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**(Consolidated) Fifth report on relations between States and international organizations
(second part of the topic), by Mr. Leonardo Díaz-González, Special Rapporteur**

Topic:
**Status, privileges and immunities of international organizations, their officials, experts,
etc.**

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RELATIONS BETWEEN STATES AND INTERNATIONAL ORGANIZATIONS (SECOND PART OF THE TOPIC)

[Agenda item 7]

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Fifth report on relations between States and international organizations (second part of the topic), by Mr. Leonardo Díaz González, Special Rapporteur

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* Incorporating document A/CN.4/438/Corr.1. This document supersedes the partial report previously issued at the forty-second session of the Commission, in 1990, as document A/CN.4/432.

Agreements and conventions cited in the present report

ABBREVIATIONS

Legislative Texts United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, 2 vols. (Sales Nos. 60.V.2 and 61.V.3).

Diplomatic relations

	Source
Convention regarding Diplomatic Officers (Havana, 20 February 1928)	League of Nations, <i>Treaty Series</i> , vol. CLV, p. 259.
Vienna Convention on Diplomatic Relations (Vienna, 18 April 1961)	United Nations, <i>Treaty Series</i> , vol. 500, p. 95.
Vienna Convention on Consular Relations (Vienna, 24 April 1963)	Ibid., vol. 596, p. 261.

Privileges and immunities and headquarters agreements

UNITED NATIONS

Convention on the Privileges and Immunities of the United Nations (London, 13 February 1946)	United Nations, <i>Treaty Series</i> , vol. 1, p. 15.
<i>United Nations and Switzerland:</i> Interim Arrangement on Privileges and Immunities of the United Nations (Bern, 11 June 1946)	Ibid., p. 163.
<i>United Nations and United States of America:</i> Agreement regarding the Headquarters of the United Nations (Lake Success, 26 June 1947)	Ibid., vol. 11, p. 11.
<i>United Nations and Chile:</i> Agreement regulating conditions for the operation, in Chile, of the headquarters of the United Nations Economic Commission for Latin America (Santiago, 16 February 1953)	Ibid., vol. 314, p. 59.
<i>United Nations and Thailand:</i> Agreement relating to the headquarters of the Economic Commission for Asia and the Far East in Thailand (Geneva, 26 May 1954)	Ibid., vol. 260, p. 35.
<i>United Nations and Egypt:</i> Exchange of letters constituting an agreement concerning the status of the United Nations Emergency Force in Egypt (New York, 8 February 1957)	Ibid., p. 61.
<i>United Nations and Ethiopia:</i> Agreement regarding the headquarters of the United Nations Economic Commission for Africa (Addis Ababa, 18 June 1958)	Ibid., vol. 317, p. 101.
<i>United Nations and Congo (Leopoldville):</i> Agreement relating to the legal status, facilities, privileges and immunities of the United Nations Organization in the Congo (New York, 27 November 1961)	Ibid., vol. 414, p. 229.

Source

- United Nations and Cyprus:* Ibid., vol. 492, p. 57.
Exchange of letters constituting an agreement concerning the status of the United Nations Peace-keeping Force in Cyprus (New York, 31 March 1964)
- SPECIALIZED AGENCIES AND INTERNATIONAL ATOMIC ENERGY AGENCY
- Articles of Agreement of the International Monetary Fund (Washington, 27 December 1945) As amended: IMF, *Articles of Agreement of the International Monetary Fund* (Washington, D.C., 1978).
- Articles of Agreement of the International Bank for Reconstruction and Development (Washington, 27 December 1945) As amended: IBRD, *Articles of Agreement of the International Bank for Reconstruction and Development* (Washington, D.C., 1980).
- Convention on the Privileges and Immunities of the Specialized Agencies (New York, 21 November 1947) United Nations, *Treaty Series*, vol. 33, p. 261.
- Switzerland and ILO:* Ibid., vol. 15, p. 377.
Agreement concerning the legal status of the International Labour Organisation in Switzerland, and Arrangement for the execution of the Agreement (Geneva, 11 March 1946)
- Switzerland and WHO:* Ibid., vol. 26, p. 331.
Agreement concerning the legal status of the World Health Organization, and Arrangement for the execution of the said Agreement (Geneva, 17 July 1948)
- Italy and FAO:* *Legislative Texts*, vol. II, p. 187.
Agreement regarding the headquarters of the Food and Agriculture Organization of the United Nations (Washington, [D.C.], 31 October 1950)
- ICAO and Canada:* United Nations, *Treaty Series*, vol. 96, p. 155.
Agreement regarding the headquarters of the International Civil Aviation Organization (Montreal, 14 April 1951)
- Argentina and Pan American Sanitary Bureau:* *Legislative Texts*, vol. II, p. 290.
Agreement regarding the establishment of a Zone Office in the City of Buenos Aires (Buenos Aires, 21 August 1951)
- Egypt and FAO:* Ibid., p. 212.
Agreement regarding the Near East Regional Office of the Food and Agriculture Organization of the United Nations (17 August 1952)
- UNESCO and France:* United Nations, *Treaty Series*, vol. 357, p. 3.
Agreement regarding the headquarters of UNESCO and the privileges and immunities of the Organization on French Territory (Paris, 2 July 1954)
- WMO and Switzerland:* Ibid., vol. 211, p. 277.
Agreement to govern the legal status of the World Meteorological Organization in Switzerland (Geneva, 10 March 1955)
- ICAO and Mexico:* *Legislative Texts*, vol. II, p. 180.
Agreement regarding the International Civil Aviation Organization's Regional Office for North America and the Caribbean (Mexico City, 20 December 1956)
- Thailand and FAO:* Ibid., p. 220.
Agreement regarding the Far East Regional Office of the Food and Agriculture Organization of the United Nations (entered into force on 6 February 1957)

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Source

- Agreement on the Privileges and Immunities of the International Atomic Energy Agency (Vienna, 1 July 1959) United Nations, *Treaty Series*, vol. 374, p. 147.
- IAEA and Austria:* Ibid., vol. 339, p. 111.
 Agreement regarding the headquarters of the International Atomic Energy Agency (Vienna, 11 December 1957)

OTHER INTERGOVERNMENTAL ORGANIZATIONS

- Agreement on Privileges and Immunities of the Organization of American States (15 May 1949) OAS, *Law and Treaty Series*, No. 31 (Washington, D.C., 1949); *Legislative Texts*, vol. II, p. 377.
- General Agreement on Privileges and Immunities of the Council of Europe (Paris, 2 September 1949) United Nations, *Treaty Series*, vol. 250, p. 13.
- Convention on the Privileges and Immunities of the League of Arab States (10 May 1953) *Legislative Texts*, vol. II, p. 414.
- Agreement establishing the Inter-American Development Bank (Washington, [D.C.], 8 April 1959) United Nations, *Treaty Series*, vol. 389, p. 69.

Postal agreements

- United Nations and Switzerland:* Ibid., vol. 43, p. 327.
 Agreement on the supply of official stamps to the European Office of the United Nations at Geneva (Geneva, 14 September 1949)
- United Nations and United States of America:* Ibid., vol. 108, p. 231.
 Postal Agreement (New York, 28 March 1951)
- United Nations and Lebanon:* Ibid., vol. 286, p. 199.
 Exchange of letters constituting an agreement concerning the United Nations Emergency Force postal arrangements (Gaza, 21 December 1957 and 5 February 1958, and Beirut, 20 January 1958)
- United Nations and Switzerland:* Ibid., vol. 692, p. 373.
 Postal Agreement (Geneva, 11 December 1968)

Telecommunications

- United Nations and Switzerland:* *Legislative Texts*, vol. I, pp. 202-204.
 Exchange of letters of 22 October and 4 November 1946, annexed to the Interim Arrangement of 11 June 1946
- International Telecommunication Convention, Atlantic City, 1947 (2 October 1947) United Nations, *Treaty Series*, vol. 193, p. 189.
- International Telecommunication Convention, Buenos Aires, 1952 (22 December 1952) ITU, *International Telecommunication Convention, Buenos Aires, 1952* (Geneva, 1953).
- International Telecommunication Convention, Geneva, 1959 (21 December 1959) ITU, *International Telecommunication Convention, Geneva, 1959* (Geneva, [1960]).
- International Telecommunication Convention, Montreux, 1965 (12 November 1965) ITU, *International Telecommunication Convention, Montreux, 1965* (Geneva, [1966]).

I. Introduction

1. This report, except for the section containing the proposed texts of draft articles 13 to 17, was originally submitted to the Commission at its forty-second session as document A/CN.4/432. Owing to lack of time, the report could neither be introduced nor considered by the Commission.¹ The report was therefore resubmitted in its present form at the forty-third session.

¹ *Yearbook* . . . 1990, vol. II (Part Two), p. 84, para. 422.

2. The present report consists of two parts. The first part concerns the archives of international organizations and contains an article on this question that completes part III (Property, funds and assets) of the draft articles. The second part concerns the publications and communications of international organizations and contains provisions constituting part IV (Publications and communications facilities) of the draft articles.

II. Archives

A. Presentation of the subject

3. Like States, international organizations are in permanent communication with member States and with each other. They maintain a steady correspondence with public and private institutions and private individuals. They keep files on their staff, on projects, on studies and on any other action in which they may be involved with a view to achieving the aims for which they were created. Lastly, they possess a body of documentation which is the backbone of their operations.

4. All this documentation, which is protected and kept safe, is what constitutes the archives of international organizations. International intergovernmental organizations must enjoy inviolability of their archives in order to preserve, protect and safeguard the confidentiality of these archives and to protect not only their own security and their right to privacy and private property but also the security and privacy of documentation addressed or entrusted to them, particularly by member States.

5. International organizations are subjects of international law and, like States, enjoy inviolability of their archives.

6. For States, the inviolability of archives is closely linked to the inviolability of diplomatic premises. This principle is enshrined in article 24 of the Vienna Convention on Diplomatic Relations:

Article 24

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

7. Likewise, the inviolability of the archives of international organizations is closely linked to the inviolability of the premises occupied by those organizations. The Convention on the Privileges and Immunities of the United Nations² expands on the principle of the inviola-

bility of archives when it provides, in its article II, section 4, that:

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

We are thus talking about not only all the Organization's own documents but also those held by it, in other words those in its safekeeping.

8. The concept of the archives of international organizations has been spelt out in a number of international instruments concluded by some international organizations, in particular in the Agreement between the United Nations and Chile concerning the headquarters of the United Nations Economic Commission for Latin America (ECLA).³ Article I, section 1 (g), of that agreement states:

(g) The expression "archives of ECLA" means the records, correspondence, documents, manuscripts, photographs, cinematograph films and sound recordings, belonging to or held by ECLA.

9. The Vienna Convention on Consular Relations adopts a similar definition in its article 1, paragraph 1 (k):

(k) "consular archives" includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safekeeping.

