

Document:-  
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**The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: study prepared by the Secretariat**

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**Representation of States in their relations with international organizations**

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DOCUMENTS A/CN.4/L.118 AND ADD.1 AND 2\*

The practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities: study prepared by the Secretariat

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GENERAL TABLE OF CONTENTS

	<i>Page</i>
INTRODUCTION . . . . .	154
TABLE OF CONTENTS . . . . .	155
LIST OF ABBREVIATIONS . . . . .	162
PART ONE — THE REPRESENTATIVES OF MEMBER STATES	
A. Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the United Nations . . . . .	162
B. Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the specialized agencies and the International Atomic Energy Agency . . . . .	191
PART TWO. — THE ORGANIZATIONS	
A. Summary of practice relating to the status, privileges and immunities of the United Nations . . . . .	207
B. Summary of practice relating to the status, privileges and immunities of the specialized agencies and the International Atomic Energy Agency . . . . .	299

**Introduction**

By resolution 1289 (XIII) of 5 December 1958, the General Assembly requested the International Law Commission to give consideration to the question of relations between States and inter-governmental organizations. At its fourteenth session in 1962 the Commission appointed a Special Rapporteur on the topic, who submitted a first report<sup>1</sup> to the Commission in 1963. At its sixteenth session in 1964, the Commission considered the first report and examined a list of questions submitted by the Special Rapporteur.

In order to assist the work of the Commission, the United Nations Secretariat has prepared the four studies listed below relating to the status, privileges and immunities of the representatives of Member States to the United Nations, the specialized agencies and the International Atomic Energy Agency, and to the status, privileges and immunities of those organizations themselves. The material relating to the specialized agencies and the International Atomic Energy Agency has been prepared on the basis of the replies of those organizations to two questionnaires sent by the United Nations Secretariat.

*Part One: The representatives of Member States*

- A. Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the United Nations

\* A few minor changes have been made in the original text of this document.

<sup>1</sup> *Yearbook of the International Law Commission, 1963*, vol. II, document A/CN.4/161 and Add.1, p. 159.

- B. Summary of practice relating to the status, privileges and immunities of the representatives of member States to the specialized agencies and the International Atomic Energy Agency

*Part Two: The Organizations*

- A. Summary of practice relating to the status, privileges and immunities of the United Nations  
 B. Summary of practice relating to the status, privileges and immunities of the specialized agencies and of the International Atomic Energy Agency

These studies attempt to summarize the major features of the practice which has grown up in this sphere since these organizations were founded. Although covering a wide range of matters affecting the activities of the United Nations and its kindred organizations, the studies do not deal with the status, privileges and immunities of the International Court of Justice nor with practice relating to the status, privileges and immunities of United Nations peace-keeping forces, except where the matter involved was one in which the character of the force as such did not materially affect the issue.

The material used in the studies has been taken largely from the official records of the organizations concerned and compiled by the Office of Legal Affairs of the United Nations. The studies contained in Parts One and Two respectively have been arranged on similar lines so as to make cross-reference between them, for the purpose of comparing practice with regard to the United Nations and to the specialized agencies and the International Atomic Energy Agency, as easy as possible. Subjects are dealt with in approximately the same order as that followed in the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946. It may be noted that, except where expressly noted in the text, the provisions of the Agreement on the Privileges and Immunities of the International Atomic Energy Agency are the same or closely similar to those contained in the Convention on the Privileges and Immunities of the Specialized Agencies, adopted by the General Assembly on 21 November 1947, and which are referred to in the studies relating to the specialized agencies. The information given covers in general the period up to 31 December 1965,

but in some cases more recent items have also been included.

All international agreements and national enactments mentioned in the studies are contained in United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vols. I and II, except where a reference is given to another source. In the studies relating to the specialized agencies and the International Atomic Energy Agency the expression "Headquarters Agreement" is used for ease of reference to denote the principal agreement between the specialized agency concerned and the State in which its headquarters are situated. In the United Nations studies the same expression is used to refer to the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations, signed on 26 June 1947; references to the "Agreement with Switzerland" or to the "1946 Agreement" are to the instrument concluded between the Secretary-General and the Swiss Federal Council in 1946, originally under the title "Interim Arrangement on Privileges and Immunities of the United Nations". The terms "ECA Agreement", "ECAFE Agreement" and "ECLA Agreement", refer to the agreement in respect of each of these regional economic commissions with its respective host country. Similarly in the case of United Nations peace-keeping forces, the expressions "UNEF Agreement", "ONUC Agreement"<sup>2</sup> and "UNFICYP Agreement"<sup>3</sup> refer to the Status of Forces Agreements concluded by the United Nations with the respective host State regarding the particular force concerned. Lastly, it should be noted that, for the sake of uniformity and convenience, memoranda or communications prepared by the legal staff of the United Nations Secretariat are referred to as having been prepared either by the Office of Legal Affairs or by the Legal Counsel, even in respect of earlier periods in the history of the Organization when different terms were used to describe that office or the official in charge of that office.

<sup>2</sup> United Nations, *Treaty Series*, vol. 414, p. 229.

<sup>3</sup> *Ibid.*, vol. 492, p. 57.

TABLE OF CONTENTS

	<i>Page</i>
PART ONE: THE REPRESENTATIVES OF MEMBER STATES	
A. SUMMARY OF PRACTICE RELATING TO THE STATUS, PRIVILEGES AND IMMUNITIES OF THE REPRESENTATIVES OF MEMBER STATES TO THE UNITED NATIONS	
<i>Chapter I. — General aspects: The position of representatives in relation to the United Nations</i>	
Section 1. Interpretation of the term "representatives" . . . . .	162
Section 2. Distinction between permanent and temporary representatives . . . . .	163
(a) Position at United Nations Headquarters . . . . .	163
(b) Position at the United Nations Office at Geneva . . . . .	164
(c) Position at headquarters of economic commissions (other than ECE) . . . . .	164

	<i>Page</i>
Section 3. Relationship between functions and composition of permanent missions . . . . .	165
Section 4. Credentials . . . . .	166
(a) The General Assembly . . . . .	166
(b) The Security Council . . . . .	166
(c) The Economic and Social Council . . . . .	167
(d) The Trusteeship Council . . . . .	167
(e) Subsidiary organs and United Nations conferences . . . . .	167
(f) Permanent representatives . . . . .	168
Section 5. Full powers and action in respect of treaties . . . . .	168
Section 6. Appointment of a representative to more than one organization or post; representation of more than one State by the same representative . . . . .	169
<i>Chapter II. — Application of article 105 of the Charter in relation to the privileges and immunities of representatives</i>	
Section 7. Scope of privileges and immunities derived from Article 105 . . . . .	170
(a) Position at United Nations Headquarters . . . . .	170
(b) Position at the United Nations Office at Geneva . . . . .	173
(c) Meetings of United Nations organs held other than at Headquarters or at the Geneva Office . . . . .	173
(d) Conferences held under United Nations auspices . . . . .	173
(e) United Nations regional economic commissions . . . . .	174
(f) Other United Nations subsidiary bodies . . . . .	174
Section 8. Nationality of representatives and the grant of privileges and immunities . . . . .	175
Section 9. Commencement and duration of privileges and immunities . . . . .	176
Section 10. Restrictions placed by the host State on the privileges and immunities of representatives on the ground of reciprocity . . . . .	177
<i>Chapter III. — Immunity in relation to the legislative, jurisdictional and other acts of the host State</i>	
Section 11. Personal inviolability and immunity from arrest . . . . .	179
Section 12. Immunity from legal process and waiver of immunity . . . . .	179
(a) Traffic offences . . . . .	180
(b) Actions in respect of premises . . . . .	180
(c) Private suits . . . . .	181
Section 13. Abuse of privileges and the departure of representatives at the request of the host State . . . . .	181
Section 14. Immigration restrictions, alien registration and national service obligations . . . . .	182
Section 15. Currency or exchange restrictions . . . . .	182
Section 16. Personal baggage and effects . . . . .	182
Section 17. Customs and excise duties . . . . .	183
Section 18. Taxation . . . . .	183
(a) Assets of Member States . . . . .	183
(b) Premises . . . . .	184
(c) Representatives . . . . .	185
Section 19. Diplomatic licence plates, parking offences and traffic regulations . . . . .	186
<i>Chapter IV. — Immunity of premises</i>	
Section 20. Diplomatic status and location of premises . . . . .	187
Section 21. Inviolability of mission premises and of private residences . . . . .	187
Section 22. National flag . . . . .	187
<i>Chapter V. — Freedom of communication and right of transit and of access to meetings</i>	
Section 23. Freedom of communication and inviolability of correspondence, archives and documents . . . . .	187
Section 24. Use of codes, diplomatic bag and courier . . . . .	188
Section 25. Right of transit and of access to meetings . . . . .	188
<i>Chapter VI. — Observers of non-member States</i>	
Section 26. Permanent observers . . . . .	190
Section 27. Facilities afforded by the United Nations to observers . . . . .	190
Section 28. Grant of privileges and immunities to observers . . . . .	191

	<i>Page</i>
<b>B. SUMMARY OF PRACTICE RELATING TO THE STATUS, PRIVILEGES AND IMMUNITIES OF THE REPRESENTATIVES OF MEMBER STATES TO THE SPECIALIZED AGENCIES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY</b>	
<i>Chapter I. — General aspects: The position of representatives in relation to the specialized agencies and IAEA</i>	
Section 1. Interpretation of the term “representatives” . . . . .	191
Section 2. Distinction between permanent and temporary representatives . . . . .	191
Section 3. Attendance at different organs and meetings of the same organization . . . . .	192
Section 4. Credentials . . . . .	193
I. Practice regarding issuance of credentials in respect of (a) permanent representatives and (b) temporary representatives . . . . .	193
II. Practice regarding inspection of credentials . . . . .	194
Section 5. Full powers and action in respect of treaties . . . . .	195
Section 6. Appointment of a representative to more than one organization or post; representation of more than one State by the same representative . . . . .	196
<i>Chapter II. — Application of the constitutional instruments of the specialized agencies and of IAEA in relation to privileges and immunities</i>	
Section 7. Scope of privileges and immunities derived from the constitutional instruments of specialized agencies and of IAEA . . . . .	196
Section 8. Nationality of representatives and the grant of privileges and immunities . . . . .	196
Section 9. Commencement and duration of privileges and immunities . . . . .	197
Section 10. Restrictions placed by the host State on the privileges and immunities of representatives on the ground of reciprocity . . . . .	198
<i>Chapter III. — Immunity in relation to the legislative, jurisdictional and other acts of the host State</i>	
Section 11. Personal inviolability and immunity from arrest . . . . .	199
Section 12. Immunity from legal process and waiver of immunity . . . . .	199
Section 13. Abuse of privileges and the departure of representatives at the request of the host State . . . . .	199
Section 14. Immigration restrictions, alien registration and national service obligations . . . . .	200
Section 15. Currency or exchange restrictions . . . . .	200
Section 16. Personal baggage and effects . . . . .	200
Section 17. Customs and excise duties . . . . .	200
Section 18. Taxation . . . . .	201
Section 19. Diplomatic licence plates, parking offences and traffic regulations . . . . .	201
<i>Chapter IV. — Immunity of premises</i>	
Section 20. Diplomatic status and location of premises . . . . .	201
Section 21. Inviolability of mission premises and of private residences . . . . .	201
Section 22. National flag. . . . .	203
<i>Chapter V. — Freedom of communication and right of transit and of access to meetings</i>	
Section 23. Freedom of communication and inviolability of correspondence, archives and documents . . . . .	203
Section 24. Use of codes, diplomatic bag and courier . . . . .	203
Section 25. Right of transit and of access to meetings . . . . .	203
<i>Chapter VI. — Observers of non-member States</i>	
Section 26. Permanent observers . . . . .	203
Section 27. Facilities afforded by the specialized agencies to observers . . . . .	204
Section 28. Grant of privileges and immunities to observers . . . . .	204
<i>Annex. — Summary of the position of the representatives of Member States in relation to the IBRD, IFC and IDA, and the IMF . . . . .</i>	<i>204</i>

## PART TWO: THE ORGANIZATIONS

### A. SUMMARY OF PRACTICE RELATING TO THE STATUS, PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS

#### *Chapter I. — Juridical personality of the United Nations*

Section 1. Contractual capacity	
(a) Recognition of the contractual capacity of the United Nations . . . . .	207
(b) Choice of law; settlement of disputes and system of arbitration . . . . .	208

	<i>Page</i>
Section 2. Capacity to acquire and dispose of immovable property	
(a) Recognition of the capacity of the United Nations to acquire and dispose of immovable property . . . . .	209
(b) Acquisition and disposal of immovable property . . . . .	212
Section 3. Capacity to acquire and dispose of movable property	
(a) Recognition of the capacity of the United Nations to acquire and dispose of movable property . . . . .	213
(b) Licensing and registration of land vehicles, vessels and aircraft by the United Nations	213
Section 4. Legal proceedings brought by and against the United Nations	
(a) Legal proceedings brought by the United Nations in respect of commercial contracts .	216
(b) Legal proceedings brought by the United Nations in respect of non-commercial contracts and criminal acts . . . . .	216
(c) Claims of a private law nature made against the United Nations and the steps taken to avoid or mitigate such claims . . . . .	217
Section 5. International claims brought by and against the United Nations	
(a) Capacity of the United Nations to bring claims against other subjects of international law . . . . .	218
(b) Claims made against the United Nations by States or by other international organizations. . . . .	219
Section 6. Treaty-making capacity	
(a) Treaty-making capacity of the United Nations . . . . .	220
(b) Treaties with non-member States . . . . .	222
(c) Registration, or filing and recording, of agreements on the status, privileges and immunities of the United Nations . . . . .	222
<i>Chapter II. — Privileges and immunities of the United Nations in relation to its property, funds and assets</i>	
Section 7. Immunity of the United Nations from legal process	
(a) Recognition of the immunity of the United Nations from legal process . . . . .	222
(b) Action taken by the United Nations when its immunity from legal process was not recognized . . . . .	223
(c) Interpretation of the phrase "every form of legal process" . . . . .	224
Section 8. Waiver of the immunity of the United Nations from legal process	
(a) Practice relating to the waiver by the United Nations of its immunity from legal process	225
(b) Special agreements obliging the United Nations to waive its immunity in specified circumstances. . . . .	226
(c) Interpretation of the phrase "any measure of execution" . . . . .	226
Section 9. Inviolability of United Nations premises and the exercise of control by the United Nations over its premises	
(a) Inviolability of United Nations premises . . . . .	227
(b) The exercise of control by the United Nations over its premises . . . . .	229
(i) The extent of the headquarters or other area in which United Nations premises are situated . . . . .	229
(ii) The power of the United Nations to make regulations and the applicability of local law . . . . .	230
(iii) The exercise of police and other official functions . . . . .	232
(iv) The service of legal process within United Nations premises . . . . .	234
Section 10. Immunity of United Nations property and assets from search and from any other form of interference . . . . .	234
Section 11. United Nations name, emblem and flag	
(a) United Nations name and emblem . . . . .	235
(b) United Nations flag . . . . .	236
Section 12. Inviolability of United Nations archives and documents . . . . .	238
Section 13. Immunity from currency controls . . . . .	239
Section 14. Direct taxes	
(a) Definition of direct taxes . . . . .	241
(i) Stamp taxes . . . . .	242
(ii) Transport taxes, including taxes on tickets . . . . .	243
(iii) Taxes on United Nations financial assets . . . . .	245
(iv) Taxes in respect of the occupation or construction of United Nations premises . .	245
(b) Practice in respect of "charges for public utility services" . . . . .	247

	<i>Page</i>
Section 15. Customs duties	
(a) Imports and exports by the United Nations "for its official use" . . . . .	248
(b) Imposition of "customs duties . . . prohibitions and restrictions" . . . . .	250
(c) Sales of articles imported by the United Nations or by officials . . . . .	250
Section 16. Publications	
(a) Interpretation of the term "publications" and problems relating to the distribution of publications . . . . .	251
(b) United Nations copyright and patents . . . . .	252
Section 17. Excise duties and taxes on sales; important purchases	
(a) Excise duties and taxes on sales forming part of the price to be paid . . . . .	253
(b) Important purchases . . . . .	258
(c) Remission or return of duties or taxes paid . . . . .	258
<i>Chapter III. — Privileges and immunities of the United Nations in respect of communication facilities</i>	
Section 18. Treatment equal to that accorded to Governments in respect of mails, telegrams and other communications . . . . .	259
Section 19. Use of codes and dispatch of correspondence by courier or in bags . . . . .	260
Section 20. United Nations postal services . . . . .	260
Section 21. United Nations radio administration . . . . .	261
<i>Chapter IV. — Privileges and immunities of officials</i>	
Section 22. Categories of officials to which the provisions of articles V and VII apply . . . . .	264
Section 23. Immunity of officials in respect of official acts . . . . .	265
(a) General . . . . .	265
(b) Judicial decisions . . . . .	267
(c) Cases of detention or questioning of United Nations officials; testifying before public bodies . . . . .	268
(d) Cases arising out of driving accidents . . . . .	269
(e) Cases involving attempted application of Official Secrets Acts . . . . .	269
(f) Duration of immunity . . . . .	269
Section 24. Exemption from taxation of salaries and emoluments . . . . .	270
(a) General; tax equalization fund . . . . .	270
(b) Position in the United States . . . . .	271
(c) Position in Switzerland . . . . .	272
(d) Locally recruited staff . . . . .	272
(e) National taxation in respect of United Nations pension benefits; estate or succession duties . . . . .	273
Section 25. Immunity from national service obligations . . . . .	273
Section 26. Immunity from immigration restrictions and alien registration . . . . .	275
(a) Practice in respect of countries other than the United States . . . . .	275
(b) Practice in respect of the United States . . . . .	276
Section 27. Exchange facilities . . . . .	278
Section 28. Repatriation facilities in time of international crisis . . . . .	279
Section 29. Importation of furniture and effects . . . . .	279
Section 30. Diplomatic privileges and immunities of the Secretary-General and other senior officials	280
Section 31. Waiver of the privileges and immunities of officials . . . . .	283
Section 32. Co-operation with the authorities of Member States to facilitate the proper administration of justice. . . . .	283
<i>Chapter V. — Privileges and immunities of experts on missions for the United Nations and of persons having official business with the United Nations</i>	
Section 33. Persons falling within the category of "experts on missions for the United Nations" .	284
Section 34. Privileges and immunities of "experts on missions for the United Nations" . . . . .	285
Section 35. Privileges and immunities of persons having official business with the United Nations. .	285
<i>Chapter VI. — United Nations laissez-passer and facilities for travel</i>	
Section 36. Issue of United Nations <i>laissez-passer</i> and their recognition by States as valid travel documents . . . . .	288

	<i>Page</i>
Section 37. Freedom of movement of United Nations personnel; inapplicability of <i>persona non grata</i> doctrine . . . . .	289
Section 38. Travel documents of petitioners . . . . .	291
Section 39. Issue of visas for holders of United Nations <i>laissez-passer</i> . . . . .	293
Section 40. United Nations certificates; family certificates . . . . .	293
Section 41. Diplomatic facilities for the Secretary-General and other senior officials whilst travelling on official business. . . . .	294
Section 42. Agreements with specialized agencies regarding the issue of <i>laissez-passer</i> . . . . .	295
<i>Chapter VII. — Settlement of disputes</i>	
Section 43. Settlement of disputes . . . . .	296
Section 44. Reference to the International Court of Justice of differences arising out of the interpretation of the General Convention. . . . .	296
<i>Chapter VIII. — Final article</i>	
Section 45. Submission of the General Convention to Member States for accession . . . . .	296
Section 46. Entry into force of the General Convention on the date of deposit of the instrument of accession . . . . .	298
Section 47. Implementation of the General Convention under national law. . . . .	298
Section 48. Continuation of the General Convention . . . . .	298
Section 49. Supplementary agreements . . . . .	299
<b>B. SUMMARY OF PRACTICE RELATING TO THE STATUS, PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES AND THE INTERNATIONAL ATOMIC ENERGY AGENCY</b>	
<i>Chapter I. — Juridical personality of the specialized agencies and of IAEA . . . . .</i>	
<i>Section 1. Contractual capacity</i>	
(a) Recognition of the contractual capacity of the specialized agencies and of IAEA . . . . .	299
(b) Choice of law; settlement of disputes and system of arbitration . . . . .	300
Section 2. Capacity to acquire and dispose of immovable property . . . . .	301
<i>Section 3. Capacity to acquire and dispose of movable property</i>	
(a) Recognition of the capacity of the specialized agencies and of IAEA to acquire and dispose of movable property . . . . .	301
(b) Licensing and registration of land vehicles, vessels and aircraft . . . . .	301
Section 4. Legal proceedings brought by and against the specialized agencies and IAEA . . . . .	302
Section 5. International claims brought by and against the specialized agencies and IAEA . . . . .	302
<i>Section 6. Treaty-making capacity</i>	
(a) Treaty-making capacity of the specialized agencies and of IAEA. . . . .	302
(b) Registration, or filing and recording, of agreements on the status, privileges and immunities of the specialized agencies and of IAEA. . . . .	302
<i>Chapter II. — Privileges and immunities of the specialized agencies and of IAEA in relation to their property, funds and assets</i>	
Section 7. Immunity of the specialized agencies and of IAEA from legal process . . . . .	302
Section 8. Waiver of the immunity from legal process of the specialized agencies and of IAEA . . . . .	303
Section 9. Inviolability of the premises of the specialized agencies and of IAEA and the exercise of control by the specialized agencies and by IAEA over their premises. . . . .	304
Section 10. Immunity of the property and assets of the specialized agencies and of IAEA from search and from any other form of interference . . . . .	304
Section 11. Name and emblem of the specialized agencies and of IAEA: United Nations flag . . . . .	304
Section 12. Inviolability of archives and documents . . . . .	304
Section 13. Immunity from currency controls . . . . .	305
Section 14. Direct taxes . . . . .	306
<i>Section 15. Customs duties</i>	
(a) Imports and exports by the specialized agencies and by IAEA "for their official use" . . . . .	306
(b) Imposition of "customs duties . . . prohibitions and restrictions" . . . . .	307
(c) Sales of articles imported by the specialized agencies and by IAEA . . . . .	307
Section 16. Publications . . . . .	307

	<i>Page</i>
Section 17. Excise duties and taxes on sales; important purchases	
(a) Excise duties and taxes on sales forming part of the price to be paid . . . . .	307
(b) Important purchases . . . . .	308
(c) Remission or return of taxes paid . . . . .	308
<i>Chapter III. — Privileges and immunities of the specialized agencies and of IAEA in respect of communication facilities</i>	
Section 18. Treatment equal to that accorded to Governments in respect of mails, telegrams and other communications . . . . .	308
Section 19. Use of codes and dispatch of correspondence by courier or in bags . . . . .	312
Section 20. Postal services provided by the specialized agencies and by IAEA . . . . .	312
Section 21. Radio communications of the specialized agencies and of IAEA . . . . .	312
<i>Chapter IV. — Privileges and immunities of officials</i>	
Section 22. Categories of officials to which the provisions of article VI and VIII apply . . . . .	313
Section 23. Immunity of officials in respect of official acts . . . . .	313
Section 24. Exemption from taxation of salaries and emoluments . . . . .	314
Section 25. Immunity from national service obligations . . . . .	315
Section 26. Immunity from immigration restrictions and alien registration . . . . .	315
Section 27. Exchange facilities . . . . .	315
Section 28. Repatriation facilities in time of international crisis . . . . .	315
Section 29. Importation of furniture and effects . . . . .	315
Section 30. Diplomatic privileges and immunities of the Executive Head and other senior officials of the specialized agencies and of IAEA . . . . .	316
Section 31. Waiver of the privileges and immunities of officials . . . . .	317
Section 32. Co-operation with the authorities of member States to facilitate the proper administration of justice . . . . .	317
<i>Chapter V. — Privileges and immunities of experts on missions for the specialized agencies and IAEA and of persons having official business with the specialized agencies and IAEA</i>	
Section 33. Persons falling within the category of experts on missions for the specialized agencies and IAEA . . . . .	317
Section 34. Privileges and immunities of experts on missions for the specialized agencies and IAEA . . . . .	318
Section 35. Privileges and immunities of persons having official business with the specialized agencies and IAEA . . . . .	318
<i>Chapter VI. — United Nations laissez-passer and facilities for travel</i>	
Section 36. Issue of United Nations <i>laissez-passer</i> and their recognition by States as valid travel documents . . . . .	319
Section 37. Freedom of movement of personnel; inapplicability of <i>persona non grata</i> doctrine . . . . .	319
Section 38. Issue of visas for holders of United Nations <i>laissez-passer</i> . . . . .	320
Section 39. Certificates issued by the specialized agencies and by IAEA . . . . .	320
Section 40. Diplomatic facilities for the executive heads and other senior officials of the specialized agencies and of IAEA whilst travelling on official business . . . . .	320
<i>Chapter VII. — Settlement of disputes</i>	
Section 41. Settlement of disputes . . . . .	320
Section 42. Settlement of disputes regarding alleged abuses of privileges . . . . .	321
Section 43. Reference to the International Court of Justice of differences arising out of the interpretation of the Specialized Agencies Convention . . . . .	321
<i>Chapter VIII. — Annexes and final provisions</i>	
Section 44. Annexes to the Specialized Agencies Convention . . . . .	321
Section 45. Supplemental Agreements . . . . .	322
Section 46. Accession to the Specialized Agencies Convention by Member States of the United Nations and by member States of the specialized agencies . . . . .	324

## LIST OF ABBREVIATIONS

ECA. . . . .	Economic Commission for Africa
ECAFE . . . . .	Economic Commission for Asia and the Far East
ECE . . . . .	Economic Commission for Europe
ECLA . . . . .	Economic Commission for Latin America
FAO. . . . .	Food and Agriculture Organization of the United Nations
IAEA . . . . .	International Atomic Energy Agency
IBRD . . . . .	International Bank for Reconstruction and Development
ICAO . . . . .	International Civil Aviation Organization
IDA . . . . .	International Development Association
IFC . . . . .	International Finance Corporation
ILO . . . . .	International Labour Organisation
IMCO . . . . .	Inter-Governmental Maritime Consultative Organization
IMF . . . . .	International Monetary Fund
IRO . . . . .	International Refugee Organization
ITU . . . . .	International Telecommunication Union
ONUC. . . . .	United Nations operation in the Congo
UNEF . . . . .	United Nations Emergency Force
UNESCO . . . . .	United Nations Educational, Scientific and Cultural Organization
UNFICYP . . . . .	United Nations Peace-Keeping Force in Cyprus
UNICEF. . . . .	United Nations Children's Fund
UNKRA . . . . .	United Nations Korean Reconstruction Agency
UNMOGIP. . . . .	United Nations Military Observers Group in India and Pakistan
UNRRA . . . . .	United Nations Relief and Rehabilitation Administration
UNRWA. . . . .	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNTSO . . . . .	United Nations Truce Supervision Organization in Palestine
UPU . . . . .	Universal Postal Union
WHO . . . . .	World Health Organization
WMO . . . . .	World Meteorological Organization

**PART ONE: THE REPRESENTATIVES OF MEMBER STATES**

**A. Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the United Nations**

**CHAPTER I. — GENERAL ASPECTS: THE POSITION OF REPRESENTATIVES IN RELATION TO THE UNITED NATIONS**

*Section 1. Interpretation of the term "representatives"*

1. The Convention on the Privileges and Immunities of the United Nations (subsequently referred to as the "General Convention"), which was adopted by the General Assembly on 13 February 1946, defines in article IV the privileges and immunities to be accorded to the representatives of Member States. Article IV, section 16 of the General Convention provides that :

In this article the expression "representative" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

2. This definition is repeated in section 13 of the Agreement with Switzerland and is contained, with slight modification, in section 1 (k) of the Agreement between the United Nations and Thailand regarding ECAFE, and section 1 (i) of the Agreement between the United Nations and Ethiopia regarding ECA.

3. The number of persons who may represent a given member State before a United Nations organ varies according to the organ concerned. Normally, States may have only one representative and as many alternate representatives, advisers, etc., as they wish to choose. In the case of the General Assembly, however, Article 9, paragraph 2 of the Charter provides that:

Each Member shall have not more than five representatives in the General Assembly.

Rule 25 of the rules of procedure of the General Assembly adds that:

The delegation of a Member shall consist of not more than five representatives and five alternate representatives, and as many advisers, technical advisers, experts and persons of similar status as may be required by the delegation.

In the case of the Security Council, Economic and Social Council and Trusteeship Council, each member may have one representative.<sup>1</sup>

4. As regards United Nations conferences, rule 1 of the rules of procedure of the 1958 United Nations Conference on the Law of the Sea provided that:

The delegation of each State participating in the Conference shall consist of accredited representatives and such alternate representatives and advisers as may be required.<sup>2</sup>

Other United Nations conferences have adopted the same rule.<sup>3</sup>

5. Questions have on occasions arisen concerning the use of different titles designating representatives and other practices involving the interpretation of the pertinent rules of procedure of United Nations organs. Thus in 1962 the Legal Counsel was called upon to advise the Secretary of the Economic and Social Council regarding the application of the Council's rules of procedure, rule 18<sup>4</sup> of which provides as follows:

Each member of the Council shall be represented by an accredited representative, who may be accompanied by such alternate representatives and advisers as may be required.

6. An extract from the memorandum of the Legal Counsel is set out below.

The designation of two representatives to represent one member of the Council would not be permissible as it would run counter to the provisions of paragraph 4 of Article 61 of the Charter as well as those of rule 18 of the rules of procedure. The identity of the representative entitled to vote on behalf of a member of the Council or empowered to designate an alternate representative to do so in his place must be known to the Council at all times and all possible sources of confusion in this respect should be avoided.

The tendency of some members of the Council to designate "deputy representatives" should not be encouraged. Rule 18 does not provide for such deputies. There is furthermore no significant difference between the meaning of the expression "deputy representative" and "alternate representative", each of these terms referring to a member of the delegation who may take the place of the representative upon designation by the latter.

The situation of the representative, whether a Cabinet Minister or other, leaving the Council before the end of the session can be resolved on the basis of the last sentence of rule 19 which states: "This rule shall not, however, prevent a member from changing its representatives, alternate representatives, or advisers subsequently, subject to proper submission and examination of credentials where needed". An indication in the credentials of the delegation concerned that upon the departure of the person designated as representative another person will act as representative would be adequate in this respect.

It would be permissible in our opinion for delegations to the Council, while retaining the three designations referred to in rule 18, i.e., "representatives", "alternate representatives" and "advisers", to qualify these designations in such manner as "first alternate" or "senior alternate".

<sup>1</sup> Art. 23, para. 3, Art. 61, para. 4, and Art. 86, para. 2 of the Charter. In the case of the Trusteeship Council the representative is to be a "specially qualified person".

<sup>2</sup> *United Nations Conference on the Law of the Sea* (1958), *Official Records*, vol. II, p. xxxi.

<sup>3</sup> e.g. rule 1, rules of procedure, *United Nations Conference on Diplomatic Intercourse and Immunities*, *Official Records*, vol. I, p. xxiii.

<sup>4</sup> Rule 18 of the rules of procedure of the Trusteeship Council contains a similar provision.

Similarly the term "adviser" could be qualified if the delegation concerned so desires by such terms as "senior", "technical" or "special".

The rules do not refer to designations such as "chairman of delegation"; the person designated as the representative to the Council is clearly the head of his delegation.

"Secretary" or "Secretary-General of delegation" is not an expression used in rule 18. It might, however, be possible for one of the alternate representatives or advisers to be designated as performing such functions and the designation "secretary of delegation" might be included in the list *in addition* to "alternate representative" or "adviser".

"Experts" are, presumably, included in delegations only for the purpose of extending advice to representatives; they may therefore be appropriately designated as "advisers". If a delegation wishes to have experts on certain special matters listed as special advisers on such matters, this could be permitted.

"Members of delegations" is not a desirable designation.

It is preferable that all members of delegation should receive one of the three designations referred to in rule 18.

7. The problem has arisen from time to time of determining whether, when Member States were appointed to serve on certain bodies, their representatives were then to be treated as national representatives or as representatives of the United Nations as a whole, so as to require the application of United Nations privileges and immunities. This issue was raised, for example, in connexion with the establishment of the Advisory Council for Somaliland. The Committee for Italian Somaliland included the following article in the draft Trusteeship Agreement placed before the Trusteeship Council in 1950:

Article 10. Members of the Advisory Council and their staff shall enjoy in the Territory the same privileges and immunities as they would enjoy if the Convention on the Privileges and Immunities of the United Nations were applicable to the Territory.

During the discussion<sup>5</sup> of this text in the Trusteeship Council it was pointed out that, since members of the Advisory Council were Member States which would appoint their representatives to the Council as sovereign entities, those representatives would enjoy the privileges and immunities traditionally accorded to members of the diplomatic corps. In support of this view it was maintained that members of the Advisory Council would retain distinctly national characteristics, and that each would therefore, in addition to being responsible to the United Nations as a member of a body set up by the General Assembly, be responsible to his own Government. The discussion resulted in the unanimous adoption by the Trusteeship Council of an amendment to insert the words "shall have full diplomatic privileges and immunities" between the words "members of the Advisory Council" and the words "and their staff" in article 10.

