the Office of Legal Affairs provide legal opinions concerning the proper application of Article 105.

(a) *Property, funds and assets*

¹⁰⁹ *United Nations Juridical Yearbook, 1995*, p. 412.

¹¹⁰ *Ibid*

43. In 1996 the Office of Legal Affairs provided legal advice to the United Nations Commercial Services Division on a proposal to lease the display showcases in the basement of the GA to commercial entities for advertising purposes in order to produce revenue.¹¹¹ The Office of Legal Affairs was of the opinion that the proposed advertising scheme would require the legislative endorsement of the GA.¹¹² This was because neither the United Nations Charter nor the General Convention made reference to the United Nations' engagement in commercial activities. In its view therefore it was not apparent that an activity of this nature could be deemed to be "necessary for exercise of its functions and fulfillment of its purposes."¹¹³ The Office of Legal Affairs was of the view, however, that it would be possible for the GA to decide that the commercial scheme proposed in this instance was essential to the fulfillment of the purposes of the United Nations, which would have the effect of covering such an activity by the privileges and immunities of the organization. However, it noted that such an approach would be contrary to the UN's philosophy of non-engagement with commercial activity.¹¹⁴

44. On 21 May 1997 Office of Legal Affairs wrote to the Executive Secretary of the United Nations Compensation Commission about the issue of whether funds originating from the Compensation Fund continue to enjoy the privileges and immunities of the United Nations while in the custody of the recipient Government.¹¹⁵ The Office of Legal Affairs noted that the Compensation Fund constitutes a fund of the United Nations in terms of Article II of the General Convention and as per the United Nations' Financial

¹¹¹ *United Nations Juridical Yearbook, 1996*, pp. 478-480.

¹¹² *Ibid*, p. 479.

¹¹³ *Ibid*

¹¹⁴ *Ibid*

¹¹⁵ *United Nations Juridical Yearbook, 1997*, pp. 441-443.

Regulations and Rules.¹¹⁶ It reiterated that “funds deposited in accounts of the Compensation Fund enjoy the jurisdictional immunities provided for the Convention.”¹¹⁷ It noted that Article II, Section 5, of the General Convention provides that the United Nations “may hold funds, gold or currency” which are covered by the privileges and immunities set out in Article II, Section 3 of the Convention. It reiterated that these funds enjoy such privileges and immunities given their “quality as funds of the Organization”.¹¹⁸ However in the case at hand, the Office of Legal Affairs was of the view that once monies were transferred into the custody of the Governments in question the funds could no longer be characterized as “funds of the United Nations” and so could not enjoy United Nations privileges and immunities.¹¹⁹

(i) *Exemption from taxation and customs duties*

45. During the period under review, the question of whether a tax was direct within the meaning of article II, section 7, or indirect within the meaning of article II, section 8, of the General Convention, again attracted attention.¹²⁰ The Office of Legal Affairs continued to take the position, that direct taxes within the meaning of section 7(a) of the General Convention are those which constitute a direct burden on the United Nations. The nature and effect of the tax are accordingly the primary considerations in determining whether the tax was direct or indirect. Where a Member State attempts to impose a tax upon the United Nations which *prima facie* would appear to fall within the

¹¹⁶ *United Nations Juridical Yearbook, 1997*, pp. 442.

¹¹⁷ *United Nations Juridical Yearbook, 1997*, pp. 442; See also S/22559.

¹¹⁸ *United Nations Juridical Yearbook, 1997*, pp. 442.

¹¹⁹ *Ibid*

¹²⁰ This issue has been considered in prior supplements. See *Repertory, Supplement No. 8* and *Supplement No. 7*

meaning of section 7(a) of the General Convention, it was for the Member State to show that the tax in question was in the nature of a charge for a public utility service in order for the exemption not to apply.

46. On 9 January 1995 the Office of Legal Affairs issued a memorandum to the Office of Conference Support Services about licensing fees levied against the United Nations for the allocation of radio frequencies.¹²¹ Firstly, the Office of Legal Affairs reiterated that the United Nations Environmental Programme is covered by the privileges and immunities set out in the General Convention, to which the state was a party. The Headquarters Agreement with the host State, in line with the General Convention, provided under Article 4 (b) that, “the Government shall, upon request, *grant* to UNEP for official purposes appropriate radio and other telecommunication facilities in conformity with technical arrangements to be made with the International Telecommunications Union”. The Office of Legal Affairs noted that under the Telecommunication Convention there is no requirement to pay for registration or use of radio frequencies.¹²² It was of the opinion that the licensing fee for radio frequencies in question arguably therefore constituted a direct tax. It recalled that the United Nations, and therefore UNEP, is exempt under Article II, Section 7(a) of the General Convention, which provides that “[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 a public utility

¹²¹ *United Nations Juridical Yearbook, 1995*, pp. 399-400.

¹²² *Ibid*, p. 399.

service”.¹²³ The Office of Legal Affairs pointed to the fact that the United Nations has consistently taken a narrow interpretation of what constitutes “charges for public utility services”. It stated that charges for public utility services “must relate to concrete services that can be specifically identified, described, itemized and calculated according to some predetermined unit.” In the case at hand Office of Legal Affairs advised that it was “difficult to clearly identify and itemize the service being rendered by allocating radio-electric spectrum and frequencies” and that the charge had no basis on the amount of services rendered, and that it therefore constituted a direct tax from with the organization was exempt.¹²⁴

47. On 5 February 1995 a memorandum was issued by the Office of Legal Counsel to the Chief of the Legal Section of the Division of Personnel of the UNDP concerning the issue of various taxes levied by a State on UNDP.¹²⁵ One of the forms of tax in question was a Commercial Transaction Levy which was charged by the government with respect to transactions relating to the sale and rendering of services. In this instance while it was for the seller to pay the levy he could pass the levy on to the purchaser of the service. Therefore the Office of Legal Affairs was of the view that given that the UNDP was a purchaser the levy constituted an indirect tax which comes under Article II, Section 8, of the General Convention, which obliges Governments, where feasible, to put in place appropriate administrative arrangements for remission or return of levy fee.¹²⁶

¹²³ *United Nations Juridical Yearbook, 1995*, p. 400.

¹²⁴ *Ibid*

¹²⁵ *Ibid*, pp. 405 -407.

¹²⁶ *Ibid*, p. 406.

48. Another form of tax charged by the host State was in the form of a registration fee payable by the United Nations to register and license official vehicles. This was contrary to the Agreement with UNDP, under which it was obliged to grant promptly and without cost visa, license and permits.¹²⁷ The Office of Legal Affairs also considered a road toll as a direct form of taxation and customs duty from which the organization is exempt under Article II, Sections 7(a) and 7(b) of the General Convention respectively. Finally, the Office of Legal Affairs advised that in its opinion an airport service charge placed on the United Nations for member departing the State was a direct form of taxation, contrary to Article II, Section 7(a) of the Convention.¹²⁸

49. In 1996 the Office of Legal Affairs considered the question of whether the imposition of a price equalization tax by the European Union on articles imported or exported by the United Nations, for its official use were in violation of Article II, Sections 7(a) and Section 8 and 34 of the General Convention.¹²⁹ In a facsimile to the Chief of Procurement and Contracts of the World Food Programme (WFP) the Office of Legal Affairs noted that every Member States of the EU is also party to the General Convention, Article II, Section 7(a) of which provides, "the United Nations, its assets, income and other property shall be exempt from all direct taxes". The Office of Legal Affairs observed that pursuant to Section 7(b), "the United Nations, its assets, income and other property shall be exempt form customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported **by** the United Nations for its official use."¹³⁰

¹²⁷ *United Nations Juridical Yearbook, 1995*, p. 406

¹²⁸ *Ibid*

¹²⁹ *Ibid*, pp. 439-440.

¹³⁰ *Ibid*, p. 439.

However the Office of Legal Affairs also noted that under Section 8 of the same article it is provided that:

“while the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.”¹³¹

50. As a subsidiary organ of the United Nations the Office of Legal Affairs noted that the above privileges and immunities would apply equally to the WFP. Therefore it was of the opinion that no tax ought to be placed on wheat and wheat flour if a direct tax. If a tax was placed on the wheat or wheat flour as an excise duty or part of the price to be paid the Office of Legal Affairs considered there ought to be a remission or return of any amounts paid on purchase of “important items”.¹³²

(ii) *Most favourable legal rate of exchange*

51. On 10 January 1997 the Office of Legal Affairs sent a facsimile to the United Nations Relief and Works Agency for Palestinian Refugees (UNRWA) in the Near East concerning the question of the Member State’s exchange rate. The Office of Legal Affairs noted, based on the information provided to it, that not alone did UNRWA not enjoy “the most favourable rate of exchange in the Member State but also that the central commercial bank of the Member State has frozen UNRWA assets and that the Member

¹³¹ *United Nations Juridical Yearbook, 1995*, p. 439.

¹³² *Ibid.*

State authorities have restricted the right of UNRWA to hold and freely transfer its funds” which violates the General Convention.¹³³ The Office of Legal Affairs recognizes that the Convention does not explicitly provide that States are obligated to provide the organization with the “most favourable rate of exchange” but that this is now established practice and policy of the United Nations and its subsidiary organs, in line with Article 105 of the UN Charter, and that the Government undertook to comply with this obligation in its Agreement with UNDP.¹³⁴ With respect to the freezing of UNRWA assets by the bank, the Office of Legal Affairs advised that this was contrary to Article II, Section 3, of the General Convention, which provides that “the property and assets of the United Nations, whenever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation, and other form of interference, whether by executive, administrative or legislative action.”¹³⁵ With respect to the State’s restriction on the right of UNRWA to hold and freely transfer its currency, the Office of Legal Affairs referred to Article II, Section 5, of the Convention,¹³⁶ which provides: “Without being restricted by financial controls, regulations or moratoria of any kind, (a) the United Nations may hold funds, gold or currency of any kind and operate accounts in any currency; (2) the United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.”

¹³³ *United Nations Juridical Yearbook, 1997*, pp. 438-439.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*, pp. 439.

¹³⁶ *Ibid.*, pp. 439.

52. Article VIII, paragraph 7 of the Model UNHCR Co-operation Agreement provides that “UNHCR shall enjoy the most favourable legal rate of exchange”.¹³⁷ Of the four agreements concluded between UNHCR and host countries, the Agreement with Kuwait did not contain this provision in any form¹³⁸ and Article 8, paragraph 7 of the Agreement with the Ukraine of 1998 provided that, “[the] UNHCR shall apply the legal rate of exchange set by the country.”¹³⁹

53. The United Nations Model status-of-forces agreement (SOFA) for peace-keeping operations¹⁴⁰ provides in part V, section 23, that the Government “undertakes to make available to the United Nations peace-keeping operation, against reimbursement in mutually acceptable currency, [local] currency required for the use of the United Nations peace-keeping operation, including the pay of its members, at the rate of exchange most favourable to the United Nations peace-keeping operation”. Of the eight SOFAs establishing observer or peace-keeping missions during the period under review, only four contained this provision.¹⁴¹ The agreement with Sierra Leone, done by exchange of letters, concerning the status of the United Nations Observer Mission in Sierra Leone makes no reference to rates of exchange.¹⁴² Article V, Section 28 of the Agreement concluded with the Democratic Republic of Algeria concerning the status of the United

¹³⁷ UNHCR/IOM/79/89 of 27 June 1989.

¹³⁸ Agreement with Kuwait, *United Nations Juridical Yearbook*, 1996, pp. 103-108.

¹³⁹ Agreement with the Ukraine, *United Nations Juridical Yearbook*, 1998, pp. 113 -120.

¹⁴⁰ A/45/594 of 9 October 1990.

¹⁴¹ Agreement with the Government of Haiti regarding the Status of the United Nations mission in Haiti, *United Nations Juridical Yearbook*, 1995, pp. 15-26; Agreement with the Government of Angola on the status of the United Nations Peacekeeping Operation in Angola, *United Nations Juridical Yearbook*, 1995, pp. 31-41; Agreement with the Government of Croatia regarding the status of the United Nations forces and operations in Croatia, *United Nations Juridical Yearbook*, 1995, pp. 42-54; Agreement with the Government of the Lebanon on the status of the United Nations Interim Force in Lebanon, *United Nations Juridical Yearbook*, 1995, pp. 98-108; Agreement with Morocco concerning the status of MINURSO, *United Nations Juridical Yearbook*, 1999, pp. 5-16.