10. The Committee of Ministers of the Council of Europe has adopted a similar definition,⁴ and article 31 of the regulation of the Commission of the European Communities of 1 July 1969 on mail and archives defines archives as comprising files and collections.

11. The issue, then, is one of protecting not only secrecy but also the place where the secret is kept. In the case of diplomatic and consular missions, the receiving State is under an obligation not only to refrain from trying to penetrate the secret but also to protect it by re-

³ Now ECLAC.

⁴ Council of Europe, *Privileges and Immunities of International Organisations*, Resolution (69) 29 adopted by the Committee of Ministers of the Council of Europe on 26 September 1969 and explanatory report (Strasbourg, 1970), p. 29, para. 50.

² Hereinafter the "General Convention".

specting the place where it is kept, and even to prevent third parties from violating it. This is the right to secrecy defined by the late Paul Reuter, in a famous article on the problem, when he says that there can be "no personality or freedom without some degree of privacy, some private life, without a protective screen which hides a number of secrets from the public eye".⁵

12. Article 24 of the Vienna Convention on Diplomatic Relations (see para. 6 above) refers only to the inviolability of archives and makes no mention whatsoever of the receiving State's obligation to protect them against third parties. However, it has always been tacitly understood that the customary rule whereby the receiving State is bound to protect the archives of a mission remains in force (article 14 (d) of the Havana Convention regarding Diplomatic Officers). Similarly, the draft convention on diplomatic privileges and immunities drawn up by the Harvard Law School⁶ provides, in article 5, that a receiving State "shall protect the archives of a mission from any violation and shall safeguard their confidential character, wherever such archives may be located within the territory of the receiving State".

13. This duty to protect can clearly be inferred from the commentary to article 22 (Inviolability of the archives) of the draft articles on diplomatic intercourse and immunities,⁷ on which the Vienna Convention on Diplomatic Relations was based.

14. Reuter, in the above-mentioned article, goes a step further by establishing a close relationship between autonomy, a prerequisite for the proper functioning of an international organization, and the right to privacy. He says that a certain right to privacy also gives recognition to the autonomy of the group and that without privacy there can be no freedom, without freedom there can be no autonomy.⁸

15. There does not seem to be any valid reason for not applying this rule to the archives of international organizations.

16. The question was raised by Cahier whether there was any need for a separate article on the inviolability of archives in the Vienna Convention on Diplomatic Relations.⁹ It was, in fact, argued that, since diplomatic premises were inviolable, the inviolability of their archives was automatically guaranteed. Both the Commission and the 1961 United Nations Conference on Diplomatic Intercourse and Immunities took the view that a separate provision was necessary since the case might arise, and had in fact arisen, where the archives of a mission were not located, even if only temporarily, on the premises occupied by the mission. What we have here is a special duty of oversight and protection.¹⁰

17. This inviolability is absolute, for it continues to apply to diplomatic missions even in the event of war or the severance of diplomatic relations. There are a number of legal precedents for this which have come to be viewed as typical. One concerns the archives of the former Imperial Russian Legation at Bern. In the absence of diplomatic relations between the Soviet and Swiss Governments, the Swiss authorities placed the archives of the Imperial Russian Legation under seal and refused to open them to individuals wishing to consult them for the benefit of private interests.¹¹

18. The principle of the inviolability of archives has at times been disregarded, but only rarely. The two most serious cases recorded in the legal literature are the search by the French authorities of the archives of the Apostolic Nunciature in Paris on 11 December 1906, after the severance of diplomatic relations between the Holy See and France on 30 July 1904, and the violation of the archives of the British Embassy in Petrograd by the Soviet Government in 1918.¹²

19. Aside from these sporadic occurrences, which are by now part of history, the principle has been universally accepted. The United Nations itself has interpreted section 4 of article II of the General Convention as necessarily implying the inviolability of information contained in archives and documents as well as the actual archives and documents themselves.¹³

20. In connection with judicial proceedings against United Nations staff members, questions relating to the inviolability of the documents of the Organization have been raised on several occasions. In March 1949, the United States police arrested a member of the United Nations Secretariat on charges of espionage. The Permanent Representative of the State of which the staff member concerned was a national protested against this action on the ground that the official held the rank of Third Secretary in the Ministry of Foreign Affairs of his country and that, consequently, the diplomatic immunity protecting him remained in force even after his appointment to the United Nations. In addition, the Permanent Representative alleged that information from United Nations files had been made known to officials of the Federal Bureau of Investigation. The Secretary-General replied stating that information regarding the status of the official had been made known solely to his attorney.

21. A somewhat different situation arose in the case of *United States v. Keeney*, where the defendant was prosecuted for contempt of Congress following her refusal to answer, when testifying before a Senate Sub-Committee, the question whether anyone in the State Department had aided her in obtaining employment with the United Nations. The main issue in the case was whether the defendant, as a former employee of the United Nations,

⁵ P. Reuter, "Le droit au secret et les institutions internationales", *Annuaire français de droit international*, 1956 (Paris), vol. II, p. 60.

⁶ Harvard Law School, *Research in International Law. I. Diplomatic Privileges and Immunities* (Cambridge, Mass., 1932), pp. 15 et seq.

⁷ *Yearbook . . . 1958*, vol. II, p. 96, document A/3859.

⁸ Reuter, loc. cit., p. 61.

⁹ P. Cahier, *Le droit diplomatique contemporain* (Geneva, Droz, 1962), pp. 209-210.

¹⁰ See C. Rousseau, *Droit international public*, vol. IV, *Les relations internationales* (Paris, Sirey, 1980), p. 183.

¹¹ See the letter from the Swiss Political Department dated 10 January 1923, in *Répertoire suisse du droit international public*, vol. III (Bern, 1975), pp. 1501 et seq.

¹² See Rousseau, op. cit., p. 184.

¹³ See the study prepared by the Secretariat in 1967 on the practice of the United Nations, the specialized agencies and IAEA concerning their status, privileges and immunities (*Yearbook . . . 1967*, vol. II, p. 238, document A/CN.4/L.118 and Add.1 and 2), para. 132.

was herself privileged from answering that question. The District Court held that her motion of privilege should be denied.¹⁴ The Court of Appeals reversed the earlier conviction and granted a new trial on the ground that the answer sought by the Sub-Committee, in so far as it depended upon data in United Nations files or upon information derived from those files, was rendered privileged by the Charter and the Staff Rules of the United Nations and could not legally be revealed by an official. One of the judges of the Court stated that the question posed

related to "unpublished information". The United Nations does not tell the world what recommendations underlie appointments of staff members. The United Nations Administrative Manual even defines unpublished information to include "the appointment... [of] or any other confidential information concerning" a staff member. I think it plain that staff members would not have such unpublished and confidential information unless it had been made "known to them, by reason of their official position".¹⁵

22. The last words quoted in the above statement by the judge were from staff rule 7 (now regulation 1.5 of the Staff Regulations of the United Nations), requiring staff members not to communicate unpublished information "except in the course of their duties or by authorization of the Secretary-General". The Court also stated, with reference to Article 105, paragraph 2, of the Charter of the United Nations, that the privilege of non-disclosure as it applied to officials was "necessary for the independent exercise of their functions in connection with the Organization".¹⁶

23. There have, however, been instances where information was supplied, not amounting to access to United Nations files, as in a case which arose in 1956. A person who had previously held a United Nations short-term appointment submitted a claim to the United States authorities for unemployment insurance benefits. There was some question as to whether or not there was an overlap between the period of her employment by the United Nations and that for which the claim was being made. The United Nations informed the United States Department of Labor that, though it would not grant access to United Nations files or permit the production and delivery of the entire personnel file, it would be prepared in the circumstances to produce its record of the employment of the person concerned, together with a brief qualified testimony necessary to explain it.¹⁷

24. More recently, according to reports from the United Nations, the specialized agencies and IAEA, there has been no controversy regarding recognition of the inviolability of the archives and documents of the United Nations, the specialized agencies and IAEA. However, IMF, whose staff members on mission carry an IMF briefcase for papers and documents, notes that on a few occasions customs officials have insisted on searching the briefcase even when informed of the inviolability of the organization's archives, and that docu-

ments, including codes, have been examined. In no case, however, have documents been confiscated. IMF has, of course, protested against these actions, and assurances have been received that such incidents would henceforth be avoided. Similarly, there have been some incidents reported of interference with IMF documents sent by private courier.¹⁸

25. In addition to the general conventions on the privileges and immunities of the United Nations and the specialized agencies, the headquarters agreements contain express provisions on the inviolability of archives. Such provisions differ little in their wording; in substance, they set out the principle of the absolute inviolability of archives more or less broadly, depending on the case. To be noted in this connection, among others, are: the Articles of Agreement of IMF (art. IX, sect. 5); the Agreement between Switzerland and WHO (art. 8); the Agreement on Privileges and Immunities of OAS (art. 4); the General Agreement on Privileges and Immunities of the Council of Europe (art. 5); the Convention on the Privileges and Immunities of the League of Arab States (art. 4); the Agreement between UNESCO and France (art. 14, para. 2); the Agreement between WMO and Switzerland (art. 8); the Agreement between IAEA and Austria (art. VIII, sect. 21); and the Agreement establishing IDB (art. XI, sect. 5).

26. The question of the inviolability of the archives of an international organization has two aspects. First, for practical reasons, the archives of the organization must be open to its officials, who are bound by the obligation of professional secrecy. This aspect, which concerns the internal affairs of the organization, is regulated by the organization itself and is covered by its internal regulations. Through appropriate legal mechanisms, international organizations determine the way in which their archives are to be used and the persons who are authorized to use them, and regulate the arrangements for their use. It would not be appropriate for the Commission to discuss or examine this aspect of the question.

27. The second aspect involves the inviolability of the archives of international organizations in relation to the exterior. It is this second aspect which the Commission is required to study in conformity with the mandate given to it by the General Assembly. The inviolability of the archives of international organizations in relation to the exterior is, as we have seen, absolute, just as in the case of States. It can be said that in the case of international organizations such inviolability should be even stricter, since its purpose is to protect not only the secrets of the international organizations themselves but also those of their member States.

28. In accordance with doctrine and State practice, national authorities must refrain from any kind of administrative or jurisdictional coercion and are obligated to protect the archives of international organizations against any external interference.

¹⁴ Judgement of 17 March 1953 of the District Court of the District of Columbia (*Federal Supplement*, vol. III, 1953, p. 223).

¹⁵ *Keeney v. United States*, judgement of 26 August 1954 of the Court of Appeals of the District of Columbia (*Federal Reporter, 2nd series*, vol. 218, 1955, pp. 843-844).

¹⁶ *Ibid.*, p. 845.

¹⁷ See document (A/CN.4/L.118 and Add.1 and 2 (footnote 13 above), p. 239, para. 136.