## *Section 2. Distinction between permanent and temporary representatives*

### *(a) Position at United Nations Headquarters*

8. A distinction exists under United Nations practice between so-called permanent representatives, who are

<sup>5</sup> *Official Records of the Trusteeship Council, Sixth Session*, 206th meeting, pp. 16-22, paras. 21-92.

stationed at the United Nations office concerned throughout the year, and temporary representatives, who are sent for the purposes of attending particular sessions of United Nations bodies or *ad hoc* conferences convened by the United Nations. Although not contained in the General Convention, the institution of permanent representatives and of permanent missions was endorsed by the Assembly in resolution 257 A (III), adopted on 3 December 1948, in the following terms:

*The General Assembly,*

*Considering that*, since the creation of the United Nations, the practice has developed of establishing, at the seat of the Organization, permanent missions of Member States,

*Considering that* the presence of such permanent missions serves to assist in the realization of the purposes and principles of the United Nations and, in particular, to keep the necessary liaison between the Member States and the Secretariat in periods between sessions of the different organs of the United Nations,

*Considering that* in these circumstances the generalization of the institution of permanent missions can be foreseen, and that the submission of credentials of permanent representatives should be regulated,

*Recommends:*

1. That credentials of the permanent representatives shall be issued either by the Head of the State or by the Head of the Government or by the Minister of Foreign Affairs, and shall be transmitted to the Secretary-General;

2. That the appointments and changes of members of the permanent missions other than the permanent representative shall be communicated in writing to the Secretary-General by the head of the mission;

3. That the permanent representative, in case of temporary absence, shall notify the Secretary-General of the name of the member of the mission who will perform the duties of head of the mission;

4. That Member States desiring their permanent representatives to represent them on one or more of the organs of the United Nations should specify the organs in the credentials transmitted to the Secretary-General;

*Instructs* the Secretary-General to submit, at each regular session of the General Assembly, a report on the credentials of the permanent representatives accredited to the United Nations.

9. As indicated in paragraph 4 of the operative part of the above resolution, unless particular organs are specified, accreditation as a permanent representative does not go beyond accreditation to the Secretariat.<sup>6</sup>

10. The Headquarters Agreement between the United Nations and the United States (subsequently referred to as the "Headquarters Agreement"), which came into force on 21 November 1947, contains the following article dealing with resident representatives to the United Nations:

*Article V, section 15*

(1) Every person designated by a Member as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary,

(2) such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned;

...

<sup>6</sup> The question of credentials is dealt with in section 4, paras. 19-33, below.

shall, whether residing inside or outside the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it. In the case of Members whose governments are not recognized by the United States, such privileges and immunities need be extended to such representatives, or persons on the staffs of such representatives, only within the headquarters district, at their residences and offices outside the district, in transit between the district and such residences and offices and in transit on official business to or from foreign countries.

11. Although it is believed that no substantive difference is involved, it may be noted that whereas in resolution 257 A (III) the General Assembly referred to "permanent missions" and to "permanent representatives", the Headquarters Agreement refers to the "principal resident representative" and "resident members" of his staff. *The effect of the distinctions between permanent representatives and other representatives under United States law is considered more fully in section 7, paras. 47-60, below.*

12. As envisaged in operative paragraph 3 of resolution 257 A (III), the duties of head of mission may be performed temporarily by someone other than the permanent representative. In the United Nations "blue book" listing members of permanent missions the designation "*chargés d'affaires, a.i.*" is used after the Secretariat has been informed of such an appointment. The appointment of a *chargé d'affaires* should be distinguished from that of an "alternate representative" or of a "deputy permanent representative". Both of these terms are used by Member States, the latter expression being frequently used to describe the person ranking immediately after the permanent representative himself.

*(b) Position at the United Nations Office at Geneva*

13. At the Geneva Office a similar distinction exists between permanent missions and others. Representatives at the Geneva Office are received by the Director-General of that Office, who acts on behalf of the Secretary-General.

14. By a decision of 31 March 1948, the Swiss Federal Council gave official recognition to this practice and granted permanent missions to the Geneva Office and to the specialized agencies having their headquarters in Geneva facilities analogous to those accorded to diplomatic missions at Berne. It may be noted that whereas the 1946 Agreement with Switzerland applies to "representatives", the 1948 decision refers to "delegations".

*(c) Position at headquarters of economic commissions (other than ECE)*

15. Neither the terms of reference of the economic commissions, nor any resolutions of the General Assembly, of the Economic and Social Council, or of the commissions themselves, provide for resident representatives at the headquarters of the economic commissions. Nevertheless, embassy or consulate staff who are present at the site may serve as liaison officers between their Governments and economic commissions on a more or less permanent basis. This practice appears to have

been especially followed in the case of ECAFE. The Agreement relating to ECA is the only headquarters agreement for an economic commission which expressly envisages resident representatives. Section 10 (b) provides that resident representatives are entitled to the same privileges and immunities as the Government of Ethiopia accords to diplomatic envoys accredited to it.

*Section 3. Relationship between functions and composition of permanent missions*

16. In the preamble to resolution 257 A (III) the General Assembly recognized that:

The presence of . . . permanent missions serves to assist in the realization of the purposes and principles of the United Nations and, in particular, to keep the necessary liaison between the Member States and the Secretariat in periods between sessions of the different organs of the United Nations.

17. This statement has remained the basis for discussion of questions raised in relation to the composition of permanent missions, assessed in the light of the tasks those missions are called upon to perform. In a memorandum submitted to the Secretary-General in 1958, the Legal Counsel gave a general review of the issues involved, including the question whether, in certain circumstances, objections could be raised to the appointment of particular individuals or to their continuation as representatives. After referring to resolution 257 A (III), the memorandum continued:

The development of the institution of the permanent missions since the adoption of that resolution shows that the permanent missions also have functions of a diplomatic character in relation to each other, and serve as important channels of communication between Governments and the Secretary-General as well as between Governments of the Member States themselves on matters dealt with by the United Nations organs. The permanent missions perform these various functions through methods and in a manner similar to those employed by diplomatic missions, and their establishment and organization are also similar to those of diplomatic missions which States accredit to each other.

It may be recalled in this connexion that international law and practice, while ensuring to diplomatic missions the widest independence and facilities for the performance of their functions, reserve to the Government of the State to which they are accredited the full discretion with respect to the acceptance of particular individuals as members of such missions, as well as virtually an unrestricted power to demand the departure of members of a diplomatic mission. This power to have a person recalled—although unrestricted in principle—is in practice exercised in cases where the receiving State considers that the diplomatic agent has improperly exceeded his official functions.

In the case of delegations to the United Nations, no United Nations organ has been given the broad power of a receiving State vis-à-vis diplomatic agents. However, a distinction which is pertinent in this connexion has been made between the official functions of representatives and other activities in which they may engage. Article 105 of the Charter limits the privileges and immunities of representatives to those "necessary for the independent exercise of their functions in connexion with the Organization". The provisions of the Convention on the Privileges and Immunities of the United Nations are based on this concept, and Section 14 of the Convention states that the privileges and immunities listed in the Convention "are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent

exercise of their functions in connexion with the United Nations. Consequently, a Member . . . is under the duty to waive the immunity of its representative in any case where in the opinion of the Member, the immunity . . . can be waived without prejudice to the purpose for which the immunity is accorded".

This distinction between the exercise of official functions and other activities of a member of a permanent mission is, in our opinion, of basic importance. Activities pertaining to the exercise of the functions of a permanent mission, while performed in accordance with the rules and procedures established by United Nations organs, are subject to the control and supervision only of the Government which the mission represents; no interference can take place in this respect by outside entities and the composition of a permanent mission cannot be questioned on that account. Activities undertaken by individual members of the mission which do not pertain to the functions of official representation of the Member State concerned are not, however, similarly protected and, if they constitute an abuse of the status of a representative of the United Nations, there would be warrant for intervention by the United Nations.\*

In accordance with these principles, there seem to be certain situations which would clearly justify representations by the United Nations organs to a Member State in regard to the composition of its permanent mission. One such case would occur if a Member State placed on the list of its permanent mission an individual who does not actually perform any function connected with the work of the mission, but who is put on the list for the purpose of enabling him to attain entry to the host State or to enjoy the status and facilities of a representative to the United Nations.

Another such situation might arise as a result of activities of a political nature undertaken by a member of a permanent mission, particularly at United Nations Headquarters, when such activities are not exercised on behalf of the permanent mission itself or the Member State which it represents, but rather for a separate entity or group which is not part of the government of that Member State. This situation would obviously have a special gravity where the member of the permanent mission carries on activities on behalf of a party or group located in another Member State. Not only would this go beyond the function of representatives, which is the basis of the institution of the permanent missions, but it would introduce an element of disorder and confusion which would be contrary to the purposes of the permanent missions and the standards which a diplomatic corps may be expected to maintain.

With regard to the question of nationality, I believe there would be no grounds for intervention by United Nations organs in the case of the inclusion in a permanent mission of persons who have the nationality of another State, either as their only nationality or concurrently with the nationality of the State which has accredited them. There were a number of cases in the League of Nations of Members being represented by delegates who were not their nationals, and there are also similar instances in the United Nations. If a Member State objects to the position taken by one of its nationals as a representative of another State, it would have to deal with the situation within the framework of its own law and administration (or possibly through representations to the other State) rather than through the intervention of a United Nations organ. . . .

The question remains to be answered of the organs which would be entitled to act on behalf of the United Nations in cases where representations would have to be made to a Member State with respect to the activities and status of a Member of its permanent mission. It appears that the Secretary-General could assume

\* It is not the object of this memorandum to consider the question of the relation between the host Government and a Member State with respect to the status granted to members of the permanent mission to the United Nations in the territory of the host State. Section 15 of the Headquarters Agreement grants to members of permanent missions the privileges and immunities of diplomatic envoys accredited to the Government of the United States "subject to the corresponding conditions and obligations."

such responsibilities in conformity with his functions and powers under Chapter XV of the Charter. Resolution 257 (III) provides that he should receive the credentials of members of the permanent missions. The same resolution entrusts him with responsibility for reporting to the General Assembly on those credentials at each regular session. Part B of that resolution instructs him to study "all questions which may arise from the institution of permanent missions" and report on this subject to the Fourth Session of the General Assembly. The Headquarters Agreement, approved by the General Assembly, also contains a recognition by the Assembly of the Secretary-General's role in connexion with the establishment and status of permanent missions; in its article V it provides for the agreement between the Secretary-General, the Government of the United States and the Government of the Member State concerned in respect of all members of permanent missions, other than principal permanent representatives, who are entitled to privileges and immunities under the Agreement.

Should consultations between the Secretary-General and a Member State concerning the status of a member of its permanent mission not achieve satisfactory results, the Secretary-General would be entitled to bring the matter, either as a question of principle or as affecting specific missions and individuals, to the attention of the General Assembly which could consider such situations as questions arising out of the application of resolution 257 (III).

18. Although no provision appears to exist specifically delimiting the size of a mission it has been generally assumed that some upper limit did exist. When negotiations were held with the United States authorities concerning the Headquarters Agreement, the United States representative, while accepting the principle of the proposed article V dealing with permanent representatives, "felt that there should be some safeguard against too extensive an application". The text thereupon suggested (which, with only slight modification, was finally adopted as article V) was considered by the Secretary-General and the Negotiating Committee to be a possible compromise.<sup>7</sup>

#### Section 4. Credentials

19. The *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* give a detailed account of the practice followed with respect to the credentials of the representatives of particular Member States. The following summary, taken largely from that account, refers to the main occasions when the question of credentials has been discussed; the present rules of procedure are also cited. In accordance with diplomatic practice credentials or other evidence of powers of representation are not required in the case of a Head of State, Head of Government, or Minister of Foreign Affairs.

##### (a) *The General Assembly*

20. Chapter IV of the rules of procedure is as follows:

<sup>7</sup> Joint Report by the Secretary-General and the Negotiating Committee on the negotiations with the authorities of the United States of America concerning the arrangements required as a result of the establishment of the seat of the United Nations in the United States of America, A/67 and A/67/Add.1, 4 September 1946. Reproduced in *Handbook on the Legal Status, Privileges and Immunities of the United Nations*, ST/LEG/2, p. 435. The relevant portion of article V is reproduced in section 7 (a), para. 49, below.

#### IV. CREDENTIALS

##### *Submission of credentials*

###### Rule 27

The credentials of representatives and the names of members of a delegation shall be submitted to the Secretary-General if possible not less than one week before the date fixed for the opening of the session. The credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs.

##### *Credentials Committee*

###### Rule 28

A Credentials Committee shall be appointed at the beginning of each session. It shall consist of nine members, who shall be appointed by the General Assembly on the proposal of the President. The Committee shall elect its own officers. It shall examine the credentials of representatives and report without delay.

##### *Provisional admission to a session*

###### Rule 29

Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives, until the Credentials Committee has reported and the General Assembly has given its decision.

At the Assembly's second session<sup>8</sup> in 1947 a proposal that credentials might be signed by resident representatives failed of adoption; it was agreed, however, that credentials might be signed by the Head of Government, as well as by the Head of State or Minister for Foreign Affairs. It may also be noted that in practice cablegrams are considered as provisional credentials until superseded by full credentials, submitted by Governments in accordance with rule 27 of the rules of procedure.

21. At various sessions of the Assembly there has been discussion regarding the representation of particular Member States,<sup>9</sup> but no resolutions have been adopted of general application with regard to credentials. It may be noted that in resolution 1618 (XV) of 21 April 1961, the General Assembly called the attention of Member States to the necessity of complying with the requirements of rule 27.

##### (b) *The Security Council*

22. Chapter III of the provisional rules of procedure of the Security Council is set out below.

#### CHAPTER III — REPRESENTATION AND CREDENTIALS

##### Rule 13

Each member of the Security Council shall be represented at the meetings of the Security Council by an accredited representative. The credentials of a representative on the Security Council shall be communicated to the Secretary-General not less than twenty-four hours before he takes his seat on the Security Council. The credentials shall be issued either by the Head of the State or of the Government concerned or by its Minister of Foreign Affairs. The Head of Government or Minister of Foreign Affairs of each member of the Security Council shall be entitled to sit on the Security Council without submitting credentials.

<sup>8</sup> See *Repertory of Practice of United Nations Organs*, vol. I, p. 248, paras. 17-20.

<sup>9</sup> *Ibid.*, vol. I, pp. 249-251, paras. 21-34; *Supplement No. 1*, vol. I, pp. 111 and 112, paras. 9-16; *Supplement No. 2*, vol. II, pp. 7-9, paras. 9-16.

## Rule 14

Any Member of the United Nations not a member of the Security Council and any State not a Member of the United Nations, if invited to participate in a meeting or meetings of the Security Council, shall submit credentials for the representative appointed by it for this purpose. The credentials of such a representative shall be communicated to the Secretary-General not less than twenty-four hours before the first meeting which he is invited to attend.

## Rule 15

The credentials of representatives on the Security Council and of any representative appointed in accordance with rule 14 shall be examined by the Secretary-General who shall submit a report to the Security Council for approval.

## Rule 16

Pending the approval of the credentials of a representative on the Security Council in accordance with rule 15, such representative shall be seated provisionally with the same rights as other representatives.

## Rule 17

Any representative on the Security Council, to whose credentials objection has been made within the Security Council, shall continue to sit with the same rights as other representatives until the Security Council has decided the matter.

23. The third sentence of rule 13 ("the credentials shall be issued either by the Head of the State or the Government concerned or by its Minister of Foreign Affairs") was adopted by the Security Council at its 468th meeting on 28 February 1950.<sup>10</sup> At the same meeting the Council determined not to make any amendment to rule 17. The Indian representative suggested that where the right of any person to represent a State in the Security Council had been called in question, the President should place the views of all other Member States before the Council, so that these could be taken into consideration in deciding what attitude the Council should adopt. This proposal was not endorsed, however, by a Committee of Experts which was established to consider the question.<sup>11</sup>

24. An account of the discussion relating to the representation of particular States is given in the *Repertoire of the Practice of the Security Council*.<sup>12</sup>

(c) *The Economic and Social Council*

25. Rule 19 of the Council's rules of procedure provides:

The credentials of representatives and the names of alternate representatives and advisers shall be submitted to the Secretary-General not less than twenty-four hours before the first meeting which the representatives are to attend. The President and the Vice-Presidents shall examine the credentials and submit their report to the Council. This rule shall not, however, prevent a member from changing its representatives, alternate representatives, or advisers subsequently, subject to proper submission and examination of credentials, where needed.

At each session of the Council the credentials received by the Secretary-General have been examined by the President and the Vice-Presidents, who submit a report

on credentials to the Council. In practice, credentials are accepted from permanent missions and representatives, as well as when issued by the Head of the State, the Head of the Government, or by the Minister of Foreign Affairs.<sup>13</sup>

(d) *The Trusteeship Council*

26. The pertinent rules of procedure of the Trusteeship Council are set out below.

## Rule 14

1. The credentials of representatives on the Trusteeship Council shall normally be communicated to the Secretary-General not less than twenty-four hours before the meeting at which the representatives will take their seats. The credentials shall be issued either by the Head of the State or by the Minister of Foreign Affairs of the respective member governments.

2. The credentials shall be examined by the Secretary-General, who shall submit a report thereon to the Trusteeship Council for approval.

## Rule 15

1. Any member of the United Nations not a member of the Trusteeship Council, when invited to participate in a meeting or meetings of the Council, shall submit credentials for the representative appointed by it for this purpose in the same manner as provided in rule 14. The credentials of such a representative shall be communicated to the Secretary-General not less than twenty-four hours before the first meeting which he is to attend.

2. The credentials of representatives referred to in the paragraph immediately preceding and of any representatives appointed in accordance with rule 74 shall be examined by the Secretary-General, who shall submit a report to the Trusteeship Council for approval.

## Rule 17

Pending the decision on the credentials of a representative on the Trusteeship Council, such representative shall be seated provisionally and shall enjoy the same rights as he would have if his credentials were found to be in good order.

## Rule 18

Each representative on the Trusteeship Council may be accompanied by such alternates and advisers as he may require. An alternate or an adviser may act as a representative when so designated by the representative.

27. At various sessions of the Council there has been discussion regarding the representation of particular Member States.<sup>14</sup>

(e) *Subsidiary organs and United Nations conferences*

28. The position with respect to the credentials of representatives attending meetings of subsidiary organs and United Nations conferences is governed by the rules of procedure of the organ or conference concerned. Where, as is often the case, a person has been authorized to represent his Government in all United Nations organs, this authorization necessarily extends to all subsidiary organs which may be established. Where, on the other hand, the representative is specially sent from his home State to represent his Government before an *ad hoc* subsidiary organ, specific credentials are

<sup>10</sup> See *Repertoire of the Practice of the Security Council, 1946-1951*, p. 12 *et seq.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, pp. 14-17; *Supplement 1952-1955*, pp. 4 and 5; *Supplement 1956-1958*, pp. 4-8.

<sup>13</sup> For details of discussion on the representation of a Member State, see *Repertory of Practice of United Nations Organs, Supplement No. 1*, vol. II, pp. 68 and 69.

<sup>14</sup> See *Repertory of Practice of United Nations Organs*, vol. IV, pp. 321-323; *ibid.*, Suppl. No. 1, vol. II, pp. 271 and 272.

required. In the case of the regional Economic commissions, credentials must be submitted in advance to the Executive Secretary, for examination by the Chairman and Vice-Chairman, who submit a report to the commission. At United Nations conferences, a procedure similar to that of sessions of the General Assembly is observed; credentials must be submitted to the Secretary-General, or the official acting in his stead, for examination by a credentials committee or by the Secretariat, which reports to the plenary body of the conference.

(f) *Permanent representatives*

29. The question of the credentials of permanent representatives was dealt with comprehensively in resolution 257 A (III), in which the General Assembly

*Recommends:*

1. That credentials of the permanent representative shall be issued either by the Head of the State or by the Head of the Government or by the Minister of Foreign Affairs, and shall be transmitted to the Secretary-General;

2. That the appointments and changes of members of the permanent missions other than the permanent representative shall be communicated in writing to the Secretary-General by the head of the mission;

...

4. That Member States desiring their permanent representative to represent them on one or more of the organs of the United Nations shall specify the organs in the credentials transmitted to the Secretary-General;

*Instructs* the Secretary-General to submit, at each regular session of the General Assembly, a report on the credentials of the permanent representatives accredited to the United Nations.

30. The procedure outlined in resolution 257 A (III) has been observed since 1949. As indicated in paragraph 4 of the operative part of the resolution, accreditation as a permanent representative does not entitle the representative concerned to appear before a particular organ unless that organ has been referred to in the credentials issued on his behalf. The credentials of many permanent representatives do in fact specify that the person concerned may represent his State before all or several United Nations organs.

31. The annex to the report submitted by the Secretary-General to the General Assembly at its fourth session on permanent missions to the United Nations<sup>15</sup> gave a standard form of credentials, as a guide to the drafting of such instruments:

*Standard Form of Credentials*

Whereas the Government of . . . . . has set up at the seat of the United Nations a permanent mission to maintain necessary contact with the Secretariat of the Organization,

Now therefore we . . . . . (*name and title*) . . . . . have appointed and by these presents do confirm as permanent representative to the United Nations His Excellency . . . . . (*name*) . . . . . (*title*).

His Excellency . . . . . is instructed to represent the Government of . . . . . in the following organs: . . . . . He is also authorized to designate a substitute to act temporarily on his behalf after due notice to the Secretary-General.

In faith whereof we have signed these presents at . . . . . on . . . . .

Signature. . . . .  
(*title*)

(Head of the State, Head of the Government or Foreign Minister)

32. It was suggested that where a Government desires to accredit its permanent representative to all organs of the United Nations, the beginning of the third paragraph of this form might be altered to read:

His Excellency . . . . . is instructed to represent the Government of . . . . . in all organs of the United Nations.

33. Notification of the appointment of members of the staff of a permanent mission other than the representative himself is normally provided by the permanent representative. This practice is also commonly followed in the case of members of delegations, other than representatives, to sessions of the General Assembly, although notification in such cases may also be made by representatives to the Assembly.

*Section 5. Full powers and action in respect of treaties*<sup>16</sup>

34. In a letter dated 11 July 1949, sent to all Member States, the Legal Counsel described the procedures to be observed in relation to the above subject-matter. The arrangements outlined have continued in force.

Sir,

I have the honour to draw your attention to a question relating to the depository functions entrusted to the Secretary-General by various multilateral agreements open to signature of Member States. By virtue of these functions, the Secretary-General receives the signatures affixed to such instruments by the plenipotentiaries after submission of their full powers, which are subsequently preserved in the archives of the Secretariat together with the original documents. In view of some difficulties which have arisen in the past, it is suggested that the procedure set forth below, based upon the prevailing international practice, be followed.

Full powers should be issued, in accordance with the constitutional procedure of each State, either by the Head of the State, the Head of the Government or the Minister of Foreign Affairs. They should clearly specify the instrument referred to and give its exact and full title and its date.

In some exceptional cases and for reasons of urgency, if, for example there is a time-limit, cabled credentials may be accepted provisionally but the cable should also originate from the Head of the State, the Head of the Government or the Minister of Foreign Affairs and should be confirmed by a letter from the Permanent Delegation or the Plenipotentiary certifying its authenticity. The text of the cable should also state the title of the agreement referred to and whether the Plenipotentiary is authorized to sign subject to later acceptance, and should specify that ordinary credentials are being sent immediately by mail.

This is the more important now that several conventions or agreements concluded under the auspices of the United Nations have provided that States can be definitely bound by signature alone.

It is finally suggested that in order to facilitate their examination, the credentials of the representatives should be deposited with the Legal Department of the Secretariat twenty-four hours before the ceremony of signature of an international instrument.

<sup>15</sup> *Official Records of the General Assembly, Fourth Session, Annex to the Summary Records of the Sixth Committee, p. 17.*

<sup>16</sup> Further information as to United Nations practice may be found in *Summary of the Practice of the Secretary-General as Depository of Multilateral Agreements*, ST/LEG/7, paras. 28-36.

35. The requirement of United Nations practice that permanent representatives need full powers to enable them to sign international agreements was described as follows by the Legal Counsel in response to an inquiry made by a permanent representative in 1953:

As far as permanent representatives are concerned, their designation as such has not been considered sufficient to enable them to sign international agreements without special full powers. Resolution 257 (III) of the General Assembly of 3 December 1948 on permanent missions does not contain any provision to this effect and no reference was made to such powers during the discussions which preceded the adoption of this resolution in the Sixth Committee of the General Assembly. However, the credentials of some permanent representatives contain general authorization for them to sign the conventions and agreements concluded under the auspices of the United Nations. But, even in such cases, in order to avoid any possible misunderstanding, if an agreement provides that States can be definitely bound by signature alone, it is the general practice to request a cable from the Head of the State or Government or from the Minister for Foreign Affairs confirming that the permanent representative so authorized in his credentials can sign the agreement concerned.

In some exceptional cases and for reasons of urgency the permanent representatives have often transmitted letters to the Secretary-General specifying that they were authorized by their governments to sign a particular agreement, and indicating further that formal full powers would be forwarded at a later date. Such a procedure, however, has been followed only in respect of agreements which do not bind governments by signature alone but require further action on their part.

Under general principles of law, a plenipotentiary who has been appointed by his government to sign an agreement cannot delegate his authority.

The practice set out above applies equally to representatives of Member Governments to sessions of the General Assembly.

When a permanent representative or a plenipotentiary is authorized, in special full powers, to sign an agreement "subject if necessary, to approval" and the agreement does not provide for such approval, a clarification is required as to the meaning of the words. If the words simply mean that the Government intends to take the necessary measures for the approval of the agreement only if it is required under its terms, then no new full powers are needed; otherwise full powers should be issued without any reference to further approval.

Further, as to the deposit of formal instruments of ratification or accession from governments to agreements and conventions concluded under the auspices of the United Nations, it has not been the practice to require permanent representatives to produce full powers authorizing them to present instruments for deposit. In most cases instruments of ratification or accession are accompanied by a letter from the permanent representative informing the Secretary-General that he is acting under instructions from his Government in depositing the instrument.

Full powers would be necessary if the plenipotentiary were himself to sign the instrument deposited.

36. In speaking of "formal instruments" the above letter means those signed by the Head of State or Government or by the Minister of Foreign Affairs. In rare instances instruments of accession have been drawn up by permanent representatives and accepted, provided that the instrument in question was accompanied by full powers, executed by the Head of State or Government or by the Minister of Foreign Affairs, authorizing the representative to draw up the instrument.

37. Full powers, or a statement signed by the Head of State or Government or by the Minister of Foreign Affairs, are also required in the case of notification of state succession in respect of treaties or in the case of denunciation. Such instruments are not required, however, in the case of other notifications, for example those dealing with the extent of territorial application of a treaty, or in exercising an option granted under a treaty. Nor are full powers required when existing States Parties to the Convention on the Privileges and Immunities of the Specialized Agencies extend its provisions to additional agencies.

*Section 6. Appointment of a representative to more than one organization or post; representation of more than one State by the same representative*

38. Although no exact figures are available, there have been a considerable number of cases in which a person has been appointed to represent his country at more than one organization during the same period. At United Nations Headquarters, members of permanent missions have also exercised functions on behalf of their respective States at the specialized agencies in Washington, for example. At the Geneva Office the same representative has in many instances been appointed both to the various specialized agencies having their headquarters in Geneva and to the Geneva Office itself. On some occasions the representative at the Geneva Office has also represented his country at meetings and conferences held by IAEA in Vienna.

39. As is well known, there have also been a large number of cases in which a representative, whilst forming part of the diplomatic staff of his country (or even as ambassador) in State A, has been sent as the representative of his country to a United Nations conference in State B, or even to sessions of the General Assembly. Similarly, representatives have on occasions simultaneously represented their country both at United Nations organs and at regional organizations (e.g. at the Organization of American States). Lastly, a number of permanent representatives have also served as the ambassador of their country to the host State.

40. The question of representation of more than one Government or State by a single representative has been raised on several occasions in United Nations bodies. It has been the consistent position of the Secretariat and of the organs concerned that such representation is not permissible unless clearly envisaged in the rules of procedure of the particular body. The practice, which has sometimes been followed, of accrediting the official of one Government as the representative of another, has not been considered legally objectionable, provided the official concerned was not simultaneously acting as the representative of two countries. A distinction should be drawn between these cases and that in which more than one delegation may be sent by the same State (e.g. as in the case of commodity conferences).<sup>17</sup>

<sup>17</sup> See the letter sent regarding participation of dependent territories in the United Nations Coffee Conference of 1962, *United Nations Juridical Yearbook 1962* (ST/LEG/8), p. 258.

CHAPTER II. — APPLICATION OF ARTICLE 105 OF THE CHARTER IN RELATION TO THE PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES

*Section 7. Scope of privileges and immunities derived from article 105*<sup>18</sup>

41. Article 105, paragraph 2, of the Charter provides that the representatives of Member States shall

. . . enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.

42. At the San Francisco Conference the Committee on Legal Problems stated that Article 105 "sets forth a rule obligatory for all members as soon as the Charter becomes operative";<sup>19</sup> similarly, the Preparatory Commission on the United Nations reported in 1945 that Article 105 is "applicable even before the General Assembly has made the recommendations referred to in paragraph (3) of the Article or the conventions therein mentioned have been concluded".<sup>20</sup>

43. As regards the nature of the privileges and immunities granted under Article 105, at the San Francisco Conference the Committee on Legal Problems declared that the terms "privileges and immunities" used in that Article "indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization and to the free functioning of its organs . . . exemption from tax, immunity from jurisdiction, facilities for communication, inviolability of buildings, properties, and archives etc".<sup>21</sup> The Committee stated expressly that it had seen fit to avoid the term "diplomatic" in describing the nature of the privileges and immunities conferred under Article 105, and had "preferred to substitute a more appropriate standard based . . . in the case of representatives . . . on providing for the independent exercise of their functions".

44. The General Convention is based on a similar rationale; although in several instances the facilities afforded are declared to be the same as those accorded to diplomatic envoys, there is no general assimilation of the position of representatives to that of diplomatic representatives. Article IV, section 14, states that the privileges and immunities of representatives are accorded not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the United Nations.

45. Thus, under the major Charter provision dealing with the privileges and immunities, and under the Convention dealing with the privileges and immunities of

the Organization (including those conferred on representatives), there is no automatic grant of diplomatic privileges and immunities. Accordingly, whilst all Member States are bound by virtue of their acceptance of the Charter to observe the obligations derived from Article 105, the enjoyment by representatives of privileges and immunities over and above those to be implied by the terms of Article 105, paragraph 2, (or under the General Convention, in the case of States Parties) has been dependent on the discretion of individual States. Furthermore, since not all host States have become Members of the United Nations (e.g., Switzerland) and not all Member States have become parties to the General Convention (e.g., the United States) the position of representatives, though fortified by the extent to which the protection afforded to them may have become part of general international law, has been heavily dependent on national legislation and on particular agreements between the United Nations and given host States.

46. It would appear that, for the most part, permanent representatives have been granted diplomatic privileges and immunities whilst temporary representatives, even if of equal or higher rank, have continued to receive privileges and immunities of a more restricted character. The following survey, though not exhaustive, gives details of the agreements, or enactments under which the representatives of Member States have been granted diplomatic privileges and immunities, and of certain problems which have arisen, in particular at United Nations Headquarters, as to the extent of control resting with the host State over the grant of such privileges. The survey is divided into the following sections: (a) Position at United Nations Headquarters; (b) Position at the United Nations Office at Geneva; (c) Meetings of United Nations organs held other than at Headquarters or at the Geneva Office; (d) Conferences held under United Nations auspices; (e) United Nations regional economic commissions; and (f) Other United Nations subsidiary bodies.

(a) *Position at United Nations Headquarters*

47. Before the Headquarters Agreement came into force representatives were covered under United States law by the International Organizations Immunities Act, which was enacted in 1945, in addition to their position under the general principles of international law and under the provisions of the Charter. The International Organizations Immunities Act, as amended in 1952, has remained in effect and applies to all representatives, whether present on a permanent or on a temporary basis. In Section 8 (c) of the Act it is expressly provided that:

No person shall, by reason of the provisions of this title, be considered as receiving diplomatic status or as receiving any of the privileges incident thereto other than such as are specifically set forth herein.

The privileges and immunities for which provision is made in the Act are those which may be summarized as being of basic functional importance.

48. After the conclusion of the Headquarters Agreement, however, and the adoption of the Joint Resolution

<sup>18</sup> See also section 25, paras. 163-168, below, regarding the right of transit and of access to meetings, which is also derived from Article 105 of the Charter.

<sup>19</sup> Report of the Committee on Legal Problems, *United Nations Conference on International Organization, San Francisco*, 12 June 1945, doc. 933, IV/2/42/(2), UNCIO, Docs., Vol. 13, pp. 703-705.

<sup>20</sup> Report by the Executive Committee to the Preparatory Commission of the United Nations (PC/EX/113/Rev.1, 12 November 1945), chap. V, sect. 5, para. 2.

<sup>21</sup> Reference note 18, above.

authorizing the President of the United States to bring the Agreement into effect (United States Public Law 357—80th Congress), resident representatives were granted the same privileges and immunities as diplomatic envoys accredited to the United States.<sup>22</sup>

49. The pertinent provisions of article V, section 15, of the Headquarters Agreement read as follows:

Section 15. (1) Every person designated by a Member as the principal resident representative to the United Nations of such Member or as a resident representative with the rank of ambassador or minister plenipotentiary,

(2) such resident members of their staffs as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned,

... shall, whether residing inside or outside the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it. In the case of Members whose governments are not recognized by the United States, such privileges and immunities need be extended to such representatives, or persons on the staffs of such representatives only within the headquarters district, at their residences and offices outside the district, and in transit on official business to or from foreign countries.

50. The main issue which has arisen in the interpretation of this section has been that of determining how sub-section (2) and the last sentence of section 15 were to be interpreted, i.e., what procedures were to be followed and what part was to be played by the Secretary-General, the particular Member State and by the United States, in determining whether diplomatic privileges and immunities were to be granted to particular representatives or to classes of representatives. Upon the recommendation of the Sixth Committee, in resolution 169 (II), adopted on 31 October 1947, the General Assembly decided

to recommend to the Secretary-General and to the appropriate authorities of the United States of America to use Section 16 of the General Convention on the Privileges and Immunities of the United Nations as a guide in considering—under sub-section 2 and the last sentence of section 15 of the above-mentioned Agreement regarding the Headquarters—what classes of persons on the staff of delegations might be included in the lists to be drawn up by agreement between the Secretary-General, the Government of the United States and the Government of the Member State concerned.

51. In section 16 of the General Convention the expression “representative” is defined as including “all delegates, deputy delegates, advisers, technical experts and secretaries of delegations”.