¹⁴² SOFA with Sierra Leone, *United Nations Juridical Yearbook*, 1998, pp. 46-48.

Nations mission for the Referendum in Western Sahara simply provides that “MINURSO shall use Algerian dinars in the mission area.”¹⁴³

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

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

(v) *Police protection of United Nations premises*

54. During the period under review, the agreements concluded by the United Nations establishing interim or integrated offices, information centres and UNHCR branch and regional offices in host States included a section on the security and protection of the office and its staff. For example, in the Agreement with the Czech Republic establishing an information centre in Prague, Article V, paragraph 3 provided, “The appropriate Czech authorities shall exercise due diligence to ensure the security and protection of the premises of the Centre.”¹⁴⁴ A similar provision can be found in the UNHCR Agreement with China regarding its branch office at Article VI, paragraph 4, which states: “[t]he Government shall take all necessary measures to ensure the security and protection of the premises of the UNHCR office and its personnel”¹⁴⁵

55. In the Agreement establishing the headquarters of the International Criminal Tribunal for Rwanda, Article VII provided:

¹⁴³ Agreement with the Government of the People’s Democratic Republic of Algeria on the status of the United Nations Mission for the Referendum in Western Sahara, *United Nations Juridical Yearbook*, 1998, pp. 66-78.

¹⁴⁴ *United Nations Juridical Yearbook*, 1999, pp. 57-61.

¹⁴⁵ Article VI, para. 4, Agreement with China, *United Nations Yearbook*, 1995, pp. 132-138.

1. The competent authorities shall exercise due diligence to ensure the security and protection of the Tribunal and to ensure that the tranquility of the Tribunal is not disturbed by the intrusion of persons or groups of persons from outside the premises of the Tribunal or by disturbances in their immediate vicinity and shall provide to the premises of the Tribunal the appropriate protection as may be required;
2. If so requested by the President or the Registrar of the Tribunal, the competent authorities shall provide adequate police force necessary for the preservation of law and order on the premises of the Tribunal or in the immediate vicinity thereof, and for the removal of persons therefrom.”¹⁴⁶

56. The Agreement further provides at Article XXVI:

“The competent authorities shall take effective and adequate action which may be required to ensure the appropriate security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Tribunal, free from interference of any kind.”¹⁴⁷

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

57. During the period under review, the agreements concluded by the United Nations establishing information centres and UNHCR offices in host States specifically mentioned immunity from censorship of United Nations materials. For example, the

¹⁴⁶ *United Nations Juridical Yearbook, 1995*, pp. 72-73.

¹⁴⁷ *Ibid*, p. 80.

agreement establishing the United Nations Information Centre in the Czech Republic provided at Article V, paragraph 2 that

“No official correspondence or other communication of the Centre shall be subject to censorship. Such immunity shall extend to printed matter, photographic and electronic data communications and other forms of communications as may be agreed upon by the Parties to the present Agreement. The Centre shall be entitled to use codes and to dispatch and receive correspondence either by courier or in sealed pouches, all of which shall be inviolable and not subject to censorship.”¹⁴⁸

58. The Model UNHCR Co-operation Agreement¹⁴⁹ provided for immunity from censorship of United Nations publications in article IX, paragraph 2:

“The Government shall...not apply any censorship to its communications and correspondence. Such inviolability, without limitation by reason of this enumeration, shall extend to publications, photographs, slides, films and sound recordings”.

59. The majority of agreements establishing UNHCR offices contained this provision or a modified form of it.¹⁵⁰

¹⁴⁸ *United Nations Juridical Yearbook, 1999*, p. 58

¹⁴⁹ UNHCR/IOM/79/89 of 27 June 1989.

¹⁵⁰ See for instance Article 9, paragraph 2 of the Agreement with the Ukraine, *United Nations Juridical Yearbook, 1995*, p. 117. The Agreement with Kuwait in contrast does not specifically mention immunity from censorship, *United Nations Juridical Yearbook, 1996*, p. 106.

- (b) ***Facilities in respect of communications*
- (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*

60. At the 195th meeting, on 18 November 1998, the Costa Rican Mission Representative voiced her concern at some instances relating to security measures at the 35th session of the GA, including verbal abuse by the police.¹⁵¹ The Russian Mission Representative also expressed concern that because of heightened security measures at the 33rd session of the GA, when some heads of state were attending, some officials of his mission had difficulties accessing the United Nations Headquarters. Both the Russian Federation and Costa Rican representatives expressed concern at the lack of coordination between the security services of the host State and those of the United Nations. The United States Mission noted that security measures were excessive, however rejected any suggestion that the security measures violated the 1947 Headquarters Agreement of the 1961 Vienna Convention on Diplomatic Relations. The United States Mission responded by stating that meetings were being held to better handle security arrangements in the future.¹⁵²

C. Article 105(2)

¹⁵¹ A/54/26, paras. 11.

¹⁵² Ibid, paras. 13-20

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 grant of privileges and immunities*

61. On 11 January 1995 Office of Legal Affairs sent a memorandum to the Executive Office of the Secretary-General concerning the refusal by the United States Mission to the United Nations to extend diplomatic privileges and immunities to an official who was a member of a permanent mission of a State of which he was not a national, as a Special Adviser.¹⁵³ The Office of Legal Affairs noted that nothing in the General Convention restricts the right of Member States to appoint non-nationals as their representative to the United Nations.¹⁵⁴ The Office of Legal Affairs noted that the 1961 Vienna Convention on Diplomatic Relations provides, in article 7, that the sending State may, with certain limitations, freely appoint the members of the staff of the Mission. Article 8, paragraph 1, stipulates that “members of the diplomatic staff of the mission should, in principle, be of the same nationality as the sending State”. Article 8, paragraph 2, provides that “members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time”. In addition, article 8, paragraph 8, specifies that the receiving State “may reserve the same right”, i.e., the right to express its consent, with regard to

¹⁵³ *United Nations Juridical Yearbook, 1995*, pp. 401-403.

¹⁵⁴ *Ibid*, p. 401.

nationals of a third State who are not also nationals of the sending State .¹⁵⁵ However the issue at hand did not involve an individual from the receiving state, therefore the Office of Legal Affairs was of the view that such members of diplomatic staff of missions are entitled to privileges and immunities provided for under Article IV of the General Convention and also Article V of the UN Headquarter Agreement.¹⁵⁶

62. During the period under review, the United States continue to impose those restrictions, imposed travel restrictions on staff of other Missions to the United Nations and their dependants and lifted the travel restrictions on others as per the previous *Supplement No.8*.¹⁵⁷

63. The Committee on Relations with the Host Country (hereinafter “the Committee”) continued its deliberations on the travel regulations issued by the host country in respect of the personnel of certain Missions. At the 174th meeting the issue of host State travel restrictions on the Cuban Mission was discussed.¹⁵⁸ As an example, reference was made to a trip in which the Permanent Representative of Cuba had sought to attend a ceremony in San Francisco in June 1995. Permission was only granted to the Permanent Representative to travel alone and his travel was restricted while he was in San Francisco. The United States Mission stated the denial of permission for the Permanent Representatives to travel to a private residence in California or any of the other restrictions did not violate the United States’ treaty obligations, given that the event in

¹⁵⁵ *United Nations Juridical Yearbook, 1995*, p. 402.

¹⁵⁶ *Ibid*, p. 403.

¹⁵⁷ Repertory, Supplement No. 8

¹⁵⁸ A/50/26, paras26-29

question was not a UN event, and that allowing the Permanent Representative to travel to San Francisco in the first instance had been a gesture of good will¹⁵⁹

64. At the 186th meeting of the Committee, Cuba again voiced its concern about the travel restrictions imposed on its mission personnel, which it believed were both arbitrary and politically motivated.¹⁶⁰ The United States responded by stating that none of the restrictions imposed violated its international legal obligations and that the travel restrictions imposed in no way violated diplomatic privileges and immunities. It took the position that all the United States was obligated to do was not to restrict transit to and from United Nations Headquarters under the Headquarters Agreement.¹⁶¹ Complaints were also made by the Russian Federation and Iraq.¹⁶² The Iraqi Mission stated that it had not been permitted to travel outside the 25-mile limit for more than three years.¹⁶³

65. At the 192nd meeting of the Committee, the Cuban Mission representative voiced its concern about travel restrictions imposed on its personnel, such as a 25-mile zone restriction on its Permanent Representative. The Cuban Mission Representative noted that the GA had passed a number of Resolutions urging the host country to remove travel restriction imposed on certain permanent missions.¹⁶⁴ The Russian Representative also voiced his concerns about the continued travel restrictions on its Mission personnel and the need to lift them.¹⁶⁵

¹⁵⁹ A/50/26, paras 27-29.

¹⁶⁰ Ibid, para. 103.

¹⁶¹ Ibid, para. 105.

¹⁶² Ibid, para. 106-107

¹⁶³ Ibid, para. 107.

¹⁶⁴ A/53/26, para. 41.

¹⁶⁵ Ibid, para. 42.

66. On 27 October 1999 the issue of travel restrictions imposed on its personnel was again raised by Cuba at the 199th meeting of the Committee. Of particular concern appeared to be the 25 mile limit and consistent denial of requests for Cuban mission personnel to go beyond this, without explanation. The Cuban Mission Representative stated that refusal to permit travel violated the Headquarters Agreement and the 1975 Vienna Convention.¹⁶⁶ At the same meeting the representative of Russian Federation reiterated his concerns at the imposition of travel restrictions which he considered violated international law. He called upon the host state to remove travel restrictions, as did the representatives of Iraq and China.¹⁶⁷ The United States representative responded that travel restrictions were imposed for security reasons and did not restrict the capacity of the representatives to perform official United Nations related work. Therefore, the restrictions were entirely consistent with the United States obligations under international law as the Headquarters Agreement only required that the host State ensure the free transit of diplomatic personnel to and from the United Nations Headquarters. It stated that Cuban Mission complaints were being reviewed, but that some had related to non-UN events.¹⁶⁸

67. In a number of resolutions during the reporting period the GA urged the lifting of continued travel restrictions imposed by the host country on staff of certain missions.¹⁶⁹ It further called upon the host state “to review measures and procedures relating to parking

¹⁶⁶ A/54/26, para. 36.

¹⁶⁷ Ibid, paras. 37-38.

¹⁶⁸ Ibid, at para. 39

¹⁶⁹ A/52/650, at para. 5; A/54/612, at para. 4; A/RES/49/56, at para. 2; A/RES/50/49, at para. 5; A/RES/51/163, at para. 6; A/RES/52/159, at para. 5; A/RES/53/104, at para. 5

of diplomatic vehicles, with a view to responding to the needs of the growing diplomatic community, and to consult with the Committee on these issues...”¹⁷⁰ and to deal with the problem “in a fair, balanced and non-discriminatory way...”.¹⁷¹

68. At the 186th meeting of the Committee, the Iraqi representative expressed concern about delays in granting visas to Iraqi diplomats by the United States, in particular with regard to those officials who were supposed to attend the 19th special session of the GA in June 1997. The United States mission stated that they were bombarded with visa requests for that session.¹⁷²

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

(d) *Privileges and immunities*

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

(ii) *Personal inviolability and immunity from arrest*

69. On 5 April 1995 at the 170th meeting of the Committee, the Committee discussed an issue raised by Cuba about hostile demonstrations systematically occurring outside the

¹⁷⁰ A/52/650, at para. 6; A/54/612, at para. 5; See also A/RES/50/49, at para. 6; A/RES/51/163, at para. 8; A/RES/52/159, at para. 6.

¹⁷¹ A/RES/53/104, at para. 6.

¹⁷² A/50/26, para. 108-109.

Cuban Mission, allegedly carried out by terrorist organizations, which were disrupting the work of the mission and threatening its personnel.¹⁷³ The Cuban representative recalled an incident which had occurred outside the Cuban Mission in 1994 where Cuban mission personnel who attempted to block the entry of demonstrators to the mission where arrested and detained at a police station, where they were called to renounce their immunity so that they might be charged. The representative of the United States asserted the United States had made repeated efforts to respond to complaints made by Cuba about protest outside its mission. The United States representatives however emphasized that its Constitution guarantees freedom of speech and assembly and the right to peaceful protest and that demonstrators who had acted unlawfully had been arrested, charged and prosecuted.¹⁷⁴ The Cuban representative stated that he hoped in the future more would be done to prevent such incidents occurring in the first instance.¹⁷⁵ At the 171st meeting, on 30th May 1995, the representative of the United States informed the Committee that meeting had been held with the Cuban mission following the previous meeting in an effort to better address their concerns. The United States had also met with the law enforcement authorities in this respect and proposals for improvement were made.¹⁷⁶

70. On 14 May 1996 at the 175th meeting of the Committee, on 14 May 1996, the issue of security and safety of missions and their personnel arose. A number of note verbales were circulated by the Cuban and United States Mission on their respective positions. Two primary issues arose which related to the installation of a street sign in the security zone

¹⁷³ A/50/26, at paras. 12-24.