¹⁸ See the supplementary study prepared by the Secretariat in 1985 on the practice of the United Nations, the specialized agencies and IAEA concerning their status, privileges and immunities (*Yearbook... 1985*, vol. II (Part One), *Addendum*, p. 191, document A/CN.4/L.383 and Add.1-3), para. 69.

29. Even when an international organization waives immunity from jurisdiction, it cannot be obliged to comply with national procedural rules and, in particular, with the obligation to produce documents requested by the courts. We know that waiver of immunity from jurisdiction does not entail a simultaneous waiver of immunity from measures of execution. There is no doubt that an order for discovery of documents constitutes coercion, and the privilege in these circumstances is just as broad as that accorded to foreign States.¹⁹

30. Jenks has expressed a categorical opinion on this point, stating that, as regards inviolability of archives, international organizations enjoy a fuller measure of immunity than the Government in English law. He observes firmly: "No order for discovery of documents can be made against an international body corporate which is entitled to inviolability of archives . . .".²⁰

31. In the course of an inquiry concerning United Nations staff members of United States nationality, the United States Government called upon them to produce certain documents belonging to the archives of the Organization, declared inviolable by United States law itself. The Secretary-General of the United Nations opposed such a step because he considered that it violated the Organization's archives. The United States grand jury did not object to the position adopted by the Secretary-General. Nevertheless, on 22 October 1952 the Secretary-General set up an international commission of jurists which was requested to advise him on five specific questions, including the following:

(iv) In the course of inquiries by agencies of the United States Government, should the Secretary-General make available archives of the Organization or authorize staff members to respond to questions involving confidential information relating to official acts?²¹

32. In its opinion of 29 November 1952 the Commission of Jurists replied in the following terms:

All the relevant documents declare the archives of the United Nations to be inviolable. In our opinion, the Secretary-General should never waive this privilege. Indeed, we doubt whether he has any power to do so. . . .²²

33. The United Nations interprets strictly the principle of the absolute inviolability of its archives, which is, moreover, in accordance with the relevant United States legislation, the International Organizations Immunities Act, which states: "The archives of international organizations shall be inviolable".²³

34. Protection by States of the inviolability of the archives of an international organization against any interference by persons from outside the organization involves preventing such persons from taking possession of the archives or obtaining information about their con-

tents. The State is therefore under an obligation to refrain and protect. This is the rule in diplomatic law,²⁴ and it applies also in the case of international organizations.

35. The Vienna Convention on Diplomatic Relations expressly provides in article 45 for the protection of the archives of diplomatic missions in case of emergency:

Article 45

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled:

(a) The receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;

...

36. The same Convention does not refer specifically in article 24 to the duty of the receiving State to protect the archives against any interference by third parties. As Cahier states, the wording of this article is defective because "this inviolability would obviously be illusory if the receiving State were not obliged to protect the archives".²⁵

37. Nevertheless, despite this omission in the Vienna Convention, it is understood, as noted above (para. 12), that the customary rule according to which a State is obliged to protect the archives of a diplomatic mission remains in force. This can clearly be deduced from the Commission's commentary to article 22, on inviolability of the archives, adopted in 1958.²⁶

38. This absolute inviolability of archives was demonstrated in practice in connection with the closing of the German Legation at Bern in 1945. The premises were placed under the protection of the Political Department of the Swiss Confederation, and the archives were sealed.²⁷

39. The customary rule was also applied in the case of the Romanian Legation at Bern which was attacked by a group of individuals who occupied the Legation for 38 hours on 15 and 16 February 1951. They read a number of documents forming part of the Legation archives and destroyed them. The Swiss Government was criticized for not having taken appropriate steps to restore the inviolability of the archives immediately. In fact, the Swiss authorities preferred to negotiate with the attackers so as not to endanger human lives by storming the Legation premises.²⁸ The Swiss authorities were nevertheless under the obligation not only to protect the premises but also to prevent violation of the secrecy of the archives.

40. In another case, on the other hand, Switzerland complied fully with its obligations. In 1958, when two armed Hungarian refugees entered the Hungarian Legation at Bern in order to seize documents, the police, alerted and given permission by the head of the mission, entered the premises and arrested the perpetrators.²⁹

¹⁹ See J. Duffar, *Contribution à l'étude des privilèges et immunités des organisations internationales* (Paris, Librairie générale de droit et de jurisprudence, 1982), p. 169.

²⁰ C. W. Jenks, *The Proper Law of International Organisations* (London, Stevens, 1962), pp. 234-235.

²¹ See the report of the Secretary-General on personnel policy, of 30 January 1953 (*Official Records of the General Assembly, Seventh Session, Annexes*, agenda item 75, document A/2364), para. 62.

²² *Ibid.*, annex III, sect. VII.

²³ *United States Code, 1988 Edition*, vol. 9, title 22, sect. 288a, (c).

²⁴ Cahier, op. cit., pp. 216 *et seq.*

²⁵ *Ibid.*, p. 210.

²⁶ See footnote 7 above.

²⁷ Cahier, op. cit., p. 210.

²⁸ *Ibid.*, pp. 217-218.

²⁹ *Ibid.*, p. 218, footnote 76.

41. There is no doubt that the principle is equally valid in the case of international organizations. It is clear that when the archives are kept on the premises occupied by an international organization, protection of the premises entails protection of the inviolability of the archives. But when the archives are carried out of the premises, it must be acknowledged that the host State is obliged, should the circumstances so require, to provide the protection necessary to preserve the secrecy of their contents or to allow the organization itself to do so.

42. The States members of an international organization should therefore refrain from exercising any administrative coercion whatsoever against the individuals or means of transport that may be carrying archives. They should not invoke the prerogatives of the judicial authorities in order to infringe the secrecy of the archives. They also have the obligation to protect the archives of international organizations against interference by third parties.

43. In conclusion, international instruments, whether in the form of treaties or headquarters agreements, and even unilateral declarations or acts (for example, the International Organizations Immunities Act of the United States), like doctrine and State practice, fully support the principle of the inviolability of the archives of international organizations. The right to a private life, to privacy, in other words to secrecy, is recognized to be a basic element guaranteeing the freedom of action and functional efficiency of international organizations. Respect for privacy and the preservation of secrecy constitute the

very basis of the independence of international organizations, to which they must be entitled if they are to fulfil properly the purposes for which they were established.

B. Draft article 12

44. In accordance with the foregoing, the Special Rapporteur proposes the following draft article:

Article 12

1. The archives of international organizations and, in general, all documents belonging to or held by them shall be inviolable wherever they are located.

2. Archives of international organizations shall be understood to mean all papers, documents, correspondence, books, films, tape recordings, files and registers of the international organization, together with ciphers, codes, and the filing cabinets and furniture intended to protect and conserve them.

45. Paragraph 2 of the article could be included in the section on definition of terms at the beginning of the draft articles. The Special Rapporteur has no preference in that regard but feels that it might perhaps make the text clearer if the definition of archives were included in the body of the draft article itself, thus obviating the need to refer to another draft article.

III. Publications and communications facilities

A. Preliminary observations

46. In the case of international organizations, freedom of communication cannot be dissociated from freedom of publication. The effectiveness of any international organization depends largely on the means of expression and communication available to it, on the exchange and dissemination of ideas, or, in other words, on its capability to express itself freely. International organizations must have the most extensive communications facilities if they are to function properly: they must be able to communicate freely with member States or other organizations, and be able to propagate and disseminate ideas and the results of the work entrusted to them. In short, they must enjoy freedom of publication and communication in order to protect the right to freedom of expression. As Duffar has observed, quoting article 11 of the 1789 Declaration of the Rights of Man, "the unrestrained communication of thoughts or opinions is one of the most precious rights of man",³⁰ a right also set forth in article 19 of the Universal Declaration of Human Rights,³¹ article 18 of the International Covenant on

Civil and Political Rights³² and article 10 of the European Convention on Human Rights.³³

47. If this freedom has been recognized in the case of individuals, there is all the more reason why it should be recognized in the case of international organizations, which are called upon to act, inform and consequently communicate on a much greater scale. This observation applies in particular to international organizations of an operational character, as the basic condition for all their activities is freedom of communication and information.

B. Publications

1. GENERAL CONSIDERATIONS

48. Publications constitute the chief—indeed, it might be said, the most basic—form of expression for international organizations. Consequently, the scope of the term "publications", as employed by international organizations both in the legal documents and in practice, is

³⁰ Duffar, *op. cit.*, p. 196.

³¹ General Assembly resolution 217 A (III).

³² United Nations, *Treaty Series*, vol. 999, p. 171.

³³ Convention for the Protection of Human Rights and Fundamental Freedoms (*ibid.*, vol. 213, p. 221).

much broader than is usual in domestic law. The scope of the term varies, of course, from document to document. One of the broadest uses is found, for example, in the wording contained in the Agreement between Austria and IAEA, which provides in article VI, section 15 (a):

(a) All official communications directed to the IAEA, or to any of its officials at the headquarters seat, and all outward official communications of the IAEA, by whatever means or in whatever form transmitted, shall be immune from censorship and from any other form of interception or interference with their privacy. Such immunity shall extend, without limitation by reason of this enumeration, to publications, still and moving pictures, films and sound recordings.

That provision clearly establishes the indivisibility that exists in the protection afforded to privacy irrespective of the vehicle used to communicate thoughts, whether correspondence, publications, moving pictures, sound recordings or other medium.³⁴

49. The concept of publications is stated in a similar, albeit less sweeping, manner in other international instruments. Thus, for example, in the Agreement between ICAO and Mexico, exemption from prohibitions and restrictions is granted in respect of the "import or export of its publications, photographs, films and phonograph records" (art. III, sect. 6 (c)). In the Agreement between UNESCO and France, the list of exempted items includes "publications, cinematograph films, photographic slides and documents which the Organization may import or publish in the course of its official activities" (art. 15, para. 2 (b)). Similar provisions are to be found in the Agreement between Italy and FAO (art. VI, sect. 13), the Agreement between Egypt and FAO (art. V, sect. 13 (b)), the Agreement between Thailand and FAO (art. VIII, sect. 15 (c)) and the Agreement on Privileges and Immunities of OAS (art. 5 (c)).

2. PRACTICE

50. In accordance with the General Convention, the United Nations is "exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications" (art. II, sect. 7 (c)). Similar provisions are contained in other agreements, for example the Interim Arrangement between the United Nations and Switzerland (art. II, sect. 5 (e)), the Agreement between the United Nations and Chile relating to the headquarters of ECLA (art. IV, sect. 10 (c)) and the Agreement between the United Nations and Thailand relating to the headquarters of ECAFE (art. IV, sect. 8 (c)).

51. As regards the specialized agencies, the Convention on the Privileges and Immunities of the Specialized Agencies grants to the agencies exemption from duties and prohibitions and restrictions on imports and exports in respect of their publications (art. III, sect. 9 (c)).