52. The Secretariat wrote to Member States in December 1947 informing them that the Headquarters Agreement had come into effect and recalling the terms of resolution 169 (II); Member States were requested to communicate the name and rank of all persons who, in the opinion of the State concerned, came within the categories of persons covered by sub-sections (1) or (2)

of section 15. In February 1948, the United States representative transmitted to the Secretary-General a list of resident representatives and others recognized by the United States as entitled to diplomatic privileges and immunities. It was stated in a covering letter that in deciding upon the persons to be included in the list the United States Government had acted upon the information submitted by delegations and endorsed by the Secretariat, the provisions of the Headquarters Agreement, the practice in Washington, and resolution 169 (II). Privileges and immunities were extended to members of the immediate family regularly resident with the representative concerned. The United States representative declared that members of a particular delegation who were of the rank of Chancellor or below were not included in the list since it was not the practice in Washington to extend diplomatic privileges and immunities to persons of that rank. An attaché of another delegation was excluded from the list owing to his record of serious violations of New York traffic laws and the fact that he had not surrendered his driving licence, despite a mandatory notice advising him that his licence had been revoked for six months.

53. On the basis of the practice established in 1947 and 1948 the normal procedure at the present time is for missions to notify the Protocol and Liaison Section of the Secretariat of the names and ranks of persons on their staff who are entitled to privileges and immunities under section 15 (1) and (2) of the Headquarters Agreement. These particulars are then forwarded by the Secretariat to the United States Department of State via the United States Mission. Upon notification from the Department of State, the United States Mission then dispatches to the person concerned a standard letter, giving details of the privileges and immunities afforded. The opening paragraphs of that letter are reproduced below:

Under the terms of the Headquarters Agreement between the United States and the United Nations, brought into force on November 21, 1947, and on the basis of certification submitted by your Mission with the concurrence of the Secretary-General of the United Nations, you are entitled, in the territory of the United States, to the privileges and immunities of a diplomatic envoy under Section 15 of the Headquarters Agreement (United States Public Law 357—80th Congress). These privileges and immunities are also extended to the members of the families of persons so recognized who are regularly resident with them. Privileges and immunities do not apply to domestics or other members of your household staff.

There is enclosed herewith an identification card issued to you by the Department of State through the Mission as evidence of your status under the Headquarters Agreement. This card should be returned to the Mission upon your departure from your present post. If lost, it cannot be replaced.

Your name has been inscribed on the published list of persons who enjoy privileges and immunities under the terms of the Headquarters Agreement. This list will be revised regularly and will be made available to missions, local merchants, and Federal, State, and local authorities.

The United States, in accordance with the Headquarters Agreement, has made administrative arrangements regarding privileges and immunities which, *mutatis mutandis*, are identical with those granted by the United States Government to the diplomatic corps accredited to it. . . .

<sup>22</sup> There are also a number of Executive Orders and various New York State and City laws; see United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. I, p. 136 *et seq.*

54. Details are then given of the various tax exemptions afforded. From time to time the Protocol and Liaison Section of the Secretariat publishes a list of all members of permanent missions ("The blue book"); inclusion in this list does not in itself result in the granting of diplomatic privileges and immunities by the United States authorities, unlike inclusion in the list established by the Geneva Office, which carries with it the grant of diplomatic privileges and immunities by the Swiss authorities.

55. In addition to the cases mentioned by the United States representative in his initial letter of February 1948, in 1958 the United States authorities notified all missions that in future they would refuse to recognize in a consular capacity, or in any other non-diplomatic capacity, any person who was entitled to diplomatic immunity pursuant to section 15. In 1959 the United States Mission further informed missions that acceptance of regular employment in the United States by a member of a permanent mission, or by his spouse, was generally incompatible with diplomatic status. These rulings were apparently not contested. On the other hand, in a number of cases in which the United States has declined to grant diplomatic privileges and immunities on the grounds that the individuals concerned were not of the nationality of the State concerned, both the State concerned and the Secretariat have objected to the stand taken.<sup>23</sup> It may also be noted that in one instance where a United Nations staff member was married to a member of the permanent mission of a Member State, the United Nations declined to register the staff member concerned with the United States Mission as being entitled to diplomatic privileges and immunities on the ground that, in the circumstances, the functional status of staff member should override that of being a spouse.

56. The interpretation of section 15 (2) of the Headquarters Agreement became an issue in the Santiesteban case in 1962. On 3 October 1962, a Mr. Santiesteban Casanova arrived in the United States bearing a Cuban diplomatic passport with a G-1 visa (the visa granted to members of permanent missions). The United Nations Chief of Protocol was informed that he was a member of the Cuban Mission; the Chief of Protocol notified the United States Mission. His name was listed in the United Nations blue book. He was then arrested by the United States authorities on the grounds that he had participated, together with two other members of the Cuban Mission, in a conspiracy to commit sabotage. The United States Mission informed the Cuban Mission and the Secretary-General that Mr. Santiesteban did not possess diplomatic immunity and that he would be subject to prosecution under federal statutes. The activities of the other two members of the Cuban Mission were described as a flagrant abuse of the privileges of residence and the Cuban Mission was requested to effect their immediate departure from the United States. The Cuban Mission protested to the United Nations that the arrest was in breach of section 15 (2) of the Headquarters Agreement.

57. In discussions with the United States authorities, the United Nations contended that the wording of section 15 (2) and the arrangements which had been previously established did not support the contention, made by the United States authorities, that the agreement of all three parties involved (viz. of the Secretary-General, the United States and of the Member States) extended to requiring the consent of all three to each individual resident member of a State's mission to the United Nations. As had been shown by subsequent practice, the necessary agreement of the parties had been settled in principle by the original establishment of the diplomatic list, specifying the categories of mission staff (as opposed to lists of individuals) who were entitled to privileges and immunities under section 15. Such cases as had arisen in the past related to the eligibility of the person or persons concerned as mission staff rather than to the question of whether the United States could decline to grant diplomatic privileges to an admittedly eligible person. Moreover, any argument that the immunity in question was not available until the notification procedure had been completed would place all members of missions in an entirely exposed position in the period between their arrival and the completion of their "processing" by the United States.

58. In reply, the United States denied that any clear agreement had in fact been entered into regarding categories of staff entitled to privileges and immunities under section 15; the consent of the United States therefore remained obligatory in each individual case. It was suggested that the wording of resolution 169 (II) supported this interpretation. Furthermore, in earlier cases in which the United States had declined to grant diplomatic privileges and immunities, the United Nations had apparently accepted the position, as had the Member States concerned.

59. Whilst the matter was still being considered between the United States Mission and the United Nations, Mr. Santiesteban sought release from custody on a writ of habeas corpus, contending that he was entitled to diplomatic immunity from arrest and prosecution under the United Nations Charter, the Headquarters Agreement and international law; his petition also referred to the original jurisdiction of the Supreme Court of the United States.<sup>24</sup> By a judgement of 16 January 1963, the United States District Court, Southern District of New York, denied the writ, principally on the ground that under section 15 of the Headquarters Agreement the consent of the United States was required to the grant of diplomatic privileges and immunities to individual members of permanent missions, which had not been given in the case of Mr. Santiesteban.<sup>25</sup> This judgement was in the process of appeal to a higher court when Mr. Santiesteban was exchanged for a United States national, following direct negotiations between the two Governments concerned.

<sup>24</sup> Article III, section 2 of the Constitution of the United States gives the Supreme Court original jurisdiction in "all cases affecting Ambassadors, other public Ministers and Consuls".

<sup>25</sup> A more extensive account of the judgement is contained in *United Nations Juridical Yearbook 1963*, p. 200.

<sup>23</sup> See section 8, paras. 83 and 84, below.

60. Following discussions with the United States, the following note was sent by the Secretary-General to permanent missions on 31 July 1964, setting out arrangements designed to reduce or eliminate delay between the arrival of members of the staff of permanent missions and the recognition by the host Government of the privileges and immunities accorded to them under the Headquarters Agreement.

The Secretary-General of the United Nations presents his compliments to the Permanent Representative of . . . . . and has the honour to refer to the granting of diplomatic privileges and immunities by the host State to resident members of the staff of Permanent Missions under Section 15 (2) of the Headquarters Agreement between the United Nations and the United States of America.

The United States authorities informed the Secretary-General that it is proposed to put into effect a new procedure to reduce or eliminate the delay which presently arises between the arrival in the United States of members of the staff of Permanent Missions and the recognition by the host Government of the privileges and immunities accorded to such members under the Headquarters Agreement. This new procedure would permit Permanent Missions, if they so wished, to submit in advance, and prior to their arrival in the United States, the names of persons appointed to serve on their Missions. The requirements for this procedure, as described to the Secretary-General by the United States Mission, would be as follows:

“Permanent Missions to the United Nations, as soon as a new member is known and in advance of his arrival, may submit his name to the United States Mission through the United Nations Office of Protocol, in the manner presently followed with respect to resident members of Missions. Photographs of the prospective Mission members, similar to those submitted in the case of resident Mission members, will be required. As soon as the United States Mission receives the request from the United Nations Protocol Office in proper form, its processing will commence. In this manner, the period between arrival and receipt of credentials can be reduced and, indeed, may be virtually eliminated in certain cases.”

The Secretary-General has indicated to the United States Mission his belief that Permanent Missions may find the foregoing procedure a useful one, if they wish to avail themselves of it. This would be without prejudice to any questions of the interpretation to be given to Section 15 (2) of the Headquarters Agreement between the United Nations and the United States of America.

(b) *Position at the United Nations Office at Geneva*

61. Under article IV of the 1946 Agreement the representatives of Member States are granted the same privileges and immunities as are afforded by article IV of the General Convention. By a decision of the Swiss Federal Council of 31 March 1948, however, members of permanent missions to the Geneva Office and to the specialized agencies in Geneva receive facilities analogous to those accorded to diplomatic missions at Berne. The text of the 1948 decision is reproduced below.

1. *Les délégations permanentes d'États Membres bénéficient, comme telles, de facilités analogues à celles qui sont accordées aux missions diplomatiques à Berne.*

*Elles ont le droit d'user des chiffres dans leurs communications officielles et de recevoir ou d'envoyer des documents par leurs propres courriers diplomatiques.*

2. *Les chefs de délégations permanentes bénéficient de privilèges et immunités analogues à ceux qui sont accordés aux chefs de mis-*

*sions diplomatiques à Berne, à condition toutefois qu'ils aient un titre équivalent.*

3. *Tous les autres membres des délégations permanentes bénéficient, à rang égal, de privilèges et immunités analogues à ceux qui sont accordés au personnel des missions diplomatiques à Berne.*

4. *La création d'une délégation permanente, les arrivées et les départs des membres des délégations permanentes sont annoncés au Département politique par la mission diplomatique à Berne de l'État intéressé. Le Département politique délivre aux membres des délégations une carte de légitimation attestant les privilèges et immunités dont ils bénéficient en Suisse.*

(It may be noted that whereas the Agreement concluded in 1946 applies to “representatives”, the 1948 decision refers to “permanent delegations”.)

62. By a declaration of the Swiss Federal Council of 20 May 1958, paragraph 2 was amended to read as follows:

2. *Les chefs de délégations permanentes bénéficient mutatis mutandis de privilèges et immunités analogues à ceux qui sont accordés aux chefs de missions diplomatiques à Berne.*

63. Since the position of diplomatic missions at Berne is based on reciprocity, the privileges and immunities of permanent missions (other than customs privileges) may vary from one mission to another, although this appears to be decreasingly the case. Details of the position of both permanent and non-permanent representatives as regards customs privileges are contained in chapters VI and VII of the Customs Regulation adopted by the Swiss Federal Council on 23 April 1952.

(c) *Meetings of United Nations organs held other than at Headquarters or at the Geneva Office*

64. The examples given below, taken from agreements entered into with the State in whose territory the meeting was to be held, illustrate the practice which has been followed.

65. The memorandum of agreement of 30 January 1951 between the United Nations and Chile concerning the facilities, privileges and immunities to be accorded to the Economic and Social Council during its twelfth session in Santiago, provided in article XV that:

The Government shall grant the privileges and immunities, exemptions and facilities accorded to diplomatic envoys accredited to the Government, to the representatives of Member States to the Economic and Social Council regardless of whether or not the Government maintains diplomatic relations with the Governments of any such Member States.

66. The exchange of letters on 17 April 1951 between the Secretary-General and France relating to the meeting of the sixth session of the General Assembly in Paris, provides (article XVI of the letter of the French Government) for the application of the provisions of the General Convention; section III C) of article XVI provides, however, that representatives of Member States “*accrédités à la sixième session*” are accorded “*pendant la durée de leur mission, y compris le temps du voyage en territoire français, les privilèges, immunités, exemptions et facilités reconnus aux envoyés diplomatiques accrédités auprès du Gouvernement français*”.

(d) *Conferences held under United Nations auspices*

67. The examples given below illustrate the practice followed in the case of conferences held under United Nations auspices.

68. The Agreement signed on 27 February 1961 between the United Nations and Austria regarding the arrangements for the Vienna Conference on Diplomatic Inter-course and Immunities,<sup>26</sup> provides in article VI:

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

(2) The Government will accord representatives attending the Conference . . . the same privileges and immunities as accorded to representatives to . . . the International Atomic Energy Agency, under the Headquarters Agreement between the Republic of Austria and the IAEA.

69. The Agreement between the United Nations and Austria, signed on 29 January 1963, regarding the arrangements for the Vienna Conference on Consular Relations, contains an identical provision.

70. The Agreement<sup>27</sup> of 23 August 1961 between the United Nations and Italy regarding the arrangements for the United Nations Conference on New Sources of Energy, provided in article X for the application of the General Convention.

71. The exchange of letters dated 24 July 1962 between the United Nations and the Federal Republic of Germany regarding the privileges and immunities to be accorded to those attending the United Nations Technical Conference on the International Map of the World on the Millionth Scale,<sup>28</sup> provided for the provision by the Federal Republic of Germany of privileges and immunities "no less favourable than she accords with respect to any specialized agency" under the Specialized Agencies Convention. In particular it was agreed that:

5. Representatives and Observers of States Members or non-Members of the United Nations invited to the Conference shall enjoy such other privileges, immunities and facilities in accordance with Section 11 (g) of the Convention on the Privileges and Immunities of the United Nations.

72. The Agreement signed on 26 July 1963, between the United Nations and Italy regarding arrangements for the United Nations Conference on International Travel and Tourism,<sup>29</sup> provided in article VI, paragraph 1, for the application of the General Convention. In addition, paragraph 2 of article VI specified that representatives of non-Member States attending the Conference should enjoy the same privileges and immunities as were accorded to the representatives of Member States by the Convention.

(e) *United Nations regional economic commissions*

73. Apart from ECE, which is governed by the provisions of the more general agreements between the United Nations and Switzerland considered above, the position of the economic commissions is determined by the terms of the particular agreements entered into with the various host Governments, and, where those agreements are silent, by the provisions of the General Convention. Thus, since Chile was a party to the General Convention,

the Agreement between Chile and ECLA makes no specific mention of the privileges and immunities of representatives; persons who are members of missions established by the Economic Commission, or who are invited by the Commission for official purposes, are granted functional privileges and immunities. In the Exchange of Letters between the Government of Uruguay and the Secretary-General regarding the session of the Commission held in Montevideo in May 1950, however, it was provided expressly that diplomatic privileges and immunities would be accorded to the representatives of member States. In the case of ECAFE, under article VI, section 15 of the Agreement between the United Nations and Thailand, representatives are granted the same privileges and immunities as the Government of Thailand accords to members of diplomatic missions of comparable rank. The Agreement between the United Nations and Ethiopia regarding ECA draws a distinction between resident representatives and others; the former are granted the same privileges and immunities as the Government accords to the diplomatic envoys accredited to Ethiopia (article V, section 10 (b)), while non-permanent representatives receive the same privileges and immunities "as are accorded to diplomatic envoys of comparable rank under international law".

(f) *Other United Nations subsidiary bodies*<sup>30</sup>

*United Nations Commission for Indonesia*

74. By an exchange of letters dated 23 May 1950 between the Prime Minister of Indonesia and the principal secretary of the Commission, "the three representatives on the Commission and the personnel of their delegations" were granted "all privileges and immunities granted to the members of the Diplomatic Corps of similar rank accredited in Indonesia".

*United Nations Relief and Works Agency for Palestine Refugees*

75. Representatives of States serving on the Advisory Committee of UNRWA are granted diplomatic privileges and immunities under article VII of the Agreement between UNRWA and Egypt of 12 September 1950 and article I of the Agreement between UNRWA and Jordan of 14 March and 20 August 1951.

*Advisory Council for Somaliland*

76. Under article 10 of the Trusteeship Agreement for the Territory of Somaliland under Italian administration, approved by the General Assembly on 2 December 1950, members of the Advisory Council were granted full diplomatic privileges and immunities, and their staff "the privileges and immunities which they would enjoy if the Convention on the Privileges and Immunities of the United Nations were applicable to the Territory".

*United Nations bodies in the Republic of Korea*

77. In article IV, paragraph 4 of the exchange of letters of 21 September 1951, between the United Nations and the Republic of Korea, it was provided:

<sup>30</sup> The cases cited are illustrative only and are not intended to be exhaustive.

<sup>26</sup> United Nations, *Treaty Series*, vol. 394, p. 27.

<sup>27</sup> *Ibid.*, vol. 405, p. 3.

<sup>28</sup> *Ibid.*, vol. 434, p. 249.

<sup>29</sup> *Ibid.*, vol. 472, p. 173.

(1) Representatives of Member States serving on United Nations Commissions operating in Korea and the members of their delegations,

(2) Representatives of organs of the United Nations who may exercise official functions in Korea,

...

shall enjoy the privileges and immunities, exemptions and facilities as are granted to diplomatic envoys of similar rank in accordance with international law . . .

#### *United Nations bodies in Japan*

78. The Agreement signed on 25 July 1952 between the United Nations and Japan provides in article II that:

The following representatives of Member States exercising their official functions in Japan or passing through Japan to or from Korea . . .:

a. Representatives of Member States serving on any United Nations missions in Korea and the members of their delegations,

c. Representatives of organs of the United Nations

...

shall enjoy the privileges and immunities, exemptions and facilities provided for in Article IV . . . of the General Convention.

#### *Commission on the Status of Women*

79. The exchange of letters between the Secretary-General and Lebanon regarding the 1949 session of the above Commission, held at Beirut, provided that the representatives of Member States should be granted the privileges and immunities, exemptions and facilities specified in Article IV of the General Convention. A similar provision was contained in the Agreement between the United Nations and Iran, concluded on 16 February 1965,<sup>31</sup> regarding the session of the Commission held in Teheran in March 1965.

#### *Sub-Commission on Freedom of Information and of the Press*

80. In the exchange of letters between the Secretary-General and the Government of Uruguay regarding the session of the Sub-Commission held in Montevideo in May 1950, it was provided that diplomatic privileges and immunities would be accorded to the representatives of Member States.

#### *Technical Assistance Committee*

81. The Agreement signed on 11 June 1964, between the United Nations and Austria concerning arrangements for the meeting of the Technical Assistance Committee<sup>32</sup> held in Vienna, provided in article V for the application of the General Convention; in addition, representatives of non-member States were granted the same privileges as those accorded to the representatives of Member States by the Convention.

#### *Section 8. Nationality of representatives and the grant of privileges and immunities*

82. In a number of instances a host State has refused to grant diplomatic privileges and immunities to representatives on the ground that the person concerned did

not possess the nationality of the State he was representing but that of a third State.

83. In one such case which arose at United Nations Headquarters in 1957, the United States authorities based their refusal on the practice followed in Washington, whilst agreeing to grant the person concerned the privileges and immunities referred to in the International Organizations Immunities Act. The United Nations Chief of Protocol replied, reserving the position of the United Nations as regards the interpretation thus placed on section 15 (2) of the Headquarters Agreement. In another case in 1963 the United States Mission contended that, since possession of the nationality of the sending State was one of the conditions for the granting of diplomatic status in Washington, this condition also applied in respect of members of permanent missions by virtue of the wording of section 15. Referring to this point, the United Nations Chief of Protocol wrote:

We recognize, of course, that diplomatic practice authorizes the requirement by a receiving State of its consent for the appointment by a sending State to its diplomatic mission of a national of a third State. We are therefore ready to assume that the United States Government can impose the condition described in your letter in respect of diplomatic personnel to be accredited to it. Manifestly, it would be of direct significance to the United States Government whether a diplomat dealing with the Department of State has the nationality of the State which he represents. By contrast, the United Nations remains in doubt whether such a policy on the part of the host Government is a "corresponding condition" within the meaning of Section 15. It appears to us that the relationship between the obligation on the part of the United States to confer diplomatic privileges and the degree of interest which it could claim in the nationality of diplomatic personnel dealing not with the United States but only with the United Nations and with other missions of Members is too tenuous for such conditions at the United Nations Headquarters to be treated as corresponding to those in Washington.

84. In correspondence regarding a further case in 1964, the United Nations drew attention to the fact that, although under article 8 of the Vienna Convention on Diplomatic Relations<sup>33</sup> and Article 22 of the Vienna Convention on Consular Relations,<sup>34</sup> a receiving State might object to the appointment by the sending State of a non-national, no restriction could be placed on the immunities enjoyed once the appointment had been made. The United States was not a receiving State, nor apparently had it objected to the appointment as such of the person concerned.

85. At the Office at Geneva the Swiss Government has granted diplomatic privileges and immunities to a non-Swiss national appointed to represent a third State, but has refused to grant more than functional privileges to its own nationals appointed as the permanent representatives of other States.

86. Lastly, it may be noted that section 15 of the General Convention provides that the provisions of sections 11, 12 and 13 of the Convention are not applicable as between

<sup>33</sup> *United Nations Conference on Diplomatic Intercourse and Immunities, Official Records*, vol. II, p. 83.

<sup>34</sup> *United Nations Conference on Consular Relations, Official Records*, vol. II, p. 178.

<sup>31</sup> United Nations, *Treaty Series*, vol. 525, p. 211.

<sup>32</sup> *Ibid.*, vol. 500, p. 85.

a representative and the authorities of the State of which he is a national or of which he is or has been the representative.

*Section 9. Commencement and duration of privileges and immunities*

87. Section 11 of the General Convention and section 9 of the 1946 Agreement with Switzerland provide that representatives shall enjoy the privileges and immunities listed in those provisions "while exercising their functions and during their journey to and from the place of meeting". In 1961 the Legal Counsel replied to an inquiry made by one of the specialized agencies as to the interpretation to be given to the first part of this phrase, which is also to be found in section 13 of the Convention on the Privileges and Immunities of the Specialized Agencies.

You inquire whether the words "while exercising their functions" should be given a narrow or broad interpretation. By the former, the words could mean only "the period of time during which the representative concerned is actually doing something as a part of his functions as representative", "e.g., is present in the room or building where the meeting . . . is being held". By the latter, it could denote "the whole of the period during which he is present in the city where the . . . meeting . . . is being held".

We have not been confronted with such a question here in the United Nations, and the preparatory work on neither of the two privileges and immunities conventions throws any specific light on the point you raise. Nevertheless, I have no hesitation in believing that it was the "broad" interpretation that was intended by the authors of the Convention. This must follow from the fact that the expression "while exercising their functions" is contained in the opening paragraph and qualified each and all of the privileges and immunities provided in the sub-paragraphs, (a) through (g), that follow.

A glance at those sub-paragraphs will clearly show that the privileges and immunities provided by any of them would become meaningless if it is applicable only when the representative is "actually doing something as a part of his functions", "e.g., is present in the room or building where the meeting . . . is being held". Such an interpretation would lead to the absurd conclusion that, a representative, immediately after having performed an official function, or after having left the meeting room may, under paragraph (a) for example, be arrested, or detained, or have his personal baggage seized. By the same narrow interpretation, he may, the moment he left the meeting room, have his papers confiscated, or his right to use codes suspended, or his courier seized, or be conscripted into national service, etc. Should such a narrow interpretation prevail, the basic purpose of the Convention, which is to assure the representatives the independent exercise of their functions, would clearly be totally defeated.

The broader interpretation is also borne out by the fact that the phrase "while exercising their functions" is immediately accompanied and complemented by the phrase "and during their journey to and from the place of meeting". In other words, "while exercising" means during the entire period of presence in the State (not city) for reasons of the conference in question. This is logical because the "journey" necessarily is that to and from the State, not the conference hall. Only this interpretation avoids absurdity and only this is consistent with the immediately following reference in sub-section (a) to "personal baggage". Therefore, in accordance with the general principle that a treaty must be interpreted to effectuate its purpose and not to lead to absurdity, it seems to me, without reference to other criteria of interpretation, that only the "broad interpretation" should have been intended by the phrase in question.

88. In accordance with this interpretation it may be stated that the privileges and immunities granted to representatives under the General Convention and under the 1946 Agreement with Switzerland become operative at the moment the representative concerned leaves his own country or duty station *en route* to a meeting of a United Nations organ or to a conference convened by the United Nations. In order to secure the smooth application of the privileges and immunities it is common for Member States to inform the Secretariat of the arrival and departure of representatives and of their families. Besides recording this information for the benefit of other representatives, the United Nations notifies the host State so that, subject to adequate notice being given, arrangements can be made to enable the host authorities to receive representatives in an appropriate manner from the time of their arrival.<sup>35</sup>

89. As regards permanent representatives at the Geneva Office, a practice has developed in recent years whereby information of the arrival and departure of members of permanent delegations is supplied to the Federal authorities by the Geneva Office, rather than by the diplomatic mission at Berne, as envisaged in paragraph 4 of the decision of the Federal Council of 31 March 1948. The "*carte de légitimation*", referred to in paragraph 4 of the Federal Council's decision, is given only after the Geneva Office has informed the Federal authorities that credentials have been accepted in respect of the permanent representative in question, and his name entered in the official list maintained by the Geneva Office. In the case of *B.v.M.*<sup>36</sup> the appellant, an Iranian national, argued against the decisions of two lower courts in a private suit on the grounds, *inter alia*, that he had diplomatic privileges and immunities as a member of the Permanent Mission of Iran at the Geneva Office. A certificate from the head of the Mission saying that he was so employed was produced before the Federal Tribunal. The appeal was dismissed by the Tribunal in view of the fact that previous notification of the appellant's appointment had not been given to the competent Swiss authorities nor appropriate recognition shown by those authorities to the appointment. Although the element of previous notification had been met, it will be recalled that in the *Santiesteban* case<sup>37</sup> the United States court denied the application for release from custody principally on the ground that the consent of the United States authorities had not been given to the grant of diplomatic privileges and immunities to the individual concerned.

90. The effect, if any, of the grant of diplomatic privileges and immunities following the commencement of a suit was at issue in the New York case of *Arcaya v. Paez*.<sup>38</sup> In March 1956 a Venezuelan national began an action for libel against the Venezuelan Consul in New York on the ground that he had written articles

<sup>35</sup> As regards the practice at United Nations Headquarters, see section 7 (a), para. 53, above.

<sup>36</sup> *Arrêts du Tribunal fédéral suisse*, 85, 1959, II, p. 153.

<sup>37</sup> See section 7 (a), paras. 56-59, above.

<sup>38</sup> United States District Court, Southern District of New York, 15 October 1956; Court of Appeals, Second Circuit, 17 June 1957, 145 Fed. Suppl. 464; affirmed *per curiam*, 244, F. 2d 958 (1957).

defamatory of the plaintiff's character and had caused them to be distributed in the United States. On 10 April 1956, the Venezuelan Ambassador requested the United States Secretary of State to dismiss the case because of the defendant's immunity as a Consul. The Secretary of State forwarded the request to the Court without comment. On 13 April 1956, the defendant was made Alternate Representative of Venezuela to the United Nations, with the rank of Ambassador. In a statement to the Court the State Department declared that the defendant had diplomatic privileges and immunities as a result of his appointment but that his earlier status was not affected. It was held that the jurisdiction granted to District Courts over Consuls was not ousted by the defendant's appointment as a representative but that a stay of proceedings should be ordered for so long as he held ambassadorial rank.

91. The question of the continuation of immunity after representative functions have been relinquished was involved in a case which arose concerning a staff member who had previously served as First Secretary of his country's mission to the United Nations. Whilst serving as a member of the mission he had been involved in a car accident. The lawyers acting in his defence in an action arising out of the accident contacted the United States Mission, which in turn notified the Secretariat, on the question whether the position of the person involved as a defendant was affected by his status as a staff member. The Secretariat replied that the immunity of the staff member extended only as to his official functions and that, in any case, the cause of action had arisen before he became a staff member. Thus the question was to be determined by the status of the defendant as First Secretary. The letter from the Secretariat continued:

In this connexion, however, it may be appropriate to offer the comment that the immunity from legal process in respect of all acts done by representatives of Members to the United Nations in discharging their duties continues in force, notwithstanding that the persons concerned are no longer the representatives of Members. (Cf., the express determination to this effect by the General Assembly in Section 12 of the Convention on the Privileges and Immunities of the United Nations. This provision seems to conform to the well-established rule: Harvard Draft Convention on Diplomatic Privileges and Immunities, Article 29 and Comment with citations; Havana Convention on Diplomatic Officers, 1928, Article 20.) There is, of course, the further question that a diplomatic immunity from legal process may not survive the tenure of office of the diplomatic officer as to acts which did not relate to the exercise of his functions but only to his private life during the period of his tenure. In the present case, on the other hand, Mr. . . . . appears to have been driving from the United Nations Headquarters to the offices of his Mission, in each of which places he normally had official functions to perform, and it may therefore be that he was in fact driving on official duty.

92. One important occasion when considerations relating to the temporal duration of privileges and immunities was raised was in connexion with the decision of Indonesia, communicated in a letter dated 20 January 1965,<sup>39</sup>

<sup>39</sup> Letter dated 20 January 1965 from the First Deputy Prime Minister and Minister for Foreign Affairs of Indonesia addressed to the Secretary-General, A/5857.

On 19 September 1966, the Ambassador of Indonesia in

"at this stage and under present circumstances to withdraw from the United Nations". The concluding paragraph of this letter read:

While our actual withdrawal from the United Nations had been already carried out in New York as of 1 January 1965, I would suggest that due to the technical winding up of the Indonesian Permanent Mission in New York and reciprocally your Office in Indonesia, officially our respective offices would be closed on 1 March 1965. I would appreciate it highly if you would be helpful in having the office of the Indonesian Mission in New York maintain its official status till 1 March 1965, which will also be the case with your United Nations office in Djakarta.

In his reply of 26 February 1965,<sup>40</sup> the Secretary-General declared,

As you requested, arrangements have been made for the Indonesian Mission in New York to "maintain its official status" until 1 March 1965.

93. A number of individual problems regarding members of the Indonesian Mission who, either for personal reasons or for the purposes of winding up outstanding administrative matters, wished to remain in New York for a further limited period, were the subject of discussions between the United States and Indonesian Missions.

*Section 10. Restrictions placed by the host State on the privileges and immunities of representatives on the ground of reciprocity*

94. As in the case of section 15 of the Headquarters Agreement, the privileges and immunities granted to permanent representatives may be expressed to be the same "and subject to corresponding conditions and obligations", as the host State accords to diplomatic envoys accredited to the host State.<sup>41</sup> If, in such instances

Washington transmitted a message (A/6419)\* to the Secretary-General from his Government, stating that it had decided "to resume full co-operation with the United Nations and to resume participation in its activities starting with the twenty-first session of the General Assembly". At the 1420th plenary meeting of the General Assembly on 28 September 1966, the President, having read this communication, declared:

"It would . . . appear that the Government of Indonesia considers that its recent absence from the Organization was based not upon a withdrawal from the United Nations but upon a cessation of co-operation. The action so far taken by the United Nations on this matter would not appear to preclude this view."

At the conclusion of the President's statement, the delegation of Indonesia was seated without objection.

\* For the text of this document see *Official Records of the Security Council, Twenty-first year, Supplement for July, August and September 1966*, document S/7498.

<sup>40</sup> Letter dated 26 February 1965 from the Secretary-General to the First Deputy Prime Minister and Minister for Foreign Affairs of Indonesia, A/5899.

<sup>41</sup> In the case of the United States it should be noted that section 9 of the International Organizations Immunities Act provides as follows:

"The privileges, exemptions and immunities of international organizations and of their officers and employees, and members of their families, suites, and servants, provided for in this title, shall be granted notwithstanding the fact that the similar privileges, exemptions, and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: *Provided*, that nothing contained in this title shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities herein provided from

(Continued on next page.)

therefore, the host State reduces the privileges and immunities enjoyed by representatives accredited to it, it may be asserted that the privileges and immunities enjoyed by representatives to the United Nations should be similarly reduced. Thus in the instance referred to in section 16, para. 131, below, the United States authorities imposed the same restrictions on the representatives of certain Member States as regards inspection of unaccompanied baggage as were imposed on representatives of those countries accredited to Washington, in view of similar restrictions placed on United States representatives in the countries concerned. On similar grounds the United States has imposed limits on the movement of the representatives of those countries.<sup>42</sup> The Member States concerned have protested at these restrictions and the matter has remained a current issue.<sup>43</sup>

95. At the Geneva Office, as noted in section 7 (b) paras. 61-63, above, the fact that permanent missions are granted privileges and immunities analogous to those accorded to diplomatic missions at Berne, which in turn are based on reciprocity, has meant that some variation exists in the privileges and immunities actually enjoyed by different permanent missions, although the extent of such variation appears to be decreasing. The position in respect of customs privileges is dealt with separately in the Customs regulations adopted by the Federal Council on 23 April 1952.

96. The United Nations has not been directly involved in the correspondence and discussion between the host State and the various Member States affected regarding the restrictions referred to above. Nevertheless it has been the understanding of the Secretariat that the privileges and immunities granted should generally be those afforded to the diplomatic corps as a whole, and should not be subject to particular conditions imposed, on a basis of reciprocity, upon the diplomatic missions of particular States. This interpretation is supported by

(Continued)

persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States."