¹⁷⁴ Ibid, at paras. 15, 18

¹⁷⁵ Ibid, at para. 19

¹⁷⁶ Ibid, at para. 25

of the Cuban Mission which read “Brother to the Rescue Corner” and the brutal beating of one of the Cuban Missions diplomats.¹⁷⁷ The Cuban Mission explained that the sign had been put up for the purpose of a ceremony in which the Mayor of the City of New York made a slanderous speech marking a political act. The United States Mission stated that the sign was erected by the local authorities, and that it had not been involved. It recalled the Constitution of the United States and the right to free speech and assembly. It stated that it had made arrangements to ensure that Cuban mission staff could carry out their functions and were free to access their mission, including a meeting on the morning of the ceremony with the Cuban mission to discuss their security concerns. The Cuban Mission requested that the Committee adopt a decision requesting the United States to remove this sign.¹⁷⁸ The matter was again discussed at the Committee’s 176th meeting. At this meeting the Cuban mission pointed out that a second sign bearing the same name had been installed near its mission premises. It stated that these signs attract demonstrations of an aggressive and offensive nature and put the security of Cuban Mission staff at risk. In response, the United States Representative continued to emphasize the high level of police protection that it has provided around the Cuban mission premises.¹⁷⁹

71. On 2 July 1997 at the 186th meeting of the Committee Cuba again flagged the issue of continuing security problems suffered by its mission, in addition to ongoing demonstrations. The United States stated that the Cuban Mission had implied that New York City Police had signaled demonstrators to initiate a “riot” so that Cuban delegates would be subjected to violence. It stated rather that the police have been providing

¹⁷⁷ A/51/26, paras.7-28.

¹⁷⁸ Ibid, paras.18-25

¹⁷⁹ Ibid, paras. 26-28.

ongoing protection to the mission. The Cuban Mission Representative stated that the Cuban Minister for Science, Technology and Environment at the 19th session of the GA was impeded by the law-enforcement officials on the excuse that demonstrations were in the area.¹⁸⁰ At the 187th meeting of the Committee, on 15 October 1997, the Chairman of the Committee reported that the issue had been dealt with by the three missions on a bilateral basis.¹⁸¹

72. On 5 November 1997 at the 188th meeting of the Committee, the representative of the Russian Federation complained he had been harassed and intimidated by New York police. The representative of the Russian Federation had been in his car on route to a Security Council meeting when he was stopped by police. The police took the keys from the diplomat's driver despite the diplomat stating he had diplomatic immunity. The Russian Mission stated that this incident violated international laws governing diplomatic immunity and privileges and diplomatic inviolability, including Articles 22 and 26 Vienna Conventions on Diplomatic Relations of 1961.¹⁸² The representative of the United States expressed concern and organized a meeting between the representative of the Russian Federation and senior New York police commanders. The United States mission also stated it would brief police on diplomatic immunities.¹⁸³

(iii) *Immunity from legal process*

¹⁸⁰ A/52/26, paras. 7-10.

¹⁸¹ Ibid, paras. 26.

¹⁸² Ibid, para. 27.

¹⁸³ Ibid, para. 28.

73. On 9 January 1997 the Committee on Relations with the Host State considered complaints by a diplomat of the Russian Federation and a diplomat of the Belarus Mission about the conduct of the New York City Police. A Russian Federation diplomat was reportedly detained and beaten, despite having produced his diplomatic identity card and driver's licence.¹⁸⁴ The Russian Mission asserted this incident was in clear violation of international law treaty obligations with respect to diplomats¹⁸⁵ and demanded a full investigation, an apology, disciplinary action against the police officers involved, and damages for the injuries sustained. The diplomat from Belarus, who was in the car with the Russian Federation diplomat, complained that he had been arrested by police despite having despite his having submitted his diplomatic papers. The Mission Representative stated that this incident was in clear violation of international law treaty obligations with respect to diplomats.¹⁸⁶ The police however disputed the diplomats' version of the incident.¹⁸⁷ The police and several witnesses stated that the police had been issuing a parking ticket for an illegally parked vehicle, when they had allegedly been abused and assaulted by these diplomats who were at the time allegedly in a drunken state. The Representative of the United States said that the diplomats had refused to produce a driver's licence to police and suggested representatives of the two missions meet with New York police department.¹⁸⁸ The Committee stated that an investigation would take place and that a formal report would be issued.

(iv) ***Currency or exchange facilities*

¹⁸⁴ A/52/26, paras. 11-28.

¹⁸⁵ Ibid, paras. 12-13.

¹⁸⁶ Ibid

¹⁸⁷ Ibid, para. 14; See further paras.23-33.

¹⁸⁸ Ibid, para. 17.

(v) *Exemption from taxation*

74. At the 174th meeting of the Committee, the observer of Portugal highlighted the problem that apart from stores near the United Nations in Manhattan, other boroughs around New York City appeared to be unaware of the tax exemption cards used by diplomats. The United States Government said there was a need to issue a Federal Card and indicated that the New York Office of Foreign missions would investigate the possibility of providing a re-education programme to sales persons on the tax exemption cards. The United States Mission also encouraged States to report stores refusing to recognize their tax exemption cards.¹⁸⁹

(vi) ***Legal status of premises*

(vii) *Financial indebtedness of Permanent Missions and their personnel*

75. During the period under review, the problem of financial indebtedness of Permanent Missions and representatives continued to arise. The United States informed the Committee at its 169th meeting that the significant financial indebtedness in New York had started to tarnish the financial reputation of the United Nations. Reference was made to a report by the Secretary-General addressing the legal aspects of this problem, dated 13 March 1995.¹⁹⁰ The report was discussed at the 171st meeting of the Committee where the Committee considered the possibility of arranging more affordable health and dental

¹⁸⁹ A/51/26, at paras. 36-39

¹⁹⁰ A/50/26, paras. 30-59.

services for mission personnel, and the establishment of an information programme for states on the costs associated with a mission's presence in New York.¹⁹¹ However, the Committee in conclusion emphasized that the primary responsibility for mission debts is that of the sending State and that missions should be mindful that just and uncontested debts must be paid in full.¹⁹² The United States Mission stated that 31 permanent missions in 1995 owed more than \$9 million in just debts but that only three permanent missions had made good progress in reducing their indebtedness.¹⁹³ The United States Mission suggested that one option might be for States to reduce the size of their missions.¹⁹⁴ The issue of financial indebtedness was also noted to be problematic in Geneva.¹⁹⁵ The Costa Rican representative noted that the issue of financial indebtedness was of great concern to the diplomatic community because of its impact on the ability of diplomats to rent apartments and open credit lines.¹⁹⁶

76. At the 175th meeting of the Committee, on 14 May 1996, the Committee once again addressed the issue of financial indebtedness and procedures to be followed with the purpose of solving this problem.¹⁹⁷ One of the issues that the Committee discussed was that in some instances missions simply did not consider themselves bound by fiscal and tax regulations in connection with taxable commercial activities in the host State.¹⁹⁸ The Representative of Switzerland stated that financial indebtedness of missions in Geneva

¹⁹¹ A/50/26, paras. 34-35.

¹⁹² Ibid, para. 36.

¹⁹³ Ibid, para. 37.

¹⁹⁴ Ibid, para. 38.

¹⁹⁵ Ibid, para. 39.

¹⁹⁶ Ibid, para. 55.

¹⁹⁷ Ibid, paras. 40-52

¹⁹⁸ A/51/26, para. 40.

and elsewhere was damaging the reputation of diplomatic communities in host States.¹⁹⁹ The Representative of the United States Mission observed that the lack of health care and health insurance was a primary contributory factor in creating the problem.²⁰⁰ In response to a questionnaire was sent by the Committee on the Host State to missions on this issue, 56 missions indicated that they would be interested in an alternative medical insurance cover, and there was also substantial support for a dental care plan.²⁰¹

77. At the 191st meeting of the Committee the issue of financial indebtedness again arose. The United States Mission noted that progress had been made and the amounts of monies decreased, however it still remained a major problem. The United States Mission observed that on a number of occasions it had been required to step in on behalf of those possessing diplomatic privileges and immunities in order to prevent eviction, court appearances or attachment of bank accounts. It commended the progress of the Working Group on this issue. The Representative of Switzerland stated that this also remained a major issue with respect to Geneva.²⁰² The Chairman of the Committee expressed the hope that this problem would be resolved constructively.²⁰³

78. During the period under review the GA passed a number of Resolutions on diplomatic indebtedness, stressing that the non-payment of just debts damages the reputation of the United Nations and that this cannot be condoned.²⁰⁴

¹⁹⁹ A/51/26, para. 41.

²⁰⁰ Ibid, para. 42

²⁰¹ Ibid, paras. 46-47.

²⁰² A/53/26, paras. 43-44.

²⁰³ Ibid, para. 45.

²⁰⁴ A/RES/49/56, para. 4; A/RES/50/46, at para. 4; A/RES/51/163, at para. 4;

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

(ix) *Movable property of representatives of Members*

79. At the 174th meeting of the Committee on 7 December 1993, the Russia Federation drew the Committee's attention to the problem of tickets and fines for parking. It highlighted the fact that the parking space for its diplomatic staff was only 10 allotments, and that other missions suffered from a similar problem. Portugal highlighted the fact that some legally parked diplomatic cars had received tickets.²⁰⁵ The United States stated that diplomatic privileges and immunities do not extend to violations of traffic laws and regulations and that there were signs indicating parking allotments for diplomats.²⁰⁶ The issue of parking allotments and tickets was raised again at the 175th meeting of the Committee. The United States Representative suggested that the issue of parking could be discussed with the New York City Police Commissioner.²⁰⁷

80. The issue of parking and tickets was also brought up in the Committee's 180th and 18th meetings. The United States stated Manhattan is a highly congested city and that violations of traffic laws will result in fines which are not in violation of diplomatic privileges and immunities. The United States Mission proposed a new programme under which diplomats who failed to pay their fines for a period of 12 months or more would be required to return their diplomatic plates and their vehicles towed would only be released

²⁰⁵ A/51/26, paras. 53-61.

²⁰⁶ Ibid, paras. 56.

²⁰⁷ Ibid, paras. 59-61.

at the owner's expense.²⁰⁸ The Russian Federation Representative recalled that in February 1996 the New York City Commissioner for the United Nations and Consular Corps had assured diplomats that tickets issued to diplomatic vehicles would be cancelled. It was concerned by the idea that licence plates might be taken, and it would impede missions' ability to function. Various other mission Representatives also voiced their concerns.²⁰⁹ The matter was discussed further at the 182nd meeting. The Office of Legal Affairs issued a legal opinion on the matter on 21 March 1997.²¹⁰ The Office of Legal Affairs was in favour of the cancelling of unsatisfied outstanding tickets issued prior to the Programme; the ensuring of at least two parking spaces to each mission; the establishment of a 'hotline' to report unauthorized vehicles; etc. The Office of Legal Affairs emphasized that issuing parking tickets and other such traffic violation related fines to diplomatic personnel, or the towing of a diplomatic vehicle parked hazardously does not in itself violate their privileges and immunities under international law, so long as these are just and non-discriminatory. This view is in line with the diplomatic and UN personnel's obligation to respect local laws. The legal opinion, which was generally well received by members of the Committee, concluded that the Programme proposed was not yet ready to be implemented and that there remained practical issues to be discussed.²¹¹ The primary issue considered not to be in line with international laws governing diplomatic privileges and immunities was the removal of diplomatic vehicles licence plates when vehicles towed and the non-release of these vehicles until a fine or other condition met, given that this would amount to the exercise of jurisdiction over

²⁰⁸ A/52/26, para. 32-33.

²⁰⁹ Ibid, para. 34-46.

²¹⁰ A/AC.154/307.