52. The term "publications" has been widely interpreted to encompass not only printed matter but also films, records, recorded radio programmes and audio tapes, as well as books, periodicals and other printed matter published by the organization in question. Note should be taken of the statement made by the Legal Counsel of the United Nations to the Fifth Committee of

the General Assembly at its seventeenth session, in which he referred to a problem that had arisen regarding the interpretation of the term "official use". The Legal Counsel stated:

Now, if the United Nations sent a film or recording produced by it as a part of its public information operations to a distributing agent for distribution in a Member State, is the film so imported into the territory of that Member State for the "official use" of the United Nations? The Secretariat took the affirmative view and the Member concerned, I am glad to report, graciously agreed.³⁵

53. Furthermore, in an internal memorandum prepared by the Office of Legal Affairs in 1952 it was stated, in connection with the General Convention:

... the term "official use" in section 7 (b) must be regarded as comprehending the distribution of United Nations films within Member States not only by the United Nations itself but through the various distributors which contract with the United Nations under the film rental agreements, so long as the United Nations is carrying out an official purpose in effecting the distribution.³⁶

54. We can therefore see from the different interpretations given to the term "publications" by the various international organizations that the term covers a rather wide gamut of means of information and dissemination. It encompasses not only publications *stricto sensu* but also a range of means of information, including motion pictures. The United Nations and the specialized agencies have until now claimed as of right a regime of complete freedom—though with certain specific exceptions—in all matters relating to the publications of international organizations.

55. A possible way of establishing more direct means of control by States is through censorship or government licence. In 1962, the United States of America sought to require the United Nations to obtain a licence to export public information materials to certain States. Following an exchange of correspondence, the United States acknowledged that the United Nations was exempt from that obligation, since such a restriction might cripple its information activities in the States in question. The United Nations based its protest on the provisions of Article 105 of the Charter and article II, section 7 (b), of the General Convention.³⁷

56. A Member State requested the United Nations Information Centre situated in its territory to stop showing United Nations films until they had been cleared with the authorities of the host State. The Secretariat wrote in 1966 to the Permanent Mission of the State concerned, setting out the basis on which exemption from this requirement was claimed in the following words:

The United Nations is not in a position to submit its films to censorship since this would be contrary to the Charter and to the Convention on the Privileges and Immunities of the United Nations of which your country is a party. The position of the United Nations in this regard derives, in general terms, from Article 105 of the Charter and more specifically from sections 3, 4 and 7 (c) of the Convention on the Privileges and Immunities of the United Nations.³⁸

³⁵ See document A/CN.4/L.118 and Add.1 and 2 (footnote 13 above), p. 250, para. 182.

³⁶ *Ibid.*, p. 251, para. 193.

³⁷ *Ibid.*, p. 250, para. 184.

³⁸ *Ibid.*, p. 252, para. 199.

³⁴ Duffar, *op. cit.*, p. 199.

57. It may be noted that the Agreement between the United Nations and Chile relating to the headquarters of ECLA expressly provides that the freedom from censorship enjoyed in respect of ECLA correspondence and other communications is extended, "without limitation by reason of this enumeration, to printed matter, still and moving pictures, films and sound recordings" (art. III, sect. 6). Similar provisions are contained in the Agreement between the United Nations and Ethiopia regarding the headquarters of ECA (art. III, sect. 6 (a)) and the Agreement between the United Nations and Thailand relating to the headquarters of ECAFE (art. V, sect. 13 (a)).

58. The information received since 1966 on the practice of the United Nations, the specialized agencies and IAEA concerning their status, privileges and immunities³⁹ indicates that, in practice, no serious problems relating to the recognition of the freedom of the organizations mentioned with respect to their publications have arisen. However, the United Nations has noted two cases that concern the interpretation of the term "publications" and problems of distribution.

59. In one case, a new press law in a Member State required that all periodical publications should carry a record of the name of the editor. In a memorandum dated 16 January 1970 addressed to the Office of Public Information, the United Nations Office of Legal Affairs gave the following opinion:

The purpose of the provision referred to above of the press law in question is obviously to identify the author of any periodical publication so as to hold him responsible under the law of the Member State concerned. In the distribution of United Nations publications in that State, the Director of the United Nations Information Centre would be performing a United Nations function in his capacity as a United Nations official. He cannot be held accountable to the Government concerned or, for that matter, to any other authority external to the United Nations, in virtue of Article 105 of the Charter and section 18 (a) of the Convention on the Privileges and Immunities of the United Nations. The said provision of the law in question obviously has no application with respect to United Nations publications, including those issued by the Information Centre.

Accordingly, the Director of the Centre should take the necessary steps to request recognition of the exemption from the application of the law in question.⁴⁰

60. The other case refers to the censorship of United Nations films under the censorship laws of a Member State. In a memorandum to the Office of Public Information dated 7 January 1970,⁴¹ the Office of Legal Affairs addressed this question, stating *inter alia*:

The United Nations is not in a position to submit its films to censorship, since it would be contrary to the Charter and to the Convention on the Privileges and Immunities of the United Nations to which the Member State concerned acceded without reservations. The position of the United Nations in this regard derives, in general terms, from Article 105 of the Charter and, more specifically, from sections 3, 4 and 7 (c) of the Convention on the Privileges and Immunities of the United Nations. . . .

61. The legal provisions cited by the Office of Legal Affairs refer to the inviolability of the premises of the United Nations; the immunity of the property and assets of the United Nations, wherever located and by whomso-

ever held, from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action; the inviolability of the documents belonging to it or held by it; and, lastly, the exemption accorded to the United Nations from prohibitions and restrictions on imports and exports in respect of its publications.

62. As to the distinction between United Nations films intended "for screening in commercial cinemas" and films "shown at public or private group-screenings", the Office of Legal Affairs rejects the notion that any such distinction could be made in relation to the General Convention. According to the Office of Legal Affairs, the establishment of an information centre in the territory of a Member State is effected in accordance with resolutions of the General Assembly, under which both Member States and the Secretary-General are to further the public information work of the United Nations, as spelt out in General Assembly resolutions 13 (I), 595 (VI) and 1405 (XIV).

63. According to paragraph 8 of the "Basic Principles Underlying the Public Information Activities of the United Nations"⁴² approved by the General Assembly in its resolution 595 (VI), the United Nations Department of Public Information should

promote and where necessary participate in the production and distribution of documentary films, film strips, posters and other graphic exhibits on the work of the United Nations.

Concerning the mode of distribution, paragraph 10 of the Basic Principles states:

10. Free distribution of materials is necessary in the public information activities of the United Nations. The Department should, however, as demands increase and whenever it is desirable and possible, actively encourage the sale of its materials. Where appropriate, it should seek to finance production by means of revenue-producing and self-liquidating projects.

The Office of Legal Affairs concludes its memorandum of 7 January 1970 by stating:

It is thus a long-established principle that distribution of United Nations public information material may take place through commercial channels. . . . there is no foundation for distinguishing between various forms of distribution as long as the activities are performed within the scope of the above-mentioned General Assembly resolutions.

64. In practice, then, the term "publications" has been interpreted to cover films, photographs and sound recordings (produced as part of the public information programme of an international organization and exported or imported for exhibition or retransmission), as well as books, periodicals and other printed matter. While no disputes have arisen concerning the scope of the term "publications", some specialized agencies, such as FAO, IBRD and IDA, have encountered difficulties in applying the relevant provisions, and also with regard to the 1949 Agreement on the free circulation of educational materials.⁴³ For instance, some countries levy import duties on the publications and documents of international organizations, and the distribution of books, films

³⁹ See document A/CN.4/L.383 and Add.1-3 (footnote 18 above).

⁴⁰ *Ibid.*, p. 167, para. 39.

⁴¹ *Ibid.*, para. 40.

⁴² See the annex to the report of Sub-Committee 8 of the Fifth Committee on Public Information (*Official Records of the General Assembly, Sixth Session, Annexes*, agenda item 41, document A/C.5/L.172).

⁴³ Agreement for facilitating the international circulation of visual and auditory materials of an educational, scientific and cultural character (United Nations, *Treaty Series*, vol. 197, p. 3).

and microfiches is sometimes hindered by restrictions or long delays in clearing them through customs.

65. The subcommittee on privileges and immunities of international organizations of the European Committee on Legal Cooperation noted in its report that agreements on the privileges and immunities of international organizations usually do not contain express provisions on the dissemination of publications once they have been imported, but pointed out that article 10 of the Protocol on the Privileges and Immunities of the European Space Vehicle Launcher Development Organization specifically provides that publications must be circulated without restriction. While agreeing that States should facilitate distribution of the publications of an organization of which they are members, it took the view that member States should reserve the right to take the necessary steps to protect public order.⁴⁴

C. Communications

1. DEFINITION AND LEGAL TEXTS

66. The Convention on the Privileges and Immunities of the Specialized Agencies provides in article IV, section 11:

Each specialized agency shall enjoy, in the territory of each State party to this Convention in respect of that agency, for its official communications, treatment not less favourable than that accorded by the Government of such State to any other Government, including the latter's diplomatic mission, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, and press rates for information to the press and radio.

67. This provision is similar to the one in the General Convention, which states in article III, section 9:

The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communication; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

68. Similar provisions can be found in other international agreements, for instance in article III of the Agreement between the United Nations and Chile relating to ECLA; in Article V, sections 11 and 13, of the Agreement between the United Nations and Thailand relating to ECAFE; in article III, sections 5 and 6, of the Agreement between the United Nations and Ethiopia relating to ECA; and in article III, section 7, of the Interim Arrangement between the United Nations and Switzerland, to which the words "in conformity with the International Convention on Telecommunications" were added at the end of the first sentence.

69. The General Agreement on Privileges and Immunities of the Council of Europe is more specific; it provides in article 8 as follows:

Article 8

The Committee of Ministers and the Secretary-General shall enjoy in the territory of each Member, for their official communications, treatment at least as favourable as that accorded by that Member to the diplomatic missions of any other Government.

No censorship shall be applied to the official correspondence and other official communications of the Committee of Ministers and of the Secretariat.

This article refers specifically to diplomatic treatment and is clearly intended to protect freedom of communication effectively against any attempt by a State to obstruct or impede the Council's mission if it considers that mission potentially detrimental to its own interests. Reference to this provision is justified by the similarity of situations. Like international organizations, diplomatic missions conduct their activities in a territory which is not their own. Moreover, the international nature of their functions requires, as we have seen, that secrecy be respected.⁴⁵

70. The inviolability of the communications of international organizations would thus seem to be defined by reference to the law of diplomatic missions. There could be no more favourable system than that which States agree to apply to each other. Such a system is provided for in the Vienna Convention on Diplomatic Relations, which states in article 27, paragraph 1:

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. . . .