The effect of this provision in relation to the Headquarters Agreement and the Charter was referred to by the Legal Adviser of the United States Department of State in the legal opinion cited in paragraph 97 below.

<sup>42</sup> It may be noted that in 1960 when the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics attended the fifteenth session of the General Assembly, the United States declared that he should reside "in the closest proximity to the Headquarters of the United Nations" and that his movements, other than his arrival and departure, should be confined to Manhattan Island. The main reason given for this restriction was the need to ensure his safety. The Union of Soviet Socialist Republics denied the authority of the United States to impose these restrictions and asked the Secretary-General to take up the matter. The Secretary-General requested the United States to reconsider its position, drawing attention to the terms of Section 11 of the Headquarters Agreement and to the interest of the United Nations as a whole that heads of governments should participate in person in its deliberations. The Chairman of the Council of Ministers was eventually permitted to travel to the premises maintained on Long Island by the Mission of the Union of Soviet Socialist Republics.

<sup>43</sup> The question of reciprocity in respect of taxation on real property at United Nations Headquarters is referred to in section 18 (b), paras. 139 and 140, below.

an early official interpretation of the position by the Legal Adviser of the United States Department of State, which held it to be

clear that the Charter of the United Nations does not permit the imposition of conditions of reciprocity on the granting of privileges and immunities under article 105. Indeed the purpose of the Charter in respect of article 105 is to provide for the granting unconditionally by Member States of certain privileges and immunities to the United Nations so that it may function effectively as a world organization untrammelled in its operation by national requirements of reciprocity or national measures of retaliation among States.<sup>44</sup>

97. The State Department Legal Adviser's opinion also notes that the Convention on the Privileges and Immunities of the United Nations "does not admit of reciprocity requirements". He continues:

The background in the negotiation of section 15 of the headquarters agreement indicates that the phrase "subject to corresponding conditions and obligations" was inserted by way of compromise to meet a desire on the part of the United States that persons covered by section 15 were not to receive privileges and immunities broader than those accorded to diplomatic envoys accredited to the President of the United States, and that, like diplomatic envoys, such persons might be found *personae non gratae* and made subject to recall. The negotiating background does not indicate that the quoted phrase was inserted for the purpose of permitting the United States to make the privileges and immunities provided for in Section 15 dependent upon reciprocity. In the case of representatives of members, and resident members of their staffs, the United States may be authorized under the headquarters agreement to bring about expulsion of personnel in cases where such action appears to be required. Except for this drastic weapon which the United States may under some circumstances use, the headquarters agreement does not provide for the cancelling of privileges and immunities.<sup>45</sup>

He therefore concluded that even the International Organizations Immunities Act, which has an express authority on reciprocity in its section 9, is not to be interpreted as requiring the United States Secretary of State to enforce any conditions of reciprocity in conflict with the Charter and the Headquarters Agreement, but only as not precluding him from enforcing reciprocity, where otherwise authorized to do so, merely because a foreign national happens to be connected with an international organization. In addition, he acknowledged that the Headquarters Agreement established its own procedure for requiring a representative to leave the United States in case of abuse of his privileges of residence in activities outside his official capacity, beyond which there exists no grant of authority to withdraw privileges on any grounds determined by the host State.<sup>46</sup>

<sup>44</sup> Letter to the Chairman of the Sub-Committee on International Organizations and International Law of the Committee on Foreign Affairs, House of Representatives, 29 April 1946; reprinted in *Structure of the United Nations and the Relations of the United States to the United Nations. Hearings before the Committee on Foreign Affairs. House of Representatives Eightieth Congress, Second Session*, p. 508.

<sup>45</sup> *Ibid.*, p. 511. See *Summary of practice relating to the status, privileges and immunities of the United Nations*, section 37, paras. 364-370 below concerning the inapplicability of the *persona non grata* doctrine in respect of United Nations officials; the same reasoning applies, it is submitted, in the case of representatives.

<sup>46</sup> The question of the departure of representatives at the request of the host State is considered in section 13, paras. 117-121, below.

CHAPTER III. — IMMUNITY IN RELATION TO THE LEGISLATIVE, JURISDICTIONAL AND OTHER ACTS OF THE HOST STATE

*Section 11. Personal inviolability and immunity from arrest*<sup>47</sup>

98. Section 11 (a) of the General Convention and section 9 (a) of the 1946 Agreement with Switzerland provide, *inter alia*, for the immunity from personal arrest or detention of representatives.

99. In an opinion of 1 March 1948, the Attorney-General of New York gave an opinion<sup>48</sup> holding that privileges and immunities from arrest and conviction for crimes and traffic infractions within New York State were to be accorded to persons listed by the Department of State as being entitled to diplomatic privileges and immunities.

100. Various incidents have occurred from time to time involving the personal inviolability of representatives. In 1961 one Member State inquired whether United Nations protection could be provided for a member of its permanent mission in view of possible threats to his safety. The Secretary-General replied that it could not provide protection *qua* police protection outside the Headquarters district; it was thought that the Secretary-General might possibly assign a security officer, unarmed and not in uniform, to accompany a member of a mission or delegation if he felt such a course justified. In 1962 the permanent representative of another country complained that he had been the subject of abuse from the driver of a passing car; the United States authorities investigated the case, suspended the licence of the driver and conveyed his apologies to the representative concerned.

101. The question of the arrest of a member of the staff of a permanent mission was amongst the issues raised in the Santiesteban case.<sup>49</sup> The Cuban authorities protested to the United States authorities and to the Secretary-General on the grounds that the arrest was in violation of the diplomatic immunities conferred upon the diplomatic staff of permanent missions under section 15 (2) of the Headquarters Agreement. The subsequent discussion with the United States dealt mainly, however, with the question of whether or not Mr. Santiesteban already enjoyed diplomatic privileges and immunities at the time of his arrest.

102. In 1964, following an attack by a group of boys upon the First Secretary of the Mauritanian Mission, the representatives of fifty-five Member States sent a joint letter to the Secretary-General expressing their grave concern. It was stated that the First Secretary had been attacked "because he was a diplomat and because he was coloured". The signatories declared that the continued repetition of such incidents was the cause of "serious misgivings" as to the conditions

required in order for them to live normal lives and to carry out their work as diplomats. The United States Representative wrote to the Secretary-General, recalling that United States officials had already expressed regrets and apologies to the Mauritanian Mission and Government. The New York City police authorities had acted promptly on being informed of the incident and had located and arrested four boys, aged 16 to 19, who were believed to have been guilty of the attack in question. The District Attorney was prepared to prosecute if the First Secretary (who was the principal available witness) would agree to testify, so as to satisfy the requirements of local law. From statements given to the police by the arrested boys it appeared that the identity of the First Secretary had been unknown to them and that he was in fact believed, on account of language unfamiliarities, to be a member of a group with whom the arrested boys had been engaged in a dispute.

*Section 12. Immunity from legal process and waiver of immunity*

103. In all major agreements representatives have been granted immunity from arrest and legal process. A provision to this effect is contained in section 11 (a) of the General Convention and in section 9 (a) of the 1946 Agreement with Switzerland. A further section deals with the question of waiver. Section 14 of the General Convention provides as follows:

Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right, but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

104. Section 7 (b) of the International Organizations Immunities Act specifies that representatives

shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives . . . except insofar as such immunity may be waived by the foreign Government . . . concerned.

105. If an employee of a foreign mission, not of United States nationality, wishes to become a permanent resident of the United States (a step normally required preparatory to acquiring United States citizenship), he is required under section 247 of the Immigration and Nationality Act to file a waiver of privileges and immunities accruing to him under any United States law or executive order;<sup>50</sup> such a waiver includes a waiver of the exemption otherwise enjoyed from federal income taxation, but does not extend to waiver of immunity from suit and legal process for official acts under section 7 (b) of the International Organizations Immunities Act, or of privileges and im-

<sup>47</sup> The question of the departure of representatives at the request of the host State is considered in section 13, paras. 117-125, below.

<sup>48</sup> United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. 1, p. 160.

<sup>49</sup> See section 7 (a), paras. 56-59, above.

<sup>50</sup> See Code of Federal Regulations, Title 26—Internal Revenue, paragraph 1.893-1, (4), (5), United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. 1, p. 139; *Opinion of United States Attorney-General*, vol. 41, Op. No. 25 (1953), *ibid.*, p. 145, and *Opinion of United States Attorney-General*, vol. 41, Op. No. 27 (1954), *ibid.*, p. 147.

munities derived from treaties. Immunity from New York State income tax is also waived on acquiring permanent residence status, preparatory to becoming a United States citizen.

106. As regards immunity from legal process, the standard letter sent by the United States mission to all members of permanent missions receiving diplomatic privileges and immunities includes the following paragraph:

*Immunity from Legal Process* — In the event that the question of immunity from legal process arises, notification should be made to the United States Mission over the signature of the Head or Chargé d'Affaires of your Mission stating the nature of the judicial process involved, the court in which the case has arisen, and other identifying information. Notice of the immunity from judicial process will thereupon be transmitted to the appropriate judicial authorities by the United States Mission.

107. The following cases, relating to the jurisdiction of local courts, may be noted.<sup>51</sup>

(a) *Traffic offences*

(i) *Friedberg v. Santa Cruz*<sup>52</sup>

108. The wife of the Ambassador and Permanent Representative of Chile to the United Nations claimed diplomatic privileges and immunities under section 15 of the Headquarters Agreement following a traffic accident. The claim failed in a lower court on the ground that the Representative and his wife had submitted to the jurisdiction of the court by appearing generally and must be deemed in any case to have waived their immunity by obtaining a New York State driving licence. On appeal it was held that jurisdiction over an ambassador was vested exclusively in the Supreme Court of the United States and that no appearance or waiver by an ambassador could establish jurisdiction elsewhere. By virtue of section 15 of the Headquarters Agreement permanent representatives with the rank of ambassador were given the same privileges and immunities as the United States afforded to envoys accredited to it. The Supreme Court thus had original and exclusive jurisdiction over the case; the lack of jurisdiction of the New York courts could not be waived. An ambassador's wife was held entitled to a similar immunity under United States law as a "domestic" of the ambassador.

(ii) *City of New Rochelle v. Page-Sharp*<sup>53</sup>

109. The Third Secretary of the Australian Mission received a summons for speeding. He returned the summons through the United States Mission, claiming diplomatic privileges and immunities. His claim was upheld by virtue of the Headquarters Agreement and the recognition of his position under the Agreement given by the United States Mission. However, since it was not clear if United States diplomats in Australia were

granted immunity in respect of traffic offences, the case was adjourned to enable Mr. Page-Sharp to consider what further steps needed to be taken. The case was subsequently dismissed after the United States Mission to the United Nations indicated that it was not customary international practice to request waiver of immunity in such a case but that diplomatic action would be taken wherever necessary to prevent the recurrence of any abuse.<sup>54</sup>

(iii) *People v. von Otter*<sup>55</sup>

110. The defendant, the wife of the Counsellor of Legation of the Swedish Mission to the United Nations, was charged with a parking offence. She pleaded "absolute and unconditional immunity". Her claim was upheld, under the terms of section 15 of the Headquarters Agreement and in view of the recognition given to her diplomatic status by the Department of State which had issued her with an identification card.

(iv) *People v. Roy*<sup>56</sup>

111. The defendant, the chauffeur of the Indonesian Ambassador to Canada, was served with a summons for exceeding the speed limit when driving the Ambassador from the United Nations (where he had been acting as Vice-Chairman of his country's delegation) to Canada. The Ambassador informed the Court that, pursuant to section 335 of the New York Code of Civil Procedure, the defendant would file an application and waiver, pleading guilty and waiving the right to trial in open court. The Court, having in its discretion accepted the application and waiver, found the defendant guilty. It was held that no immunity existed in respect of the acts of diplomatic envoys or their servants outside the country to which the envoy was accredited; moreover the Ambassador had not been acting as an official or on behalf of the United Nations at the time in question.

(b) *Actions in respect of premises*

(i) *Agostini v. De Antueno*<sup>57</sup>

112. The landlord sought possession of certain premises occupied by the defendant, who was a Third Secretary at the Permanent Mission of Argentina. It was argued that under the constitution of the United States jurisdiction over realty had been reserved to state courts and that the Municipal Court therefore had jurisdiction *in rem* over realty situated in Manhattan. The Municipal Court held that it had such jurisdiction, notwithstanding the defendant's diplomatic privileges and immunities.

(ii) *De Miglio v. Paez*<sup>58</sup>

113. In an action by the landlord to remove the defendant tenant for non-payment of rent, the defendant

<sup>51</sup> See also the Santiesteban case, referred to in section 7 (a), paras. 56-59, above.

<sup>52</sup> Supreme Court of the State of New York, Special Term, Nassau County, Part II, 5 November 1948 (84 N.Y.S. 2d. 148). Appellate Division of the Supreme Court of the State of New York, 31 January 1947, 274 App. Div., 1072, (86 N.Y.S. 2d. 369).

<sup>53</sup> City Court of New Rochelle, New York, 29 August 1949, 91 N.Y.S. 2d. 290.

<sup>54</sup> C. M. Crowell, *The Protection of International Personnel Abroad*, pp. 84-86.

<sup>55</sup> City Court of New Rochelle, New York, 30 July 1952, 114 N.Y.S. 2d. 295.

<sup>56</sup> Court of Special Sessions, Herkimer County, New York, 2 December 1959, 200 N.Y.S. 2d. 612.

<sup>57</sup> Municipal Court of the City of New York, Borough of Manhattan, Third District, 5 June 1950, 99 N.Y.S. 2d. 245.

<sup>58</sup> Supreme Court of the State of New York, Appellate Term, Second Dept., 16 June 1959, 189 N.Y.S. 2d. 593.

claimed diplomatic and consular immunities as Consul-General of Venezuela and as Alternate Representative to the United Nations with the rank of Ambassador. The defendant's motion to dismiss the suit on these grounds was denied and default judgement entered for the landlord when the defendant failed to appear. On appeal to the Supreme Court of the State of New York, the Court ordered that a new trial should be held. The municipal court was without jurisdiction as regards any proceeding, whether *in rem* or *in personam*, against a foreign diplomatic representative.

(iii) *Knocklong Corporation v. Kingdom of Afghanistan, A. H. Aziz*<sup>59</sup>

114. The alleged holder of the title deed brought an action to determine title to certain real property owned by the Kingdom of Afghanistan; the property had been acquired to house the Permanent Representative of Afghanistan, who was one of the defendants in the action and also served as the office of the Permanent Mission of Afghanistan and as a repository of its records. The suggestion of the United States Attorney, based on the certification of immunity issued by the State Department, that the Permanent Representative enjoyed immunity by virtue of Section 15 of the Headquarters Agreement and that the Kingdom of Afghanistan enjoyed immunity in view of the nature of the property which was the subject of the action, was accepted by the Court.

115. An account of a suit brought by the City of New Rochelle in December 1964 to foreclose tax liens in respect of past taxes levied on the residences of the Permanent Representatives of Ghana, Indonesia and Liberia is given in section 18, para. 141, below. The State Department intervened to urge dismissal of the case on grounds of the defendant's immunity from suit.

(c) *Private suits*<sup>60</sup>

(i) *Tsiang v. Tsiang*<sup>61</sup>

116. The Permanent Representative of China was served with process in an action for separation brought by his wife. He appeared specially and claimed diplomatic privileges and immunities. The United States Attorney for the Southern District of New York presented a "suggestion of immunity" which recorded that the Department of State had requested the Attorney-General to call the attention of the Court to the defendant's immunity from judicial process. The Court granted the motion, in view of the State Department's request and the terms of the Headquarters Agreement.

*Section 13. Abuse of privileges and the departure of representatives at the request of the host State*

117. Under the terms of the General Convention, in particular article IV, the privileges and immunities granted to representatives are related to the official

functions they perform. Thus no question of requiring a representative to leave a country can normally arise (nor does any case appear to have arisen) based on acts actually performed by a representative as part of his official duties as a representative. Where, however, non-official acts are performed, which amount, in the opinion of the host State, to abuse of the privileges and immunities accorded, a demand for the recall of the representative concerned may be made.

118. In the case of the United States, the International Organizations Immunities Act provides in section 8 (b)

Should the Secretary of State determine that the continued presence in the United States of any person entitled to the benefits of this title is not desirable, he shall so inform the foreign government or international organization concerned, as the case may be, and after such person shall have had a reasonable length of time, to be determined by the Secretary of State, to depart from the United States he shall cease to be entitled to such benefits.

119. The Headquarters Agreement contains the following paragraphs in article IV, section 13:

(b) Laws and regulations in force in the United States regarding the residence of aliens shall not be applied in such manner as to interfere with the privileges referred to in section 11 and, specifically, shall not be applied in such manner as to require any such person to leave the United States on account of any activities performed by him in his official capacity. In case of abuse of such privileges of residence by any such person in activities in the United Nations outside his official capacity, it is understood that the privileges referred to in section 11 shall not be construed to grant him exemption from the laws and regulations of the United States regarding the continued residence of aliens, provided that:

(1) No proceedings shall be instituted under such laws or regulations to require any such person to leave the United States except with the prior approval of the Secretary of State of the United States. Such approval shall be given only after consultation with the appropriate Member in the case of a representative of a Member (or a member of his family) or with the Secretary-General or the principal executive officer of the appropriate specialized agency in the case of any other person referred to in section 11;

(2) A representative of the Member concerned, the Secretary-General or the principal executive officer of the appropriate specialized agency, as the case may be, shall have the right to appear in any such proceedings on behalf of the person against whom they are instituted;

(3) Persons who are entitled to diplomatic privileges and immunities under section 15 or under the General Convention shall not be required to leave the United States otherwise than in accordance with the customary procedure applicable to diplomatic envoys accredited to the United States.

(c) This section does not prevent the requirement of reasonable evidence to establish that persons claiming the rights granted by section 11 come within the classes described in that section, or the reasonable application of quarantine and public health regulations.

(d) Except as provided above in this section and in the General Convention, the United States retains full control and authority over the entry of persons or property into the territory of the United States and the conditions under which persons may remain or reside there.

(e) The Secretary-General shall, at the request of the appropriate American authorities, enter into discussions with such authorities, with a view to making arrangements for registering the arrival and departure of persons who have been granted visas

<sup>59</sup> Nassau County Court, New York, 25 March 1959, 167 N.Y.S. 2d. 285.

<sup>60</sup> See also the cases of *B. v. M* and *Arcaya v. Paez* referred to in section 9, para. 90 above.

<sup>61</sup> Supreme Court of New York County, New York (Special Term) 7 February 1949, 86 N.Y.S. 2d. 556.

valid only for transit to and from the Headquarters district and sojourn therein and in its immediate vicinity.

(f) The United Nations shall, subject to the foregoing provisions of this section, have the exclusive right to authorize or prohibit entry of persons and property into the Headquarters district and to prescribe the conditions under which persons may remain or reside there.<sup>63</sup>

120. It may be recalled that in the Santiesteban case,<sup>63</sup> Mr. Santiesteban was accused of having entered into a conspiracy to commit sabotage with two members of the Cuban Mission whose prompt removal was requested by the United States.

121. In agreements with other host countries the matter has been dealt with more shortly. In the exchange of letters in 1949 between the Secretary-General and the Lebanese Foreign Minister regarding the privileges and immunities to be accorded to the 1949 session of the Commission on the Status of Women, it was provided that those attending the meeting of the Commission should not "be liable to arrest, to seizure of their personal baggage or to expulsion proceedings, unless they have abused the privileges of sojourn accorded to them hereby by engaging, in Lebanese territory, in an activity irrelevant to their functions and punishable under Lebanese law." A closely similar provision was contained in the Exchange of Letters with Uruguay in 1950 concerning the privileges and immunities to be accorded by the Government of Uruguay to the sessions of the Sub-Commission on Freedom of Information and of the Press, and of ECLA. In the Exchange of Letters with France regarding the holding of the sixth session of the General Assembly in Paris in 1951, it was agreed that expulsion proceedings could only be instigated if there was an abuse of privileges by representatives undertaking "*une activité sans rapport avec leurs fonctions ou mission*". In addition it was specified that expulsion proceedings might not be introduced before consultations had been held with the Government of the Member State concerned.

#### *Section 14. Immigration restrictions, alien registration and national service obligations*

122. Section 11 (d) of the General Convention provides that representatives shall enjoy:

(d) Exemption in respect of themselves and their spouses from immigration restrictions, alien registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions.

123. The same rule has been contained in a number of agreements with host countries, for example in section 9 (d) of the 1946 Agreement with Switzerland and section 16 (e) of Agreement between the United Nations and Thailand relating to ECAFE.

124. In the case of United Nations Headquarters, section 13 (a) of the Headquarters Agreement provides

<sup>63</sup> The interpretation of this and related sections was considered during the discussions held following the refusal by the United States to grant entry visas to certain representatives of non-governmental organizations; see *Summary of practice relating to the status, privileges and immunities of the United Nations*, section 35, paras. 350-352, below.

<sup>63</sup> See section 7 (a), paras. 56-59, above.

that the "Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere" with the transit to or from the headquarters district of representatives. It is also provided that when visas are required for persons referred to in section 11 they shall be granted without charge and as promptly as possible. Section 13 (b) specifies that the pertinent laws and regulations shall not be applied in such a manner as to require any representative to leave the United States on account of any activities performed by him in his official capacity.<sup>64</sup>

125. In Executive Order No. 10292 amending the Selective Service Regulations, as amended by Executive Order No. 10659, representatives and members of their families are relieved from registration and from liability for military training.

#### *Section 15. Currency or exchange restrictions*

126. Article IV, section 11 (e) of the General Convention grants representatives:

The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions.

127. This provision has been generally applied without serious difficulty. It may be noted in this connexion that on occasions the possibility has arisen that steps taken to freeze the assets in the United States of a particular Government might be applied against the bank account maintained in order to conduct the business of the permanent mission of the State concerned. With reference to this contingency, the Legal Counsel advised the Deputy Chef de Cabinet in 1963 as follows:

... It is our view that it is not permissible for the host Government to interfere with the legitimate activities of the permanent missions to the United Nations by preventing these missions or their personnel from using funds on deposit in this country. From the legal standpoint, this is a matter covered by paragraph 2 of article 105 of the Charter, which provides that representatives of Members shall enjoy in the territory of each Member such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization. It is also relevant that in resolution 257 (III) the General Assembly recognized that the presence at the seat of the Organization of permanent missions serves to assist in the realization of the purposes and principles of the United Nations. . . .<sup>65</sup>

128. The United States did not in fact apply restrictions against the accounts maintained by the permanent missions in question.

#### *Section 16. Personal baggage and effects*

129. Section 11 (a) of the General Convention specified that representatives enjoy "immunity from seizure of their personal baggage". Section 11 (f) of the Convention provides more widely that representatives have the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

<sup>64</sup> See also section 7 (a), (c) and (d), International Organizations Immunities Act.

<sup>65</sup> *United Nations Juridical Yearbook 1963*, p. 168.

130. Identical provisions are contained in section 9 (a) and section 9 (f) of the 1946 Agreement with Switzerland. Under article 19 of the Swiss Customs Regulation of 23 April 1952, members of non-permanent delegations are expressly accorded "*une vérification de leurs bagages personnels réduite au strict minimum*". The baggage of heads of missions is not subject to inspection.

131. At United Nations Headquarters the matter is chiefly regulated by the provisions of section 15 of the Headquarters Agreement.<sup>66</sup> The United States Customs authorities have on occasions inspected the unaccompanied outgoing baggage and effects of the representatives of certain States on the grounds that such inspections were also made of the baggage and effects of diplomatic representatives of the countries concerned in Washington, after United States representatives to those countries had been subject to similar treatment. The invocation of the principle of reciprocity in this connexion was rejected by the States affected in the course of correspondence with the United States authorities. It is believed that the matter was eventually largely regulated following direct negotiations between the States concerned.

#### Section 17. Customs and excise duties

132. Section 11 of the General Convention provides that representatives may enjoy, besides the privileges and immunities expressly listed in that section,

(g) Such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties and sales taxes.

133. At United Nations Headquarters the United States Code of Federal Regulations, Title 19—Customs Duties (Revised 1964) provides as follows in section 10.30 a:

(b) Pursuant to sections 2 (d) and 3 of the act,<sup>67</sup> property of the organizations named in paragraph (a) of this section and the baggage and effects of the alien officers and employees thereof, of aliens designated by foreign Governments to serve as their representatives in or to such organizations, or of the families, suites, and servants of such officers, employees, or representatives, shall be admitted free of duties and internal revenue taxes imposed upon or by reason of importation, but such exemption shall be granted only upon the receipt in each instance of the Department's instructions which will be issued only upon the request of the Department of State.

(c) The term "baggage and effects" as used in section 3 of the act includes all articles which were in the possession abroad, and are being imported in connexion with the arrival, of a person entitled to the benefits of the act and which are intended for his bona fide personal or household use, but does not include articles imported as an accommodation to others or for sale or other commercial use.

(d) All articles accorded free entry under the act shall be entered or withdrawn in accordance with the requirements prescribed by the Tariff Act of 1930, as amended, and the regulations thereunder.

<sup>66</sup> Section 3 of the International Organizations Immunities Act merely provides that the baggage and effects of the representatives of foreign Governments shall be admitted free of customs duties and of internal revenue taxes.

<sup>67</sup> The International Organizations Immunities Act.

(e) No invoices shall be required for articles accorded free entry under the act.

134. Section 10.30 b, paragraph (b) provides that resident representatives and members of their staffs may import "... without entry and free of duty and internal-revenue tax articles for their personal or family use."<sup>68</sup>

135. The United States Department of State informed all permanent missions in 1964 that in future members of such missions would only be allowed to purchase one duty-free car a year. This restriction was not applied, however, in the case of the head of the mission or to cars purchased for official mission use. It was stated that the same ruling was already applicable to missions in Washington.

136. In the case of Switzerland the matter is dealt with largely in the Customs Regulation of 23 April 1952. Briefly, permanent missions may import all articles for official use and belonging to the Government they represent (article 15). The heads of permanent delegations may, in accordance with the declaration of the Swiss Federal Council of 20 May 1958<sup>69</sup>, import free of duty all articles destined for their own use or for that of their own family (article 16, paragraph 1). Other members of permanent delegations have a similar privilege except that the importation of furniture may only be made once (article 16, paragraph 2).

137. Non-permanent representatives have the right to "*franchise douanière*" only in respect of articles imported in their personal baggage (article 19 and article 21, paragraph 3). Office materials (*matériel de bureau*) may be freely imported (article 20). A special régime applies in respect of the importation of cars (chapter X) and the purchase of petrol (annex II).

#### Section 18. Taxation

##### (a) Assets of Member States

138. The General Convention contains no express provision providing for the exemption from taxation of the assets of Member States, although article IV specifies that the representatives of Member States may themselves be afforded certain privileges in respect of taxation. In the case of the Headquarters Agreement with the United States, reference is made only to resident representatives who, in section 15, are granted privileges and immunities equal to those granted to diplomatic envoys accredited to the United States Government. In the case of the United States therefore, the immunity from taxation of Member States is dependent on the terms of Article 105 of the Charter, the position under general international law and internal legislation. Under the International Organizations Immunities Act, section 4 (a),<sup>70</sup> income of foreign Governments received from

<sup>68</sup> Details of the position in respect of the various federal and state taxes in New York are given in section 18 (c), (ii), para. 147, below.

<sup>69</sup> See section 7 (b), para. 62, above.

<sup>70</sup> See also Code of Federal Regulations, Title 26—Internal Revenue, United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. I, p. 137.

United States investments and securities, and interest on bank deposits, is exempt from taxation.

(b) *Premises*

139. The main treaty provision which has been referred to in connexion with the liability to taxation of premises occupied by Member States for the purposes of their representation at United Nations Headquarters has been section 15 of the Headquarters Agreement. The relevant legislation of the State of New York at the present time is contained in an enactment which came into effect on 14 April 1960, whereby subdivision one of section 418 of the real property tax law of the State was amended to read as follows:<sup>71</sup>

Real property of a foreign government which is a member of the United Nations or of any world-wide international organization as defined in section four hundred sixteen of this chapter, the legal title to which stands in the name of such foreign government or of the principal resident representative or resident representative with the rank of ambassador or minister plenipotentiary of such foreign government to the United Nations or such other world-wide international organization, used exclusively for the purposes of maintaining offices or quarters, for such representatives, or offices for the staff of such representatives, shall be exempt from taxation, except levies made on a city-wide or borough-wide basis which are collectible with the real property tax, and special *ad valorem* levies to the extent provided in section four hundred ninety of this chapter. If a portion only of any lot or building of any such government or representative is used exclusively for the purposes herein described, then such portion only shall be exempt and the remainder shall be subject to taxation unless otherwise exempt from taxation by law. The exemption granted by this section shall apply to taxes which become due and payable after the date such property is used for the purposes herein stated, and shall continue with respect to such property as long as it remains the property of such government and is used for the purposes herein stated and no longer.

140. As enacted in 1955<sup>72</sup> the exemption extended only to real property situated within twelve miles of United Nations Headquarters; in 1957 this radius was extended to fifteen miles;<sup>73</sup> in 1960, in the provision quoted above, the geographical limitation was removed entirely. The dispute which had previously existed as to the liability to taxation of premises situated further than twelve miles, and then fifteen miles, from United Nations Headquarters was accordingly ended. The question of arrears of taxation in respect of such premises has remained in issue however. The Secretary-General has used his good offices in an effort to arrive at a satisfactory solution to these problems. In the course of correspondence the United States authorities have pointed out, *inter alia*, that in Washington exemption from real property taxation is granted, not on the basis of general principles of international law, but by virtue of United States Statutes and that property lying outside the District of Columbia is exempt from taxation only if there are in existence treaties between the United

States and the government in question providing for such exemption. The United States has therefore contended that, in the absence of such treaties, States occupying premises beyond the geographical limits set by New York law had no foundation for exemption under the terms of section 15 of the Headquarters Agreement.

141. As regards the question of arrears, the only issue now outstanding, it may be noted that in December 1964, the City of New Rochelle brought a suit to foreclose tax liens of \$24,000 each for 1958 and 1959 on the residences of the Permanent Representatives of Ghana, Indonesia and Liberia, situated more than fifteen miles from Headquarters. The Westchester County Judge dismissed the case "most reluctantly", in view of the possible hardship on other persons living in the area, after the State Department had intervened on the grounds of the jurisdictional immunity of the defendants.<sup>74</sup> The United States Attorney did not plead that the defendants were immune from taxation; in his written submission to the Court he declared that the City of New Rochelle would be able to recover its taxes only through diplomatic channels or by allowing the tax liens to remain on the properties until such time as the foreign Governments concerned decided to sell them.

142. A question relating to the taxability of the leasehold premises, only part of which were occupied by a mission, was raised in 1964 by the Permanent Representative of a Member State. In his reply, the Legal Counsel wrote as follows:

... As you may be aware, New York State has provided by law for the exemption from taxation of real property of Members of the United Nations when it is owned by the Governments or the Resident Representatives and is used exclusively for the purposes of maintaining offices or quarters for such representatives, or offices for the staff of such representatives. The Secretary-General has supported claims for exemption of premises owned by Members of the United Nations.

I would understand from your letter, however, that in the case of your office the building is privately owned and the tax assessed against the owner. Your Mission, like other tenants in the building, has assumed under the terms of its lease the obligation to pay a portion of any increase in the New York City real estate tax which may be assessed against the owner. In these circumstances the tax exemption to which your Mission would be entitled as an owner under New York law would not appear to be relevant. There is, I understand, no tax assessed directly against the tenant. It would appear that a provision in the lease for the tenant to pay the tax for the landlord would not change the taxable status of the property under New York law.

The problem raised in this situation, so far as international law is concerned, was considered by the International Law Commission during its preparation of the text which became Article 23 of the Vienna Convention on Diplomatic Relations. The International Law Commission recognized an exemption from "national, regional and municipal dues or taxes in respect of the premises of a mission, whether owned or leased". However, in the Commentary to this Article, the Commission stated:

"The provision does not apply to the case where the owner of leased premises specifies in the lease that such taxes are to be defrayed by the mission. This liability becomes part of the consideration given for the use of the premises and usually

<sup>71</sup> *McKinney's 1960 Session Laws of New York*, chap. 554, p. 931.

<sup>72</sup> *McKinney's 1955 Session Laws of New York*, chap. 700, p. 1018.

<sup>73</sup> *McKinney's 1957 Session Laws of New York*, chap. 541, p. 581.

<sup>74</sup> 255 N.Y. Suppl. 2d. 178.

involves, in effect, not the payment of taxes as such, but an increase in the rental payable." (*Yearbook of the International Law Commission, 1958*, vol. II, p. 96.)

This question was again considered at the Vienna Conference on Diplomatic Relations in 1961. While there was some difference of opinion on this point, the Conference added a second paragraph to Article 23 as follows:

"2. The exemption from taxation referred to in this Article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission."

I regret that in the light of the foregoing considerations we are not in a position to make representations with respect to taxes assessed against the lessor and not directly against the Mission.

143. In the case of Switzerland, exemption from real property taxation is granted for premises owned by the sending State, or by the head of mission for the sending State, and used for official business or as the residence of the head of mission.

### (c) *Representatives*

#### (i) *Income and fiscal taxes*

144. In the case of representatives, the rule contained in section 13 of the General Convention,<sup>75</sup> that periods spent on official missions should not count as "residence" for taxation purposes, appears to have been widely accepted, even where full diplomatic privileges and immunities are not granted.