²¹¹ A/52/26, para. 49- 64

diplomatic personnel and would impede the missions' ability to function.²¹² However, at the 184th meeting the Committee was informed that the Programme had entered into force. Various difficulties with the new programme were discussed in subsequent meetings, and in meetings with the Legal Counsel with a view to revising aspects of the Programme. At its 185th meeting on 10 April 1997 the Committee adopted a decision to refer the issue to the GA, unless the host country resolved the issue to the satisfaction of the Legal Counsel that the Programme complies fully with international law within one week. The implementation of the Programme was instead deferred by the host State on 2 July 1997. Discussed continued at subsequent meetings of the Committee and Working Group on Parking.²¹³

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

3. PRIVILEGES AND IMMUNITIES OF OBSERVERS OF NON- GOVERNMENTAL ORGANIZATIONS
AT UNITED NATIONS MEETINGS

81. During the period under review the Office of Legal Affairs issued a letter on 15 March 1999, advising on the legal status of the Permanent Observer Mission of the Organization of the Islamic Conference (OIC) and its privileges and immunities as a non-state entity invited to participate as observers in United Nations meetings.²¹⁴ The Permanent Representative of a Member State had addressed a letter to the Secretary-General seeking his good offices for the purpose of determining the status of the OIC,

²¹² A/AC.154/307.

²¹³ A/52/26, paras. 68-102

²¹⁴ *United Nations Juridical Yearbook, 1999*, pp. 408-409.

“both at the United Nations and also vis-à-vis the host country”. This letter also sought that “the necessary facilities and privileges conducive to the unhindered discharge of its functions be extended” to the OIC.²¹⁵ The Office of Legal Affairs noted that the international legal status of the OIC stems from GA resolution 3369 (XXX) of 10 October 1975, in the GA invited the OIC to participate in the sessions and work of the GA and its subsidiary organs as an observer. The GA requested that the Secretary-General implement this decision. The Office of Legal Affairs notes, however, that the resolution did not specifically set out the extent of privileges and immunities of the OIC.²¹⁶ The Office of Legal Affairs noted that United Nations consistent practice on such issues is to consider them in light of the United Nations Charter and the 1947 Headquarter Agreement with the United States. In its view a permanent observer mission, “as an invitee to the meetings of the United Nations organs, is entitled to enjoy in that capacity certain functional immunities necessary for the performance of official functions vis-à-vis those organs. These immunities flow by necessary intendment from Article 105 of the Charter of the United Nations”.²¹⁷ The Office of Legal Affairs noted that the position consistently taken by the United Nations is that such permanent observer delegations are to be afforded “functional immunity from legal process in respect of words spoken or written and all acts performed by members of the observer delegation in their official capacity before relevant United Nations organs”, in addition to inviolability of their official papers and documents connected with their relations with the United Nations, including on their mission premises.

²¹⁵ *United Nations Juridical Yearbook, 1999*, p. 408.

²¹⁶ *Ibid*

²¹⁷ *Ibid* p. 409.

82. The Office of Legal Affairs concluded that the United States authorities should not impose any impediments to transit to and from UN headquarters on the aforementioned persons, and that the American authorities shall extend all necessary protections to such individuals in transit to and from UN headquarters.²¹⁸ The Office of Legal Affairs noted that under the UN Headquarters Agreement the host State is obliged to grant visas free of charge and as soon as possible to all members of permanent observer missions, and the host State cannot require such persons to leave the United States due to activities performed in their official capacity. It notes however that diplomatic immunity would only extend to an observer mission with the United Nations by a Special Agreement with the host state.²¹⁹

83. In 1997 the Office of Legal Affairs issued another opinion on the issue of the immunities of representatives and observers of non-governmental organizations at United Nations meetings.²²⁰ The opinion was issued in response to a query from the Swiss Permanent mission as to whether the provisions under Article VI, Section 19 of the 1946 Interim Arrangements on Privileges and Immunities of the United Nations, concluded with Switzerland could apply by analogy to a representative of a non-governmental organization. The query was made due to the fact that a Government had requested the Swiss authorities through Interpol to extradite a national of that state accused of murder and terrorist acts.²²¹ The Office of Legal Affairs was of the view that whether or not these immunities could be extended to an NGO representative depends on their functions and relationship with the United Nations, in order to afford the privileges and immunities

²¹⁸ *United Nations Juridical Yearbook, 1999*, p. 409.

²¹⁹ *Ibid*

²²⁰ *Ibid*, pp. 443-444.

²²¹ *Ibid*, p. 443.

of experts on mission to such persons. The Office of Legal Affairs recalled that experts on mission for the United Nations enjoy immunity from personal arrest.²²² However the Office of Legal Affairs noted that there does not appear to be any precedent for according the status of “expert on mission” to representatives of NGOs participating in official United Nations meetings.²²³ The term “expert on mission” applies only to a person performing a mission for the United Nations where they have been given an assignment from either the Secretary-General or from an independent expert organ may in connection with their functions for the United Nations be afforded certain privileges and immunities, e.g. special rapporteurs, military observers, etc.²²⁴ The practice by the United Nations is to afford only such privileges and immunities to representatives of NGOs in official UN proceedings as are necessary for their function in connection with that meeting, including the ability to enter and freely leave the respective country and the ability to speak freely. The Office of Legal Affairs was therefore of the view that in this instance representatives of NGOs could not be regarded as experts on mission.²²⁵

4. PRIVILEGES AND IMMUNITIES OF OFFICIALS OF THE ORGANIZATION

(a) *Categories of officials*

84. The opinion of Office of Legal Affairs was requested on a number of occasions to interpret the term “officials of the United Nations” for the purpose of extending to them

²²² *United Nations Juridical Yearbook, 1997*, p. 443.

²²³ *Ibid*

²²⁴ *Ibid*

²²⁵ *Ibid* p. 444.

the privileges and immunities set out in Articles V and VII of the Convention on Privileges and Immunities of the United Nations of 1946.

85. In 1998 the Office of Legal Affairs provided an opinion to the Department of Peacekeeping Operations on the possibility of establishing an internship programme in the field. The Department wished to establish a pilot project for the summer of 1998.²²⁶ The Office of Legal Affairs' opinion canvassed the various legal implications of the establishment of such a programme, including issues such as the status of such students under a SOFA and the liability of the United Nations in the event of death or injury in the performance of their functions. The Office of Legal Affairs took the view that such students could not fit under any category of personnel under the General Convention. Therefore the host Country would be under no legal obligation to extend to these students any privileges and immunities. Any privileges and immunities granted to students would have to be by agreement with the host Country and provided for in the respective SOFA.²²⁷ The Office of Legal Affairs took the position that as a minimum "the students would need to be accorded functional immunity and facilities for their entry into and departure from the host country, including for repatriation in times of international crisis."²²⁸ The Office of Legal Affairs cautioned that permitting students to participate in field operations in such a manner "could potentially expose the United Nations organization to third party claims for any loss, damage or injury caused by student in the performance of their functions."²²⁹

²²⁶ *United Nations Juridical Yearbook, 1999*, pp. 389-392.

²²⁷ *Ibid.*, pp. 390.

²²⁸ *Ibid.*

²²⁹ *Ibid.*, pp. 391.

(b) *Privileges and immunities*

(i) ***General provisions*

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

1. Immunity from legal process

86. In 1999 the Office of Legal Affairs provided a legal opinion to UNICEF concerning an inquiry from a Member State's police authorities in relation to a complaint of criminal assault which had been lodged by a former staff member of UNICEF against a staff member of UNICEF and two security officers. While the police noted that UNICEF has immunity from legal process they query related to whether UNICEF staff also had immunity.²³⁰ The Office of Legal Affairs noted that the privileges and immunities provided for in the General Convention were also set out in the Standard Basic Cooperation Agreement in question.²³¹ The Office of Legal Affairs pointed to Article V, Section 18 (a) of the General Convention, to which the state in question had been party to since 1961, which provides that UN officials shall "be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity".²³² The Office of Legal Affairs recalled GA resolution 76(1) of 7 December 1946 provides for, "the granting of the privileges and immunities referred to in article V (...) to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates". The Office of Legal Affairs

²³⁰ *United Nations Juridical Yearbook, 1999*, pp. 405-408; Note that the OLA's opinion with respect to the security officers is dealt with under the Section on experts on mission of this Supplement.

²³¹ *United Nations Juridical Yearbook, 1999*, pp. 405.

²³² *Ibid*, pp. 406.

advised Mr. X has a right to enjoy such immunity irrespective of his nationality.²³³ The Office of Legal Affairs also suggested that the complainant should seek to resolve her dispute in accordance with UNICEF's internal rules and regulations and the relevant terms of her contract, given that the individual in question was covered by privileges and immunities under international law.²³⁴

87. In 1998, in its fourth session, the Commission on the Limits of the Continental Shelf sought the opinion of the Office of Legal Affairs on which procedure might be most appropriate to use in proceedings in the case of an alleged breach of confidentiality.²³⁵ Rules 4 and 5 of Annex II to the Rules of Procedure of the Commission prohibit breaches of confidentiality by its member; foresee the Secretary-General providing assistance in enforcing these rules; and permit the Commission to institute proceedings against the accused.²³⁶ The United Nations does not have a model procedure for dealing with breaches of confidentiality that could be used by the Commission. However, the Office of Legal Affairs observed that staff assigned to assist the Commission are UN Staff and are bound to observe the confidentiality of documents pursuant to Staff Rules and Regulations, and Administrative Issuances.²³⁷ The Office of Legal Affairs reiterated that a breach of confidentiality by a UN staff member would constitute misconduct which could result in the Secretary-General instituting disciplinary proceedings against them, which could result in their dismissal.²³⁸ The Office of Legal Affairs noted that while

²³³ *United Nations Juridical Yearbook, 1999*, pp. 406.

²³⁴ *Ibid*

²³⁵ *Ibid*, pp. 410-415.

²³⁶ CLCS/3/Rev.2.

²³⁷ *United Nations Juridical Yearbook, 1999*, pp. 412.

²³⁸ *Ibid*

Section 18 (a) of the General Convention provides that UN officials are immune from legal process “with respect of words spoken or written and all acts performed by them in their official capacity”, Section 20 of that Convention goes on to state that these privileges and immunities are granted with the interests of the United Nations solely in mind and not for the purpose of the personal benefit of the individuals.²³⁹ It further reiterates that the Secretary-General has the discretion under the Convention to waive the privileges and immunities of UN officials where he believes it would not prejudice the United Nations. The Office of Legal Affairs advised that this procedure should be followed with respect to a breach of confidentiality by a UN staff member.²⁴⁰

88. At the 196th meeting of the Committee on Relations with the Host State, on 10 March 1999, the United States noted with appreciation that the United Nations would now deduct funds from the salaries of staff that were under a court order to provide support to their spouses and children.²⁴¹

2. Exemption from national income taxation

89. During the period under review the issue of the imposition of taxes on the salaries of UN officials, in particular those locally recruited, contrary to Section 18(b) of the General Convention, continued to arise.

90. In a memorandum issued by the Office of Legal Affairs to the Division of Personnel of the United Nations Development Programme (UNDP) on 5 February 1995, the Office

²³⁹ *United Nations Juridical Yearbook, 1999*, pp. 413.

²⁴⁰ *Ibid*

²⁴¹ A/54/26, para. 34.

of Legal Affairs addressed the issue of various taxes levied by a State on UNDP.²⁴² It was reiterated that under Article V, Section 18(b) of the General Convention “officials of the United Nations shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations”.²⁴³ (The other forms of tax which were imposed are discussed above.)²⁴⁴ A “Graduated Tax” was being deducted by the Government in question from the salaries and wages of all UNDP employees. The Office of Legal Affairs noted that under Article V, Section 18(b) of the General Convention, UN officials, regardless of their nationality, are exempt from taxation. It recalled Section 34 of the General Convention, which provides that the State has a legal obligation to “be in a position under its own law to give effect to the terms of this Convention.”²⁴⁵

91. In a facsimile to the Chief of Field Services, Division of Finances of UNICEF, the Office of Legal Affairs examined the issue of obligations of the United Nations with respect to a law of a State requiring that tax be deducted automatically from all employees of every organ in the State.²⁴⁶ The Office of Legal Affairs reiterated that the privileges and immunities set out in the General Convention apply equally to UNICEF as a subsidiary of the United Nations. Reference was made to Article 2, Section II of the General Convention which extends immunity from legal process to all UN property, funds and assets, as well as Article V, Section 8(a) and (b) of the Convention, which provides immunity from legal process to officials of the United Nations “in respect of words spoken or written and all acts performed by them in their official capacity” and

²⁴² *United Nations Juridical Yearbook, 1995*, pp. 405 -407.