71. It may also be noted that the internal law of most Western countries confirms the inviolability of communications between persons. By extension, international law might be said to recognize that such inviolability is guaranteed in the case of international organizations.

72. The term "communications" encompasses all means of transmitting ideas: correspondence, telegraph, telephone and radio. Most legal systems guarantee the inviolability of communications. Thus, for example, article 63 of the Constitution of Venezuela states: "Correspondence in all its forms is inviolable. Letters, telegrams, private papers and any other means of correspondence may not be seized except by judicial authority". It nevertheless establishes a limitation which is not applicable to international organizations. A similar provision is to be found in article 25 of the Constitution of Mexico; in articles 10, 18 and 44 of the Basic Law of the Federal Republic of Germany; and in article 36, paragraph 4, of the Constitution of Switzerland.

73. Although the principle is formulated in absolute terms, *de jure* and *de facto* derogations from it, such as that noted above in the case of the Venezuelan Constitution, exist in all countries. However, it would seem that such derogations do not apply to international organizations.

74. The inviolability of the communications of diplomatic missions implies on the part of the receiving State both abstention and a positive obligation to protect freedom of communication; the communications of international organizations are entitled to the same treatment.

⁴⁴ Council of Europe, *Privileges and Immunities* . . . , explanatory report (see footnote 4 above), para. 73.

⁴⁵ See Duffar, *op. cit.*, p. 197.

Furthermore, the State must refrain from using against them any of the means available to it in internal law. Its responsibility may be entailed if it does not protect the communications of international organizations.

75. The protection provided by the State may be direct or indirect, depending on the arrangements involved.⁴⁶ The protection is direct when the State conducts or operates the means of communication itself. It would seem that in such cases the obligation of the State consists in doing everything possible to fulfil its undertakings and is not, therefore, an obligation of result. In order to avoid any controversy, various headquarters agreements simply require the State to enter into an obligation of this kind rather than an obligation of result. For example, the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations states in article VII, section 17 (a):

... In case of any interruption or threatened interruption of any such services, the appropriate American authorities will consider the needs of the United Nations as being of equal importance with the similar needs of essential agencies of the Government of the United States, and will take steps accordingly to ensure that the work of the United Nations is not prejudiced.

76. The obligation to guarantee absolute inviolability is indirect when the communications are not carried out by the services of the State itself. The State must then intervene to see that non-governmental institutions are ensuring the fulfilment of its international obligations. The responsibility of the host State is not diminished in international law by the fact that the communication service involved is a private one. In practice, it seems to be considered that the State has fulfilled its obligations when it proves that it has sought with due diligence to protect the communications of the organization.

77. According to the studies prepared by the Secretariat in 1967 and 1985 on the practice of the United Nations, the specialized agencies and IAEA concerning their status, privileges and immunities,⁴⁷ the provisions of section 9 of the General Convention have in general been well observed. In three Latin American countries, Bolivia, El Salvador and Mexico, the United Nations has received the benefit of special postage rates or franchise in respect of official mail posted in those countries. In Bolivia the United Nations Information Centre was allowed free postage within the country. In Mexico the matter was governed by an official decree, published in the *Diario Oficial* No. 19 of 24 September 1963, whereby the Mexican Government granted postal and telegraphic franchise to the organizations participating in the Technical Assistance Board programme for the duration of the Basic Agreement on Technical Assistance between Mexico and the United Nations signed on 23 July 1963. In El Salvador a similar franking privilege was given in 1961, in connection with which mention was made of the Convention of the Postal Union of the Americas and Spain, under which members of the diplomatic corps in El Salvador of the countries of the Union were entitled to that privilege.⁴⁸

⁴⁶ Ibid., p. 210.

⁴⁷ See footnotes 13 and 18 above.

⁴⁸ Document A/CN.4/L.118 and Add.1 and 2 (see footnote 13 above), p. 259, paras. 217-219.

78. Following the adoption in 1966 of a convention between the Latin American States, Canada and Spain which granted special franking privileges to the correspondence of diplomatic missions of the members of the Postal Union of the Americas and Spain, the Secretary-General, in a letter of 24 August 1971 to the Permanent Representatives of those countries to the United Nations, claimed those privileges for the United Nations under article III, section 9, of the General Convention.⁴⁹

79. There is a reason for the addition of the words "in conformity with the International Convention on Telecommunications" at the end of the first sentence of article III, section 7, of the Interim Arrangement between the United Nations and Switzerland. In effect, the International Telecommunication Convention adopted at Atlantic City in 1947 provides that telegrams sent and telephone calls made by the United Nations should be treated as though sent or made by a Government. The assimilation to telegrams and telephone calls sent or made by a Government was made in the following terms:

Article 36. Priority of Government telegrams and telephone calls

Subject to the provisions of Article 45, Government telegrams shall enjoy priority over other telegrams when priority is requested for them by the sender. Government telephone calls may also be accorded priority, upon specific request and to the extent practicable, over other telephone calls.

80. Article 45 of that Convention gives "absolute priority" to "distress calls and messages". Furthermore, annex 2 of the Convention, in defining the terms used, includes the following clause:

Government Telegrams and Government Telephone Calls: These are telegrams or telephone calls originating with any of the authorities specified below:

...

(f) the Secretary-General of the United Nations and the Heads of the subsidiary organs of the United Nations;

...

81. In 1949 the Administrative Council of ITU adopted resolution No. 142,⁵⁰ in which it requested the Secretary-General of ITU *inter alia*

... to keep up to date the list of the subsidiary organs of the United Nations and to forward to the Members and Associate Members of the Union a copy of such list and to advise them of any modifications therein;

...

82. Difficulties arose, however, over the question of determining which were the subsidiary organs of the United Nations. Faced with a refusal to grant governmental treatment to a particular United Nations information centre, the United Nations wrote to ITU in 1951, pointing out that information centres formed part of the Secretariat and were not subsidiary organs; telegrams and telephone calls originating with them were therefore

⁴⁹ See document A/CN.4/L.383 and Add.1-3 (footnote 18 above), p. 169, para. 46.

⁵⁰ Resolution on the application of article IV of the Convention on the Privileges and Immunities of the Specialized Agencies ("Resolutions of the Administrative Council of the International Telecommunication Union, 4th session, Geneva, August-September 1949") (mim.).

entitled to governmental treatment, as having been sent or made on behalf of the Secretary-General, without needing to be specially listed. In the International Telecommunication Convention adopted at Buenos Aires, the definition quoted above (para. 80) was amended and the corresponding clause, appearing in annex 3 of the Convention, read as follows:

Government Telegrams and Government Telephone Calls: These are telegrams or telephone calls originating with any of the authorities specified below:

...

the Secretary-General of the United Nations and the Heads of the subsidiary organs of the United Nations;

...

83. In annex 3 of the International Telecommunication Convention of 1959 adopted at Geneva this definition was changed again so as to refer to telegrams and telephone calls originating with "the Secretary-General of the United Nations; Heads of the principal organs of the United Nations".

84. Apart from this problem of definition, it can be confirmed that United Nations telegrams and telephone calls (unlike those of the specialized agencies) now receive treatment at least as favourable as that granted to the telegrams and telephone calls of Governments.⁵¹

85. As regards priority (the only aspect covered expressly by the International Telecommunication Convention), it may be noted that, under the provisions of chapter XVII, article 62, paragraph 7, of the Telegraph Regulations, as revised at Geneva in 1958,⁵² a special priority, over and above that afforded to government telegrams, is granted to telegrams relative to the application of the provisions of Chapters VI, VII and VIII of the Charter of the United Nations sent in an emergency by the President of the Security Council, the President of the General Assembly, the Secretary-General and certain other officials. However, in addition to receiving priority for its telecommunications on terms at least as favourable as those afforded to Governments, the United Nations has also been granted the benefit of the same rates as are enjoyed by Governments in respect of their intercommunications.

86. No cases have been reported in which the national authorities have applied censorship to official correspondence and other communications of the United Nations.

87. According to the two studies by the Secretariat on the practice of the United Nations, the specialized agencies and IAEA concerning their status, privileges and immunities,⁵³ there has been faithful compliance with the treatment accorded to the specialized agencies under article IV, section 11, of the Convention on the Privileges and Immunities of the Specialized Agencies, with one important exception. The exception concerns privileges

in respect of telecommunications, since, under the various international telecommunication conventions, not all the specialized agencies have enjoyed treatment in respect of priorities, rates and taxes not less favourable than that accorded to Governments.

88. The International Telecommunication Convention adopted at Atlantic City, at approximately the same time as the Convention on the Privileges and Immunities of the Specialized Agencies was adopted by the General Assembly, provides that priority shall be given to United Nations telegrams and telephone calls, but does not do so for those of the specialized agencies. Since the Atlantic City Convention did not accord governmental treatment for communications of the specialized agencies, the Administrative Council of ITU, at its third session, in 1948, adopted a resolution inviting the Secretary-General and the member States of ITU to interpret article IV of the Convention on the Privileges and Immunities of the Specialized Agencies in the light of the Atlantic City Convention.⁵⁴ There followed a series of exchanges between the Secretaries-General of the United Nations and of ITU. By a letter dated 30 August 1948, the Secretary-General of the United Nations informed the Secretary-General of ITU that the Convention on the Privileges and Immunities of the Specialized Agencies had become applicable to ICAO and WHO, and expressed the opinion that States parties to the Convention would have the duty to apply the provisions of article IV, section 11, to those agencies.⁵⁵

89. Despite lengthy correspondence between the parties concerned and negotiations and discussions in ITU, the latter has systematically refused to include the specialized agencies among those empowered to send government telegrams or to place government telephone calls. Indeed, it has urged the United Nations to amend article IV, section 11, of the Convention on the Privileges and Immunities of the Specialized Agencies in order to resolve the problem. As of 1 June 1985, eight Governments had declared that they were unable to comply fully with the provisions of article IV, section 11, until such time as all other Governments had decided to cooperate in granting such treatment to the agencies.⁵⁶ Thus, except in certain extreme cases (e.g., urgent epidemiological telegrams of WHO, under article 61 of the Telegraph Regulations,⁵⁷ or where strikes prevent the dispatch of ordinary cables, so that the procedure envisaged in resolution No. 27 of the Buenos Aires Conference⁵⁸ comes into play), the specialized agencies have not enjoyed the privilege of priority for their telecommunications, nor the advantages of government rates.

⁵⁴ Resolution No. 36 concerning privileges and immunities of specialized agencies ("Resolutions of the Administrative Council of the International Telecommunication Union, 3rd session, Geneva, September-October 1948") (mim.).

⁵⁵ See document A/CN.4/L.118 and Add.1 and 2 (footnote 13 above), p. 309, para. 77.

⁵⁶ See United Nations, *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 1990* (Sales No. E.91.V.8), chap. III.2.