145. At United Nations Headquarters, section 4 (b) of the International Organizations Immunities Act provides that wages, fees or salary received as compensation for official services by employees of a foreign Government shall be exempt from federal income tax. This exemption does not apply in the case of United States citizens (unless they are also citizens of the Philippines), and is made subject to the condition that the services must be of a similar character to those performed by United States employees in foreign countries, and that an equivalent exemption is granted to those employees. Representatives who are not United States citizens have also been granted exemption from the tax laws of the State of New York.<sup>76</sup>

146. At the Geneva Office permanent representatives are treated in the same way as diplomatic envoys at Berne, in accordance with the decision of the Swiss Federal Council of 31 March 1948. Exemption from taxation on income and capital is granted, except that there is no exemption from taxation on income from investment in Swiss commercial companies or on other private income derived from Swiss sources. Interest on deposits in savings banks or from bonds or savings certificates is subject to an automatic deduction of a 27 per cent *impôt fédéral anticipé*. Reimbursement of this deduction may be claimed later, however, from the income tax administration. Permanent representatives

are not exempt from succession duties on estates of which they are the beneficiaries. However, real property owned by the head of mission for the purposes of official business or as his residence is exempt from succession duties.

#### (ii) *Articles and services*

147. As regards taxation on articles and services, a distinction exists at United Nations Headquarters between resident and non-resident representatives. The position as regards resident representatives is fully described in the following extract from the standard letter sent by the United States representative to all incoming members of permanent missions accorded diplomatic privileges and immunities.

You are not subject to Federal taxes, the legal incidence of which falls on the purchaser. No immunity is practicable for taxes, the legal incidence of which falls on the manufacturer unless purchase can be made direct from the manufacturer.

On first entry into the United States, duty-free importation of household goods and furnishings, and personal effects, accompanied or unaccompanied, may be arranged through the United Nations Transportation Section, Headquarters Building, (Plaza 4-1234, Extension 3192) under the provisions of Public Law 291 — 79th Congress.

In the case of transportation of property within the United States, the shipping papers may be accepted by a carrier as proof of exemption where they show (1) that the consignor or consignee is a person entitled to exemption as outlined above, and (2) that the transportation charges were paid directly to the carrier by such person.

The various forms attached relate to Federal and State taxes:

(1) A listing of Federal taxes on goods and service and their applicability to Diplomatic Officers.

(2) *Federal Excise Tax Exemption Certificate* — may be used for securing tax exemption from retailers' and manufacturers' excise taxes. This form, upon being properly filled out and signed, should be presented upon purchasing taxable items. The form may be duplicated by you in accordance with your needs, although the larger retail stores will probably have them available. You will doubtless find that many retail stores will make automatic adjustments to eliminate excise tax charges on your charge account.

(3) *Federal Cabaret Tax Exemption Certificate* — may be used to claim exemption from the Federal tax in places of entertainment where such tax prevails.

(4) *Exemption Certificate (Form 731)* — may be used to claim exemption from Federal tax on transportation of persons. These forms may be obtained from most transportation companies or from the Office of the Collector of Internal Revenue, Wage and Excise Section, 120 Church Street, New York, New York 10007.

(5) *Federal Tax Exemption Certificate* to the New York Telephone Company — may be filed to secure exemption from taxes on telephone service in the New York area. This has been drawn up by the New York Telephone Company and approved by the Bureau of Internal Revenue. It should be prepared and filed on the letterhead stationery of your mission when paying your monthly telephone bill.

(6) *Federal Tax Exemption Certificate* — to be filed with the New York Telephone Company to secure Federal Tax Exemption on telegraph, radio and cable communications. A certificate is required for each separate payment regardless of the period covered by, and the number of charges included in the payment.

<sup>75</sup> The rule is also contained in section 11 of the 1946 Agreement with Switzerland.

<sup>76</sup> See United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. I, pp. 156 and 171.

(7) *Federal Excise Tax on Gasoline* — the Federal tax on gasoline is a manufacturers' excise tax and, therefore, exemption from it can be made only when gasoline is purchased from a station owned by a producing company. If the companies are willing to establish the necessary book-keeping procedures at certain of their stations, forms of exemption from this tax will be furnished by them. The Federal excise tax exemption and the New York State gasoline tax exemption should be requested at the same time.

(8) *New York State Sales and Use Taxes* — enclosed also is a numbered Identification Card issued to you by the Director of the New York Sales Tax Bureau which grants you exemption from payment of the New York State tax on rent for occupancy of hotel rooms, the sales and use tax on retail purchases of tangible personal property, the New York State amusement tax and the New York State gasoline tax. Also enclosed is a copy of the Certificate ST-126 (9/65). To claim exemption, copies of the Certificate may be furnished to vendors when making purchases subject to the above-mentioned taxes and to places where the New York State amusement tax applies. You are also required to exhibit the Identification Card issued to you by the Department of State. With regard to the gasoline tax, it is recommended that a credit account be opened with the gasoline company of your choice, whereupon a credit card will be issued to you. On the basis of this card you may purchase gasoline anywhere in New York from a station which sells that company's product. Upon purchasing gasoline you will present the credit card and sign a sales slip for the amount purchased each time. The sales slips will be forwarded by the stations to the company's main office and you will receive monthly billings. The gasoline company will deduct the tax from each bill.

Arrangements with the gasoline companies for monthly billings on the basis of credit cards are, of course, the personal responsibility of each Mission member. Neither the United States Mission nor the United Nations is in a position to arrange such credits or to certify to the credit status of members of Missions.

You will doubtless find it convenient to file copies of the New York State card with all the stores with which you establish charge accounts. Generally speaking, local merchants do not desire to undertake the necessary book-keeping to grant exemption from the 5 per cent State sales tax, unless the purchase is of a substantial nature or unless billing is made on a monthly basis.

*Customs Clearance* — For the duty-free importation of goods ordered by you after your arrival, and not for resale, which are admitted under Public Law 357-80th Congress, application should be made to the United States Mission to the United Nations for each transaction. A memorandum explaining the revised procedure for requesting Customs clearance was sent to all Missions on 14 May 1964, together with a supply of printed forms and instructions for completing the forms. . . .

In the case of non-permanent representatives, tax exemption extends only to taxes on income, as noted above, to Federal social security tax and unemployment tax, and to the tax otherwise added to hotel bills.

148. At the Geneva Office permanent representatives are treated in the same way as diplomatic envoys at Berne, in accordance with the decision of the Swiss Federal Council of 31 March 1948. All representatives are entitled to buy gasoline free of duty and are granted tax exemption in respect of driving licences and car registration fees. In addition exemption is granted from sales tax (ICHA) on duty free goods (including liquors and tobacco), and from insurance and dog tax; exemption is not granted, however, from indirect taxes incorporated in the price of goods (turnover tax). There is no exemption

from radio or television tax, either in respect of radio or television sets belonging to missions or to individual representatives. Missions and representatives are exempt from paying the employers' contribution under the Federal Law on Old Age and Survivors Insurance in respect of local employees subject to the scheme; it is understood that the employers' contribution has been paid in some instances on a voluntary basis.

#### *Section 19. Diplomatic licence plates, parking offences and traffic regulations*

149. The standard letter sent out by the United States Mission summarizes the position in respect of automobile registration and insurance as follows:

*Automobile Registration* — You may obtain a New York State diplomatic automobile registration and licence plate in the "DPL" series without payment by forwarding to the United States Mission (1) a completed registration application, (2) a Certificate of Insurance, FS-1, and (3) proof of ownership of the automobile to be registered. Application forms are available at the United States Mission. The FS-1 form is obtained from the insurance company. Proof of ownership is obtained from the seller.

*Automobile Insurance* — in 1957, the State of New York enacted a compulsory insurance law requiring that automobile accident personal liability insurance be carried by all owners of automobiles. Without proof of insurance, automobile registration cannot be effected. It is assumed by the Government of the United States that all members of Missions who own and operate automobiles carry such insurance in amounts commensurate with their status and responsibilities.

150. As noted in section 18 (c) (ii), para. 148, above, all representatives at the Geneva Office, whether permanent or not, are granted tax exemption in respect of driving licences and car registration fees.

151. The question of parking offences and traffic regulations in general has been the subject of some discussion. In 1962, the representatives of Member States of the Afro-Asian Group protested to the Secretary-General over the towing-away of cars with DPL licence plates parked in front of fire hydrants (or the possibility that cars so parked might be towed away by the New York City authorities). On that occasion, and again in 1967, when the New York City authorities started to remove DPL cars which were parked in violation of traffic regulations, discussions were held between the Secretary-General, the United States and City authorities, and, in 1967, members of the informal Committee on host country relations, designed to find a practical solution to the problems raised. It may be noted that special parking places have been allocated for missions of Member States to the United Nations.

152. In Geneva cars belonging to representatives are registered in the special 40,000 series and bear a C.D. sign. No fine is imposed on representatives for parking offences or other traffic violations.

153. The following judicial decisions, referred to in section 12 (a), paras. 108-111, above, relate to traffic offences: *Friedberg v. Santa Cruz*, *City of New Rochelle v. Page-Sharp*, *People v. von Otter*, and *People v. Roy*.

## CHAPTER IV. — IMMUNITY OF PREMISES

*Section 20. Diplomatic status and location of premises*<sup>77</sup>

154. Practice at United Nations Headquarters was summarized in the following letter sent by the Legal Counsel to the Legal Adviser of one of the specialized agencies in 1964.

There is no specific reference to mission premises in the Headquarters Agreement and the diplomatic status of these premises therefore arises from the diplomatic status of a resident representative and his staff. The United States has taken the position that offices having the status of a permanent mission can only be established after a permanent representative (resident representative in the terms of the Headquarters Agreement) is appointed. Their stand in this connexion, however, has not involved questions concerning the location of the office.

General Assembly resolution 257 (III) of 3 December 1948, on the permanent missions to the United Nations, likewise deals with the personnel of the Mission (credentials of a permanent representative, communication of appointment of the staff of a permanent mission, etc.) but does not deal with the office premises.

In practice permanent missions do not inform us in advance of their intention to set up an office at a given location, and I understand do not inform the United States Mission, unless they desire assistance of some kind in obtaining the property or otherwise. They do of course advise us of the address of their office once it is established and of any changes of address. We publish the address in the monthly list of Permanent Missions. We also inform the United States Mission of new addresses, and the United States Mission is sometimes informed directly by the permanent mission, but there is no special procedure, consultation or acceptance, tacit or express, involved.

155. In a circular note the Swiss Federal Authorities informed permanent missions at the Geneva Office that they had no objection in principle to one mission serving for the purposes of representing the State concerned both at Berne and at the Geneva Office, but that they would only recognize such missions as an embassy where the premises were situated in Berne. At the present time all permanent missions at the Geneva Office are located in Geneva, with the exception of two in Berne and one in Paris.

*Section 21. Inviolability of mission premises and of private residences*

156. The requirement that the host State should ensure, so far as reasonably possible, the inviolability of mission premises and of the private residences of representatives, has been generally recognized. United Nations records deal chiefly with the question of hostile demonstrations outside mission premises; when such demonstrations have taken place the Member State concerned has usually drawn the matter to the attention of the Secretary-General and requested his assistance in ensuring that necessary measures be taken by the United States authorities, in accordance with the Headquarters Agreement, to prevent their recurrence. Reference has also been made to Article 105 of the Charter when the demonstration or other activity (e.g., use of loudspeakers outside the mission premises) has placed difficulties in the way

of the performance of the functions of the mission. In discussions and correspondence with the United States authorities, the Secretary-General has suggested that, since under section 15 of the Headquarters Agreement resident representatives are entitled at their missions to the same privileges and immunities as the United States accords to diplomatic envoys accredited to it, consideration should be given to the adoption of a law similar to the Joint Resolution of the United States Congress (52 Stat. 30) which makes it unlawful to conduct demonstrations or other activities directed against foreign Governments within 500 feet of any building or premises in the District of Washington used by foreign government representatives. The Secretary-General has also pointed out that under section 16 (a) of the Headquarters Agreement the United States authorities are under an obligation to exercise due diligence to ensure that the tranquillity of the headquarters district is not disturbed.

157. The United States authorities have on each occasion assured the Secretary-General that the United States would discharge fully its international obligation to maintain the privileges and immunities necessary for the independent exercise of the functions of the representatives of Member States. They have also stated that, since under United States law, serious constitutional difficulties existed in adopting legislation impinging on the rights of individuals to congregate and express their political convictions, they were reluctant to consider new legislation until satisfied that acceptable alternatives did not exist. The United States authorities have also expressed the opinion that effective police protection had in fact been provided.

158. It may be noted that there have been a number of convictions for disorderly conduct, breach of the peace, resisting an officer and similar offences, following demonstrations directed against the missions of Member States of the United Nations.

*Section 22. National flag*

159. Although there appear to be no express provisions on the matter, in practice Member States have placed their national flag and emblem outside the premises of permanent offices and, to a lesser extent, on the residence and means of transport of the head of the mission. In Geneva the national flag is flown only on the national day and on special occasions.

## CHAPTER V. — FREEDOM OF COMMUNICATION AND RIGHT OF TRANSIT AND OF ACCESS TO MEETINGS

*Section 23. Freedom of communication and inviolability of correspondence, archives and documents*

160. Missions to the United Nations and representatives attending conferences convened by the United Nations enjoy in general freedom of communication on the same terms as those enjoyed by diplomatic personnel present in the host State on official business in connexion with that State. The inviolability of papers and correspondence, which is specified in section 11 (b) of the General Con-

<sup>77</sup> Questions relating to the immunity from taxation of premises are dealt with in section 18 (b), paras. 139-143, above.

vention, appears to have been respected. United Nations records show only one case in which a complaint was received from the mission of a Member State, that coded messages sent by cable to the home Government had not been received; it is possible, however, that this failure was due to an error in transmission.

*Section 24. Use of codes, diplomatic bag and courier*

161. Section 11 (c) of the General Convention and section 9 (c) of the 1946 Agreement with Switzerland grant to the representatives of Member States:

The right to use codes and to receive papers or correspondence by courier or in sealed bags.

In addition the decision of the Swiss Federal Council of 31 March 1948 specifies that permanent representatives

*. . . ont le droit d'user de chiffres dans leurs communications officielles et de recevoir ou d'envoyer des documents par leurs propres courriers diplomatiques.*

Chapter XI of the Swiss Customs Regulation of 23 April 1952, provides as follows:

*Correspondance officielle expédiés par valise scellée*

Article 33

1. *Les organisations auxquelles s'applique le présent règlement, de même que les délégations d'États Membres ont, en Suisse, le droit d'expédier et de recevoir, dans des valises scellées, de la correspondance officielle, des dossiers ou autres documents officiels échangés entre elles, avec leurs propres bureaux situés dans d'autres pays, avec les membres de leurs conseils et avec des gouvernements ou des missions diplomatiques.*

*Les Membres des conseils (conseils d'administration, conseils exécutifs, etc.) des organisations précitées ont le même droit lorsqu'ils se trouvent en Suisse dans l'exercice de leurs fonctions.*

*Les personnes qui accomplissent des missions pour les organisations susnommées peuvent également recevoir des valises scellées expédiées par l'une de ces organisations.*

2. *Les valises doivent être plombées ou cachetées par le service compétent de l'organisation, du gouvernement, de la mission diplomatique ou de la délégation. Elles doivent être accompagnées, soit d'un courrier porteur d'une lettre de courrier (sauf-conduit), soit d'une attestation. La lettre de courrier et l'attestation doivent être établies par le service qui a apposé la fermeture, et certifier que la valise ne contient que des documents officiels.*

162. The following extract from a letter sent in 1956 by the United States Mission to the United Nations Chief of Protocol summarizes the position at United Nations Headquarters in respect of the privileges and immunities to be accorded to a courier.

Under the usage of international comity, diplomatic couriers have always enjoyed immunity only for any pouches or parcels of official documents in their custody but not for baggage or personal effects. Under a recently issued amendment to the Customs Regulations, diplomatic couriers of foreign governments are accorded the customs privileges of foreign personnel of diplomatic rank, which means that in addition to the official communications they may be carrying, their personal baggage and effects are also inviolate.

With reference to immunity, an employee of a permanent mission in transit between the office and the airport is entitled only to such immunity as he normally is accorded, that is, a duly accredited diplomatic officer on the Blue List would have diplomatic immunity in accordance with Public Law 357 and a non

diplomatic or clerical employee to such immunity as provided by Public Law 291.

A diplomatic courier who is regularly in transit between a foreign country and the United States would not have diplomatic immunity, since only his pouches, luggage or personal effects are inviolate. In other words, the exceptions accorded to him are for the documents he carries rather than for himself.

A diplomatic courier is a subordinate official without the rank of a diplomatic officer, and usually is in a transit status rather than a resident member of a diplomatic staff. Accordingly, it would be contrary to diplomatic practices and the policy of the Department to include a diplomatic courier, as such, on the diplomatic list.

*Section 25. Right of transit and of access to meetings*

163. The right of transit to the place of meeting is contained, expressly or by implication, in each of the agreements dealing with the privileges and immunities of the representatives of Member States. In section 11 of the General Convention and section 9 of the 1946 Agreement, the privileges and immunities accorded to representatives are expressed to extend "during their journey to and from the place of meeting", without restriction of any kind. Similar provisions are contained in other agreements with host countries.

164. The position at United Nations Headquarters is chiefly regulated by sections 11,<sup>78</sup> 12 and 13 (a) of the Headquarters Agreement, the relevant positions of which are as follows:

Section 11. The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of (1) representatives of Members . . . or the families of such representatives . . . (5) other persons invited to the headquarters district by the United Nations . . . on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district. This section does not apply to general interruptions of transportation which are to be dealt with as provided in Section 17, and does not impair the effectiveness of generally applicable laws and regulations as to the operation of means of transportation.

Section 12. The provisions of Section 11 shall be applicable irrespective of the relations existing between the Governments of the persons referred to in that section and the Government of the United States.

Section 13 (a). Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11. When visas are required for persons referred to in that section, they shall be granted without charge and as promptly as possible.

165. In 1960 a problem arose regarding the attendance of the representative of a particular State at the sixteenth session of ECAFE which had been arranged to open in Karachi on 17 February 1960. The Government of Israel informed the Secretary-General of its intention to be represented in a consultative capacity, under paragraph 9 of the Commission's terms of reference and

<sup>78</sup> Section 11 of the Headquarters Agreement was referred to by the Secretary-General in his communications with the United States authorities regarding the restrictions placed on the movements of the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics when he attended the fifteenth session of the General Assembly in 1960; see section 10, para. 94, foot-note 42, above.

requested his assistance in obtaining the necessary visa. The Government of Pakistan indicated to the Secretary-General that it was not disposed to issue a visa to the representative of Israel for the purpose of attending the meeting. The Secretary-General therefore took steps, in consultation with the Chairman of the Commission and the Interim Committee on the Programme of Conferences of the Economic and Social Council, to change the venue of the session to one where access by all Member States was ensured. The following extract from a note to Correspondents (No. 2099), of 19 January 1960, summarizes the action taken and the grounds relied on.

Under paragraph 1 (b) of the rules of procedure of ECAFE, the Secretary-General has been given authority to alter, in special cases, the date and place of a session of ECAFE, in consultation with the Chairman of the Commission and the Council's Interim Committee on Programme of Conferences. In view of the imminence of the scheduled opening of the session, the Secretary-General considered that he could delay no longer in undertaking the prescribed consultations with a view to changing the venue of the session to the Commission's headquarters, where access by all Members of the United Nations is ensured, and to postponing the opening date, for administrative reasons. The Chairman of ECAFE and all the members of the Council's Interim Committee have concurred in the Secretary-General's proposal; the announcement of the change in the time and place of the ECAFE session was accordingly communicated to all members of ECAFE and of the United Nations on 18 January. In the Secretary-General's view, the principles which were at stake, namely the right of the United Nations to determine which States shall be represented at meetings of its organs and the right of Members of the United Nations to be present at meetings they are entitled to attend, are of crucial importance. These principles derive from the Charter itself. Furthermore, the Convention on the Privileges and Immunities of the United Nations provides that representatives of Member States to principal and subsidiary organs of the United Nations shall be exempted from immigration restrictions. In the circumstances, the Secretary-General had no choice but to take steps necessary to uphold the principles in question.

166. In 1963 the fifth session of ECA had before it a draft resolution inviting all African States to refuse to grant visas to representatives of South Africa and Portugal so as to prevent them from attending conferences and meetings. The Secretary-General sent the following cable<sup>79</sup> to the Executive Secretary of the Commission:

Please circulate the following message quote I have been informed that the submission of a draft resolution is under consideration by certain delegations which would invite all African States, members of the Economic Commission for Africa, to refuse to grant visas to representatives of the Republic of South Africa and Portugal to prevent them from attending conferences and meetings. I must respectfully draw attention to the fact that such resolution would invite action in violation of Article 105 of the Charter and Article IV of the Convention on the Privileges and Immunities of the United Nations. Such action would also be contrary to the established practice of the United Nations, based on the Charter principle of sovereign equality of all its Members, that all Members of the United Nations are entitled to attend meetings of its organs wherever they may be held. Any derogation from this fundamental principle and from the universally recognized practice would not only be legally unacceptable but would create a dangerous precedent which might be copied

by other host States. Action such as that contemplated in a draft resolution of this kind would be disruptive to the functioning of United Nations organs. Moreover consideration of such a draft resolution is without question outside the terms of reference of the Commission.

167. In 1963 the Office of Legal Affairs sent the following note<sup>80</sup> to the Under-Secretary for Economic and Social Affairs, asserting the right of access to United Nations meetings and offices of the representatives of all Member States.

It is a fundamental principle of the United Nations that representatives of the Members of the United Nations and officials of the Organization have the right of access to all meetings of the United Nations organs and to the offices of the United Nations to the extent necessary for the independent exercise of their functions in connexion with the Organization.

This right is recognized as included in the privileges and immunities which Article 105 of the Charter prescribes in paragraph 2 thereof:

"Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization."

It is also a corollary of the principle of sovereign equality expressed in Article 2, paragraph 1, that all Members of the United Nations are entitled to participate in the work of the Organization irrespective of the relations of their governments and the government on whose territory the United Nations meetings or activities are being held.

In implementation of these basic principles, the Convention on the Privileges and Immunities of the United Nations accords to representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations an exemption (in respect of them and their spouses) from immigration restrictions in the State they are visiting or through which they are passing in the exercise of their functions (Section 11. d). A similar exemption is accorded to officials of the Organization (Section 18.d). In addition, a number of "site" agreements have been entered into by the United Nations with host governments which stipulate in more detail the extent and definition of the right of access. Such agreements have been concluded, for example, with the United States in regard to the Headquarters and with the governments which act as hosts of the regional economic commissions and sub-regional offices.

The essential element in the right of access is that representatives of governments, officials of the Organization and other persons invited on official business shall not be impeded in their transit to or from the United Nations offices in connexion with meetings or other activities in which they are entitled to participate. Although this does not mean that the representatives of Member States have a right of entry to every United Nations office at any time, it clearly means that such right of access to United Nations premises must be granted to representatives of Members at least when they are entitled to attend meetings held in such premises or are invited to such premises in connexion with the official business of the Organization. This also implies that representatives of Member States and other persons having official business with the Organization should have the right to communicate freely with United Nations offices by mail, telephone or telegraph.

The Secretary-General has on several occasions emphasized the importance of compliance with the foregoing principles of access. He has noted that any derogation from these principles would be disruptive to the functioning of United Nations organs

<sup>79</sup> *Message from the Secretary-General of the United Nations on draft resolution E/CN.14/L.172 on Portugal and South Africa, E/CN.14/INF.13, 2 March 1963.*

<sup>80</sup> *United Nations Juridical Yearbook 1963, p. 167.*

and contrary to the clear obligations of Member States under the Charter.

168. A special problem arises when access to the country in which a United Nations meeting is to be held is only possible through another State. While there is little practice, the Secretariat takes the position that such States are obliged to grant access and transit to the representatives of Member States for the purpose in question.

## CHAPTER VI. — OBSERVERS OF NON-MEMBER STATES

### Section 26. Permanent observers

169. Permanent observers have been sent by non-member States only to United Nations Headquarters and to the Geneva Office. The position as regards permanent observers appointed by non-Member States to United Nations Headquarters was summarized in the following memorandum,<sup>81</sup> dated 22 August 1962, sent by the Legal Counsel to the then Acting Secretary-General. Since the preparation of that memorandum, the Holy See has appointed permanent observers, both in New York and at Geneva.

#### *Policy of the Organization regarding Permanent Observers*

1. In deciding whether or not to accord certain facilities to a Permanent Observer, it has been the policy of the Organization to make such facilities available only to those appointed by non-members of the United Nations which are full members of one or more specialized agencies and are generally recognized by Members of the United Nations.\*

#### *Legal basis for the institution of Permanent Observers*

2. There are no specific provisions relating to Permanent Observers of non-member States in the United Nations Charter, in the Headquarters Agreement with the United States Government or in General Assembly resolution 257 (III) of 3 December 1948 relating to Permanent Missions of Member States. The Secretary-General referred to Permanent Observers of non-members in his report to the fourth session of the Assembly on Permanent Missions,<sup>82</sup> but no specific action was taken by the Assembly either at that time or later to provide an express legal basis for the institution of Permanent Observers. It therefore rests purely on practice as so far followed.

#### *Facilities accorded to Permanent Observers*

3. Since Permanent Observers of non-member States do not have an officially recognized status, facilities which are provided them by the Secretariat are strictly confined to those which relate to their attendance at public meetings and are generally of the same nature as those extended to distinguished visitors at United Nations Headquarters. The Protocol Section arranges for their seating at such meetings in the public gallery and for the distribution to them of the relevant unrestricted documentation. A list of their names is appended, for convenience of reference, to the

\* A Permanent Observer was designated by the Government of Switzerland in the summer of 1946 and the practice of designating such Observers has been followed by Switzerland since that time. Observers were subsequently appointed by certain States which later became Members of the United Nations including Austria, Finland, Italy and Japan. Certain other States, which are not Members of the Organization at the present time, maintain Permanent Observers, namely the Federal Republic of Germany (since October 1952), Monaco (since May 1956), the Republic of Korea (since February 1949), and the Republic of Viet-Nam (since March 1952).

<sup>81</sup> *United Nations Juridical Yearbook 1962*, (ST/LEG/8), fascicle 2, p. 236.

<sup>82</sup> *Official Records of the General Assembly, Fourth Session, Annex to the summary records of the Sixth Committee*, document A/939.

List of Permanent Missions to the United Nations published monthly by the Secretariat, as Permanent Observers often represent their Governments at sessions of United Nations organs at which their Governments have been invited to participate.

4. No other formal recognition or protocol assistance is extended to Permanent Observers by the Secretariat. Thus no special steps are taken to facilitate the granting of United States visas to them and their personnel, nor for facilitating the establishment of their offices in New York. Communications informing the Secretary-General of their appointment are merely acknowledged by the Secretary-General or on his behalf and they are not received by the Secretary-General for the purpose of presentation of credentials as is the case for Permanent Representatives of States Members of the Organization.

#### *Permanent Observers and the question of privileges and immunities*

5. Permanent Observers are not entitled to diplomatic privileges or immunities under the Headquarters Agreement or under other statutory provisions of the host State. Those among them who form part of the diplomatic missions of their Governments to the Government of the United States may enjoy immunities in the United States for that reason. If they are not listed in the United States diplomatic list, whatever facilities they may be given in the United States are merely gestures of courtesy by the United States authorities.

170. At the Geneva Office the Federal Republic of Germany, the Holy See, the Republic of Korea, and the Republic of San Marino maintain permanent observers, who enjoy *de facto* the same privileges and immunities as permanent representatives (except in the case of the permanent observer of San Marino, who is a Swiss citizen). In addition, Switzerland appointed in 1966 an *Observateur permanent du Département Politique Fédéral auprès de l'Office des Nations Unies à Genève*.

171. Where representatives of non-member States are specially invited to attend United Nations meetings or conferences the representatives concerned must be granted at least functional immunities and a right of entry into the host State, even if they only attend as observers. In a memorandum from the Legal Counsel to the Secretary of the Special Political Committee in 1960 it was stated that a right of transit to the Headquarters District might be claimed for observers if they could be deemed to be "persons invited to the Headquarters District by the United Nations . . . on official business", as envisaged by section 11 (5) of the Headquarters Agreement.

### Section 27. Facilities afforded by the United Nations to observers

172. As noted in paragraphs 3 and 4 of the memorandum quoted in section 26 above, the facilities provided to permanent observers "are strictly confined to those which relate to their attendance at public meetings and are generally of the same nature as those extended to distinguished visitors at United Nations Headquarters". Such observers do not enjoy *ex qualitate* any special treatment with respect to communications which their Government might wish to circulate.

173. If the Government of a non-member State is invited to attend a meeting of a United Nations organ or subsidiary organ or a conference under United Nations auspices, it frequently appoints its observer to represent

it. In such a case the observer must have special credentials since he does not sit at the conference table as an observer but as the plenipotentiary of his Government. This principle is applied, for example, when the Swiss observer represents his country at the General Assembly for the election of Judges to the International Court of Justice.

*Section 28. Grant of privileges and immunities to observers*

174. The position as regards diplomatic privileges and immunities for permanent observers at United Nations Headquarters is summarized in paragraph 5 of the memorandum cited in section 26 above. In *Papas v. Francini*<sup>83</sup> a claim by a member of the staff of the then Italian observer to the United Nations to full diplomatic immunity was rejected since the State Department had not recognized the defendant as an official with diplomatic status. The benefits of the International Organizations Immunities Act, however, (i.e. functional privileges and immunities) are granted to persons designated by foreign Governments to serve as their representatives "in or to" international organizations; this phrase has been interpreted as applying to permanent observers.

175. The position as regards observers at the Geneva Office and in the case where the representatives of non-member States are specially invited to attend United Nations meetings even if they attend only as observers, is described in section 26 above.

**B. Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the specialized agencies and the International Atomic Energy Agency**

CHAPTER I. — GENERAL ASPECTS: THE POSITION OF REPRESENTATIVES IN RELATION TO THE SPECIALIZED AGENCIES AND IAEA<sup>84</sup>

*Section 1. Interpretation of the term "representatives"*

1. In the Convention on the Privileges and Immunities of the Specialized Agencies (subsequently referred to as the "Specialized Agencies Convention"), article I, section 1 (v), provides that for the purposes of articles V and VII, dealing respectively with the representatives of Member States and abuses of privileges,

... the expression "representatives of members" shall be deemed to include all representatives; alternates, advisers, technical experts and secretaries of delegations.<sup>85</sup>

<sup>83</sup> Supreme Court of the State of New York, Special Term, King's County, Part V, 6 February 1953, 119 N.Y.S. 2d. 69.

<sup>84</sup> Owing to the particular organizational structure of the IBRD, IFC, IDA and IMF and the sources from which their privileges and immunities are derived, the account of the position of functionaries of those organizations has been placed in a separate annex at the end of this study.

<sup>85</sup> It may be noted that in the ICAO Headquarters Agreement with Canada, article I, section 1 (f), which reproduces the substance of the above definition, specifies that the expression "secretaries of delegations" includes "the equivalent of third secretaries of diplomatic mission but not the clerical staff".

2. The majority of specialized agencies reported that no special problems had arisen regarding the interpretation of the term "representative". FAO referred to the fact that the FAO annex to the Specialized Agencies Convention was amended in 1959 so as to extend the application of the Convention to the representatives of associate members of FAO as well as to full members; this amendment has not, however, presented any difficulties in relation to representatives.

3. In addition to the IMF and IBRD, which are dealt with in a separate annex,<sup>86</sup> three other specialized agencies drew attention to the fact that individual members of the executive or similar body of their institution enjoyed a special status. In the case of WHO the members of the Executive Board are persons technically qualified in the field of health, who, although designated by member States, sit as members of the Board in an individual capacity. Whilst not representatives of Governments, under paragraph 1 of annex vii to the Specialized Agencies Convention, they are granted the same privileges and immunities, together with their alternates and advisers, as the representatives of member States, and waiver of their immunity may be made only by the Executive Board. In the case of IAEA, article XV B of its Statute provides that Governors appointed to the Board of the Agency enjoy, together with their alternates and advisers, such privileges and immunities as are necessary for the independent exercise of their functions. Members of the IAEA Board of Governors remain, however, national representatives and may indeed also act as the permanent representative of the member State concerned.

4. By reason of the tripartite character of the Organization, Government, employers' and workers' delegates enjoy an equal status in organs of the ILO. If, however, at the ILO General Conference employers' and workers' delegates are in fact members of national delegations, the employers' and workers' members of the Governing Body do not represent the countries of which these persons are nationals, but are elected by employers' and workers' delegates to the Conference. By virtue of paragraph 1 of the ILO annex to the Specialized Agencies Convention, employers' and workers' members of the Governing Body are assimilated to representatives of member States, except that the waiver of the immunity of any such person may be made only by the Governing Body.

*Section 2. Distinction between permanent and temporary representatives*

5. The appointment of permanent representatives, as opposed to those sent to represent member States solely at conferences or *ad hoc* meetings held by the agency concerned, is widely followed by member States. In the case of specialized agencies having their headquarters in Geneva,<sup>87</sup> it is customary for the accreditation

<sup>86</sup> See para. 67 *et seq.*

<sup>87</sup> See also *Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the United Nations*, section 2 (b), paras. 13 and 14, above.

No State has a permanent representative at any regional office of a specialized agency.

of permanent representatives to be along the following lines:

... to the European Office at the United Nations and to the Specialized Agencies with headquarters in Geneva ...

The various agencies concerned are sometimes mentioned by name. In a relatively small number of instances States have accredited a representative solely to a particular agency in Geneva; it is believed that there are no examples of this practice at the present time.

6. As regards specialized agencies having their headquarters other than in Switzerland, it may be noted that under ICAO Assembly resolution A 4-1, a State elected to the Council of ICAO "is understood to have indicated its intention ... to appoint and support full time representation at the Headquarters of the Organization". Such representation has normally been provided. In the case of IAEA, section 1 of the Headquarters Agreement with Austria provides in part that:

(j) the expression "resident representative to the IAEA" means the principal resident representative to the IAEA designated by a Member State.

(k) the expression "each Member of the resident delegation of a Member State to the IAEA" includes members of the delegation of the resident representative to the IAEA, but does not include clerical and other auxiliary personnel.

7. Some IAEA Governors act at the same time as resident representatives; in some instances plenipotentiary envoys accredited to the Republic of Austria are concurrently Governors and/or resident representatives. Similarly, the staff of Governors and resident representatives may be concurrently members of the staff of diplomatic missions in Austria.