²⁴³ *Ibid*, p. 406.

²⁴⁴ See paras. 47-38 above.

²⁴⁵ *Ibid*, p. 406.

²⁴⁶ *United Nations Juridical Yearbook, 1996*, pp. 440-441.

exempts them from taxation on the salaries and emoluments paid to them by the United Nations. The Office of Legal Affairs concluded that taxation of the UN officials in this instance was illegal.²⁴⁷ However, the Office of Legal Affairs stated that consultants do not fall under the category of UN official; they may in some instances be accorded the status of expert on mission or are simply treated as independent contractors.²⁴⁸ With regard to independent contractors/consultants the Office of Legal Affairs stated that it is their own responsibility to determine whether they come under the State's income tax law, but that it was not for the United Nations to deduct taxes or to issue any statement to the authorities on their earnings.²⁴⁹

92. In a 1997 the Office of Legal Affairs advised the Office of Human Resources of UNDP about the United Nations' position on contributions for social security schemes under national legislation for locally recruited employees (irrespective of whether they are staff members on fixed term contracts of consultants engaged in special service agreements).²⁵⁰ The Office of Legal Affairs reiterated that it has been the consistent policy of the United Nations that such payments constitute a direct form of taxation and are therefore contrary to the General Convention. Reference was made to Article II, section 7(a) and Article V, section 18(b) of the Convention which in effect exempt both the Organization and its officials from such taxation. The Office of Legal Affairs noted GA Resolution 76 (1), which provides that "the granting of the privileges and immunities referred to in article V ... to all members of the staff of the United Nation, with the exception of those who are recruited locally and assigned the hourly rates". It stated

²⁴⁷ *United Nations Juridical Yearbook, 1996*, p. 440.

²⁴⁸ *Ibid*, p. 441.

²⁴⁹ *Ibid*

²⁵⁰ *Ibid*, pp. 444-445.

therefore that locally recruited staff members who are not assigned hourly rates are entitled to the privileges and immunities provided for in the General Convention, irrespective of their nationality or whether they are on permanent or fixed term contracts, and are thus exempt from taxation on their salaries.²⁵¹ Furthermore the Office of Legal Affairs stated that as a party to the General Convention the Member State cannot use UN emoluments for taxation purposes. It pointed out that the purpose behind immunity from taxation on salaries was to secure the equality of treatment of all UN officials, irrespective of their nationality.²⁵² It stated that the fact that the United Nations has its own comprehensive social security scheme for its staff is further evidence of its exemption from national social security schemes.²⁵³

93. In a note verbale to a Permanent Mission of a Member State in 1998, the Office of Legal Affairs again commented on the payment of social security contributions by UNDP locally recruited employees, on both fixed-term contracts and those engaged as consultants.²⁵⁴ The Office of Legal Affairs took the position that mandatory contributions for social security schemes under national legislation are contrary to United Nations policies and practice and they violate the Standard Basic Assistance Agreement between the Government of the Member State in question (SBAA) and United Nations, and the General Convention as they constitute a form of direct taxation on the organization.²⁵⁵ Under Article IX, paragraph 1 of the SBAA it was provided, “the Government shall apply to the United Nations and its organs, including UNDP and United Nations subsidiary

²⁵¹ *United Nations Juridical Yearbook, 1996*, pp. 444.

²⁵² *Ibid*, pp. 444-445.

²⁵³ *Ibid*, pp. 445.

²⁵⁴ *United Nations Juridical Yearbook, 1998*, pp. 479-480

²⁵⁵ *Ibid*, 1998, p. 79.

organs acting as UNDP executing agencies, their property, funds and assets, and to their officials, including the resident representative and other members of the UNDP mission in the country, the provisions of the Convention on the Privileges and Immunities of the United Nations.”²⁵⁶ Reference was again made to Article II, Section 7(a) of the General Convention which provides that the United Nations, its assets, income and property shall be exempt from all forms of direct taxation. Article V, Section 18(a) was also referred given that it exempts UN officials from taxation on their salaries and emoluments. As above, the Office of Legal Affairs recalled GA Resolution 76(1) of 1946, which extends the privileges and immunities in Art V of the General Convention to all members of United Nations staff, with the exception of those ‘who are locally recruited and are assigned the hourly rates.’²⁵⁷ The rationale behind immunity from taxation of salaries is to ensure equality of all officials of the organization irrespective of their nationality.²⁵⁸

3. Immunity from national service obligations

94. During the period under review, the Office of Legal Affairs issued a memorandum to the UNHCR in response to its request for advice on the issue of call-up notices issued by the Government for five UNHCR locally recruited staff to report for military service.²⁵⁹ The Office of Legal Affairs recalled that Section 18 of the General Convention exempts UN staff from national military service. While it noted that the Member State in question had not yet acceded to the Convention, it had concluded an Agreement in 1993 relating to

²⁵⁶ *United Nations Juridical Yearbook, 1998*, p. 479

²⁵⁷ *Ibid*

²⁵⁸ *Ibid*, p. 480

²⁵⁹ *Ibid* pp. 482-483.

the establishment of a United Nations Integrated Office, under which it undertook to exempt UN officials from national military service obligations.²⁶⁰

95. The Office of Legal Affairs noted that the UNHCR had pointed to the risk that refusing to permit staff members to carry out their national military service obligation could both jeopardize the mission and the protection of refugee in that State.²⁶¹ The Office of Legal Affairs referred to Paragraph 1 of Appendix C to the United Nations Staff Rules, which provides that the Secretary-General might agree to allow staff to undertake their military service “in case of a staff member who, with the *advance* approval of the Secretary-General, volunteers for military service or requests waiver of immunity under section 18(c) of the Convention on Privileges and Immunities of the United Nations.”²⁶² In such a scenario state nationals would could then volunteer to obtain special leave form UNHCR. The Office of Legal Affairs however stated that it is not possible for the Secretary-General to given its decision to waive staff immunity retroactively unless the UN Staff Rules were changed to allow for advanced approval of the request.²⁶³ The Office of Legal Affairs stated that any retroactive approval by the Secretary-General could only be on the basis of the staff member’s consent which would need to be voluntary and it would be required to be accompanied by a detailed statement form UNHCR on how the retroactive waiver of immunity would prove beneficial to the United Nations.²⁶⁴

²⁶⁰ *United Nations Juridical Yearbook, 1998*, p. 482.

²⁶¹ *Ibid*, p. 483.

²⁶² *Ibid*

²⁶³ *Ibid*

²⁶⁴ *Ibid*

96. On 9 October 1995 a report by the Secretary-General expressed concern about the drafting into military service of locally recruited UN staff, in contravention of Article V, Section 18(c) of the General Convention.²⁶⁵

4. **Exchange facilities

5. **Exemption from customs duties

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

97. The Agreement with the Government of the United Republic of Tanzania concerning the headquarters of the International Criminal Tribunal for Rwanda²⁶⁶ conferred full diplomatic privileges and immunities on the judges, the Prosecutor, the Registrar and internationally-recruited staff of P-4 level and above who were not of Tanzanian nationality. The judges, the Prosecutor and the Registrar, together with members of their families forming part of their household, who did not have Tanzanian nationality, were granted the privileges and immunities, exemptions and facilities accorded to diplomatic agents.²⁶⁷

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

²⁶⁵ A/C.5/50/3, para. 6.

²⁶⁶ *United Nations Juridical Yearbook, 1995*, pp. 69-81.

²⁶⁷ *Ibid*, Article XIV and Article XV, paragraph 2.

98. The General Survey section outlined variations in agreements concluded with host Governments of United Nations conferences regarding immunity from legal process accorded to local personnel provided by the Government to perform functions for those conferences.²⁶⁸

99. Immunity from national service obligations continued to be an issue of concern during the period under review.²⁶⁹

100. During the period under review the issue of taxation of locally recruited personnel continued to arise.²⁷⁰ This issue was addressed by the Office of Legal Affairs in a memorandum to UNDP in 1997.²⁷¹ The Office of Legal Affairs noted Article II, section 7(a) and Article V, Section 18(b) of the General Convention, and recalled GA Resolution 76(1) in coming to the conclusion that these provisions granting immunities and privileges to UN official apply to all UN staff irrespective of their nationality, with the exception of those “recruited locally and assigned the hourly rates”.²⁷² Reference was also made to the relevant SBAA with UNDP reaffirming these privileges and immunities. The Office of Legal Affairs noted that the United Nations consistently maintained the position that the conditions of service of its staff are governed exclusively by the Staff Regulations and Rules and cannot be subject to national labour legislation.²⁷³ The Office of Legal Affairs stated that while local employment conditions are taken into consideration

²⁶⁸ See above paras.25-27 of this Supplement.

²⁶⁹ See above, paras 93-95 of this Supplement.

²⁷⁰ See above, paras 88-92 of this Supplement.

²⁷¹ *United Nations Juridical Yearbook, 1997*, p. 435

²⁷² *Ibid*, pp 436-437.

²⁷³ *Ibid*, p. 437.

in determining emoluments of staff, “a condition requiring the Secretary-General to give *priority* to one nationality over another runs counter to the clear language of Article 101, paragraph 3, of the Charter.”²⁷⁴ It noted that the Government in question’s legislation ran contrary to the SBAA, Article II, paragraph 4(b), wherein it “recognized the right of UNDP to have such staff in the country as it deems appropriate for its proper functioning.”²⁷⁵ The Office of Legal Affairs also observed the UN has its own comprehensive pension and social security schemes for its staff, and that it has always maintained the position that mandatory contributions to external national security schemes cannot be applied to staff, and that such payments violate Article V, Section 18(b) and Article II, paragraph 4(b) of the General Convention.²⁷⁶ The Office of Legal Affairs stated that individuals employed on special service agreements are not UN officials, and that as individual contractors they ought to comply with local laws on social security contributions.²⁷⁷

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

101. In a letter to the Minister Counsellor of the United States Mission the Office of Legal Affairs addressed the issue of the right and duty to waive the immunity of any official by the Secretary-General, and who had the right to determine whether any act by an official was performed in his or her official capacity, as per Section 20 of the General

²⁷⁴ *United Nations Juridical Yearbook, 1997*, p. 437-438.

²⁷⁵ *Ibid*

²⁷⁶ *United Nations Juridical Yearbook, 1997*, p. 438.

²⁷⁷ *Ibid*

Convention.²⁷⁸ The issue at hand related to the immunity of a Mr. X who was an official of the United Nations. The Office of Legal Affairs recalled Section 20 of the General Convention, the Secretary-General has been granted “the right and the duty to waive the immunity of any official in any case where, *in his opinion*, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations”. It noted that under Article 97 of the UN Charter the Secretary-General is the Chief Administrative Officer of the UN and that he retains the sole competence to determine whether an act by a UN official was ‘official’ or not.²⁷⁹

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

102. The official and private travel of United Nations staff members in the United States continued to be the subject of discussions between the United Nations and the United States. This had also been dealt with above with respect to Representatives of Missions at the United Nations²⁸⁰ in addition to other categories of personnel.²⁸¹

103. In 1995 the Office of Legal Affairs issued a memorandum to the Office of Conference and Support Services wherein it addresses the question of whether the United Nations laissez passer should be issued to 30 judges and lawyers engaged in special service agreements in order to rehabilitate the Rwandan criminal justice system.²⁸² The Office of Legal Affairs reiterated that as per Article VII of the General Convention the

²⁷⁸ *United Nations Juridical Yearbook, 1995*, pp. 403-403.

²⁷⁹ *Ibid*, p. 404.

²⁸⁰ See above pp. 37-41 of this Supplement.

²⁸¹ See below at pp. 75-76 of this Supplement.

²⁸² *United Nations Juridical Yearbook, 1995*, p. 409.