⁵⁷ ITU, *Telegraph Regulations*, op. cit., p. 86.

⁵⁸ See ITU, *International Telecommunication Convention, Buenos Aires, 1952*, p. 156.

⁵¹ See document A/CN.4/L.118 and Add.1 and 2 (footnote 13 above), p. 259, para. 222.

⁵² ITU, *Telegraph Regulations (Geneva Revision, 1958), annexed to the International Telecommunication Convention (Buenos Aires, 1952)* (Geneva, 1959), p. 88.

⁵³ See footnotes 13 and 18 above.

90. In the case of international agencies of a financial nature—IBRD, IDA, IFC and IMF—the facilities to be accorded to their communications are set forth in their respective constitutions in closely similar terms. Article VII, section 7, of the Articles of Agreement of IBRD, for example, provides: “The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members.”

91. Except for a dispute that arose in 1949 between the United States of America on the one hand and IBRD and IMF on the other concerning a problem of interpretation, which was solved in favour of the two agencies, the right of the financial agencies mentioned in the preceding paragraph, whose constitutions contain the same provisions, to enjoy the same treatment as that granted to Governments in respect of telecommunications has not been challenged.⁵⁹

92. Lastly, it may be noted that in article VI, section 13, of the Agreement between IAEA and Austria and in article IV, section 10, of the Agreement on the privileges and immunities of IAEA, communications facilities are granted to IAEA in the territory of each State party on the same terms as those enjoyed by Governments only to the extent that such action is “compatible with any international conventions, regulations and arrangements” to which the State concerned is a party. A similar provision is contained in article 10 of the Agreement between UNESCO and France.⁶⁰

93. The scope of the obligations assumed by the United States towards the United Nations is much vaguer. Article VII, section 17 (a), of the Headquarters Agreement stipulates that “the headquarters district shall be supplied on equitable terms with the necessary public services, including . . . post, telephone, telegraph, . . .”.

2. MEANS OF COMMUNICATION

(a) *General considerations*

94. The means of communication to be made available to international organizations cannot but be identical to those employed by States or diplomatic missions. Accordingly, in this case also, international organizations are assimilated or equated to diplomatic missions so as to enable them to use the same means of communication.

95. The subcommittee of the European Committee on Legal Cooperation issued the following opinion on this matter:

... Not all international organizations need to use couriers and to have special facilities for the use of sealed bags, codes and ciphers. In the case of many organizations the use of ordinary mail and telecommunications services should be sufficient. . . .⁶¹

⁵⁹ See document A/CN.4/L.118 and Add.1 and 2 (footnote 13 above), p. 312, paras. 95-96.

⁶⁰ *Ibid.*, para. 97.

⁶¹ Council of Europe, *Privileges and Immunities . . .*, explanatory report (footnote 4 above), para. 81.

96. The Special Rapporteur does not think that it should be of major concern whether all international organizations invariably use all of the exceptional means of communication. The principle should be recognized, as it generally is, and applied in appropriate cases. In those cases where the functions of the organization do not warrant the application of the principle, the organization should have the authority to waive it.

97. In any event, with the increasingly sophisticated advances in communications technology, using means of radiotelephony and radiotelegraphy, such as telex and facsimile transmission, the issue would become less and less important. Indeed, in future—as is the case to a large extent, even today—the priority will simply be to have the appropriate equipment installed, and to be accorded preferential tariffs and rates for the applicable taxes and service charges.

98. As far as the relevant treaties are concerned, the Vienna Convention on Diplomatic Relations stipulates, in article 27, that:

Article 27

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

...

99. The means of communication, as can be seen from the above article, comprise four main categories: codes, the diplomatic bag, couriers and telecommunications. As it would be impossible to compile an exhaustive list, the Commission⁶² and the 1961 Vienna Conference on Diplomatic Intercourse and Immunities preferred to adopt a criterion of a general character.

100. For its part, the General Convention stipulates, in article III, section 10, that the United Nations “shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags”, while the corresponding provision of the Convention on the Privileges and Immunities of the Specialized Agencies (art. IV, sect. 12) reads:

No censorship shall be applied to the official correspondence and other official communications of the specialized agencies.

The specialized agencies shall have the right to use codes and to despatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

⁶² See the discussion in the Commission, at its ninth and tenth sessions, on article 16 of the draft articles on diplomatic intercourse and immunities (*Yearbook . . . 1957*, vol. I, pp. 74 *et seq.*, 398th meeting, paras. 27-100; and *Yearbook . . . 1958*, vol. I, pp. 127 *et seq.*, 455th meeting, paras. 55-78).

Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialized agency.

It should be noted that article III, section 10, of the General Convention contains no reference to security precautions, and that the prohibition of censorship figures separately in article III, section 9, of that Convention.

101. As may be seen from the above texts, the privileges and immunities of international organizations are defined in relation to those of diplomatic missions, as they are specified in article 27 of the Vienna Convention on Diplomatic Relations.

102. In addition to the aforementioned conventions concerning the privileges and immunities of the United Nations and the specialized agencies, there are many other international instruments under which the treatment accorded to international organizations is assimilated to that accorded to diplomatic missions. Examples include the Interim Arrangement between the United Nations and Switzerland (art. III, sects. 7 and 8); the Agreement between Switzerland and ILO (arts. 12 and 13) and the Arrangement for the execution of that Agreement (arts. 5 and 6); the Agreement between Switzerland and WHO (arts. 12 and 13); the Agreement between Italy and FAO (art. VI, sects. 11, 12 and 13); the Agreement between ICAO and Canada (art. II, sects. 9 and 10); the Agreement between UNESCO and France (arts. 10 and 11); and the Agreement between Switzerland and WMO (arts. 12 and 13).

(b) Codes

103. Whenever international organizations have been allowed the benefit of diplomatic status, they have also been fully authorized to use coded correspondence, without there being any need for a specific reference to such authorization. The United Nations enjoys that right by virtue of article III, section 10, of the General Convention. The Organization has of course used codes in cases where it considered this advisable, and no legal problems appear to have arisen as a result.⁶³

104. With respect to the specialized agencies, as noted above, article IV, section 12, of the Convention on the Privileges and Immunities of the Specialized Agencies authorizes them to use codes. The majority of the specialized agencies, however, do not use them in their correspondence.⁶⁴ In general, there has always been recognition of the rights and the corresponding immunities and privileges referred to in the second paragraph of article IV, section 12, of the Convention on the Privileges and Immunities of the Specialized Agencies, including "the right to use codes".

105. The draft convention on diplomatic privileges and immunities drawn up by the Harvard Law School states specifically, in article 14 (Freedom of communications), that international organizations have the right to use codes and ciphers:

1. A receiving State shall freely permit and protect official communications by whatever available means, including the employment of messengers provided with passports *ad hoc* and the use of codes and cipher:

...

(e) Between a mission of the sending State and the agents of public international organizations, such as...⁶⁵

106. Accordingly, there seems to be no dispute as to the application of that right and the granting of the privileges which international organizations are guaranteed on the basis of that right.

(c) The diplomatic bag

107. We have seen that the General Convention and the Convention on the Privileges and Immunities of the Specialized Agencies recognize that the United Nations and those agencies are entitled to use the diplomatic bag for their correspondence.

108. For its part, the Commission, with a view to closing the loophole in the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, gave the following definition of "diplomatic bag" in article 3, paragraph 1 (2), of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and a similar one in article II (b) of draft Optional Protocol Two thereto.⁶⁶ The definition given in article 3 reads as follows:

2. "diplomatic bag" means the packages containing official correspondence, and documents or articles intended exclusively for official use, whether accompanied by diplomatic courier or not, which are used for the official communications referred to in article 1 and which bear visible external marks of their character as:

(a) a diplomatic bag within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

(b) a consular bag within the meaning of the Vienna Convention on Consular Relations of 24 April 1963; or

(c) a bag of a permanent mission, a permanent observer mission, a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character of 14 March 1975.

109. It should be noted that no mention was made in article 3 of the diplomatic bag of international organizations. However, article 2, which deals with couriers and bags outside the scope of the draft articles, provides:

Article 2. Couriers and bags not within the scope of the present articles

The fact that the present articles do not apply to couriers and bags employed for the official communications of special missions or international organizations shall not affect:

(a) the legal status of such couriers and bags;

(b) the application to such couriers and bags of any rules set forth in the present articles which would be applicable under international law independently of the present articles.

110. In the commentary to article 2, the Commission explained why it had ruled out the explicit inclusion of

⁶³ See document A/CN.4/L.118 and Add.1 and 2 (footnote 13 above), p. 260, para. 224.

⁶⁴ *Ibid.*, p. 312, para. 99.

⁶⁵ Harvard Law School, *op. cit.*, pp. 21-22.

⁶⁶ See *Yearbook... 1989*, vol. II (Part Two), pp. 14 and 48.

international organizations within the scope of the draft articles, as defined in article 1. The commentary contained the following qualification, however:

... the fact that the articles deal only with couriers and bags of States does not preclude the possibility of substantial similarities between the legal regime of couriers and bags of international organizations, particularly those of a universal or broad regional character, and the legal regime of couriers and bags of States. . . .⁶⁷

111. Opinions were divided during the discussion of that question in the Commission⁶⁸ and in the Sixth Committee of the General Assembly.⁶⁹ Some of the written comments and observations reflected support for the restriction of the scope of the draft articles to the couriers and bags of States; but a large number of comments and observations reflected support for the inclusion of the couriers and bags of international organizations within the scope of the draft.

112. After listing a series of considerations, and in accordance with the comprehensive and uniform criterion on which the draft articles were based, the Special Rapporteur, Mr. Yankov, suggested in his eighth report that a new paragraph 2 should be inserted in article 1, to read as follows:

Article 1. Scope of the present articles

...

2. The present articles apply also to the couriers and bags employed for the official communications of an international organization with States or with other international organizations.⁷⁰

113. After lengthy discussion, the Commission decided not to include the proposed new paragraph. Some argued in favour of its inclusion, others against. In this particular instance, as was pointed out in the Commission, the repeated insistence by some members on differentiating between States and international organizations was inopportune. International organizations are established by States and use diplomatic couriers and diplomatic bags, as we have seen, without any serious objection ever having been raised. Both the General Convention and the Convention on the Privileges and Immunities of the Specialized Agencies, as well as many other international instruments (headquarters agreements, technical assistance agreements and so forth) contain similar specific provisions on this subject.⁷¹

114. Here there appears to be a slight contradiction between the decision taken by the Commission, and approved by the Sixth Committee, to adopt a comprehensive and uniform criterion as a basis for the draft articles

(harmonization of diplomatic law established in the various Vienna Conventions) and the exclusion from these rules of international organizations, which are covered by such law in accordance with existing instruments.

