

Inter-office memorandum to the Assistant Secretary-General for Administrative and Financial Services, concerning the interpretation of the clauses of the Convention on the Privileges and Immunities relating to the use of currencies

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES, 1947—UNITED NATIONS AND ITS SPECIALIZED AGENCIES MAY TRANSFER, WITHDRAW AND USE A CURRENCY AS WELL AS OPERATE BANK ACCOUNTS IN THAT CURRENCY IN A MEMBER STATE REGARDLESS OF WHETHER IT IS THE CURRENCY OF THAT STATE—GENERAL ASSEMBLY RESOLUTION 93(I) RECOMMENDS THAT MEMBER STATES FOLLOW THE PROVISIONS OF THE 1946 CONVENTION AS FAR AS POSSIBLE PENDING THEIR ACCESSION—THE SECRETARY-GENERAL IS FREE TO NEGOTIATE DIFFERENT TERMS FOR A DEFINITE AGREEMENT ON THE CONVERTIBILITY OF CURRENCIES WITH MEMBER STATES—DUE REGARD SHOULD BE PAID IF THE TRANSFER AND CONVERSION OF CURRENCIES IS LIKELY TO HAVE A SUBSTANTIALLY ADVERSE EFFECT ON A MEMBER STATE'S BALANCE OF PAYMENTS—CONVERTIBILITY CLAUSE UNDER THE CONVENTION IS NOT CONSIDERED TANTAMOUNT TO AN AUTHORIZATION TO CONVERT UNLIMITED SOFT CURRENCY HOLDINGS INTO DOLLARS—RETENTION OF RESIDUAL RIGHT TO CONVERT INTO DOLLARS PORTIONS OF SOFT CURRENCY ACCOUNTS—ORGANIZATION'S PRIVILEGE TO MAKE PURCHASES OF GOODS AGAINST LOCAL CURRENCY—THE 1946 CONVENTION AUTHORIZES PROCUREMENT FOLLOWED BY EXPORT

1. This is in answer to your memorandum of 16 October 1950, in which you refer to your earlier memorandum transmitting a request of the Administrative Committee on Coordination (ACC) for a legal opinion regarding the interpretation of the clauses of this Convention [on the Privileges and Immunities of the United Nations] relating to the use of currencies; and in which you ask for an opinion as to the application of the Convention on the Privileges and Immunities of the United Nations* should a Government, whose regulations provide that all goods exported must be paid for in dollars, require that these regulations be applied to purchases made by the United Nations.

2. In relation to the subject of maximum utilization of soft currencies and the methods for collecting and disbursing soft currencies, it appears that the Consultative Committee on Administrative Questions (CCAQ) had recommended to the ACC that the plan for the soft currencies to be collected by international organizations, to be practicable, should be limited to a few currencies, the contributing Governments to agree to the convertibility of such currencies into their own soft currencies within a given area.

3. The relevant clauses of the Convention on the Privileges and Immunities of the United Nations are sections 5 and 6 of article II on Property, funds and assets, which read as follows:

“Section 5. 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;
- (b) 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.

* United Nations, *Treaty Series*, vol. 1, p. 15 and vol. 90, p. 327 (corrigendum to vol. 1).

Section 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member insofar as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.”

The equivalent provisions of the Convention on the Privileges and Immunities of the Specialized Agencies,^{**} sections 7 and 8 in article III, contains similar language, substituting the term “specialized agencies” where “United Nations” appears above, and requiring due regard to the representations of any State party to the Specialized Agencies Convention.

4. These provisions unquestionably establish the basic privilege of the United Nations, or of any appropriate specialized agency, to transfer soft currency in which collections are made into a country within the area chosen for the use of that currency, and to operate a bank account in that soft currency regardless of whether it is the currency of the country in which the account is operated. These provisions also, of course, safeguard the ability to withdraw the selected soft currency from the country in which the account is operated, unrestricted by financial controls or regulations, in the form in which it was transferred into that country.