UN laissez passer is granted to UN officials, and that persons engaged under special service agreements are not UN officials, and they are therefore not entitled to the laissez passer. It stated however that such persons are UN ‘experts on mission’ and that therefore per Article VI, paragraph 27(a) of the General Convention such persons may be granted the UN certificate in order to enable them to travel more expeditiously.²⁸³

104. In 1998 a memorandum was sent to the UNDP by the Office of Legal Affairs which related to a number of difficulties that had arisen in relation to UNVs deployed to a UNDP mission.²⁸⁴ Some of the difficulties pointed to by the Resident Representative were: a) the requirement of a work permit, at a fee of US \$100 prior to arrival; b) requirement that UNVs pass an exam to obtain an appropriate medical license, and c) UNVs were required to apply also for a special visa, again for an additional fee.²⁸⁵ The Office of Legal Affairs stated that UNVs have been accepted as international civil servants; they have been accorded international status; and that they operate under UN authority, and not that of the recipient state.²⁸⁶ The Office of Legal Affairs noted that under the relevant SBAA UNVs employed by the UNDP came under the category of ‘persons performing services’ for the UNDP and therefore were entitled to the same privileges and immunities as UN officials under Section 18 of the General Convention, which includes immunity from immigration restrictions and alien registration. It noted however that this does not extend to the state’s nationals.²⁸⁷ In light of the above the Office of Legal Affairs stated that the work permit and local licence requirements were

²⁸³ *United Nations Juridical Yearbook, 1995*, p. 409.

²⁸⁴ *United Nations Juridical Yearbook, 1998*, pp. 473-475.

²⁸⁵ *Ibid*, p. 473.

²⁸⁶ *Ibid*

²⁸⁷ *Ibid*, p. 474

inconsistent with UN's policy and practice in addition to the relevant SBAA. It elaborated that while the requirement of a visa is not a difficult in itself the charge of a fee for same constitutes a form of direct taxation, contrary to Section 7(a) of the General Convention.²⁸⁸ With respect to UNDP staff and UNVs who do not possess a UN laissez passer the Office of Legal Affairs was of the view that irrespective of whether or not they possess this document they are nevertheless exempt from taxation under Section 18(a) of the General Convention and the SBAA.²⁸⁹ It reiterated that this applies to all United Nations staff, save those locally recruited who are assigned the hourly rates are immune, or in the case of UNVs, if they are nationals of the Member State.²⁹⁰

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

105. As mentioned in the Section dealing with immunity from legal process of UN officials in 1999, in response to an inquiry from a Member State's police authorities in relation to a complaint of criminal force and assault which had been lodged by a former staff member of UNICEF against a staff member of UNICEF and two security guard the Office of Legal Affairs issued UNICEF with a memorandum.²⁹¹ The Office of Legal Affairs noted that the privileges and immunities provided for in the General Convention were also set out in the Standard Basic Cooperation Agreement in question.²⁹² The Office of Legal Affairs stated that UN security guards are considered 'experts on mission' and

²⁸⁸ *United Nations Juridical Yearbook, 1998*, p. 474

²⁸⁹ *Ibid*

²⁹⁰ *Ibid*, p. 475

²⁹¹ *United Nations Juridical Yearbook, 1999*, pp. 405-408.

²⁹² *Ibid* p. 405.

come under Article VI of the General Convention It further pointed to Article VI, Section 22 (a) of the Convention, wherein it is provided that experts on mission are immune from personal arrest or detention, and under Section 22 (b) that they shall also be accorded, “in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind”.²⁹³ The Office of Legal Affairs went on to suggest that the complainant should resolve instead her dispute in accordance with UNICEF’s internal rules and regulations and in accordance with the terms of her contract.²⁹⁴

106. In 1998, in its fourth session, the Commission on the Limits of the Continental Shelf sought the opinion of the Office of Legal Affairs on which procedure might be most appropriate to use in proceedings in the case of an alleged breach of confidentiality.²⁹⁵ Rules 4 and 5 of Annex II to the Rules of Procedure of the Commission prohibit breaches of confidentiality by its member; foresee the Secretary-General providing assistance in enforcing these rules; and permit the Commission to institute proceedings against the accused.²⁹⁶ However, the Office of Legal Affairs noted that the United Nations does not have a model procedure for dealing with breaches of confidentiality that could be used by the Commission. (The legal opinion of the Office of Legal Affairs with respect to UN officials is dealt with above under UN officials’ immunity form legal process).

²⁹³ *United Nations Juridical Yearbook, 1999*, pp. 406.

²⁹⁴ *Ibid*

²⁹⁵ *Ibid*, pp. 410-415.

²⁹⁶ CLCS/3/Rev.2.

107. With respect to Members of the Commission who do not come under the category of ‘UN official’, the Office of Legal Affairs noted that the Law of the Sea Convention does not set out a procedure for dealing with breaches of confidentiality. The Office of Legal Affairs noted that, in line with well established precedence with respect to other treaty organs, members of the Commission on the Limits of the Continental Shelf can be considered ‘UN experts on mission’. They are therefore covered by Article VI of the General Convention.²⁹⁷ The Office of Legal Affairs noted however that there are no special regulations or rules with regard to experts on mission and breaches of confidentiality. It recalled however that in paragraph 9 of Resolution 52/252, the GA requested the submit by its 54th session, appropriate rules and regulations to govern the basic status, right and duties of experts on mission on the basis of Article 105 (3) of the UN Charter. The Office of Legal Affairs made reference to a number of provisions of the proposed regulations. Draft regulation 2 which relate to disclosure of information, provides: “Officials and experts on mission shall exercise the utmost discretion in regard to all matters of official business. Officials and experts on mission shall not communicate to any Government, entity, person, or any other source any information known to them by reason of their official position that they know or ought to have known has not been made public, except as appropriate in the normal course of their duties or by authorization of the Secretary-General. If they are not appointed by the Secretary-General, such authorization shall be by the body that appointed them. These obligations do not cease upon the cessation of their official functions.”²⁹⁸

²⁹⁷ *United Nations Juridical Yearbook, 1999*, pp. 413

²⁹⁸ *Ibid*, pp. 413-414.

108. Despite the introduction of such regulations the UN still does not possess a procedure for dealing with experts on mission appointed by intergovernmental organs for non-observance of their obligations.²⁹⁹ The Office of Legal Affairs has emphasized that article VI of the General Convention provides experts on mission with immunity from legal process of any kind. However, the Office of Legal Affairs noted that per Section 23 of that article these privileges and immunities are granted to experts on mission in the interests of the United Nations and not for the personal benefit of the individuals. It reiterated that the Secretary-General has the right and the duty to waive this immunity where in his opinion, the immunity would impede the course of justice and where such waiver will not prejudice the interests of the United Nations.³⁰⁰ The Office of Legal Affairs again referred to the Draft regulations, wherein it note that draft Regulation 1(e) provides that where a serious issue arises in relation to the privileges and immunities of experts on mission, the later should report to the Secretary-General, who will decide whether privileges and immunities apply and if they do, whether they should be waived.³⁰¹

109. On the basis of the above, the Office of Legal Affairs advised the Commission to establish its own procedure for dealing with breaches of confidentiality by members of the Commission who are ‘experts on mission’. It made a number of suggestions in this regard.³⁰²

²⁹⁹ *United Nations Juridical Yearbook, 1999*, pp. 414.

³⁰⁰ *Ibid*, pp. 414-415.

³⁰¹ *Ibid, 1999*, pp. 415.

³⁰² *Ibid, 1999*, pp. 415.

110. In a note verbale to a Permanent Mission of a Member State in 1998, the Office of Legal Affairs again commented on the payment of social security contributions by UNDP locally recruited employees, on both fixed-term contracts and those engaged as consultants.³⁰³ With respect to United Nations officials the position of the Office of Legal Affairs is addressed above.³⁰⁴ With respect to consultant engaged on Special Service Agreement the Office of Legal Affairs stated that such individuals come under the category of ‘expert on mission’ under Article VI of the 1946 Convention and do not enjoy immunity from taxation on their salaries and emoluments. Therefore, such persons must comply with any tax obligations imposed by the Government authorities. However, the Office of Legal Affairs reiterated that the United Nations itself, as per Section 7(a) of the General Convention, cannot be obliged to make any contributions to social security schemes as the employer of these individuals.³⁰⁵

111. During the period under review a facsimile was sent by the Office of Legal Affairs in 1995 to the Acting Representative of the Secretary-General for Western Sahara, in which it addressed the issue as to whether UN experts on mission could be subject to airport scanning and whether their luggage could be searched.³⁰⁶ The Office of Legal Affairs noted that the inviolability of experts on mission is comparable to that of state representative or diplomatic agents.³⁰⁷ It stated that “it is clear that the purpose of inviolability is to ensure the confidentiality of the contents and non-detention of such

³⁰³ *United Nations Juridical Yearbook, 1998*, pp. 479-480.

³⁰⁴ See above, para 92 of this Supplement.

³⁰⁵ *United Nations Juridical Yearbook, 1998*, p. 480.

³⁰⁶ *United Nations Juridical Yearbook, 1995*, p. 409.

³⁰⁷ *Ibid*, p. 409-410.

correspondence and documents.”³⁰⁸ With respect to the personal luggage of an expert on mission, the Office of Legal Affairs stated that the privileges and immunities afforded are the same as that of a diplomat, namely their luggage is immune from seizure and should enjoy such other privileges and facilities afforded to diplomatic envoys. These other immunities and facilities afforded to diplomatic envoys are set out in Article 36, paragraph 2 of the Vienna Convention, which provides that: “The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.”³⁰⁹

112. During the period under review, the Office of Legal Affairs sent a facsimile to the Chief of the Special Procedures Centre for Human Rights of the United Nations Office in Geneva, in which it stated that “Special rapporteurs representatives experts and members of working groups of the Commission on Human Rights, as long as those persons are neither the representatives of a State nor staff members (i.e. officials) of the Organization are deemed, for the purposes of article VI, section 22, of the 1946 Convention on the Privileges and Immunities of the United Nations, to be experts on mission.”³¹⁰ The Office of Legal Affairs however pointed out however, that experts on mission do not enjoy any immunity from taxation on their emoluments; national service obligations; immigration

³⁰⁸ *United Nations Juridical Yearbook, 1995*, p. 410.

³⁰⁹ *Ibid*, p. 410-411.

³¹⁰ *United Nations Juridical Yearbook, 1996*, p. 437-438.

restrictions or registration requirements; and have not right to duty-free imports. The Office of Legal Affairs went further in stating that privileges and immunities that are afforded to experts on mission are for the purpose of safe-guarding the interests of the United Nations only, “in the privacy of its papers and communications and in preventing any coercion or threat thereof in respect of the performance of the experts' missions.”³¹¹ The Office of Legal Affairs reiterated that experts on mission are not entitled to the UN laissez-passer, but that under Section 26 of the General Convention, they may be afforded a certificate from the United Nations stating that they are traveling on official United Nations business and should be afforded ‘similar facilities’ afforded under Section 25 of the General Convention (i.e. the laissez –passer) , These facilities include: “ a) processing of visa applications (where required and when accompanied by a certificate stating that they are traveling on the business of the United Nations) as speedily as possible, and (b) granting other facilities for speedy travel.”³¹²

113. During the period under review the Office of Legal Affairs sent a note to the Secretary-General advising him on the status of Good Will Embassadors for the United Nations.³¹³ The Office of Legal Affairs stipulated that Good Will Embassadors are not staff of the United Nations, but they do possess the status of ‘expert on mission’ and therefore enjoy the privileges and immunities set out in Article VI of the General Convention.³¹⁴ As ‘experts on mission’ Good Will Embassadors were held not to be entitled to the UN laissez passer under Section 24 of the General Convention, however in

³¹¹ *United Nations Juridical Yearbook, 1996*, p. 438.

³¹² *Ibid*

³¹³ *United Nations Juridical Yearbook, 1997*, p. 440-441.

³¹⁴ *Ibid*, p. 440.

the view of the Office of Legal Affairs they would be entitled to a certificate from the United Nations stating that they are traveling on official business of the United Nations and that as such should be afforded similar facilities as those granted to those traveling under the *laissez passer*.³¹⁵ The Office of Legal Affairs reiterated however that any privileges and immunities afforded to experts on mission are afforded with the interests of the United Nations only in mind, and that the Secretary-General retains the discretion to waive these privileges and immunities where in his opinion it would otherwise impede the course of justice, and where it will not prejudice the interests of the United Nations.³¹⁶

114. On 19 April 1999, the International Court of Justice issued an Advisory Opinion titled, ‘The Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights.’³¹⁷ The UN Economic and Social Council submitted a request for an opinion on the meaning of Section 30 of the General Convention and its applicability to Dato' Param Cumaraswamy, the Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers. Cumaraswamy’s mandate included enquiries into “substantial allegations concerning, and to identify and record attacks on, the independence of the judiciary, lawyers and court officials.” He submitted a number of reports on this issue prior to being reappointed. One of these reports contained a section on litigation pending against him personally before the Malaysian Courts. Cumaraswamy had been interviewed by a commercial litigation magazine, on the basis of which two companies asserted that the article published by the

³¹⁵ *United Nations Juridical Yearbook, 1997*, p. 440-441

³¹⁶ *Ibid*, p. 441.