115. However, since opinions were divided, the Commission opted for confining the scope of the draft articles to couriers and bags of States "in order not to jeopardize the acceptability of the draft articles", but at the same time it believed it was appropriate for States to be given the choice to extend, if they so wished, the application of the draft articles to couriers and bags of, at least, international organizations of a universal character. Accordingly, it prepared and approved draft Optional Protocol Two on the Status of the Courier and the Bag of International Organizations of a Universal Character, which states, in article I:

Article I

The articles also apply to a courier and a bag employed for the official communications of an international organization of a universal character:

(a) with its missions and offices, wherever situated, and for the official communications of those missions and offices with each other;

(b) with other international organizations of a universal character.⁷²

116. According to the two studies prepared by the Secretariat on the practice of the United Nations, the specialized agencies and IAEA concerning their status, privileges and immunities,⁷³ although the United Nations has used couriers, the dispatch of communications in bags has been much more frequent. In either case, the privileges and immunities of the United Nations have been observed. A few incidents have occurred, however, when government officials, usually minor officials, acting in error or in ignorance of international regulations, have opened United Nations bags.

117. Writing to the legal adviser of a United Nations subsidiary organ after an incident in which customs authorities had opened a sealed pouch that was being carried in a United Nations vehicle, the Legal Counsel of the United Nations summarized the legal position as follows:

As a general rule, the diplomatic bag is inviolable; it may not be subject to customs inspection or any other form of interference. Should the receiving State, on suspicion that a diplomatic bag contains improper objects, open it for inspection but its suspicion prove to be unfounded, the sending State would be within its right to complain of a violation of international law. On the other hand, if improper objects are found in the bag, it would be the sending State that is guilty of abuse of privilege and no complaint from it may lie. This, I believe, sums up the general rule as practised by States.⁷⁴

118. In 1962, in agreeing to the establishment of a pouch service between United Nations Headquarters and its capital, a Member State sought to impose the condition that, in case of doubt, the Government might open the pouch in the presence of a United Nations official, on the pretext that it had not signed the General Convention. The United Nations found the condition unacceptable.

⁶⁷ Ibid., p. 15, para. (1) of the commentary.

⁶⁸ See *Yearbook . . . 1988*, vol. II (Part One), p. 125, document A/CN.4/409 and Add.1-5; and *Yearbook . . . 1989*, vol. II (Part One), p. 75, document A/CN.4/420.

⁶⁹ See "Topical summary, prepared by the Secretariat, of the discussion in the Sixth Committee on the report of the Commission during the forty-third session of the General Assembly" (A/CN.4/L.431), paras. 324-326.

⁷⁰ See *Yearbook . . . 1988*, vol. II (Part One), p. 172, document A/CN.4/417, para. 60.

⁷¹ See the summary of the discussion on this question at the fortieth session of the Commission in *Yearbook . . . 1988*, vol. II (Part Two), pp. 76-77, paras. 306-309.

⁷² For the text of the draft protocol and the commentary thereto, see *Yearbook . . . 1989*, vol. II (Part Two), pp. 48-49.

⁷³ See footnotes 13 and 18 above.

⁷⁴ See document A/CN.4/L.118 and Add.1 and 2 (footnote 13 above), p. 260, para. 225.

able and pointed out that, under the technical assistance agreement which the Member State had concluded earlier, the State had agreed to apply the said Convention in respect of technical assistance operations for which the pouch service was required. The Government withdrew the restriction and granted the United Nations the right to use the diplomatic bag unconditionally.⁷⁵

119. In the case of the regional commissions of the United Nations, some of the relevant agreements—the Agreement between the United Nations and Chile relating to ECLA (art. III, sect. 6), the Agreement between the United Nations and Thailand relating to ECAFE (art. V, sect. 13 (b)) and the Agreement between the United Nations and Ethiopia relating to ECA (art. III, sect. 6)—expressly provide that the correspondence which may be sent by courier or in (sealed) diplomatic bags includes “publications, documents, still and moving pictures, films and sound recordings”.

120. Again according to the information transmitted by the specialized agencies, the majority of them do not use codes or dispatch correspondence by courier or in bags. Those that do so state that they have not experienced any problem in securing appropriate recognition of their rights in this regard.⁷⁶

(d) *Diplomatic couriers*

121. As has been said, this means of communication is infrequently used by the United Nations and the specialized agencies. However, it should be pointed out that, in the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier prepared by the Commission, an effort has been made to fill the gaps that exist in the conventions in the field of diplomatic law drawn up under United Nations auspices in respect of the definition of “diplomatic courier” and “diplomatic bag” and the status and, more particularly, the privileges and immunities of the diplomatic courier. As noted above (para. 115), these rules do not cover international organizations; their extension to such organizations is purely optional and effected by accession to draft Optional Protocol Two to those articles.

(e) *Postal services*

122. It has been suggested that international organizations could become more independent, and in fact there is currently a trend in this direction as far as postal services are concerned, the idea being that the organization itself should operate its own postal services, independently of the State in which its headquarters is situated. Thus far, States, for obvious reasons, have been reluctant to accept this situation, in particular for security reasons. At present, only the United Nations has its own postal administration, separate from that of the United States of America, at its New York Headquarters. None of the specialized agencies or IAEA has such a service.

123. The United Nations Postal Administration was established by a General Assembly decision of 1 January 1951, in accordance with General Assembly resolution 232 (III). The United Nations has entered into special agreements with the United States and with Switzerland regarding the operation of postal facilities in United Nations premises situated in those countries. By and large, these agreements have worked smoothly.

124. After the Agreement with the United States had been signed, it proved necessary to examine the exact division of functions between the United States Post Office Department and the United Nations Postal Administration with particular reference to the sale and cancellation of stamps for philatelic purposes. After discussions with the United States Post Office Department, one of the provisions of the Agreement was amended.⁷⁷

125. Under the Agreement with Switzerland the United Nations agreed to use exclusively Swiss postage stamps for the statutory franking of postal dispatches sent by the Geneva Office; the stamps were imprinted with a surcharge designating them as the official stamps of the said office. The 1949 Agreement was abrogated by the Postal Agreement of 11 December 1968, which was similar to the Postal Agreement concluded with the United States in 1951. The 1968 Agreement establishes a Palais des Nations post office at Geneva, to be operated by the Swiss Postal, Telephone and Telegraph Department. The United Nations is authorized to issue, at its own expense, all the postal items (postage stamps in denominations expressed in Swiss francs, postcards and airletters) necessary for the operation of the postal service, which are the only ones that may be sold at this post office. The Agreement also authorizes the establishment by the United Nations of a special service for philatelic purposes.

126. The United Nations has also made special postal arrangements in respect of mail sent to or by United Nations peace-keeping forces. The exchange of letters constituting an agreement concerning the status of UNEF in Egypt contains such a provision (para. 31). The Agreement concluded with Lebanon by an exchange of letters concerning the UNEF postal services provides for the establishment of a UNEF base post office at Beirut.

127. Similar provisions are contained in the Agreement relating to the legal status, facilities, privileges and immunities of the United Nations in the Congo (para. 35) and in the exchange of letters between Cyprus and the United Nations constituting an agreement concerning the status of the United Nations Peace-keeping Force in Cyprus (para. 31).

128. As noted above, none of the specialized agencies or IAEA possesses postal services like those of the United Nations. Nevertheless, the Agreement between Switzerland and ILO and the Agreement between Switzerland and WHO provide for the issue of special stamps (*timbres de service*) by the Swiss federal authorities for those organizations, within the limits authorized by the

⁷⁵ *Ibid.*, para. 226.

⁷⁶ *Ibid.*, p. 312, para. 99; and document A/CN.4/L.383 and Add.1-3 (see footnote 18 above), p. 197, paras. 116-117.

⁷⁷ The amendment consisted of the deletion of the words “in response to orders received by mail” at the end of the first sentence of paragraph (ii) of section 3 of the Agreement (*United Nations, Treaty Series*, vol. 149, p. 414).

UPU conventions. Stamps have also been issued for the other specialized agencies with headquarters in Switzerland.

(f) *Telecommunications; broadcasting services*

129. The use of radiocommunication by international organizations creates the same problems as its use by diplomatic missions. These problems derive from reluctance on the part of States, prompted mainly by security considerations, and from the original allocation of frequencies in application of the International Telecommunication Convention of Atlantic City. Accordingly, the Vienna Convention on Diplomatic Relations establishes a limitation by providing, in article 27, paragraph 1, that "the mission may install and use a wireless transmitter only with the consent of the receiving State".

130. If international organizations are treated in the same way as diplomatic missions in this regard, the limitation applies also to them. The problem arose at the time of the League of Nations in relation to the establishment of "Radio-Nations" and was solved by the conclusion of the Agreement of 21 May 1930 between the Swiss Government and the League of Nations concerning the establishment and operation of a wireless station in the neighbourhood of Geneva.⁷⁸

131. Neither the General Convention, in article III, section 9, nor the Convention on the Privileges and Immunities of the Specialized Agencies, in article IV, sections 11 and 12, contains a specific reference to the subject. However, the Agreement concluded with the United States of America regarding the Headquarters of the United Nations regulates the matter in some detail in article II, section 4. According to these provisions the United Nations may establish and operate in the headquarters district

(1) its own short-wave sending and receiving radio broadcasting facilities, including emergency link equipment, which may be used on the same frequencies (within the tolerances prescribed for the broadcasting service by applicable United States regulations) for radiotelegraph, radioteletype, radiotelephone, radiotelephoto, and similar services.

The same section contains a series of technical provisions and provisions concerning related facilities.

132. Similar provisions may be found in other agreements concluded by the United Nations, such as the arrangement with Switzerland in 1946, the Agreement with Thailand relating to ECAFE, which also provides for the operation of telecommunications circuits and of radio services, and the Agreement with Ethiopia relating to ECA.

133. In addition to the provisions contained in general host agreements, the United Nations has made arrangements, usually on the basis of an exchange of letters, for the operation of United Nations radio stations in a number of countries.⁷⁹ In 1955, an *aide-mémoire* was prepared by the Office of Legal Affairs setting out the es-

sential legal points which needed to be considered before telecommunication operations or negotiations could be undertaken in any given country.⁸⁰

134. The *aide-mémoire* referred to article 26 of the International Telecommunication Convention adopted at Buenos Aires, article XVI of the Agreement between the United Nations and ITU annexed thereto, and General Assembly resolutions 240 (III) and 460 (V) whereby the Assembly approved the establishment and operation of the United Nations telecommunications system. In particular, it contained model provisions for inclusion in agreements concerning United Nations administrative centres, which have since been reproduced in a number of such instruments.⁸¹

135. As we have seen, ITU has resolutely opposed the establishment of a telecommunications network for the specialized agencies. The United Nations had requested that traffic of the specialized agencies should be carried on its network. The Plenipotentiary Conference of ITU held at Buenos Aires in 1952 declared, in resolution No. 26, that in normal circumstances the United Nations telecommunication network should not be used to carry the traffic of the specialized agencies "in competition with existing commercial telecommunication networks".⁸² ITU confirmed that position at the Montreux Conference in 1965 in resolution No. 25.⁸³

136. However, some communications of the specialized agencies concerning matters of interest to the United Nations are considered as communications of the United Nations and, as such, are carried by the United Nations network. In 1971, traffic originating in Geneva and consisting of communications of specialized agencies with regard to matters concerning the United Nations accounted, in terms of the number of words, for more than double the traffic of the United Nations proper.⁸⁴

137. The effect of the restriction referred to above is less noticeable following the signing on 3 August 1972 of a contract regarding the establishment of a telex link between New York and Geneva. This link, which uses submarine cables and overland lines, replaces the previous system between the two cities and is available for use by the specialized agencies according to the conditions laid down in ITU resolution No. 26.