8. In the case of FAO a distinction exists between resident and non-resident permanent representatives. The latter category normally consists of members of diplomatic missions in a neighbouring country (e.g. France or Switzerland) or of representatives accredited to the United Nations Geneva Office. Resident permanent representatives are those who are stationed in Rome and who are normally members of diplomatic missions accredited to the Government of Italy. In connexion with the appointment by a Government of a resident permanent representative who was not a member of the diplomatic corps in Rome, the Italian Government pointed out that its understanding when signing the Headquarters Agreement was that resident representatives would normally be chosen from amongst the heads or members of diplomatic missions accredited to the Italian Government, or possibly the Holy See, except in the case of countries with which Italy did not maintain diplomatic relations or where an Italian national was appointed by the sending States. This issue was submitted to the FAO Conference at its seventh session in 1953. The Conference adopted resolution No. 54 which recommended to Member States that they should

consult the Director-General in order that he may seek the views of the Italian Government

if they wished to appoint resident representatives,

who are not and may not become members of diplomatic missions accredited to the Italian Government.

Problems arising out of the application of this resolution have been satisfactorily resolved by negotiations.

9. Several agencies drew attention to the fact that, owing to the technical and operational nature of their work, they corresponded directly with the ministry or other authority of member States immediately concerned; the functions of permanent representatives in these cases therefore tended to be of a formal and occasional nature rather than of day-to-day importance.

### *Section 3. Attendance at different organs and meetings of the same organization*

10. The question whether representatives accredited to a particular agency, or to one of its organs, are entitled to represent their State at all meetings, or before all organs, has received answers which vary to some extent from agency to agency. It would seem a general rule, however, that accreditation as a permanent representative does not give a right to participate in conferences of the organization concerned unless the representative has received separate credentials enabling him to do so.

#### *(i) FAO*

In so far as permanent representatives are accredited to the FAO as such, they may attend any FAO meeting (other than conference sessions) where their country is entitled to be represented. Some non-resident permanent representatives, however, have only been accredited to attend the FAO Council; it is presumed that such representatives might nevertheless attend meetings of other FAO bodies for which no special credentials are required. Conversely, nomination as representative to a specialized technical body of FAO would not be considered as extending to attendance at the Council or other organ of the FAO as representative or observer. Letters inviting Governments to FAO meetings usually contain a request that the names of representatives, alternates and advisers or observers be communicated to the Director-General before the meeting. Credentials are required for all representatives and other members of delegations to the FAO Conference.

#### *(ii) IAEA*

Accreditation as a resident representative does not entitle the representative concerned to participate in the proceedings of any organ to which he is not specifically accredited. Credentials are needed for each delegate to the IAEA General Conference and for each Governor; a resident representative's credentials are accepted, however, for the purposes of enabling him to attend meetings of the Board of Governors as an observer.

#### *(iii) ICAO*

ICAO practice is that a representative accredited to one organ of ICAO may attend meetings of another organ in a private capacity. Attendance at ICAO conferences is dependent upon the issue of credentials.

#### *(iv) ILO*

Accreditation to the ILO does not by itself entitle a permanent representative to participate in the work

of an organ of the organization as a delegate, nor is appointment to a particular organ valid for others. Except in the case of employers' and workers' members of the Governing Body, who are elected at the ILO General Conference for a period of three years, credentials are needed to permit a person to act as a representative at any ILO meeting.

(v) *IMCO*

Specific accreditation is required for each representative for each organ of IMCO.

(vi) *ITU*

Specific accreditation is required in all cases where accreditation is needed for the organ or conference concerned.

(vii) *UNESCO*

All States which are members of UNESCO organs with limited membership are invited to inform the organization of the name of the person appointed to represent them; in default of notification, the organization considers the permanent representatives concerned as entitled to sit. Special credentials are required in the case of representatives to the General Conference.

(viii) *UPU*

Permanent representatives are not accredited to UPU organs as such. Attendance at UPU congresses is dependent on the issue of appropriate credentials in all cases.

(ix) *WHO*

The practice of the organization has been to require specific accreditation to a particular organ. Accordingly persons appointed as permanent representatives require special credentials to enable them to attend the World Health Assembly as delegates to sessions of that body.

#### *Section 4. Credentials*

11. The detailed practice of the various agencies in respect of credentials is set out below under sub-headings.

#### *I. Practice regarding issuance of credentials in respect of (a) permanent representatives and (b) temporary representatives*

(i) *FAO*

(a) Permanent representatives, whether resident or not, are usually accredited by letter from the appropriate cabinet minister of the sending State to the Director-General of FAO. There have also been cases where the appointment was notified to FAO by the head of the diplomatic mission in Rome.

(b) Formal credentials are required for delegates attending sessions of the FAO Conference. The credentials must be issued by the Head of State, the Head of Government or the Minister for Foreign Affairs. In exceptional cases credentials have been accepted if issued by the head of the diplomatic mission in Rome who, however, cannot nominate himself as a delegate. Pursuant to Rule III — 2 of the General Rules the credentials shall be deposited with the Director-General, if possible not

later than fifteen days before the opening of the Conference session.

(ii) *IAEA*

(a) Credentials for Governors and resident representatives must be signed by the Head of State or Government, or by the Foreign Minister. The appointment of members of permanent missions is notified by the head of mission.

(b) Credentials for every delegate to each session of the General Conference, and to other IAEA meetings, must be signed by the Head of State or Government or by the Foreign Minister.

(iii) *ICAO*

(a) Credentials for representatives on the ICAO Council are usually signed by the Minister for Foreign Affairs or the Minister of Communications or Transport.

(b) In the case of a member of a temporary delegation, it is considered sufficient that his credentials be signed by the Ambassador of his State appointed to the country where the meeting is being held, or by the representative of his State on the ICAO Council if the delegation represents a State which is a member of the Council.

(iv) *ILO*

(a) In certain cases the member State merely informs the Director-General of the appointment of a permanent representative; in others a letter of credence is submitted. The Director-General replies to any communication, informing the State concerned that he has taken note of the communication. Credentials are variously issued by the Head of State, by the Ministry of Foreign Affairs, and by the Ministry of Labour.

(b) Article 3 of the ILO Constitution provides that member States shall be represented at ILO General Conferences by four representatives, of whom two shall be government delegates and the other two employers' and workers' delegates respectively. Each of the delegates may be accompanied by two advisers for each item on the agenda of the Conference. Except in the case of employers' and workers' members of the Governing Body, credentials are needed to permit any person to act as a delegate at any ILO meeting. Credentials are issued by any of the authorities referred to in (a) above or by the permanent representative of the country concerned, acting on instructions from his Government.

(v) *IMCO*

Credentials are required for each representative for each organ of IMCO. Under the rules of those organs, credentials must be issued by the Head of State or Government or by the Minister for Foreign Affairs of the member State concerned, or by an appropriate authority designated by one of the above. Delegated authority to issue credentials is commonly exercised by a chief of mission accredited to the host State.

(vi) *ITU*

(a) In the case of permanent representatives ITU accepts the credentials deposited either with the Secretary-General of the United Nations, with the Director of the United Nations Office at Geneva, or directly with ITU.

(b) Chapter 5 of the General Regulations annexed to the International Telecommunication Convention (Montreux 1965) regulates the question of credentials for conferences in some detail; the Convention came into force for States Parties on 1 January 1967. At plenipotentiary conferences delegations must be accredited by instruments signed by the Head of State or Government or by the Minister for Foreign Affairs; however, they may be provisionally accredited by the head of the diplomatic mission accredited to the Government of the country in which the conference is held. In the event that the United Nations accedes to the ITU Convention on behalf of a Trust Territory placed under its administration, any delegation sent on behalf of that Territory must be accredited by the Secretary-General of the United Nations. The same arrangements apply in the case of administrative conferences except that the Minister responsible for the particular topic may accredit a delegation.

(vii) *UNESCO*

(a) Member States inform the Director-General when a new permanent representative is appointed. The representative concerned is then received by the Director-General, to whom he presents his credentials, signed by one of the authorities listed below.

(b) In the case of temporary representatives, under article 22 of the rules of procedure of the UNESCO General Conference, credentials must be signed by the Head of State or Government or by the Minister for Foreign Affairs, or by another competent minister whom the Minister for Foreign Affairs has specified in writing to the Director-General. Credentials in respect of the representatives of associate member States must be issued by the competent authorities.

(viii) *UPU*

(a) There is no consistent practice: sometimes the UPU receives a photocopy of the letters of credence, sometimes a simple note of information from the mission concerned.

(b) As regards temporary representatives, a distinction exists between the UPU Congress and other meetings. In the former case credentials are transmitted to the UPU secretariat signed by the Head of State or Government or by the Ministry of Foreign Affairs. In the case of meetings of the UPU Executive Committee and of working parties, the representatives of the various postal administrations do not require credentials.

(ix) *WHO*

(a) In the case of permanent representatives the Director-General is informed of the appointment either directly by the Foreign Ministry of the member State concerned or through the Geneva Office of the United Nations.

(b) In the case of delegates, the rules of procedure of the World Health Assembly provide that each Member State communicate to the Director-General, if possible fifteen days before the opening date, the names of its representatives. In accordance with rule 22 (b), credentials must be issued by the Head of State, the Minister for Foreign Affairs, or by the Minister of Health or by any

other appropriate authority. In practice the term "appropriate authority" has been considered to include government departments responsible for dealing with public health, ministries of health, heads of diplomatic missions and permanent missions.

II. *Practice regarding inspection of credentials*

(i) *FAO*

In the case of permanent representatives and of representatives attending sessions of FAO bodies (other than the Conference or Council) or technical or regional meetings, the credentials or nominations are examined by the Director-General. According to the rules of procedure which have been adopted by certain commissions or similar bodies established under a convention or agreement by virtue of article XIV of the FAO Constitution, the secretary (an FAO staff member) is required to examine the credentials and to report thereon to the body concerned. In the case of the FAO Conference, credentials are examined by a credentials committee consisting of nine member nations. Pursuant to rule III-5 of the General Rules, any delegation or representative to whose admission a member nation has objected is seated provisionally until the credentials committee has reported and the Conference has given its decision.

(ii) *IAEA*

The credentials of resident representatives are inspected by the Director-General. The credentials of delegates to the General Conference are examined by a credentials committee appointed by the Conference: those of Governors are inspected by the Director-General, who submits a report thereon to the Board of Governors for approval.

(iii) *ICAO*

In accordance with rule 3 of the rules of procedure of the ICAO Council, the credentials of representatives on the Council are examined by the President of the Council, the first Vice-President, and by the Secretary-General, who submits a report to the Council. The credentials of representatives to the Assembly are examined by a credentials committee, consisting of five members representing five contracting States nominated by the President of the Assembly.

(iv) *ILO*

The credentials of delegates to the General Conference are subject to the scrutiny of the Conference and are referred to a Special Credentials Committee under Article 3, paragraph 9, of the ILO Constitution. An analogous procedure exists for regional conferences. There is no formal procedure for the examination of credentials in the Governing Body, or at other meetings of the organization.

(v) *IMCO*

Under the rules of the IMCO Council and of the Maritime Safety Committee, the Secretary-General has a duty to examine and report on credentials. In the case of the IMCO Assembly a credentials committee is established.

(vi) *ITU*

The credentials of permanent representatives are inspected by the ITU secretariat. At conferences credentials are inspected by a credentials committee.

(vii) *UNESCO*

At the UNESCO General Conference a credentials committee, consisting of nine members, is elected upon the nomination of the President. If any objection is raised regarding a representative he is permitted to sit provisionally, with the same rights as other representatives, until the General Conference has given a ruling on his status following the report of the credentials committee. In the case where notification has been sent only by cable or by an authority not previously designated by the Minister for Foreign Affairs, the representative concerned is allowed to participate, subject to the presentation at a later date of formal credentials.

(viii) *UPU*

The UPU has no procedure for verifying the letters of credence of permanent representatives. At the UPU Conference credentials are inspected by an *ad hoc* committee.

(ix) *WHO*

Credentials of representatives to the World Health Assembly are examined by a credentials committee consisting of twelve delegates appointed by the Assembly upon the recommendation of the President. The Committee meets immediately after the formal opening meeting of the Assembly and reports to it before the Assembly proceeds with its agenda.

*Section 5. Full powers and action in respect of treaties*

12. Full powers, issued by the Head of State or Government, or by the Minister for Foreign Affairs or other responsible authority referred to in section 4 above, are generally required to enable representatives to sign agreements drawn up under the auspices of specialized agencies. Except to a limited extent in IAEA and UNESCO, accreditation as a permanent representative is not regarded as sufficient to enable a representative to sign agreements on behalf of his Government; the limited exemption granted by IAEA in this respect is presently under review. Details of the practice of various agencies are given below.

(i) *FAO*

The principles adopted by the FAO Conference with respect to the mode of participation in conventions and agreements concluded under the auspices of FAO provide for both the traditional system (i.e. that of signature or of signature subject to ratification and accession), as well as the simplified system of acceptance by deposit of an instrument of acceptance. When the former system is applied any signature is made subject to the provisions of rule XXI-4 of the General Rules of the organization, which provides as follows:

The full powers given to a Government representative to sign a convention, agreement, supplementary convention or agree-

ment, should be issued by the authority endowed with the inherent power to bind the State, the head of the government, the minister of foreign affairs or the minister of the department concerned. Instruments of accession or of acceptance should likewise be issued by one of these authorities. When speedy action is required, signature, accession or acceptance may be effected by the delegate of the government concerned or the head of its diplomatic mission in the country where the signature, accession or acceptance is to take place, subject to the deposit with the Director-General of a written statement issued by the head of the diplomatic mission certifying that such action is being taken in accordance with full powers conferred by the government and that the necessary formal instrument will be forthcoming.

(ii) *IAEA*

Except in the case of Governors and resident representatives, it has been IAEA's practice to require full powers for all representatives who sign agreements between IAEA and member States, whether the particular agreement is binding upon signature or not. In the case of multilateral treaties concluded under IAEA auspices, however, all representatives, including Governors and resident representatives, are required to have full powers.

(iii) *ICAO*

All representatives, including representatives on the ICAO Council, must hold full powers in order to sign conventions or other agreements drawn up under the auspices of ICAO or concluded between ICAO and the Government concerned.

(iv) *ILO*

Since the instruments adopted by the International Labour Conference are not open to signature by individual States, but only to ratification, full powers are not required. However, in the case where instruments adopted under the auspices of the organization at special meetings are open to signature, either at the time or subsequently, full powers are demanded.

(v) *IMCO*

Full powers are required for the signature of instruments of a treaty nature (e.g. not final acts) drawn up at IMCO conferences.

(vi) *ITU*

Under chapter 5 of the General Regulations annexed to the International Telecommunication Convention (Montreux 1965), representatives must be furnished with full powers in order to sign the final act of ITU conferences.

(vii) *UNESCO*

Conventions adopted by the UNESCO General Conference are not open for signature so that no question of full powers arises. Full powers are required, however, in the case of international conferences convoked by the General Conference and which have as their object the adoption and signature of an international agreement. Whilst permanent representatives are not entitled to sign multilateral conventions or other agreements drawn up under UNESCO auspices without express full powers, such powers are not regarded as necessary in the case of bilateral agreements in the form of an exchange of letters between the organization and the State concerned.

(viii) *UPU*

Full powers are necessary to enable representatives to negotiate and sign the UPU acts which are adopted at each congress; sometimes the powers of certain delegates are limited to those of negotiation, only the head of the delegation having the power to sign.

(ix) *WHO*

Permanent representatives require express powers to enable them to sign agreements between the organization and the State concerned. The manner in which conventions, agreements and regulations are adopted by the World Health Assembly obviates the need for the issue of full powers to representatives to the Assembly.

*Section 6. Appointment of a representative to more than one organization or post; representation of more than one State by the same representative*

13. The same person has frequently been appointed as the representative of his country to more than one agency, particularly in the case of those having their headquarters in Geneva. The same representative has also served on occasion as the Ambassador of his country, either in the host or a nearby State, or as a member of a diplomatic mission.

14. In most agencies a representative may not act on behalf of any State other than the one which appointed him. Exceptions to this rule do, however, exist. Delegates to ITU conferences and UPU congresses, for example, may represent more than one member, although in the latter case a delegation may not represent more than one additional country. In ICAO, whilst the rules of procedure of the ICAO Assembly and Legal Committee provide that no person may represent more than one State, the rules of procedure of Regional Air Navigation meetings allow a person to be appointed as the representative for more than one State. In UNESCO the delegation of the USSR represented the Byelorussian SSR and the Ukrainian SSR prior to the appointment by these States of their own representatives.

CHAPTER II. — APPLICATION OF THE CONSTITUTIONAL INSTRUMENTS OF THE SPECIALIZED AGENCIES AND OF IAEA IN RELATION TO PRIVILEGES AND IMMUNITIES

*Section 7. Scope of privileges and immunities derived from the constitutional instruments of specialized agencies and of IAEA*

15. Article 105, paragraph 2, of the Charter of the United Nations provides that:

Representatives of the Members of the United Nations and officials of the Organization shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization.

Provisions incorporating the same principle are to be found in the constitutional instruments of most of the specialized agencies.<sup>88</sup>

<sup>88</sup> Article 40, para. 2, of the ILO Constitution, article XII of the UNESCO Constitution; article 67 of the WHO Constitution; and article 27 (b) (ii) of the WMO Convention.

16. In the Specialized Agencies Convention, which follows the enumerative method used in the General Convention, the privileges and immunities granted to the representatives of member States in execution of these constitutional provisions are set out in a specific list; except in two cases the facilities afforded are not identified with those granted to diplomatic representatives. Furthermore it is expressly provided in section 16 that:

Privileges and immunities are accorded to the representatives of members, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the specialized agencies.

Unless, therefore, the host State (whether a State in whose territory a specialized agency has its offices or one in which a specialized agency has convened an *ad hoc* meeting) accords privileges and immunities over and above those envisaged in the Specialized Agencies Convention so as to assimilate the position of representatives to that of diplomats, the representatives of member States are only entitled to privileges and immunities on the scale provided by the Specialized Agencies Convention or under the Constitution of the specialized agency concerned.

17. Except in the case of ICAO, where representatives on the ICAO Council other than the President are granted only the same privileges and immunities as representatives to meetings, it appears that all permanent representatives have been granted privileges and immunities on a par with those granted to diplomats. In the case of Switzerland,<sup>89</sup> this is provided in the Decision of the Swiss Federal Council of 31 March 1948.<sup>90</sup>

Similar provisions are contained in the headquarters agreements concluded by other specialized agencies, other than ICAO.<sup>91</sup>

*Section 8. Nationality of representatives and the grant of privileges and immunities*

18. Section 17 of the Specialized Agencies Convention states that the provisions of sections 13, 14 and 15 granting representatives privileges and immunities

<sup>89</sup> Under agreements between Switzerland and ITU, UPU and WMO respectively, non-permanent representatives to those organizations are granted privileges and immunities analogous to those granted to non-permanent representatives to the United Nations by virtue of the 1946 Agreement between the United Nations and Switzerland; the latter Agreement provides the same privileges and immunities as are contained in the Convention on the Privileges and Immunities of the United Nations.

In the case of the ILO and WHO, agreements were entered into with Switzerland by those two organizations in 1946 and 1948 respectively, granting non-permanent representatives privileges and immunities similar in substance to those provided in the 1946 Agreement with the United Nations but expressed in different language.

The Customs Regulation of 23 April 1952 specifies the extent of immunity from customs taxes and procedures of representatives, whether permanent or temporary.

<sup>90</sup> See *Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the United Nations*, section 7 (b), paras. 61-63, above.

<sup>91</sup> See article XI, FAO Headquarters Agreement, article XIII, IAEA Headquarters Agreement, article 18, UNESCO Headquarters Agreement.

are not applicable in relation to the authorities of a State of which the person is a national or of which he is or has been a representative.

No case appears to exist in which a representative of a member State has sought to invoke the provisions of the Convention in relation to the State which he represented or of which he was a national.

19. Where the person appointed as a representative was a national of another State, no objection has normally been raised by the organization or by the host State to the appointment as such. In such instances, which have usually been cases of the appointment of permanent representatives, the host State has granted the individual concerned the same privileges and immunities as other representatives. Where, however, the representative so appointed was a national of the host State itself, the latter, usually acting under specific treaty provisions,<sup>92</sup> has declined to grant more than functional privileges and immunities.

20. It may be noted that in the case of the ILO there have been a number of instances in which the credentials of employers' and workers' delegates to the ILO General Conference have been challenged on grounds of nationality. In one such case which arose an objection to the credentials of the workers' delegate of a member State was submitted by a trade union organization which was numerically the strongest in the country; usually, in pursuance of article 3 of the Constitution of the ILO, the delegate should have been appointed in agreement with it. However, the Government explained that it had not done so because the organization, which grouped large numbers of workers from a neighbouring country, had to be regarded as "non-national". The Credentials Committee did not accept the objection on the ground that it could not establish the facts with certainty in the time available. However, it expressed the view that to deny any representative character to an organization to which belonged a large number of workers, many of whom might be of foreign origin, but who had resided continuously in the member State for many years, was tantamount to depriving them of the right to participate in the representation of the workers of the country.

#### *Section 9. Commencement and duration of privileges and immunities*

21. Section 13 of the Specialized Agencies Convention provides that representatives enjoy the privileges and immunities listed in that section "during their journeys to and from the place of meeting".<sup>93</sup> No requirement is made that transit or host States must be notified of the journey of representatives (although normally such States are notified, if only by the presentation to the appropriate authorities of a passport or other means of

<sup>92</sup> For examples of such provisions see article XI, section 24 (c), FAO Headquarters Agreement, article XVIII, section 48 (c), IAEA Headquarters Agreement, article III, sections 17 and 18, ICAO Headquarters Agreement.

<sup>93</sup> The interpretation of this phrase in conjunction with the preceding words "while exercising their functions and" is considered in *Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the United Nations*, section 9, paras. 87 and 88 above.

identification by the representative himself), or that the consent of such States must be obtained as a condition for the grant of the privileges and immunities in individual cases. Where, therefore, States have adhered to the Specialized Agencies Convention or have accepted provisions worded in similar language, whether in bilateral agreements with an agency or by other means, the privileges and immunities concerned are assumed to commence at the moment the representative leaves his home State or his regular post, if stationed outside his home country.

22. As regards the duration of some of the most essential privileges, section 14 of the Specialized Agencies Convention provides as follows:

In order to secure for the representatives of members of the specialized agencies at meetings convened by them complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

The provision has also been accepted in the majority of pertinent bilateral instruments relating to specialized agencies.

23. By contrast with the position as regards privileges and immunities under the Specialized Agencies Convention or under agreements cast in similar terms, where privileges and immunities analogous to those accorded to diplomats are concerned (chiefly in the case of permanent representatives), it would appear that the grant of such privileges and immunities has in most cases been made dependent upon notification to the host State. This summary of general practice must, however, be regarded in the light of the provisions of particular treaties and of national practice in respect of diplomatic representatives.

#### (i) *FAO*

As resident representatives are usually members of diplomatic missions in Rome the time during which they are covered by privileges and immunities is determined by the practice observed in the matter by the Italian Government. Other representatives are provided the same protection as in the Specialized Agencies Convention in article XII, section 25, of the FAO Headquarters Agreement.

#### (ii) *IAEA*

Governors and permanent representatives enjoy diplomatic privileges and immunities under article XIII of the Headquarters Agreement; as such their privileges and immunities commence upon notification by IAEA of their arrival to the host State. Under article XIV, section 33, of the Headquarters Agreement and article V, sections 12 and 13, of the IAEA Agreement on Privileges and Immunities, other representatives are granted privileges and immunities under the same temporal conditions as in the Specialized Agencies Convention.

#### (iii) *ICAO*

Section 15 of the Headquarters Agreement provides expressly that no representative shall be entitled to the privileges and immunities listed in section 12 (which correspond largely to those set out in section 13 of the

Specialized Agencies Convention) "unless and until" his name and status have been duly notified to the Secretary of State for External Affairs of the host country. In practice, the usual entry courtesies and facilities are accorded to arriving representatives before formal notification has been made.

As regards the duration of privileges and immunities, section 12 (a) of the Headquarters Agreement provides that immunity from legal process in respect of official acts shall continue even after the person concerned has ceased to be a representative.

(iv) *ILO*<sup>94</sup>

The decision of 31 March 1948 of the Swiss Federal Council, according to which permanent representatives enjoy diplomatic status, applies if the sending State informs the Swiss authority, the Federal Political Department, of the appointment and if that authority recognizes the newly appointed official.<sup>95</sup>

As regards delegates, there appears to be no requirement of notification to or acceptance by the host State. Only persons who have been formally designated as delegates by notification to the organization enjoy immunities as such, but there is no evidence in ILO practice to suggest that the privileges and immunities concerned run only from the date of receipt of the notification, as opposed to the date when the journey to the meeting began.

(v) *IMCO*

No specific procedures have been prescribed in implementation of the relevant provisions of the Specialized Agencies Convention, which are presumed by IMCO to be of automatic application.

(vi) *UNESCO*

In accordance with article 18 of the Headquarters Agreement the matter is regulated in respect of all representatives by the practice observed by the host State with respect to diplomatic representatives accredited to it. However, when a permanent representative submits his letter of credence to the Director-General it is the organization which requests the host State to provide him with a diplomatic card; this request constitutes an implicit notification to the host State. In a very small number of cases this request is made by the embassy of the State concerned, without the intervention of the organization.

*Section 10. Restrictions placed by the host State on the privileges and immunities of representatives on the ground of reciprocity*

24. There appears to be no case known to a specialized agency where the privileges and immunities granted to non-permanent representatives by the host State have been restricted on the grounds that corresponding privileges and immunities were denied or restricted to repre-

sentatives of the host State stationed in the sending State.<sup>96</sup> Such instances have been infrequent in the case of permanent representatives, but have nonetheless occurred, chiefly under treaty provisions whereby privileges and immunities were granted to such representatives on the same terms as the State concerned granted to diplomats accredited to it. Thus in the case of FAO, while no instances of the type described above have actually occurred, there might be some scope for considerations of reciprocity on the basis of article XI, section 24 (a) of the Headquarters Agreement, which provides that resident representatives of Member States and members of their missions

shall . . . be entitled within the Italian Republic to the same privileges and immunities, subject to corresponding conditions and obligations, as the Government accords to diplomatic envoys and members of their missions of comparable rank accredited to it.

Although the provisions of the IAEA Headquarters Agreement are less explicit, the host State has applied the principle of reciprocity to certain missions to IAEA. Thus it has refused in such cases to refund payments of gasoline tax or to permit the resale of cars without payment of customs duties after the customary period of two years; in addition, visas have been issued for less than the usual one year period. The IAEA has disputed the contention of the host Government that it was entitled under the Headquarters Agreement to impose these restrictions on mission personnel accredited to IAEA, as well as on diplomatic missions accredited to the Government, since similar restrictions were imposed on the representatives of the host State stationed in the particular countries concerned.

25. A similar plea was accepted by the French Government in a case which arose in UNESCO. Although under the UNESCO Headquarters Agreement the enjoyment of privileges and immunities of representatives is not made subject to reciprocity, in one instance the French authorities declined to grant exemption from radio tax to a particular representative on the ground that diplomats were not granted a similar exemption in the sending State. Exemption was obtained nevertheless following a request from the organization drawing attention to its special legal status and the inapplicability in regard to representatives to it of a condition of reciprocity. It was argued that the pertinent provision (article 18) of the Headquarters Agreement granting representatives privileges and immunities equal to those accorded to diplomats of equivalent rank was to be construed in a most favourable sense, such that if a benefit was granted to any diplomat of the same rank, the same benefit should be granted to all corresponding representatives to UNESCO. This interpretation was apparently accepted by the French authorities in agreeing to grant the exemption.

26. Under the decision of the Swiss Federal Council of 31 March 1948, permanent missions in Switzerland are granted privileges and immunities analogous to those accorded to diplomatic missions in Berne. Since the latter are based on reciprocity, some variation has existed in

<sup>94</sup> Similar arrangements apply in the case of representatives to ITU, UPU, WHO and WMO respectively.

<sup>95</sup> Decision of the Swiss Federal Tribunal in the case of *B. v. M.*, *Arrêts du Tribunal fédéral suisse*, 85, 1959 II, p. 153. See *Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the United Nations*, section 9, para. 89, above.

<sup>96</sup> See, however, the Order in Council of the Province of Quebec No. 172 of 26 January 1965, referred to in paragraph 27, below.

the privileges and immunities enjoyed by different permanent missions, although the extent of variation is believed to be decreasing.

27. Lastly it may be noted that in Order in Council No. 172 of 26 January 1965, of the Province of Quebec, exemption of representatives to ICAO from legislation in respect of provincial income tax, succession duties, gasoline tax, retail sales tax and car registration fees is given.

under condition that the country represented by such officials grants such privileges to representatives of the Province in such country.

### CHAPTER III. — IMMUNITY IN RELATION TO THE LEGISLATIVE, JURISDICTIONAL AND OTHER ACTS OF THE HOST STATE

#### *Section 11. Personal inviolability and immunity from arrest*

28. Article V, section 13 (a), of the Specialized Agencies Convention provides that the representatives of member States shall enjoy:

“Immunity from personal arrest or detention and from seizure of their personal baggage . . .

This provision, which is also contained in the relevant headquarters agreements<sup>97</sup> has been generally respected. From the information supplied by the specialized agencies it appears that very few cases of the arrest of representatives have occurred<sup>98</sup> and that the personal inviolability of representatives has been well respected.

29. Protection to ensure personal inviolability has been made the subject of national legislation in a number of countries, usually in conjunction with provisions providing protection for diplomatic representatives to the country concerned. The Swiss Criminal Code deals with the matter specifically in article 296, which states that “a person who has publicly insulted an official representative of a foreign State to an international organization shall be punished by prison or fine.”

30. No specialized agency reported having any knowledge of restrictions having been placed on the movements of representatives.

#### *Section 12. Immunity from legal process and waiver of immunity*

31. Article V, section 13 (a), of the Specialized Agencies Convention provides that the representatives of member States enjoy “immunity from legal process of every kind” in respect of “words spoken or written and all acts done by them in their official capacity”. No instance appears to have arisen in which this immunity from legal process has not been accorded to a representative to a specialized agency. Where representatives have been granted diplomatic privileges and immunities, the immunity from process is wider in that it extends to private acts.

<sup>97</sup> See e.g. article XI and article XII, section 25 (a), FAO Headquarters Agreement; article XIII and article XIV, section 33 (a), IAEA Headquarters Agreement; and article III, section 12 (a), ICAO Headquarters Agreement.

<sup>98</sup> For one case, the arrest of a representative following a traffic accident, see section 19, para. 48, below.

The exact extent of the immunity so afforded varies from country to country; in some countries, for example, immunity from legal process does not extend to the case where diplomats are caught “*en flagrant délit*”. Limitations of this kind are, of course, inapplicable where the immunity from legal process is confined to official acts.

32. As regards the waiver of immunity, the basic principle is that contained in section 16 of the Specialized Agencies Convention, which states that:

Privileges and immunities are accorded to the representatives of members, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the specialized agencies. Consequently, a member not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the opinion of the member, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

33. Apart from this provision, which is repeated in a number of agreements entered into by the specialized agencies, no restriction exists on the exercise by a member State of its discretion whether or not to waive immunity. The specialized agencies reported that no case had arisen in which a member State had waived immunity from legal process in respect of an official act of a representative.<sup>99</sup> To the best of their knowledge, no representative had even been summoned before a court as a witness.

34. It may be noted that paragraph 1 of the ILO Annex to the Specialized Agencies Convention provides that immunity in respect of employers’ and workers’ members of the Governing Body may be waived only by the Governing Body. A similar arrangement is provided for in the case of the WHO Executive Board, under paragraph 1 of Annex VII to the Convention.

#### *Section 13. Abuse of privileges and the departure of representatives at the request of the host State*

35. Article VII of the Specialized Agencies Convention provides as follows:

##### *Abuses of privilege*

##### *Section 24*

If any State party to this Convention considers that there has been an abuse of a privilege or immunity conferred by this Convention, consultations shall be held between that State and the specialized agency concerned to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the State and the specialized agency concerned, the question whether an abuse of a privilege or immunity has occurred shall be submitted to the International Court of Justice in accordance with section 32. If the International Court of Justice finds that such an abuse has occurred, the State party to this Convention affected by such abuse shall have the right, after notification to the specialized agency in question, to withhold from the specialized agency concerned the benefits of the privilege or immunity so abused.

##### *Section 25*

1. Representatives of members at meetings convened by specialized agencies while exercising their functions and during their

<sup>99</sup> See however, the case of an ICAO representative who pleaded guilty to a traffic offence, section 19, para. 48, below.

journeys to and from the place of meeting, and officials within the meaning of section 18, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity. In the case, however, of abuse of privileges of residence committed by any such person in activities in that country outside his official functions, he may be required to leave by the Government of that country provided that:

2. (I) Representatives of members, or persons who are entitled to diplomatic immunity under section 21, shall not be required to leave the country otherwise than in accordance with the diplomatic procedure applicable to diplomatic envoys accredited to that country.

(II) In the case of an official to whom section 21 is not applicable, no order to leave the country shall be issued other than with the approval of the Foreign Minister of the country in question, and such approval shall be given only after consultation with the executive head of the specialized agency concerned; and, if expulsion proceedings are taken against an official, the executive head of the specialized agency shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

36. No corresponding provision is contained in the General Convention. In the absence of any cases in which article VII of the Specialized Agencies Convention, or any similar provision in a headquarters agreement, has been applied, no practice has been developed regarding its interpretation.

#### *Section 14. Immigration restrictions, alien registration and national service obligations*

37. The immunity provided in section 13 (d) of the Specialized Agencies Convention in respect of immigration restrictions, alien registration and national service obligations, has been widely acknowledged. In a few cases where difficulties have arisen over the granting of entry visas (e.g. because of administrative delays or late applications), the agency concerned has intervened upon request in order to obtain speedy action; the host authorities have then usually taken steps to hasten the procedure. Immunity from national service obligations does not normally apply when the representative is a national of the host State.