³¹⁷ The Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights. Advisory Opinion, *ICJ Reports 1999*, p 62.

magazine was defamatory. The UN OLC and the Secretary-General were of the opinion that Cumaraswamy had conducted those interviews in his official capacity. The Legal Counsel therefore sent a note verbale to the Malaysian authorities to advise the Malaysian courts of Cumaraswamy's immunity from legal process.³¹⁸ However the Minister of Foreign Affairs proposed that the trial court exercise its discretion to determine whether immunity applied. The trial court Judge took the view that immunity in this instance did not apply.³¹⁹ In its Advisory opinion the ICJ pointed out that Special Rapporteurs appointed by the Human Rights Commission are entrusted with monitoring and reporting on human rights violations. In performing this mission for the United Nations they are therefore entitled to the privileges and immunities set out in Article VI, Section 22. Article VI, Section 22(b) of the General Convention, provides that: "Experts performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including time spent on journeys in connection with their missions. In particular they shall be accorded: (b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations."³²⁰ The ICJ held these provisions were applicable to Cumaraswamy at

³¹⁸ The Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights. Advisory Opinion, *ICJ Reports 1999*, p 67.

³¹⁹ The Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights. Advisory Opinion, *ICJ Reports 1999*, p 68.

³²⁰ The Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights. Advisory Opinion, *ICJ Reports 1999*, p 66.

the time of his statements to the magazine in question.³²¹ In considering the question of whether the statements were made by Kumaraswamy in the performance of his mission or in his official capacity, the ICJ stated that it is for the Secretary-General, as the Chief Administrative Officer of the UN, to decide whether Article VI applies, and that in this instance he had determined that it does.³²² The ICJ took the position that the Government of Malaysia was under a legal obligation to inform the courts of the position of the Secretary-General. The Court further stated that the immunity from legal process means that Kumaraswamy must be held financially harmless. However the Court emphasized that immunity from legal process is distinct from immunity from damages incurred due to an act by the United Nations or its agents, when acting in their official capacity. However any action taken for damages cannot be before national courts, but only in accordance with the procedure for the settlement of disputes set out by the United Nations.³²³

115. During the period under review the Office of Legal Affairs responded by memorandum to a question raised in a meeting on 18 February 1998 between the General Legal Division and the Supply Section of the Field Administration and Logistics Division of DPKO, on whether in the context of MONUA, contractors' personnel could be considered 'experts on mission' and whether they could be exempted from taxes by the local Government.³²⁴ The Office of Legal Affairs stated the practice of the United Nations to date with regard to who might be deemed an 'expert on mission' is "persons

³²¹ The Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights. Advisory Opinion, *ICJ Reports 1999*, pp. 81-84.

³²² The Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights. Advisory Opinion, *ICJ Reports 1999*, pp. 84-86

³²³ The Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights. Advisory Opinion, *ICJ Reports 1999*, pp. 86-88.

³²⁴ *United Nations Juridical Yearbook, 1998*, p. 481

who are charged with performing specific and important tasks for the United Nations, as long as those persons are neither representatives of Member States nor staff members (i.e., officials) of the Organization ... have been entrusted with mediation, with preparing studies, investigations or finding and establishing facts.”³²⁵ The Office of Legal Affairs noted however that the functions performed by contractors in peacekeeping operations are commercial in nature, and therefore would not fall under the category of ‘experts on mission’.³²⁶ It went on to state that even if contractors were to be considered ‘experts on mission’ they would still not be entitled to immunity from taxation on their emoluments under the General Convention. The Office of Legal Affairs reiterated that any immunities granted to experts on mission are strictly for the benefit of the Organization with the purpose of ensuring the privacy of its papers and communications and in preventing any coercion or threat thereof in respect of the performance of the experts’ missions.”³²⁷ While the Office noted that some countries did grant additional privileges and immunities to experts on mission, it stated that they are under no obligation to do so. It noted that the SOFA with Angola for instance, of 3 May 1995, provided only for exemptions from taxation for “members of UNAVEM III” which did not include contractors given that such persons are not members of the civilian, military or police components of the mission. It concluded therefore that under the SOFA MONUA contractors could not be regarded as ‘experts on mission; and if they could they would still not be exempt from taxation on their remuneration.’³²⁸

³²⁵ *United Nations Juridical Yearbook, 1998*, p. 481

³²⁶ *Ibid*

³²⁷ *Ibid*

³²⁸ *Ibid*, p. 482

116. During the period under review the Office of Legal Affairs also issued another memorandum to the Assistant Secretary-General for Peacekeeping Operation on question of whether contractors could be considered ‘experts on mission’ and the privilege and immunities of such persons could be provided for in future SOFAs or SOMAs. The Office of Legal Affairs stated that while the General Convention does not define the term ‘experts on mission’ it referred to the ICJ Advisory Opinion of 15 December 1989, on the applicability of article VI, section 22, of the Convention, experts on mission “have been entrusted with mediation, with preparing reports, preparing studies, investigations or finding and establishing facts”.³²⁹ Therefore the term refers to persons performing specific and important tasks for the United Nations. The functions of contractors do not fall with this remit.³³⁰ The Office of Legal Affairs stated however that, “[f]acilities which may be necessary for the Contractors in the performance of their functions would include freedom of movement for the proper performance of the services; prompt issuance of necessary visas; exemption from immigration restrictions and alien registration; prompt issuance of licences or permits, as necessary, for required services, including for imports and for the operation of aircraft and vessels; repatriation in time of international crisis; right to import for the exclusive and official use of the United Nations, without any restriction, and free of tax or duties, supplies, equipment and other materials.”³³¹ The Office of Legal Affairs advised that for the purpose of inserting in future SOFAs/SOMAs the above-mentioned facilities, that this issue is currently under review by the Office of Legal Affairs and that it is in the process of drafting the relevant clauses for future

³²⁹ *United Nations Juridical Yearbook, 1995*, p. 407.

³³⁰ *Ibid*, pp. 407-408.

³³¹ *Ibid*, p. 408.

consideration, but that the consent of governments would be required to make them operable.³³²

6. **PRIVILEGES AND IMMUNITIES OF MEMBERS OF THE INTERNATIONAL COURT OF JUSTICE, THE REGISTRAR, OFFICIALS OF THE REGISTRAR, ASSESSORS, AGENTS AND COUNSEL OF THE PARTIES, WITNESSES AND EXPERTS

7. PRIVILEGES AND IMMUNITIES OF MEMBERS OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, THE JUDGES, THE PROSECUTOR AND HIS OR HER STAFF, AND THE REGISTRAR AND HIS OR HER STAFF, OFFICIALS, LOCALLY RECRUITED PERSONNEL, PERSONS PERFORMING MISSIONS, WITNESSES AND EXPERTS, COUNSEL, SUSPECTS OR THE ACCUSED

117. Aside from the privileges and immunities afforded to the Judges, Prosecutor and Registrar, and internationally recruited P-4 staff and above, under the Agreement with the Government of the United Republic of Tanzania concerning the headquarters of the International Criminal Tribunal for Rwanda.³³³ Further privileges and immunities were afforded to other categories of United Nations personnel. UN staff under Article XV, paragraph 1 of the Agreement, the staff of the tribunal were extended the privileges and immunities set out in Article V and VII of the General Convention. Under Article XVI of the agreement, locally recruited personnel assigned the hourly rates were “accorded

³³² *United Nations Juridical Yearbook, 1995*, p. 408.

³³³ *Ibid*, pp. 69-81.

immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the Tribunal. Such immunity shall continue to be accorded after termination of employment with the Tribunal. They shall be accorded such other facilities as may be necessary for the independent exercise of their functions...³³⁴

Personnel performing missions for the Tribunal were granted under Article XVII the privileges, immunities and facilities set out in Article VI and VII of the General Convention.³³⁵

8. PRIVILEGES AND IMMUNITIES OF MEMBERS OF UNITED NATIONS PEACEKEEPING OPERATIONS

118. During the period under review, nine peace-keeping and observer missions were deployed wherein Agreements were concluded between the United Nations and host countries regulating the status of those missions.³³⁶ The Office of Legal Affairs provided a number of opinions concerning peace-keeping operations and observer missions during the period under review. These opinions have already been described in other relevant sections of this review.³³⁷

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

D. **Article 105(3)

³³⁴ *United Nations Juridical Yearbook, 1995*, pp. 76-77.

³³⁵ *Ibid*, pp. 77.

³³⁶ See Annex II.

³³⁷ See pp 55-57; pp. 78-79 of this Supplement.

ANNEX I

Member States that became parties to the Convention on the Privileges and Immunities of the United Nations between 1 January 1989 and 31 December 1994

<i>State</i>	<i>Accession/Succession</i>
Republic of Moldova	31 October 1995
Kazakhstan	26 August 1998
Portugal	14 October 1998
Venezuela	21 December 1998

Annex II: Table of agreements concluded by the United Nations during the period under review that contained provisions on privileges and immunities

1 Technical cooperation and assistance	Description
	Agreement between the United Nations and the Government of Canada concerning the privileges, immunities and other facilities of the United Nations officials servicing the Secretariat of the Multilateral Fund for the Implementation of the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. Signed at Cairo on 23 November 1998.
	Memorandum of Agreement between the United Nations (United Nations Office for Project Services) and the Government of New Zealand. Signed at New York on 6 July 1999.
	United Nations Technical Cooperation Agreement between the United Nations and the Government of Greece. Signed at New York on 15 October 1999.
(a) UNICEF	
	Basic Cooperation Agreement between the United Nations (United Nations Children's Fund) and the Government of the Gambia. Signed at Banjul on 27 February 1995.
	Basic Cooperation Agreement between the United Nations Children's Fund and the Government of Nepal. Signed at Kathmandu on 21 February 1996.
	Basic Cooperation Agreement between the United Nations (United Nations Children's Fund) and the Government of the Republic of Panama. Panama, 4 June 1998.
	Basic Cooperation Agreement between the United Nations (United Nations Children's Fund) and the Government of the Hashemite Kingdom of Jordan. Signed at Amman on 30 June 1999.
(b) UNDP	
	Basic Agreement between the United Nations (United Nations Development Programme) and the Government of Honduras concerning assistance by the United Nations Development Programme to the Government of Honduras. Signed at Tegucigalpa on 17 January 1995.
	Agreement between the United Nations Development Programme and the Government of Croatia. Signed at New York on 12 March 1996.
2 Establishing UN offices, centres and institutions	Description

(a) Information centres	
	Agreement between the United Nations and the Czech Republic on the United Nations information centre in Prague. Signed at Prague on 16 July 1999.
(b) Additional land for offices	
	Memorandum of Understanding with exchange of letters between the United Nations and the Government of Italy regarding the use by the United Nations of premises on military installations in Italy for the support of peacekeeping, humanitarian and related operations. Signed at Rome on 23 November 1994.
(c) UNHCR offices	Agreement between the United Nations (Office of the United Nations High Commissioner for Refugees) and the Government of China on the upgrading of the UNHCR mission in China to a UNHCR branch office in China. Signed at Geneva on 1 December 1995.
	Cooperation and Office Agreement between the Office of the United Nations High Commissioner for Refugees and the Government of Kuwait. Signed at Kuwait on 8 April 1996.
	Cooperation Agreement between the United Nations (United Nations High Commissioner for Refugees) and the Government of the Republic of Moldova. Signed at Chisinau on 2 December 1998.
	Agreement between the United Nations (United Nations High Commissioner for Refugees) and the Government of Ukraine on the establishment of a United Nations High Commissioner for Refugees field office in Ukraine. Signed at Kiev on 23 September 1998/
	Exchange of letters constituting an agreement between the United Nations and the Federal Republic of Yugoslavia on the status of the Office of the United Nations High Commissioner for Human Rights in the Federal Republic of Yugoslavia. Geneva, 6 and 9 November 1998.
(f) Institutions	Agreement between the United Nations and the Government of Japan relating to the Statistical Institute for Asia and the Pacific. Signed at Bangkok on 14 April 1995.
	Agreement between the United Nations and the Government of the United Republic of Tanzania concerning the headquarters of the International Criminal Tribunal for Rwanda. Signed at New York on 31 August 1995.
	Agreement between the United Nations and the Government of Germany concerning the headquarters of the United Nations