5. It naturally follows from the purposes of each of the two Conventions that a given Government is strictly obligated to recognize these privileges only if it has acceded to the United Nations Convention or has agreed to apply to any given specialized agency the Specialized Agencies Convention. Nevertheless, the provisions of the Convention on the Privileges and Immunities of the United Nations would be entitled to great weight in a negotiation with a Member Government which had not yet acceded thereto, since the General Assembly in its resolution 93(I) has recommended that Members, pending their accession to the Convention, should follow, so far as possible, the provisions of the Convention in their relations with the United Nations.

6. It is clear, however, that the binding effect of the Conventions is in no sense a prerequisite to a negotiation which is in any case to take place, since the CCAQ recommendations contemplated “a definite agreement on the convertibility of the currencies” to be selected, this agreement to be concluded between the Governments and the Secretary-General acting also on behalf of all the agencies. It is perfectly open to the Secretary-General to obtain from Governments (in exchange for the benefits they would derive from soft currency contributions) their consent to currency convertibility quite apart from the terms of either Convention. Nevertheless, it is the opinion of the Legal Department that reference to the Convention can effectively be made during the negotiations in order to establish that a given Government would in any case already be expected to recognize the convertibility and transferability of currencies, either by reason of the Conventions or by reason of the General Assembly’s recommendation. Accordingly, so much of the prospective negotiations as concern the operation of bank accounts could be treated as merely an administrative arrangement to give effect to the broad legal obligations already established by the Conventions.

7. There is one proviso, as a consequence of section 6 of the United Nations Convention and section 7 of the Specialized Agencies Convention. Although the authority to transfer accounts and convert currencies would for the most part be unqualified as between equally soft currencies within a given area, it would be necessary to pay due regard to any representations made by a Government if a right exercised under the convertibility clause of

^{**} United Nations, *Treaty Series*, vol. 33, p. 261.

the Conventions were likely to have a substantially adverse effect on that Government's balance of payments. But since the recommended negotiations would in the first place have as their very purpose the easing of such problems by the use of soft currencies, and since the negotiations themselves would constitute the appropriate channel for any governmental representations as contemplated by the Conventions, it may be assumed that this proviso is not a practical limitation on efforts to establish convertibility. The fact that a so-called "soft" currency in one country within a given area is not necessarily soft in another country within that area would merely be a factor to which due regard would have to be paid in the course of the negotiations, and would not in itself alter the basic obligation established by the convertibility clause in the Conventions.

8. Finally, in view of the proviso on the Conventions as to government representations, it is natural that the convertibility clause should never have been considered tantamount to an authorization to convert unlimited soft currency holdings into dollars. This should not, however, prevent the adoption by the negotiators, should it prove desirable, of a clause designed to retain a residual right to convert into dollars portions of soft currency accounts which for special reasons might prove not to be utilizable. That is, dollar conversion might at least be possible up to the total amounts for which the converting Government would in any case be liable for its regular contributions were the soft currency plan not to be adopted.

9. You have then raised the further question as to the force of the Convention on the Privileges and Immunities of the United Nations should a Government apply to United Nations purchases its regulations requiring exported goods to be paid for in dollars. This subject is not covered by express language in any section of the Convention, but it would be difficult to conclude that the Convention did not protect the essential privilege of the United Nations to make purchases of goods against local currency, even where such a purchase might by legal definition constitute a dollar export. The capacity of the Organization to acquire any form of movable property is fixed by section 1; by section 3 its property and assets wherever located are immune from any form of interference, whether by executive, administrative, judicial or legislative action. And section 7 then makes the United Nations' assets and other property exempt from prohibitions and restrictions on exports in respect of articles for its official use. As these sections, read together, clearly authorize procurement followed by export, it could hardly be thought reasonable for regulations of the type under reference to create any absolute obstacle to this form of procurement. Moreover, since by section 5 the currency itself, with which goods might be procured, would be convertible into any other currency – subject only to any governmental representations under section 6 to which effect can be given "without detriment to the interests of the United Nations" – it is only logical that it should be open to the United Nations to attain the identical result – no doubt subject to the same regard for representations by the Government concerned – in the form of goods rather than in currency.

27 October 1950