#### *Section 15. Currency or exchange restrictions*

38. In accordance with section 13 (e) of the Specialized Agencies Convention, representatives have enjoyed

the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions.

39. The majority of specialized agencies stated that they were unaware of any currency or exchange restrictions which were imposed on representatives, whether permanent or temporary. IAEA indicated that, away from the host State, where no restrictions were imposed, representatives were expected to conform to any restrictions which were in force. However, some host States had issued special tourist visas to representatives to IAEA meetings, entitling them to a rate of exchange which was more favourable than that granted to diplomatic personnel.

#### *Section 16. Personal baggage and effects*

40. Under section 13 (a) of the Specialized Agencies Convention representatives are granted immunity from seizure of their personal baggage; in addition, under section 13 (f) they are accorded

the same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

No special problems appear to have arisen in this connexion. Most agencies reported that either no inspection was made of the personal baggage and effects of representatives or that inspection was reduced to a minimum. Where representatives were granted diplomatic privileges and immunities, the position varied somewhat according to the rank of the representative. UNESCO stated that, in the case of permanent representatives assimilated to heads of diplomatic missions, no control was exercised by the host State either upon the arrival or upon the departure of the property. Members of permanent missions of lower ranks were subject to controls, but for the most part the customs authorities accepted an inventory of household goods without carrying out an inspection and also exempted personal baggage. IAEA declared that, although there was no inspection of household goods upon arrival, these might be examined upon departure with respect to works of art bought in the host State.

#### *Section 17. Customs and excise duties*

41. Whilst in general representatives enjoy immunity from Customs and excise duties, the detailed application of this immunity in practice varies from country to country according to the extent of the immunity granted (e.g. whether or not it is analogous to that accorded to diplomats) and the system of taxation followed by the country in question.

42. The position in respect of representatives of specialized agencies having their headquarters in Switzerland is identical with that of representatives to the Geneva Office.<sup>100</sup> It may be noted, however, that at the request of the ILO the President of the General Conference and the Chairman of the Governing Body enjoy, during meetings of the organs in question, the same privileges in respect to customs and excise procedure as the heads of permanent missions, except that they may not import household effects and cars. In the case of FAO, the extent of the exemption of resident representatives depends on diplomatic status and is granted in accordance with the general rules relating to diplomatic envoys. Where the resident representative is not included in a diplomatic mission accredited to the Italian Government, customs free imports are limited, especially as regards cars, petrol and tobacco. Permanent representatives to UNESCO assimilated to heads of diplomatic missions can import goods at any time for their own use and for that of their mission free of duty. Other members of permanent missions may import their household goods

<sup>100</sup> See *Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the United Nations*, section 17, paras. 136 and 137, above.

and effects free of duty at the time of taking up their appointment and may also import a car free of duty under a customs certificate without deposit.

43. In the case of ICAO the basic provisions are set out in section 12 of the Headquarters Agreement as follows:

(g) The privilege of admission of articles for their personal or family use free of duty and taxes at all times, provided that any article which was exempted from duty and taxes shall be subject thereto at the existing rates if sold or otherwise disposed of in Canada within a period of one year in the case of articles other than motor vehicles, and two years in the case of motor vehicles, from the date of acquisition and the vendor shall be liable for such duties and taxes;

(h) The privilege of exemption from excise duty imposed under the Excise Act on domestic spirits and tobacco purchased from licensed manufacturers in Canada;

(i) The privilege of exemption from excise and/or sales tax on domestic spirits, wine and tobacco products when purchased direct from licensed manufacturers for the personal use of the applicant, and on automobiles, ale, beer and stout when purchased under appropriate certificate from licensed manufacturers, provided that any article which was exempted from these taxes shall be subject thereto at the existing rates if sold or otherwise disposed of within a period of one year from the date of purchase and the vendor shall be liable for such tax.

#### *Section 18. Taxation*

44. The immunity of representatives from taxation is dealt with indirectly in the Specialized Agencies Convention, section 15 of which provides that:

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of members of the specialized agencies at meetings convened by them are present in a member State for the discharge of their duties shall not be considered as periods of residence.

45. Except in the case of nationals of the host State, representatives enjoy extensive immunity from taxation. In ICAO<sup>101</sup> and UNESCO all representatives, and in FAO and IAEA resident representatives, are granted the same exemptions in respect of taxation as diplomats of the same rank accredited to the host State in question. In the case of IAEA, no taxes are imposed by the host State on the premises used by missions or delegates, including rented premises and parts of buildings. Permanent missions to UNESCO pay taxes only for services rendered (sweeping, sanitation, etc.) and real property tax ("*contribution foncière*") when the permanent representative is the owner of the building. Permanent representatives are exempt from tax on movable property ("*contribution mobilière*"), a tax imposed in France on inhabitants of rented or occupied properties, in respect of their principal residence but not for any secondary residence.

<sup>101</sup> In section 12 (j) of the ICAO Headquarters Agreement representatives are granted the same exemption from federal income tax as the Government of Canada grants to diplomatic envoys. Section 18 of the Agreement provides that the Government shall not levy death taxes or succession duties on or in respect of property acquired in Canada for the purposes of residence. The Québec Order in Council, No. 172 of 26 January 1965, grants exemption in respect of income tax levied by the Province, succession duties, gasoline tax, retail sales tax and car registration fees.

46. Representatives are generally exempt from payment of social security contributions. Permanent missions to IAEA are exempt from paying employers' social security contributions by virtue of articles XII and XIII of the Headquarters Agreement; it is understood that in practice the employers' contribution has been paid by permanent missions on a voluntary basis.

#### *Section 19. Diplomatic licence plates, parking offences and traffic regulations*

47. The authorities of the various host countries issue special diplomatic licence plates to representatives and to permanent missions for cars used either by representatives themselves or by missions. These plates are intended to enable the police and other authorities to identify the cars of persons entitled to immunity from jurisdiction.

48. Representatives are usually not fined for parking offences or traffic violations but are merely informed of the offence by the local authorities; in serious or repeated cases a specialized agency may also be informed. After accidents have occurred administrative measures are sometimes taken in Switzerland (e.g., withdrawal of the driving licence). In one instance involving a representative to ICAO it was alleged that he had left the scene of an accident after causing damage to another car. He was arrested by the local police some distance from the place of the accident. An ICAO official contacted the police and pointed out that the arrest was illegal. The police refused to free the representative and said that they would have to consult their legal adviser on the matter. Shortly afterwards a local court released the representative pending a hearing. Meanwhile, the lawyer engaged by the representative obtained release of the representative's car which had been impounded. On his second appearance in court, the representative pleaded guilty and was sentenced.

### CHAPTER IV. — IMMUNITY OF PREMISES

#### *Section 20. Diplomatic status and location of premises*

49. The diplomatic status of premises used by representatives has been generally recognized. No restrictions appear to have been imposed by any host State on the location of such premises.

50. UNESCO reported that thirty-five permanent missions occupied offices in the UNESCO building itself and thirty-six had offices elsewhere, either in the embassy of the member State in question or at the residence of the permanent representative. Representatives on the ICAO Council appear to be the only other representatives whose offices are located in the premises of the organization to which they are accredited.

#### *Section 21. Inviolability of mission premises and of private residences*

51. Recognition has been given by host States to the inviolability of the premises of permanent missions and, at least by implication, to the private residences of representatives. Few cases appear to have arisen regarding

the latter point; the 1946 Agreement between Switzerland and the International Labour Organisation and the 1948 Agreement between Switzerland and the World Health Organization both specify, however, in article 15 (a) the inviolability of the place of residence of representatives.

52. So far as the specialized agencies are aware, adequate protection has been provided by the authorities of host States to mission premises and private residences as regards disturbances caused by private citizens.

53. In 1966 a number of legal issues with respect to the inviolability of premises were raised in an incident which occurred regarding the premises of the Permanent Mission of the Republic of China to UNESCO. The facts are summarized below.<sup>102</sup> In a communication to the Director-General of UNESCO dated 13 March 1966, the Permanent Representative of the Republic of China stated that, following a request to vacate the premises made to him on 11 March by two French officials, on 12 March a party of French policemen, together with the two officials, entered the residential quarters and offices of the Representative and ordered him and his staff, together with the members of their families who were living there, to leave the premises concerned. Upon refusal, the Representative and his staff were physically removed. Members of the Mission were not allowed to communicate with the Director-General or with anyone outside the buildings except personnel of the French Ministry of Foreign Affairs. The archives, documents, furniture and personal effects remaining in the buildings were placed under seal by the French authorities. The Permanent Representative protested to the Director-General, who informed the Ministry of Foreign Affairs on 14 March that, in the light of the information supplied, it appeared to him that the measures taken by the French authorities constituted a breach of the inviolability of premises of the Mission and of the domicile of some of its members; the measures also appeared to contravene the immunities enjoyed by members of the Mission and guarantees attaching to the Mission's status with respect to the protection of its archives and documents and its freedom of communication. The Director-General formally protested against the action which, in the light of the information available to him, he considered to be incompatible with article 18 of the Headquarters Agreement. While reserving the organization's position with regard to other measures, the Director-General requested the Minister to take the necessary steps to ensure that the Mission might as soon as possible be able to discharge its duties in a normal fashion and, for that purpose, to benefit once again from the facilities, privileges and immunities attaching to its status. He added that the restitution to the Mission of its archives and documents and of the personal belongings of its members was a matter of particular urgency.

54. In a cable dated 16 March the Minister of Foreign Affairs of the Republic of China requested the Director-General to pursue the matter further and to make strong representations to the French Government so as to

enable the Mission to exercise its functions and to enjoy the status accorded to it under the Headquarters Agreement, as it had done before 12 March.

55. In communications dated 18 March and 18 April 1966, the Permanent Representative of France declared that the buildings in question were the property of the Chinese State, "which the Embassy of the People's Republic of China is alone entitled to represent in France". The members of the Permanent Mission of the Republic of China to UNESCO had been "unable to produce any legal instrument to justify their occupation; hence they could not be considered as other than occupants without title of premises which did not therefore enjoy any immunity either under the 1954 Headquarters Agreement or under any other treaty obligation or rule of customary international law". It was also stated that "the recognition by France of the Government of the People's Republic of China brought into being an international obligation for the French Government, which could not thereafter tolerate the totally unwarranted occupation of buildings belonging to the Chinese State, against the will of that State, which is the legitimate owner. The French Government cannot be open to criticism for having put an end to this situation". The Permanent Representative of France declared that several attempts had previously been made to persuade the Mission to leave but without success. He denied that members of the Mission had been prevented on 12 March from communicating with persons outside the buildings. Alternative facilities had been offered to the Mission both previously and on 12 March, but had been refused; members had been informed that they might return to collect their property at any time. Lastly, the French Representative reaffirmed the intention of his Government to respect fully the terms of the Headquarters Agreement.

56. In a note to the French Minister of Foreign Affairs, dated 1 April, the Director-General noted with satisfaction that the French Government understood his anxiety to secure for the Mission guarantees concerning, in particular, the protection and free disposal of its archives and the personal belongings of its members, and expressed the hope that "the contacts which have now been established will make it possible in the near future to arrive at a satisfactory solution to this problem". As regards the statement of the French Permanent Representative that the Mission occupied the premises in question without title, and could not therefore enjoy any immunity with respect to them, he declared that he could not accept this conclusion. Whilst as he had previously stated, he could not take sides in a dispute concerning the ownership of the premises, he considered that, under article 18 of the Headquarters Agreement, the Head of the Mission of the Republic of China to UNESCO enjoyed the status of the head of a foreign diplomatic mission, and that the premises he occupied as offices or as residence were therefore inviolable. This opinion was in conformity with diplomatic tradition and international practice, codified in article 22 of the Vienna Convention on Diplomatic Relations, which did not make the inviolability of premises dependent on the recognition by the receiving State of a title of ownership.

<sup>102</sup> See UNESCO Executive Board, 72nd Session, Doc. 72 EX/11 and 72/EX/11 Add., dated 13 and 20 April 1966.

57. The communications exchanged were placed by the Director-General before the UNESCO Executive Board, with a request for its judgement as to the way in which the provisions of the Headquarters Agreement were to be interpreted with respect to the measures taken on 12 March by the French authorities against the Mission of the Republic of China. The Executive Board adopted a resolution on 13 May 1966 by 12 votes to 1, with 9 abstentions, at the fifteenth meeting of its 72nd session, in which, having noted the points of view expressed in the documents placed before it, it noted "with appreciation" the attitude adopted by the Director-General "in his concern to assure the full respect of the provisions of the Headquarters Agreement" and expressed its confidence that he would safeguard the Agreement in all circumstances.<sup>103</sup>

#### *Section 22. National flag*

58. In a number of cases the national flag of the member State is flown from the office of its mission and to a lesser extent, on the car used by the head of the mission. National flags are not flown from the offices in the UNESCO building used by permanent missions. IAEA states that resident representatives are not known to have flown a national flag from their offices unless they were at the same time accredited to the host State. On the other hand permanent representatives to UNESCO who are assimilated to head of diplomatic mission normally fly the national flag on their car when travelling on official business. In general, however, it would appear that the fact that many representatives are members of diplomatic missions and that many premises are also used for other purposes (e.g. as an embassy or consulate) has prevented any clear or uniform practice from emerging.

### CHAPTER V. — FREEDOM OF COMMUNICATION AND RIGHT OF TRANSIT AND OF ACCESS TO MEETINGS

#### *Section 23. Freedom of communication and inviolability of correspondence, archives and documents*

59. Missions and representatives enjoy freedom of communication on the same terms as those enjoyed by missions and representatives accredited to the host State or, in the case where representatives are present only for the purposes of a conference or meeting, on the same terms as are afforded to diplomatic representatives attending a conference convened by the host State. There appears to be no difference in this respect between communications sent by representatives to their Government and to its missions elsewhere, and to the specialized agency concerned.

60. The inviolability of all papers and documents, referred to in section 13 (b) of the Specialized Agencies Convention, has been fully recognized.<sup>104</sup>

<sup>103</sup> UNESCO Executive Board, 72nd Session, 2-31 May 1966, Doc. 72 EX/SR 1-36, pp. 126 and 127 and item 9.1, *Resolutions and Decisions adopted by the Executive Board at its 72nd Session*.

<sup>104</sup> See, however, the case referred to in section 21, paras. 53-57, above.

#### *Section 24. Use of codes, diplomatic bag and courier*

61. The right to use codes, a diplomatic bag and courier, as envisaged in section 13 (c) of the Specialized Agencies Convention, has been generally recognized in practice. Such a right has not been permitted, however, either in law or in fact, in the case of representatives to UNESCO. A request from a permanent delegation, headed by an ambassador, to correspond with his Government by diplomatic bag was refused by the Ministry of Foreign Affairs of the host State. The UNESCO Headquarters Agreement contains no provision dealing expressly with the matter. The Customs Regulation adopted by the Swiss Federal Council on 23 April 1952 contains a chapter setting forth the details of the use of sealed diplomatic bags by missions in Switzerland.<sup>105</sup>

#### *Section 25. Right of transit and of access to meetings*

62. The right of transit to the place of meeting has been generally recognized in practice. Whilst specialized agencies do not normally assist representatives in making transit arrangements, they have occasionally helped representatives to obtain transit and entry visas by informing the authorities concerned that the visas are required to enable representatives to attend conferences or meetings called by the agency.

63. When a country in which a conference or meeting was to be held indicated that it would refuse to allow the representatives of a certain member State or States to enter (e.g. by refusing to issue an entry visa) the specialized agency concerned arranged for the meeting to be convened elsewhere, so as to enable all eligible Member States to be represented.

### CHAPTER VI. — OBSERVERS OF NON-MEMBER STATES

#### *Section 26. Permanent observers*

64. Few permanent observers of non-member States appear to have been appointed to specialized agencies. The only cases reported were the Permanent Observer of the Holy See at FAO, the appointment in 1959 by the Republic of San Marino of an observer to the ILO, and some instances at UNESCO. The appointment of temporary observers by non-member States to attend meetings or conferences held by specialized agencies, on the other hand, is widespread. A number of specialized agencies have made provision for this practice vis-à-vis the organization in the pertinent rules of procedure, usually those of the General Conference.<sup>106</sup>

<sup>105</sup> See *Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the United Nations*, section 24, para. 161, above.

<sup>106</sup> e.g. FAO Statement of Principles relating to the Granting of Observer Status to Nations (FAO Basic Texts, vol. II, pp. 3-7); rule 30 of the permanent rules of procedure for the IAEA General Conference; article 2, paragraph 3 (e) of the Standing Orders of the International Labour Conference; and article 1, paragraph 7, of the Rules concerning the Powers, Functions and Procedure of ILO Regional Conferences.

*Section 27. Facilities afforded by the specialized agencies to observers*

65. In general specialized agencies accord observers of non-member States broadly the same practical facilities as are extended to representatives, e.g. by way of documentation, entry to public meetings etc.; they do so, however, as a matter of grace and not of obligation. Oral statements by observers to meetings or conferences may usually be made only upon invitation. The circulation of communications from observers of non-member States is a matter of discretion.

*Section 28. Grant of privileges and immunities to observers*

66. As a matter of practice observers sent by non-member States to attend conferences and meetings held by specialized agencies have usually been accorded the same privileges and immunities by the host State as the representatives of member States. Where such non-member States have been invited by an organ of a specialized agency so as to make the attendance of their observers a matter of official business, the grant of functional privileges and immunities by the host State has been obligatory in some cases under the terms of the pertinent international agreements.<sup>107</sup> In other instances, however, although privileges and immunities have usually been granted, this has been as a matter of courtesy within the discretion of the host State and the specialized agency has not intervened.

ANNEX. — SUMMARY OF THE POSITION OF THE REPRESENTATIVES OF MEMBER STATES IN RELATION TO THE IBRD, IFC AND IDA, AND THE IMF

67. The particular organizational structure of the above-mentioned specialized agencies and the sources from which their privileges and immunities are derived rendered it difficult to attempt to classify their practice in conjunction with that of the other specialized agencies. The following summary of the position, supplied by the secretariats of the IBRD, IFC and IDA, and the IMF, is therefore given separately below. In so far as the application of the United Nations Headquarters Agreement and United States legislation is referred to, practice in this respect corresponds largely to that followed in the case of representatives to the United Nations and which has been dealt with elsewhere in this study.<sup>108</sup>

<sup>107</sup> Thus under Article 14 of the 1946 Agreement between Switzerland and the ILO freedom of access and sojourn is guaranteed for all persons having official business with the organization; this provision has been considered to extend to observers of non-member States invited to attend ILO meetings. Article XI, section 27 (a) of the IAEA Headquarters Agreement stipulates that, with respect *inter alia* to the representatives of non-member States who are sent as observers to meetings convened by the IAEA in accordance with rules adopted by IAEA, the host State shall take all necessary measures to facilitate their entry into and sojourn in Austria, place no impediment to their departure or to their transit to IAEA headquarters and afford them necessary protection in transit.

<sup>108</sup> See relevant sections of *Summary of practice relating to the status, privileges and immunities of the representatives of Member States to the United Nations*.

The concluding portion of the summary relating to IMF describes the practice of both IBRD and IMF regarding annual meetings and the customs and similar facilities granted to directors of those organizations.

(A) *IBRD, IFC and IDA*

I. *Organizational structure of IBRD, IFC and IDA*

68. The organizational structure of IBRD, IFC and IDA consists of:

(a) A Board of Governors composed of one Governor and one Alternate Governor appointed by each member State. Governors and Alternate Governors appointed by members of IBRD are *ex officio* Governors and Alternate Governors of the respective Boards of IFC and IDA to the extent that the member appointing them is also a member of either one or both of these organizations;

(b) Executive Directors (called in Articles of Agreement of IFC Board of Directors) composed of twenty members for IBRD and IDA and of nineteen members for IFC, five of whom are appointed by the members having the largest capital subscriptions and the remainder elected by groups of other member States. Each Executive Director appoints an Alternate. Executive Directors and their Alternates in IBRD are *ex officio* Executive Directors and Alternate Executive Directors of IFC and IDA to the extent that the member appointing them or a member electing them is also a member of either one or both of these organizations;

(c) An international staff headed by the President, who is selected by the Executive Directors.

69. The question of the extent to which Governors, Executive Directors, and their respective Alternates, may be regarded as the representatives of member States, is to be determined in the light of the factors set out below.

(a) *Governors.* Governors and Alternate Governors are subject to the pleasure of the member State appointing them, are appointed for five years and serve without compensation (other than expenses) from the organization to which they are appointed. Most members appoint as Governors and Alternate Governors their Ministers of Finance, the Heads of their Central Banks or persons holding comparable positions. Since these officials have full time responsibilities in their home countries, the Articles of Agreement have provided that the Board of Governors shall hold annual and such other meetings as may be provided by the Board or called by the Executive Directors. No such special meeting has in fact been called and meetings of the Governors have so far been limited to annual meetings, lasting approximately one week each. Under present arrangements, annual meetings are generally held in each of two succeeding years in Washington, D.C., where the principal offices of the organizations are located, and every third year in a member country other than the United States.

70. Under the circumstances, it would seem that Governors may be characterized as "representatives" of their Governments, though clearly problems arising in

connexion with the status, privileges or immunities of "permanent representatives" do not concern them.

(b) *Executive Directors.* Executive Directors are appointed or elected every two years. They function in continuous session at the principal offices of the organizations and meet as often as the business of each organization may require. Their current practice is to hold a regular meeting once a month, with frequent special meetings to handle specific items of business as they arise. It has not been necessary for the discharge of these responsibilities that all Executive Directors and Alternates serve on a full-time basis, although some do. In addition, some Executive Directors serve full-time and their Alternates part-time, while some Alternates serve full-time with the Executive Directors serving part-time. Those who sit as, or for, Executive Directors are entitled to cast the votes of the country or countries appointing or electing them.

71. While having been appointed or elected, as the case may be, by member Governments, the Executive Directors and their Alternates serve in each organization and receive salaries and other emoluments from one or more of the organizations. Executive Directors and their Alternates usually report to the Governments which have appointed or elected them. Some Directors may also perform outside duties, e.g. in other organizations, national embassies and elsewhere. It is therefore considered that, at least for present purposes, the variety of posts held by Executive Directors from time to time and the different ways in which individual Directors perform their duties make it inappropriate to treat them as being exclusively "representatives" or the opposite.

## II. Sources of privileges and immunities

### 1. The Articles of Agreement

72. The Articles of Agreement of the three organizations contain substantially the same provisions regarding the privileges and immunities of Governors and Executive Directors. The relevant Articles of Agreement of IBRD are as follows:

#### *Article VII*

##### *Section 1. Purposes of Article*

To enable the Bank to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth in this article shall be accorded to the Bank in the territories of each member.

##### *Section 8. Immunities and privileges of officers and employees*

All governors, executive directors, alternates, officers and employees of the Bank

(i) Shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;

(ii) Not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;

(iii) Shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

### *Section 9. Immunities from taxation*

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to executive directors, alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals.

### *Section 10. Application of Article*

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Bank of the detailed action which it has taken.

Article VI of IFC's Articles of Agreement differs from the corresponding articles of the other two organizations in one respect. Article VI, section 11 of IFC's Articles of Agreement provides expressly that IFC may, at its discretion, waive any of the privileges and immunities conferred under that article. In view of this provision, article VI, section 8 (i) of the IFC's Articles of Agreement omits the specific reference to waiver of the immunity from legal process contained in article VII, section 8 (i) of IBRD's articles and in article VIII, section 8 (i) of IDA's articles.

### 2. The Specialized Agencies Convention

73. A number of member States have adhered to the Convention in respect of IBRD, IFC and IDA. Pursuant to article VI, section 18, of the Convention, IBRD, IFC and IDA periodically notify the Secretary-General of the United Nations and the Governments of all countries which have acceded to the Convention in respect of each Organization, the categories of officials, to which the provisions of articles VI and VIII of the Convention shall apply. Each such list contains the names of all Executive Directors, Alternate Executive Directors and all officials of each organization.

### 3. United Nations Headquarters Agreement

74. The provisions of article V, section 15 (3) and (4)<sup>109</sup> of the Agreement have been occasionally applied to Executive Directors. For example, an appointed Executive Director of IBRD was accorded diplomatic privileges pursuant to his Government's designation of him under section 15 (3) as its principal resident represen-

<sup>109</sup> Article V, section 15

"(3) every person designated by a member of a specialized agency, as defined in Article 57, paragraph 2 of the Charter, as its principal permanent representative, with the rank of ambassador or minister plenipotentiary at the headquarters of such agency in the United States, and

"(4) such other principal resident representatives of members of a specialized agency and such resident] members of the staffs of representatives of a specialized agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the United States and the Government of the Member concerned, "shall, whether residing inside or outside the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it. In the case of Members whose Governments are not recognized by the United States, such privileges and immunities need be extended to such representatives, or persons on the staffs of such representatives, only within the headquarters district, at their residences and offices outside the district, in transit between the district and such residences and offices, and in transit on official business to or from foreign countries."

tative with the rank of ambassador. Although IBRD acted as a channel of communications in this arrangement, there was no occasion for IBRD to acquiesce or object since the arrangement was a matter between the appointing government and the United States Government under an agreement to which IBRD was not a party.

75. On another occasion, IBRD was requested to communicate to the United States Government a request by a member Government that the Executive Director representing it be given the privileges and immunities granted to representatives under section 15 (4). IBRD complied with this request, stating that if the United States Government decided to accede to the request, IBRD would have no objection. The request was ultimately granted. Though a few cases are still under consideration by the United States Government, it is understood that, while privileges and immunities under section 15 (3) will continue to be granted, those under section 15 (4) will not be.

### (B) IMF

#### I. Organizational structure of IMF

76. The organizational structure of IMF is prescribed by its Articles of Agreement, and may be described as follows:

(a) *Board of Governors.* All powers of IMF are vested in the Board of Governors, consisting of one Governor and one Alternate appointed by each member in such manner as it may determine. The Governors and Alternates serve as such at the pleasure of the appointing Governments and without compensation (other than expenses incurred in connexion with attendance at meetings of the Board of Governors) from IMF. While some early drafts of the Articles incorporated language that referred to representation, the Articles of Agreement as finally adopted make no reference to a representative capacity for any functionaries of IMF.

77. The Board of Governors is required by the Articles of Agreement to hold annual meetings. Under present practice these annual meetings are of approximately one week's duration and are held in each of two succeeding years in Washington, D.C., and every third year in a member country other than the United States. Special meetings of the Board of Governors also may be called but to date none has in fact been called.

(b) *Executive Directors.* Each of the five countries having the largest quotas in IMF appoints an Executive Director and the remaining fifteen Executive Directors are elected for two-year terms by the other member countries. Each Executive Director appoints an Alternate. The Executive Directors (of whom there are presently twenty) function in continuous session, meeting as often as the business of IMF may require, at IMF's headquarters in Washington, D.C. The Executive Directors, and their Alternates, report to the Governments appointing or electing them as each Executive Director and his Alternate sees fit, but at the same time they serve as officials of IMF. As such, they receive salaries and other emoluments from IMF as prescribed by it and are responsible for

the conduct of the general operations of IMF under powers delegated to them by the Board of Governors.

(c) *Managing Director and staff.* The Executive Directors select a Managing Director who may not be a Governor or Executive Director. He is the chief of the operating staff of IMF and, under the direction of the Executive Directors, conducts its ordinary business. Subject to the general control of the Executive Directors, the Managing Director is responsible for the organization, appointment and dismissal of the staff. The Managing Director and the staff, in the discharge of their functions, owe their duty entirely to IMF.

78. Questions relating to permanent representatives or member delegations to international organizations are not therefore applicable to IMF.

#### II. Sources of privileges and immunities

79. The following are the sources of privileges and immunities which relate expressly to IMF functionaries.

##### 1. *The Articles of Agreement*

80. Article IX, sections 1, 8, 9 (b) and 10, of the Articles of Agreement of IMF contain the same provisions regarding privileges and immunities as are set out in the corresponding portions of the Articles of Agreement of IBRD, quoted above.

##### 2. *The Specialized Agencies Convention*

81. A number of Member States have adhered to the Convention in respect of IMF. Pursuant to article VI, section 18, of the Convention, IMF periodically notifies the Secretary-General of the United Nations, and the Governments of all countries which have acceded to the Convention in respect of IMF, of the categories of officials to which the provisions of articles VI and VIII of the Convention shall apply. Each such list contains the names of all of IMF's Executive Directors, Alternate Executive Directors, and all officers and staff of IMF.

##### 3. *United States Bretton Woods Agreements Act and United States International Organizations Immunities Act*

82. In accordance with article IX, section 10 of the Articles of Agreement, the privileges and immunities contained in the provisions of Article IX, sections 2 to 9 inclusive, were given full force and effect in the United States and its territories and possessions by the Bretton Woods Agreements Act, section 11.

83. The IMF was designated by the President of the United States in Executive Order 9751 of 11 July 1946, as a public international organization entitled, along with its officers and employees, to enjoy the privileges, exemptions and immunities provided for in the United States International Organizations Immunities Act.

84. Since the United States is the host country for IMF's headquarters, reference to members' domestic legislation regarding privileges and immunities to be accorded to IMF functionaries has been limited to the foregoing United States statutes.

### III. Practice regarding annual meetings of IBRD and IMF and customs and similar facilities granted to IBRD and IMF Directors

#### (a) Annual meetings

85. When annual meetings of IBRD or IMF are held in Washington the Joint Annual Meetings secretariat notifies the United States Department of State of the arrival of Governors and Alternate Governors, giving by countries, their names, IBRD or IMF titles, their position in their home country, the date and port of arrival in the United States, with airline flight number or the name of the steamship on which they will arrive. The United States Department of State transmits this information to the United States Treasury Department which has jurisdiction over the Bureau of Customs.

86. When the annual meetings are held outside the United States, at the time preliminary arrangements are made with the host member country an assurance is obtained that the Governors, Alternate Governors, Executive Directors, Alternate Executive Directors, officers and employees of IBRD or IMF, as well as all persons in member country and observer delegations, and the spouses of the foregoing will be given such facilities as the prompt provision of visas, courtesy of the port and duty-free entry of their baggage. On one occasion abroad, when the annual meetings were held in Japan, that Government was given the same information as provided to the United States Department of State for those attending, in order to facilitate port clearance.

87. For annual meetings in Washington and abroad, for the past several years, specially designed baggage labels have been used for the accompanying baggage, and special labels for shipments when the meetings are held abroad. The United States and other host member Governments have honoured these labels and customs clearance had been expedited. In host member States enforcing exit baggage control, these labels have likewise afforded expeditious clearance. The use of these labels has met with approval of all Governments concerned.

88. In no known case has a Governor, Alternate Governor, Executive Director or Alternate Executive Director attending the annual meetings in the United States or abroad been denied any privileges and immunities to which they were entitled.

#### (b) Customs and similar facilities granted to IBRD and IMF Directors

89. The United States International Organizations Immunities Act is applicable to IBRD and IMF Executive Directors and Alternate Executive Directors, other than United States citizens, when they return to the United States from official travel, home leave travel, resettlement or personal vacation. Request for duty-free entry and courtesy of the port is made to the United States Department of State in these instances upon request of the traveller.

90. Household goods and personal effects of Executive Directors and Alternate Executive Directors coming to the United States on resettlement are entitled to be cleared under the International Organizations Immunities Act.

## PART TWO: THE ORGANIZATIONS

### A. Summary of practice relating to the status, privileges and immunities of the United Nations

#### CHAPTER I. — JURIDICAL PERSONALITY OF THE UNITED NATIONS

##### Section 1. Contractual capacity

#### (a) Recognition of the contractual capacity of the United Nations

1. The contractual capacity of the United Nations, which is derived from Article 104 of the Charter and granted express recognition in section 1 (a) of the General Convention, has been fully acknowledged in practice. Recognition of United Nations capacity in this sphere has been given both by State organs on which the Organization has needed to rely in connexion with the performance of its contracts and by official bodies, private firms and individuals with whom the United Nations has wished to enter into contractual relations. The United Nations has exercised its contractual capacity both through officials of the Secretariat acting on behalf of the Secretary-General, in his capacity as chief administrative officer of the Organization, and through subsidiary bodies established for particular purposes by one of the principal organs. Subsidiary organs, such as UNICEF and UNRWA, which have been entrusted by the General Assembly with a wide range of direct functions, have regularly entered into commercial contracts in their own name.

2. Such difficulties as have arisen regarding the contractual capacity of the Organization have usually followed a dispute over the execution of a particular contract. On several occasions it has been alleged by the other party that the United Nations lacked juridical personality and thus could not enforce its contractual rights before a local court. These arguments, in which the legal personality of the Organization was denied as part of a denial of its capacity to institute legal proceedings, do not appear to have been raised in any commercial dispute in which the United Nations took action as a plaintiff, although they have been presented in correspondence. In *United Nations v. B.* and *UNRRA v. Daan*<sup>1</sup> however, arguments denying the legal personality of the two organizations were presented by former staff members when action was brought to recover sums paid to them in error under their contracts of employment; these arguments were rejected by the courts. It may also be noted that in a dispute which arose in 1952 with a private firm with whom the United Nations had entered into a commercial contract, the firm sought to halt arbitration proceedings by means of a court order on the grounds that the Organization's immunity from suit and execution rendered its contracts unenforceable. In correspondence the Office of Legal Affairs denied this argument, relying on precedents with respect to State immunities and its acceptance of an arbitral procedure

<sup>1</sup> See section 4, para. 41 and footnote 24, below.

for the settlement of disputes. The request for a motion to stay arbitration was subsequently dropped by the firm concerned.

3. So far as is known, no State has placed any express limitation upon its recognition of the contractual capacity of the United Nations. The Organization may therefore use its contractual powers, subject to the limitations imposed by its own structure and the authority given by resolutions adopted by its organs, for the same purposes as any other legal entity recognized by particular municipal systems.