138. The tendency among international organizations towards trying to secure greater independence for their communications contrasts with the attitude of States, which are anxious to guarantee their own security. The two sides are constantly vying with one another. On the one hand, the internal development of international organizations prompts them increasingly to try to highlight their international character, their own personality

⁸⁰ See document A/CN.4/L.118 and Add.1 and 2 (footnote 13 above), p. 262, para. 234.

⁸¹ *Ibid.*, pp. 262-264, paras. 234-238.

⁸² ITU, *International Telecommunication Convention, Buenos Aires, 1952*, pp. 155-156.

⁸³ See ITU, *International Telecommunication Convention, Montreux, 1965*, pp. 204-205.

⁸⁴ See Duffar, *op. cit.*, p. 224.

⁷⁸ See M. O. Hudson, ed., *International Legislation*, vol. V, 1929-1931 (Washington, D.C., 1936), pp. 494 *et seq.*, Nos. 257 and 257a.

⁷⁹ See "United Nations telecommunication system" in *Everyman's United Nations*, 8th ed., (Sales No. E.67.1.5), pp. 482-483.

as distinct from that of their member States and, as a result, to show that they are not answerable to States nor dependent upon their services. States, for their part, cannot remain indifferent to the prospect of seeing international organizations replace them in the exercise of functions that traditionally have been within their exclusive competence. Both theory and current practice seek to strike a balance between the two trends, whereby the fundamental interests of both parties concerned would be recognized.

139. At first glance, international organizations would seem to have the advantage over States in so far as official communications are concerned. Article 27 of the Vienna Convention on Diplomatic Relations, which, as already noted, applies also to international organizations, states in paragraph 1 that "the receiving State shall permit and protect free communication on the part of the mission for all official purposes." Thus, so long as the State is informed of the official nature of the communications, such communications are protected. This, of course, does not present any major problem; all that is needed is some simple external identifying marks. The difficulty had arisen over what was to be understood by "official purposes". Uncertainty in this matter was dispelled after the adoption of the Vienna Convention on Diplomatic Relations, which, in defining the expression "official correspondence", emphasizes once again the functional criterion. Indeed, article 27 provides, in paragraph 2:

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

140. This provision, which applies to diplomatic missions, applies with all the more reason to international organizations. The functional requirement alone defines the extent of the official nature of the correspondence. All communications of international organizations are considered official in so far as the international organizations themselves confer this character upon them.

141. So far, only the United Nations has felt the need to have its own means of communication, because the nature of its functions places upon it a far-reaching and highly delicate global responsibility. Obviously, in times of serious crisis the United Nations would need to be sure that it would not be cut off as a result of an interruption in public communications systems. It is also obvious that, although this is desirable in the case of the United Nations, it does not appear to be equally desirable for each and every international organization.

142. Once they are covered by the diplomatic regime, which permits them to secure the inviolability of all their communications since they are all considered official and consequently inviolable without distinction whatsoever, like those of diplomatic missions, it would seem logical that international organizations should seek to establish their own communications and telecommunications networks so as to be totally free of control by and dependence on States.

143. Such a situation, naturally, must give rise to alarm on the part of a State that is acting as host to an international organization. The State feels that if it can-

not control and monitor the means of communication, the latter may be used by interests contrary to its own. That would seem to be what motivates States to seek ways of preserving and guaranteeing their security.

144. In this regard, the system established by the Vienna Convention on Diplomatic Relations does not really meet the security requirements of States and is therefore not considered entirely satisfactory. As we know, this is the regime that also applies to international organizations. Some States apply what they consider a customary rule and open diplomatic bags, to the detriment of the principle of inviolability, whenever they feel that the external appearance of the bag gives rise to suspicion concerning its contents.⁸⁵ The Vienna Convention on Consular Relations embodies such a rule, but only in connection with consular bags. Article 35 of this Convention provides, in paragraph 3:

3. ... if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

145. On the other hand, the Vienna Convention on Diplomatic Relations embodies the principle of absolute inviolability of communications. It does not provide for any exceptions to this principle. Not only does the receiving State have the obligation to protect the freedom of diplomatic communications but it is also required, in all cases, to refrain from opening, intercepting or trying to decipher them.⁸⁶

146. The Commission did not consider it appropriate, in the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the final text of which it adopted at its forty-first session, in 1989,⁸⁷ to close the loopholes in the Vienna Convention in this area. After extensive discussions, it decided to provide, in article 28 of the draft, for an exception to the principle, but only in the case of the consular bag. Article 28, which the Commission considered the key provision on the draft articles, reproduces in paragraph 2 the wording of article 35, paragraph 3, of the Vienna Convention on Consular Relations.

147. The Commission explains its position in this regard in the commentary to article 28 by stating that

... while the protection of the diplomatic bag is a fundamental principle for the normal functioning of official communications between States, the implementation of this principle should not provide an opportunity for abuse which may affect the legitimate interests of the receiving or transit States.⁸⁸

It then adds, with regard to non-discrimination and reciprocity:

... nothing precluded States from introducing by agreement, in their mutual relations, other practices regarding the diplomatic bag. In particular, they could agree to submit the consular bag to the diplomatic bag regime or vice versa.⁸⁹

⁸⁵ See Cahier, *op. cit.*, p. 214.

⁸⁶ *Ibid.*, p. 213.

⁸⁷ See *Yearbook ... 1989*, vol. II (Part Two), pp. 14 *et seq.*

⁸⁸ *Ibid.*, p. 43, para. (8) of the commentary.

⁸⁹ *Ibid.*, p. 44, para. (10) of the commentary.

148. With regard to international organizations, the latter solution has, in fact, been adopted. A series of instruments provide for the treaty approach in guaranteeing the security of the State, either through a specific agreement on communications or through an agreement on security in general.

149. An example of an agreement on communications is the Convention on the Privileges and Immunities of the Specialized Agencies, which states in article IV, section 12, third paragraph:

Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialized agency.

It is interesting to note that the corresponding provision of the General Convention, namely article III, section 10, contains no reference to the possible adoption of security precautions.

150. Most specialized agencies, and IAEA, have not formally adopted security precautions as envisaged in article IV, section 12, of the Convention on the Privileges and Immunities of the Specialized Agencies. In accordance with airport security regulations, however, FAO pouches arriving from certain points have been subject to X-ray examination.

151. A number of WHO agreements are subject to the condition that they shall not derogate or abridge the right of the host Government to take the precautions necessary to protect the security of the State. State authorities are none the less obliged, whenever they deem it necessary to adopt measures for the protection of security, to approach WHO as rapidly as circumstances allow in order to determine by mutual agreement the appropriate measures to be taken. Likewise, WHO is required to collaborate with the authorities of the host countries to avoid prejudice to security because of WHO activities.⁹⁰

152. The Agreement regarding the headquarters of ICAO concluded with Canada provides, in article IX, section 40, that nothing in the Agreement shall be construed as in any way diminishing, abridging, or weakening the right of the Canadian authorities to safeguard the security of Canada, provided the Organization shall be immediately informed in the event that the Canadian Government shall find it necessary to take any action against any person enumerated in the Agreement.

153. An example from the second category, i.e. instruments referring to security in general texts and not solely with respect to communications, is the Agreement between Switzerland and ILO, article 25 of which reads as follows:

Article 25. Security of Switzerland

1. Nothing in the present Agreement shall affect the right of the Swiss Federal Council to take the precautions necessary for the security of Switzerland.

2. If it considers it necessary to apply the first paragraph of this Article the Swiss Federal Council shall approach the International Labour Organisation as rapidly as circumstances allow in order to deter-

mine by mutual agreement the measures necessary to protect the interests of the International Labour Organisation.

3. The International Labour Organisation shall collaborate with the Swiss authorities to avoid any prejudice to the security of Switzerland resulting from its activity.

154. Similar provisions are to be found in the Agreement between Switzerland and WHO (art. 25), the Agreement between WMO and Switzerland (art. 24), the Agreement between IAEA and Austria (art. XVIII, sect. 47) and the Agreement between Argentina and the Pan American Sanitary Bureau (art. 14).

155. More recently, there has been a tendency to change the mechanism for the adoption of restrictive measures. The trend is to replace the treaty regime of mutual agreement between organizations and States with the granting to each member State of the power to take any precautionary measures in the interest of its security—in other words, to adopt unilateral measures.

D. Draft articles 13 to 17

156. In accordance with the above, the Special Rapporteur proposes the following wording for part IV of the draft articles, relating to publications and communications facilities granted to international organizations:

PART IV

PUBLICATIONS AND COMMUNICATIONS FACILITIES

Article 13

International organizations shall enjoy in the territory of each State party (to this Convention)* the free circulation and distribution of their publications and public information material necessary for their activities, including films, photographs, printed matter and recordings prepared as part of the public information programme of an organization and exported or imported for display or retransmission, as well as books, periodicals and other printed matter.

Article 14

International organizations shall enjoy, in the territory of each State party (to this Convention)* in respect of such organizations, for their official communications, treatment not less favourable than that accorded by the Government of such State to any other Government, including the latter's diplomatic missions, in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone, telefax and other communications, and press rates for information to the press, cinema, radio and television. However, the international organization may install and use a wireless transmitter only with the consent of the host State.

⁹⁰ See document A/CN.4/L.383 and Add.1-3 (footnote 18 above), p. 197, paras. 118-119.

Article 15

1. The official correspondence and other official communications of an international organization shall be inviolable.

2. Official correspondence and official communications mean all correspondence and communications relating to an organization and its functions.

Article 16

International organizations shall have the right to use codes and to dispatch and receive their official communications by courier or in sealed bags, which

shall have the same immunities and privileges as diplomatic couriers and bags under the provisions of the multilateral conventions in force governing matters relating to the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.

Article 17

None of the above provisions shall affect the right of each State party (to this Convention)* to adopt the necessary precautions and appropriate measures in the interest of its security.

* The words "to this Convention" have been placed in brackets in order not to prejudge the final form of the draft articles.