	Volunteers Programme. Signed at New York on 10 November 1995.
	Exchange of letters between the United Nations and the Government of Bosnia and Herzegovina constituting an agreement related to the statute of the Liaison Office of the Prosecutor of the International Tribunal and its staff. 30 January 1996 and 16 February 1996.
	Exchange of letters between the United Nations and the Government of the Netherlands constituting an agreement regarding the applicability of the Headquarters Agreement of the International Tribunal for the Former Yugoslavia to the activities and proceedings of the International Criminal Tribunal for Rwanda in the territory of the Kingdom of the Netherlands. New York, 22 and 24 April 1996.
	Exchange of letters between the United Nations and the Government of Rwanda constituting an agreement on the establishment of the United Nations Office in Rwanda. New York, 10 June 1996, and Kigali, 27 June 1996.
	Exchange of letters between the United Nations and the Federal Republic of Yugoslavia constituting an agreement on the status of the Liaison Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and its personnel in Belgrade. New York 8 and 12 August 1996.
	Agreement between the United Nations, the Secretariat of the United Nations Convention to Combat Desertification and the Government of the Federal Republic of Germany concerning the headquarters of the Convention Permanent Secretariat. Signed in Bonn on 18 August 1998
	Agreement between the United Nations (United Nations University) and the Government of the Hashemite Kingdom of Jordan regarding the establishment of the International Cooperation Office of the United Nations University—International Network on Water, Environment and Health. Signed at Amman on 26 August 1999.
	Agreement between the United Nations and the Government of the Togolese Republic regarding the establishment in Lomé of the United Nations Regional Centre for Peace and Disarmament in Africa. Signed at Lomé on 17 November 1999.
	Exchange of letters constituting an agreement between the United Nations and the Republic of Croatia on the status of the Liaison Office of the Prosecutor of the International Tribunal for the Former Yugoslavia and its personnel. Signed at New York on 6 December 1999 and 10 February 2000.
3 UN sessions, meetings, seminars,	Description

workshops or trainings	
	Host Government Agreement between the United Nations (United Nations Environment Programme) and the Government of Iceland regarding the arrangements for the Meeting of Experts on the Protection of the Marine Environment from Land-based Activities, Reykjavik, 6-10 March 1995. Signed at Nairobi and at Reykjavik on 13 January 1995.
	Agreement between the United Nations and the Government of Germany regarding the first Session of the Conference of the Parties to the United Nations Framework Convention on Climate Change. Signed at Geneva on 24 January 1995.
	Exchange of letters constituting an agreement between the United Nations and the Government of Mongolia regarding a Training Course on the Administration of Justice and the Independence of the Judiciary, to be held at Ulaanbaatar, from 20 to 24 February 1995. Signed at Geneva on 27 January and 10 February 1995.
	Exchange of letters constituting an agreement between the United Nations and the Government of the Philippines regarding the Third International Workshop of National Institutions for the Promotions and Protection of Human Rights, held at Manila from 18 to 21 April 1995, Geneva, 5 and 12 April 1995.
	Exchange of letters constituting an agreement between the United Nations and the Government of Hungary concerning arrangements regarding the Study Tour of the Working party on the Chemical Industry, subsidiary body of the Economic Commission for Europe, to be held in Hungary from 22 to 25 June 1995. Signed at Geneva on 17 March and 17 May 1995.
	Exchange of letters constituting an agreement between the United Nations and the Government of Denmark regarding the Workshop on a Permanent forum for Indigenous People, to be held at Copenhagen from 26 to 28 June 1995. Signed at Geneva on 19 May 1995.
	Exchange of letters constituting an agreement between the United Nations and the Government of Trinidad and Tobago concerning the Caribbean Regional Seminar to be organized by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples at Port of Spain from 3 to 5 July 1995. Signed at New York on 26 and 29 June 1995.
	Exchange of letters constituting an agreement between the United Nations and the Government of Estonia concerning arrangements regarding the Study Tour of the Committee on Human Settlements, principal subsidiary body of the Economic

	Commission for Europe, held in Estonia from 24 to 27 September 1995. Signed at Geneva on 19 May 1995 and at New York on 6 July 1995.
	Agreement between the United Nations (United Nations Environment Programme) and the Government of Indonesia regarding the second meeting of the Conference of the Parties to the Convention on Biological Diversity. Signed at Geneva on 17 July 1995.
	Exchange of letters constituting an agreement between the United Nations and the Government of Sri Lanka concerning the United Nations / European Space Agency Workshop on Basic Space Science, to be held at Colombo from 10 to 12 January 1996. Signed at Vienna on 11 and 14 December 1995.*
	Exchange of letters constituting an agreement concerning arrangements between the United Nations and the of Nepal regarding the Fourth Asia-Pacific Workshop on Regional Human Rights Arrangements, to be held at Kathmandu from 26 to 28 February 1996. Geneva, 22 and 25 January 1996.
	Agreement between the United Nations and the Government of Turkey regarding arrangements for the United Nations Conference on Human Settlements (Habitat II). Signed at Ankara on 23 April 1996.
	Exchange of letters constituting an agreement between the United Nations and the Government of Sweden concerning arrangements for the Sixth United Nations International Training Course on Remote Sensing Education for Educators, organized in cooperation with the Government of Sweden, to be held in Stockholm and Kiruna from 6 May to 14 June 1996. Signed at Vienna, 16 April and 13 May 1996.
	Exchange of letters between the United Nations and the Government of South Africa constituting an agreement concerning arrangements for the Second United Nations Regional Conference on Space Technology for Sustainable Development in Africa, to be held at Pretoria from 4 to 8 November 1996. Vienna, 8 July and 25 October 1996.*
	Exchange of letters between the United Nations and the Government of India, constituting an agreement concerning the United Nations/European Space Agency Workshop on Satellite Communications in cooperation with the Centre for Space Science and Technology Education for Asia and the Pacific, to be held in Ahmedabad, India, from 20 to 24 January 1997. Vienna, 16 and 17 January 1997
	Exchange of letters between the United Nations and the Government of Antigua and Barbuda, constituting an agreement concerning the International Decade for the Eradication of Colonialism, to be held in St. John's, Antigua

	and Barbuda, from 21 to 23 May 1997. New York, 4 and 17 April 1997.
	Exchange of letters between the United Nations and the Government of Japan, constituting an agreement concerning arrangements regarding the United Nations Conference on Disarmament Issues entitled "New Agenda for Disarmament and International and Regional Security", to be held in Sapporo from 22 to 25 July 1997. Signed at New York on 8 July 1997.
	Exchange of letters constituting an agreement between the United Nations and the Government of Nepal concerning the tenth United Nations Meeting on Peace and Disarmament in the Asia-Pacific Region, entitled "The 10th Anniversary of the Kathmandu Process", to be held in Kathmandu from 22 to 24 February 1981. New York, 26 and 28 January 1998
	Exchange of letters constituting an agreement between the United Nations and the Government of Norway concerning arrangements regarding the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, of the Economic Commission for Europe, to be held in Oslo from 18 to 20 May 1998. Geneva, 4 February and 7 April 1998.
	Exchange of letters constituting an agreement between the United Nations and the Government of Belgium concerning the arrangements for the Conference in Support of the Fundamental Rights of the Palestinian People, to be held in Brussels from 24 to 26 February 1998. New York, 20 February 1998.
	Exchange of letters constituting an agreement between the United Nations and the Government of Fiji on the arrangements for the Pacific Regional Seminar concerning the International Decade for the Eradication of Colonialism, to be held at Nadi from 16 to 18 June 1998. New York, 30 April 1998
	Exchange of letters concerning an arrangement between the United Nations and the Government of Slovakia constituting an agreement regarding the Seminar on Improving Working Conditions and Increasing Productivity in Forestry, and the twenty-second session of the joint FAO/ECE/ILO Committee on Forest Technology, Management and Training, of the Economic Commission for Europe, to be held in Banská Štiavnica from 9 to 11 September and in Zvolen from 14 to 16 September 1998. Geneva, 25 August and 3 September 1998
	Exchange of letters constituting an agreement between the United Nations and the Government of Botswana concerning the arrangements for the Workshop on the United Nations/Sida International Training Course on Remote Sensing for Educators, Gaborone, 18 to 21 October 1998.

	Vienna, 11 September and 13 October 1998*
	Exchange of letters constituting an agreement between the United Nations and the Government of Romania on the United Nations Regional Preparatory Conference for Eastern Europe on the Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space (UNISPACE III Conference), Bucharest, 25 to 29 January 1999. Vienna, 30 September and 23 October 1998.
	Exchange of letters constituting an agreement between the United Nations and the Government of Greece concerning arrangements for the Athens Meeting of the Georgian and Abkhaz Sides on Confidence-Building Measures, from 16 to 18 October 1998. Georgia, 10 October 1998.
	Exchange of letters constituting an agreement between the United Nations and the Government of Italy concerning arrangements for the Bethlehem 2000 International Conference organized by the Committee on the Exercise of the Inalienable Rights of the Palestinian People, to be held in Rome on 18 and 19 February 1999. New York, 28 and 30 December 1998.
	Exchange of letters constituting an agreement between the United Nations and the Government of Saint Lucia, concerning arrangements for the Caribbean Regional Seminar in accordance with the plan of action for the International Decade for the Eradication of Colonialism. Signed at New York on 15 and 30 April 1999.**
	Exchange of letters constituting an agreement between the United Nations and the Government of the People's Republic of China on the United Nations/China/European Space Agency Conference on Space Applications in Promoting Sustainable Agriculture, hosted by the Government of the People's Republic of China (Beijing, 14-17 September 1999). Signed at Vienna on 10 May and 7 June 1999.
	Exchange of letters constituting an agreement concerning arrangements between the United Nations and the Government of the Federal Republic of Germany regarding the Seminar on the Prevention of Chemical Accidents and Limitation of their Impact on Transboundary Waters, organized under the auspices of the Economic Commission for Europe, the Meeting of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and the Meeting of Signatories to the Convention on the Transboundary Effects of Industrial Accidents, held in Hamburg from 4 to 6 October 1999. Signed at Geneva on 2 and 24 August 1999.
	Exchange of letters constituting an agreement between the United Nations (United Nations Population Fund) and the Kingdom of the Netherlands concerning arrangements for a

	forum associated with the five-year review of the implementation of the Programme of Action of the International Conference on Population and Development. Signed at New York on 4 February 1999.
4 Peace-keeping and other missions	
	Agreement between the United Nations and the Government of Haiti regarding the status of the United Nations Mission in Haiti. Signed at Port-au-Prince on 15 March 1995.
	Agreement between the United Nations and the Government of Angola on the status of the United Nations Peacekeeping operation in Angola. Signed at Luanda on 3 May 1995.
	Agreement between the United Nations and the Government of Croatia regarding the status of the United Nations forces and operations in Croatia. Signed at Zagreb on 15 May 1995.
	Agreement between the United Nations and the Government of Lebanon on the status of the United Nations Interim Force in Lebanon. Signed at Beirut on 15 December 1995.
	Exchange of letters constituting an agreement between the United Nations and the Government of Croatia, supplementing the agreement regarding the United Nations forces and operations in the Republic of Croatia. Zagreb, 26 January and 2 February 1996.
	Exchange of letters between the United Nations and the Government of Bosnia and Herzegovina constituting an agreement on the status of the United Nations Mission in Bosnia and Herzegovina. Sarajevo, 23 July and 5 September 1996.
	Exchange of letters constituting an agreement between the United Nations and Sierra Leone on the status of the United Nations Observer Mission in Sierra Leone. New York, 29 July 1998. 1992.
	Agreement between the United Nations and the Government of the People's Democratic Republic of Algeria on the status of the United Nations Mission for the Referendum in Western Sahara. Signed at New York on 3 November 1998.
	Agreement between the United Nations and Morocco concerning the status of the United Nations Mission for the Referendum in Western Sahara. Signed at New York on 11 February 1999.

*Non-party to the General Convention at the time the agreement was concluded.

** Non-party to the General Convention and to the United Nations at the time the agreement was concluded