4. In 1958, following a dispute as to the execution of a commercial contract, UNRWA sought to enter into arbitration with the other party. The other party having declined to appoint an arbitrator, in accordance with the terms of the contract UNRWA requested the President of the Court of Arbitration of the International Chamber of Commerce to appoint one. The latter appointed Professor Henri Batiffol of the Faculty of Law of the University of Paris. The section of Professor Batiffol's award dealing with the question of the competence of the arbitrator included the following passage which is of general interest regarding the capacity of an international organization, or of its subsidiary organs, to enter into contracts and to secure their enforcement:

... *Attendu que l'UNRWA, organe des Nations Unies, tient des traités en vertu desquels elle a été constituée, et notamment de la convention sur les privilèges et immunités des Nations Unies, du 13 février 1946, la personnalité juridique, et le pouvoir de contracter; que la stipulation d'une clause compromissoire, impliquée par ce pouvoir, trouve donc son fondement juridique dans un acte relevant du droit international public et se trouve valable par application de ce droit sans qu'il soit nécessaire, à ce point de vue, de l'appuyer sur une loi nationale, comme ce serait le cas pour un contrat entre personnes privées toujours soumises, à ce jour, à l'autorité d'un État, donc à un système juridique national, que ce soit par leur nationalité ou leur domicile, la situation de leurs biens ou le lieu de leur activité;*

*Attendu que si certains systèmes juridiques permettent au signataire d'une clause compromissoire de saisir le juge de droit commun soit pour surveiller la procédure arbitrale, soit même, si ce juge l'estime opportun, pour le substituer à l'arbitre, une telle substitution suppose que la cause relève d'un système national ayant prévu cette possibilité, et réglé ses conséquences; que s'agissant en l'espèce d'une cause qui ne relève pas d'un système juridique national, mais du droit international public lequel n'a pas prévu une telle possibilité, sans posséder d'ailleurs d'organisation propre à en régler les conséquences, il y a lieu d'entendre la clause compromissoire stipulée selon ses termes, lesquels excluent le recours au juge de droit commun sur les différends qu'elle vise, la solution étant d'ailleurs seule compatible avec l'immunité de juridiction des organismes internationaux;*

*Attendu que le refus de la société défenderesse de concourir à la désignation de l'arbitre et à l'établissement du compromis ne doit pas faire obstacle à l'exécution de la clause compromissoire; que si les systèmes juridiques nationaux répartissent différemment en cas d'inexécution d'un contrat imputable au débiteur, les rôles respectifs des dommages-intérêts et de l'exécution en nature, tous reconnaissent, à des degrés divers, le droit d'exiger cette dernière dans la mesure où elle est possible; attendu que le droit international, sur lequel est fondée la présente clause compromissoire, ne portant aucune prescription à ce sujet, il y a lieu de s'en tenir au principe général de l'effet obligatoire des contrats et de rechercher si l'exécution selon sa teneur de la clause compromissoire est possible malgré le refus de la partie défenderesse d'y concourir;*

*Attendu que la désignation de l'arbitre malgré l'abstention de la partie défenderesse est possible au moins quand le contrat, comme dans la présente espèce, a prévu le recours à un tiers pour cette désignation en cas de désaccord des parties; qu'il n'y a pas lieu de distinguer entre le désaccord sur la personne à désigner et le désaccord sur l'opportunité d'une désignation; que la formule de l'article 12 ('Should the parties not agree within 30 days as to the choice of the arbitrator, the appointment will be made by the President of the Court of Arbitration of the International Chamber of Commerce') admet les deux éventualités, conformément à la volonté réelle des parties, qui a été de soumettre à l'arbitrage tout différend né du contrat;*

*Attendu que le refus du défendeur de concourir à l'établissement du compromis peut-être suppléé par la soumission à l'arbitre du projet de compromis proposé au défendeur, l'arbitre décidant si le texte proposé définit suffisamment et correctement eu égard aux pièces produites et notamment à la correspondance des parties, l'objet du litige; que cette suppléance du contrat par un jugement, admise notamment en cas de refus d'exécuter une promesse de vente, n'est que l'exécution pure et simple, décidée par le juge, du contrat originaire, la décision rendue dans ces conditions tenant lieu de compromis;*

*Attendu qu'en l'espèce la partie demanderesse a demandé au Président de la Cour d'arbitrage de la Chambre de Commerce Internationale, conformément à l'article 12 des conditions générales annexées au contrat, la désignation de l'arbitre; qu'il y a été procédé; attendu que la demanderesse ayant soumis à l'arbitre désigné le projet de compromis proposé par elle à la société défenderesse, l'arbitre a estimé, au vu des pièces produites, que ce projet définissait suffisamment et correctement l'objet du litige; attendu que l'arbitre a donc été valablement saisi, et est compétent pour connaître du litige.*

The arbitrator found in favour of UNRWA as regards the merits of the dispute.

(b) *Choice of law; settlement of disputes and system of arbitration*

5. Generally speaking, United Nations contracts (both those of a commercial nature and employment contracts) have not made any mention in the contract of the kind of law applicable to the agreement. In the case of employment contracts, the contract itself has formed part of a growing system of international administrative law, independent of given systems of municipal law. The references to municipal law contained in employment contracts have therefore been specific rather than general (e.g., as to social security laws) or, very occasionally, introduced for the purposes of providing a convenient yardstick for measuring compensation or separation benefits.<sup>2</sup> Clauses of the latter description have now almost ceased to be used; in any case, at no time did they amount to a choice of an actual system of municipal law to govern the entire terms of an employment contract. An internal appellate system has been established to consider disputes of a serious nature regarding employment contracts. The United Nations Administrative Tribunal has referred to the general principles of law in interpreting employment contracts, and has largely avoided reference to municipal systems.

<sup>2</sup> For the cases involving employment contracts which contained clauses of this nature, see *Hilpern v. UNRWA* and *Radicopoulos v. UNRWA*, *Judgements of United Nations Administrative Tribunal*, Nos. 1-70, Nos. 57, 63, 65 and 70. See also *Bergaveche v. United Nations Information Centre*, cited in section 7, para. 74, below.

6. In the case of commercial contracts, express reference has rarely been made to a given system of municipal law. The standard practice is for the contract to contain no choice of law clause as such; provision is made, however, for the settlement of disputes by means of arbitration when agreement could not be reached by direct negotiations. Thus in the case of contracts concluded with parties resident in the United States, reference is made to arbitration according to the procedures established by the American Arbitration Association, by the Inter-American Arbitration Association in respect of contracts with Latin American suppliers, or by the International Chamber of Commerce in remaining cases. The clause presently in use reads as follows:

Any dispute arising out of the interpretation or application of the terms of this Contract shall, unless it is settled by direct negotiations, be referred to arbitration in accordance with the rules then obtaining of the (American Arbitration Association/Inter-American Arbitration Association/International Chamber of Commerce). The parties agree to be bound by any arbitration award rendered in accordance with this section as the final adjudication of any such dispute.

No further reference is made in the contract to the legal system to be applied.

7. In 1964 the Office of Legal Affairs advised the Office of General Services regarding a proposal that the United Nations standard bid form and United Nations contracts should specify that the place of arbitration would be New York. An extract from the opinion given is reproduced below:

There would naturally be practical advantages from our point of view should arbitrations be held in New York. On the other hand, there is the consideration that a requirement to this effect might dissuade parties either not resident or not represented in New York from bidding for United Nations contracts, and such a possibility should be avoided. To provide therefore in the standard bid form that arbitration should be in New York would not seem to us to be entirely advisable.

On the other hand, when it is apparent at the time of contracting that a strong conflict of interest would exist between the United Nations and the contracting party in respect to the place of arbitration, it would be advisable to include agreement on the place of arbitration in the disputes clause. In such cases, should the United Nations consider it advisable that arbitration in the particular case should be in New York, it would be advisable to try to reach agreement on the inclusion of the words "Any arbitration hereunder shall take place in New York unless otherwise agreed by the parties" in the arbitration clause of the contract.<sup>3</sup>

8. The overwhelming majority of commercial contracts which have been entered into by the United Nations have been performed without the occurrence of any serious difficulty. The United Nations has therefore only had recourse to arbitral proceedings in a limited number of cases. The arbitral awards which have been given have been very largely based on the particular facts relating to the contract concerned and have not raised points of general legal interest regarding the status, privileges and immunities of the Organization.<sup>4</sup> Very few cases regarding commercial contracts to which the United Nations was a

party have come before municipal courts; in instances in which the United Nations was the plaintiff the most frequent issue was the capacity of the Organization to institute proceedings.<sup>5</sup> In one case it was held that a United Nations subsidiary organ bringing an action arising out of a contract was obliged to comply with venue requirements.<sup>6</sup>

## Section 2. Capacity to acquire and dispose of immovable property

### (a) Recognition of the capacity of the United Nations to acquire and dispose of immovable property

9. The capacity to acquire and dispose of immovable property, which is granted to the United Nations under section 1 (b) of the General Convention, has been widely recognized by both Member and non-member States. Even in the case of *Curran v. City of New York et al.*,<sup>7</sup> in which the plaintiff sought to forbid the transfer of the Headquarters site to the United Nations by the City of New York, the plaintiff did not deny the capacity of the United Nations to hold the land if it was transferred. Such problems as have arisen in this context appear to have been the result of the unique status of the United Nations, which has prevented its assimilation under national law to the position of either that of a Government or to that of a private individual or corporation. The conditions under which the United Nations has acquired property have accordingly usually been determined at several levels; under the terms of an international agreement with the national Government; under the terms of supplementary legislation adopted by the local authorities; and/or under the terms of a private contract. The number of parties and instruments involved has in itself therefore sometimes been conducive to administrative difficulties.

10. As regards the adoption of legislative or other provisions affecting the exercise of the United Nations capacity to acquire immovable property, it may be noted that in the State of New York, special conditions<sup>8</sup> have been laid down regarding the acquisition of land by the United Nations in the State of New York. No objection was made to these conditions since they were not regarded as inconsistent with the Charter or with the major federal legislation granting the Organization the right to acquire property under United States law. It may also be noted that, when acceding to the General Convention, Turkey submitted a reservation that purchases of land and immovables by the United Nations were "subject to the conditions applied to foreigners"; this reservation was subsequently withdrawn however. A more stringent reservation was made by Mexico when acceding to the General Convention in 1962, in the following terms:

<sup>5</sup> See section 4, paras. 36-40, below.

<sup>6</sup> *UNKRA v. Glass Production Methods, idem.*

<sup>7</sup> See section 7 (a), para. 68, below.

<sup>8</sup> See, e.g., the Act of the State of New York, February 27, 1947, (especially section 59 (j)) cited in the letter quoted in para. 12, below.

<sup>3</sup> *United Nations Juridical Yearbook 1964*, p. 224.

<sup>4</sup> See, however, the award given by Professor Batiffol, cited in para. 4, above.

The United Nations and its organs shall not be entitled to acquire immovable property in Mexican territory, in view of the property regulations laid down by the Political Constitution of the United Mexican States.

11. In general it may be said that, in exercising its capacity to acquire immovable property (in instances where such exercise is not, as in the exceptional case of Mexico, denied, the Organization will comply with the normal requirements of local law, provided that these requirements do not constitute a hindrance to the way in which the Organization exercises its functions.

12. The following extract from a letter, dated 24 March 1947, from the Office of Legal Affairs to a firm of New York lawyers, in connexion with the purchase of the Headquarters site, summarizes the basic position under both international and United States law (including that of the State of New York):

... We wish to advise you that under the laws of the United States and the State of New York, the United Nations possesses the legal capacity and authority to contract for and purchase real property for the purpose of carrying on its functions. Furthermore, we wish to advise you that the Secretary-General of the United Nations is authorized by the Charter of the United Nations and the resolution of its General Assembly to act for and on behalf of the Organization in purchasing land for use as a headquarters site.

The specific legal provisions which confer upon the United Nations, the aforesaid capacity and authority, are as follows:

(1) *Article 104 of the Charter of the United Nations* which provides as follows:

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

The Charter of the United Nations, which came into force on 24 October 1945 is a treaty of the United States duly ratified by and with the advice and consent of the Senate.

(2) *Section 2 (a) of the International Organizations Immunities Act, Public Law 291—79th Congress*, which provides:

“International organizations shall, to the extent consistent with the instrument creating them, possess the capacity:

“(i) To contract;

“(ii) To acquire and dispose of real and personal property.”

The United Nations was designated as an international organization entitled to enjoy the benefits of this act by the President of the United States in Executive Order No. 9698, dated February 19, 1946.

(3) *Article IV-B of the State Law of New York as enacted by Chapter 25 of the Laws of 1947*. Section 59 (j) of this article provides as follows:

“Acquisition of land. The United Nations may take by gift, grant or devise, acquire by purchase, but not by condemnation, any land necessary, useful or convenient in carrying on the functions of such organization within the state and hold, transmit and dispose of the same.”

The authority of the Secretary-General to act for and on behalf of the United Nations in this respect derived from Article 97 of the Charter which states that “he shall be the chief administrative officer of the Organization”. Specific authority of the Secretary-General to purchase land for use as a headquarters site has been granted by the General Assembly of the United Nations in a resolution adopted at the second part of its first session on 14 December 1946. This resolution provides, *inter alia*, as follows:

“2. That the permanent headquarters of the United Nations shall be established in New York City in the area bounded by

First Avenue, East 48th Street, the East River and East 42nd Street;

“3. That the Secretary-General be authorized to take all steps necessary to acquire the land hereinabove described together with all appurtenant rights, and to receive the aforesaid gift of \$8,500,000 (U.S.), and to apply the said gift to the acquisition of the land as provided in the terms of the offer.” (Resolution 100 (1) on the Headquarters of the United Nations adopted 14 December 1946). . . .

13. In 1964 the United Nations purchased a lease and leasehold estate in New York City. A savings and loan association sought confirmation of the capacity of the United Nations to carry out the transaction. The United Nations replied as follows:

1. . . . You have requested our opinion, first, with respect to the legal capacity of the United Nations to purchase the above lease and leasehold estate and to execute the various papers incidental to the purchase, and secondly, with respect to the United Nations officials authorized to execute on behalf of the United Nations the assumption of the lease and the other papers.

2. The United Nations, under Article 104 of its Charter, enjoys in the territory of each of its Member States “such legal capacity as may be necessary for the exercise of its functions. . .”. This provision has in the United States been implemented through the International Organizations Immunities Act, which provides that “International organizations shall, to the extent consistent with the instrument creating them, possess the capacity — (i) to contract; (ii) to acquire and dispose of real and personal property; . . .” ((22) USCA, section 288a, (a)); and the United Nations has been designated in Executive Order No. 8698 as a public international organization for the purpose of this Act. New York State legislation provides that the United Nations may acquire by gift, devise or purchase any land or interest in land within the State useful in carrying on the functions of the Organization (McKinney’s *New York State Law*, section 59, *i* and *j*).

3. The property in question is to be used for office space for the United Nations Training and Research Institute which the United Nations General Assembly has, by resolution 1934 (XVIII) of 11 December 1963, requested the Secretary-General to establish. The purchase of the lease and leasehold estate and the execution of the papers required for that purpose are, therefore, valid exercises of the Organization’s powers under the Charter and within its legal capacity recognized under United States Federal and New York State legislation.

4. The Secretary-General of the United Nations is, under Article 97 of the Charter, the chief administrative officer of the Organization. Unless the Secretary-General directs otherwise, the Under-Secretary, Director of General Services, or his authorized delegate is the contracting officer; this is provided in the United Nations Financial Rules which were formulated by the Secretary-General pursuant to the Financial Regulations adopted by the General Assembly at its fifth session (General Assembly resolution 456 (V) as amended by resolutions 950 (X) and 973 B (X)). With respect to the acquisition of the leasehold, the Under-Secretary, Director of General Services, is, *ex officio*, the official authorized to execute all the necessary papers except that concerned with immunity from legal process; the Secretary-General himself is the sole official authorized to agree to such waivers.

5. It is, therefore, our opinion that all action required under the United Nations Charter, the applicable General Assembly resolutions, and the Regulations and Rules of the Organization in order to authorize the Organization’s purchase of the lease and leasehold estate and the execution of the various papers required in that connexion will have been taken by virtue of the execution by the Under-Secretary, Director of General Services, of the assumption of lease and leasehold and other agreements with the exception of the undertaking concerned with the Organization’s

immunity from legal process which will have been duly executed when signed by the Secretary-General himself.<sup>9</sup>

14. As regards the acquisition of immovable property by the United Nations elsewhere than at Headquarters, in resolution 79 (I) the General Assembly approved an "Agreement concerning the execution of the transfer to the United Nations of certain Assets of the League of Nations, signed on 19 July 1946", which provided for the transfer to the United Nations of rights in respect of the immovable and movable property of the League of Nations. The immovable property included such items as the Ariana site in Geneva and the buildings erected by the League on that site, ownership of other properties held by the League and the servitudes constituted in favour of the League. The movable property included the fittings, furniture, office equipment, books, the stock of supplies and all other corporal property belonging to the League of Nations. In addition, a specific agreement concerning the Ariana site was concluded between the United Nations and the Swiss Federal Council and approved by the General Assembly in resolution 98 (I).<sup>10</sup> Under the agreement the United Nations is stated to be the owner of the buildings of the League of Nations on the Ariana site and of any other buildings it may erect there. The Organization has a transferable and exclusive right of user of the surface of the land on which these buildings are, or may be, erected, and a non-transferable and exclusive right of user over the remainder of the site. The property in the soil, however, remains with the Town of Geneva.

15. Premises occupied by the United Nations other than at Headquarters and the Geneva Office have mostly been rented or leased, or, in some cases, made available by Governments, and not owned outright.

16. Following the acquisition of immovable property, the problems encountered by the United Nations as owner or possessor have been broadly the same as those of any occupier. In the case of the Headquarters Agreement with the United States, for example, specific arrangements were made for the supply of public services. Section 17 (a) of the Agreement provides:

... The appropriate American authorities will exercise, to the extent requested by the Secretary-General, the powers which they possess to ensure that the headquarters district shall be supplied on equitable terms with the necessary public services, including electricity, water, gas, post, telephone, telegraph, transportation, drainage, collection of refuse, fire protection, snow removal, *et cetera*. 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.

Similar provisions are contained in the ECAFE and ECA Agreements.<sup>11</sup>

<sup>9</sup> *United Nations Juridical Yearbook 1964*, p. 222.

<sup>10</sup> *Official Records of the General Assembly, Second part of first Session, Sixth Committee, Summary records of meetings, Annex 17, document A/175*.

<sup>11</sup> Section 16, ECA Agreement, and section 24, ECAFE Agreement.

17. Steps have also been taken, in conjunction with the local authorities, to protect the amenities of the area adjacent to United Nations premises. Section 18 of the Headquarters Agreement specifies that:

... The appropriate American authorities shall take all reasonable steps to ensure that the amenities of the headquarters district are not prejudiced and the purposes for which the district is required are not obstructed by any use made of the land in the vicinity of the district. The United Nations shall on its part take all reasonable steps to ensure that the amenities of the land in the vicinity of the headquarters district are not prejudiced by any use made of the land in the headquarters district by the United Nations.

18. Pursuant to this provision, the United Nations has received special protection under local zoning laws. In Geneva, protection of the amenities of the Palais des Nations was given as the main reason for the exchange of two properties, "Le Chêne", owned by the United Nations, and "Le Bocage", which the Cantonal Government had purchased from a private owner. The Advisory Committee on Administrative and Budgetary Questions reported to the seventh session of the General Assembly as follows:

Protection of the amenities of the Palais is a matter of considerable importance to Member States. With this purpose in view, representatives of the Secretary-General recently entered into negotiations with the Cantonal authorities, who have now formally agreed that, subject to the approval of the General Assembly of the United Nations, ownership of the two properties should be exchanged without other consideration.

The proposed scheme . . . would afford a safeguard against the commercial development of any part of the properties surrounding the Palais des Nations. Such a contingency would obviously impair the amenities of the Palais and cause a serious depreciation of property values. Except where "Le Bocage" is concerned, the interest of the United Nations in this respect is already fully protected. The belt of properties immediately surrounding the Palais and its grounds is unbroken except for one strip of land which comprises, in almost the whole of its area, the latter property. Commercial development on this belt is precluded.<sup>12</sup>

19. As regards the disposal of immovable property, in the case of a number of its major installations the United Nations has agreed to act in consultation with the host authorities. Sections 22 to 24 of the Headquarters Agreement, for example, provide:

Section 22. (a) The United Nations shall not dispose of all or any part of the land owned by it in the headquarters district without the consent of the United States. If the United States is unwilling to consent it shall buy the land in question from the United Nations at a price to be determined as provided in paragraph (d) of this section.

(b) If the seat of the United Nations is removed from the headquarters district, all right, title and interest of the United Nations in and to real property in the headquarters district or any part of it shall, on request of either the United Nations or the United States, be assigned and conveyed to the United States. In the absence of such request, the same shall be assigned and conveyed to the sub-division of a state in which it is located or, if such sub-division shall not desire it, then to the state in which it is located. If none of the foregoing desire the same, it may be disposed of as provided in paragraph (a) of this section.

(c) If the United Nations disposes of all or any part of the headquarters district, the provisions of other sections of this

<sup>12</sup> *Official Records of the General Assembly, Seventh Session, Annexes, agenda item 42, document A/2262*.

agreement which apply to the headquarters district shall immediately cease to apply to the land and buildings so disposed of.

(d) The price to be paid for any conveyance under this section shall, in default of agreement, be the then fair value of the land, buildings and installations, to be determined under the procedure provided in section 21.

Section 23. The seat of the United Nations shall not be removed from the headquarters district unless the United Nations should so decide.

Section 24. This agreement shall cease to be in force if the seat of the United Nations is removed from the territory of the United States, except for such provisions as may be applicable in connexion with the orderly termination of the operations of the United Nations at its seat in the United States and the disposition of its property therein.

Balancing these provisions, section 3 of the Agreement states:

Section 3. The appropriate American authorities shall take whatever action may be necessary to assure that the United Nations shall not be dispossessed of its property in the headquarters district, except as provided in section 22 in the event that the United Nations ceases to use the same, provided that the United Nations shall reimburse the appropriate American authorities for any costs incurred, after consultation with the United Nations, in liquidating by eminent domain proceedings or otherwise any adverse claims.

20. Under article 4 of the deed transferring the site of the ECLA offices, the land would revert to the Government of Chile if the United Nations ceases to exist as a legal entity in international law or if it decides to remove its offices and services permanently from Chilean territory. In the event of such reversion, a fair price is to be paid for the buildings and installations, as determined between the Government of Chile and the United Nations. As an exception to this right of reverter, the deed provided that the ownership of the land may be transferred to an international or regional organization which is recognized by the Government of Chile, provided that the transfer is authorized by that Government.

21. Lastly, it may be noted that in a number of instances, the United Nations has occupied property the title to which was either uncertain or was in dispute between various governmental parties. Examples include the occupation of Government House, Jerusalem, and of several military bases and installations in the Republic of the Congo. These instances have turned on the special facts involved in each case, including the relevant provisions of international agreements. In general, however, it may be said that in these instances the role of the United Nations has been that of a trustee, occupying the premises concerned under a *prima facie* right to do so until the question of title has been clarified.

(b) *Acquisition and disposal of immovable property*

22. The United Nations has acquired and disposed of immovable property, or of interests in immovable property<sup>13</sup> (e.g. leaseholds), on a number of occasions during its history.

<sup>13</sup> For purposes of convenience all interests in immovable property have been considered as falling within the present section even if under given systems of national law the interests may be classified according to a different criterion.

23. At New York, the first premises occupied for any appreciable length of time, namely at Lake Success, were held under lease. The Interim Headquarters Agreement regarding the Lake Success site made provision for this fact in the following article:

The United Nations agrees, in view of the fact that the premises occupied by it as the temporary headquarters are under lease from persons not parties to this agreement, that passes will be provided by the Secretary-General to such persons or their duly authorized agents for the purposes of enabling them to inspect, repair and maintain the said premises in accordance with the terms of the lease.

The United Nations further agrees that this Interim Agreement shall not affect any existing arrangements with respect to payment of taxes or payments in lieu of taxes on property under lease from persons not parties to this agreement or impair the power of any municipality to impose taxes on property so leased.

Moreover, the description of the property at Lake Success which was annexed to the Agreement declared that

The foregoing description of the property has been taken from the proposed lease between the Reconstruction Finance Corporation and the United Nations. The said description is subject to such modification as may be contained in the lease as executed between the Reconstruction Finance Corporation and the United Nations.

24. The present Headquarters Agreement does not refer specifically to the terms under which the site was acquired, although provision is made regarding possible disposal.<sup>14</sup> The Agreement reproduced below, between the City of New York and the United Nations, gives details of the transfer of a portion of the Headquarters site to the United Nations; the agreement is thus ancillary to the Headquarters Agreement between the Organization and the United States Government.

AGREEMENT made this 22nd day of August, 1947, between the CITY OF NEW YORK, a municipal corporation, having its principal office at the City Hall, Borough of Manhattan, City of New York, pursuant to the authority contained in a Resolution of the Board of Estimate adopted the 22nd day of May, 1947 (Calendar No. 202), hereinafter described as the City, and UNITED NATIONS hereinafter described as the UN.

WITNESSETH

That the City for and in consideration of the price hereinafter specified and the covenants, promises and agreements on the part of the UN herein contained and made, agrees hereby to sell and convey to the UN, subject to and upon each and all of the terms, covenants and conditions of this agreement, and the UN in consideration of the premises hereby agrees to acquire the real property situate in the City of New York, County of New York and State of New York, hereinafter described as follows:

ALL that certain lot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of East 42nd Street, distant 100 feet easterly from the corner formed by the intersection of the easterly side of 1st Avenue and the northerly side of East 42nd Street; thence northerly parallel with the easterly side of 1st Avenue 100 feet 5 inches to the centre line of the block between East 43rd Street and East 42nd Street, thence easterly along said centre line of the block 100 feet; thence southerly and again parallel with the easterly side of 1st Avenue 100 feet 5 inches to the

<sup>14</sup> See the provisions quoted in paragraph 19 above.

northerly side of East 42nd Street; thence westerly along the northerly side of East 42nd Street 100 feet to the point or place of beginning as said streets existed on March 1, 1947.

Subject to:

(a) Any state of facts which an inspection of the premises and an accurate survey may show and any encroachments upon said premises or contiguous premises.

(b) Covenants, conditions, restrictions, reservations, easements, and rights of way, if any, contained in former instruments of record affecting said premises so far as the same may now be in force or effect.

(c) Liens, charges and encumbrance made, created or suffered by the UN, or to be paid, discharged or assumed by the UN hereunder.

(d) Restrictions and zoning laws, ordinances or regulations adopted or imposed by any governmental authority, and to any modifications or amendments thereof.

The purchase price for which the City agrees to sell and convey and the UN agrees to acquire said property is ONE MILLION FOUR HUNDRED NINETY-FOUR THOUSAND DOLLARS (\$1,494,000) which the UN covenants and agrees to pay in lawful money of the United States of America to the City in the following manner:

One-fifth thereof upon the execution and delivery of this agreement, receipt of which is hereby acknowledged, and a like sum on the first day of July of each year thereafter to and including the first day of July 1951, with the privilege to make full payment of the purchase price of any unpaid balance thereof at any time.

The UN may enter into possession of the premises herein described immediately, and may make alterations therein. The UN covenants, by reason of taking possession, that it will not commit, permit or suffer any waste of said property and agrees to keep and maintain same in good condition and repair and promptly pay all costs and charges therefor. The UN shall cause to be discharged at its own costs and expense any claims or liens that may be filed against the property by reason of such repairs, improvements or alterations.

In the event the UN defaults in its payment of any installments as set forth herein, or in the event the UN ceases to use the premises as its International Headquarters, the City shall be entitled to re-enter the premises and become repossessed thereof.

If the City becomes repossessed thereof as above provided, all sums theretofore paid by the UN to the City on account of such purchase price shall be deemed payment for use and occupation of the premises by the UN.

Upon the full payment of the purchase price, the City shall deliver to the UN a good and sufficient Bargain and Sale Deed at the Office of the Corporation Counsel, Municipal Building, Room 1263, Borough of Manhattan, City of New York, in proper statutory form for record which shall be duly executed by the Mayor or Deputy Mayor and the City Clerk so as to convey to the UN the fee simple of the said premises free and clear of all liens, encumbrances or objections except as herein stated and provided for and except such liens charges or encumbrances made, created or suffered by the UN, and subject to the exceptions mentioned in this agreement.

IN WITNESS THEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

25. The majority of property transactions have not occurred, however, in New York or Geneva, but in countries in which United Nations offices and installations have been established in connexion with technical assistance and field operations, or with public information activities. In a significant number of cases the agreement under which the United Nations agreed to provide the services in question also determined, at least in outline,

the conditions under which the United Nations might occupy property. Field agencies, such as UNRWA and UNKRA, have also occupied property, erected buildings for the beneficiaries of their programmes, and executed deeds of transfer, on a wide scale. It may be noted that article IV of the Agreement between UNRWA and Jordan provides in part as follows:

The Agency agrees to pay to the Jordan Government, with effect from 1st March 1951, the sum of five hundred Jordanian Dinars per month towards all costs arising out of rents for land occupied by refugee camps and for charges of water consumed by refugees within the Hashemite Kingdom of Jordan, it being understood that the responsibility for the provision of camp sites and of water and for resolving all questions arising out of their procurement shall rest with the Government.

The Hashemite Government of Jordan agrees to bear all costs arising out of rents for land occupied by refugee camps and for charges of water consumed by refugees in excess of five hundred Jordanian Dinars per month.

26. In article II (1) of the Agreement between the United Nations and the Republic of Korea signed on 6 November 1959, the land on which the United Nations Memorial Cemetery stands is granted to the United Nations "in perpetuity and without charge".

### *Section 3. Capacity to acquire and dispose of movable property*

#### *(a) Recognition of the capacity of the United Nations to acquire and dispose of movable property*

27. The capacity of the United Nations to acquire and dispose of movable property has been fully recognized, both by Member States (whether or not they have become parties to the General Convention) and by non-member States. Specific problems relating to the terms under which such property has been acquired or might be disposed of under national law, in particular as regards taxation, are considered in chapter II below. The legal capacity of the United Nations to own movable property or otherwise exercise legal powers in relation to movable property, has not itself been called in question.

#### *(b) Licensing and registration of land vehicles, vessels and aircraft by the United Nations*

##### *(i) Land vehicles*

28. In the majority of cases land vehicles owned and operated by the United Nations have been registered with the road licensing authorities of the host State in which the vehicles were to be used. The local authorities have frequently granted a special registration number or a special prefix (e.g. "U.N.") to designate such vehicles.

29. A number of bodies performing peace-keeping operations in the field, however, have issued their own identification marks and licences, which they have notified to the local authorities concerned. In the case of UNTSO, which appears to be the forerunner in this respect, vehicles used are not registered with the authorities of any of the States in which UNTSO operates and the licence plates, which carry the letters "UN" and a number, are issued by UNTSO itself. In the exchange of letters between the Secretary-General and the Foreign Minister of Lebanon concerning the status of the United

Nations Observation Group in Lebanon "the use of United Nations vehicle registration plates" was included in the list of "privileges and immunities necessary for the fulfilment of the functions of the Observation Group"; a similar provision was included in the exchange of letters regarding the stationing in Jordan of a United Nations subsidiary organ under the charge of a Special Representative of the Secretary-General, and in the exchange of letters between the United Nations and Saudi Arabia concerning the observation operation along the Saudi Arabia-Yemen border.<sup>15</sup>

30. Paragraph 21 of the UNEF Agreement provides in part as follows:

Service vehicles, vessels and aircraft shall carry a distinctive United Nations identification mark and licence which shall be notified by the Commander to the Egyptian authorities. Such vehicles, vessels and aircraft shall not be subject to registration and licensing under the laws and regulations of Egypt. Egyptian authorities shall accept as valid, without a test or fee, a permit or a licence for the operation of service vehicles, vessels and aircraft issued by the Commander.

Similar provisions were contained in the ONUC and UNFICYP Agreements.<sup>16</sup>

(ii) *Vessels*

31. The United Nations has on occasions operated vessels under the United Nations flag. In 1961 the Director, Legal Division, IAEA, informed the Legal Counsel of a proposal which had been made to allow inter-governmental organizations to act as licensing States under the draft Convention on the Liability of Operators of Nuclear Ships. The reply of the Legal Counsel, dated 24 May 1961, summarizes past United Nations practice<sup>17</sup> and indicates some of the problems which would be posed by the establishment of a maritime register by the United Nations.

I was most interested to hear of the proposal made by Belgium, Denmark and India, at the recent Conference on Maritime Law held in Brussels, to add an Article to the draft Convention on Liability of Operators of Nuclear Ships which would permit an intergovernmental organization to act as a licensing State under the Convention. The proposal takes into account the principle that ships may, in certain circumstances, be navigated under the flag of an intergovernmental organization. This principle has already gained recognition in one of the most important maritime Conventions of this decade, namely the Convention on the High Seas, concluded at the First United Nations Conference on the Law of the Sea. Article 7 of that Convention provides as follows:

"The provisions of the preceding Articles [on nationality of ships] do not prejudice the question of ships employed on the official service of an intergovernmental organization flying the flag of the organization."

<sup>15</sup> United Nations, *Treaty Series*, vol. 474, p. 155.

<sup>16</sup> Paragraph 32, ONUC Agreement, *ibid.* vol. 414, p. 245, and paragraph 21, UNFICYP Agreement, *ibid.*, vol. 492, p. 70.

<sup>17</sup> For more detailed information on United Nations ships see the note by the Secretariat in *United Nations Conference on the Law of the Sea* (1958), *Official Records*, vol. IV, p. 138. The consideration of the right of the United Nations to sail vessels under its own flag by the International Law Commission and during the United Nations Conference on the Law of the Sea is summarized, with detailed references, in *Repertory of Practice of United Nations Organs*, Suppl. No. 1, vol. II, pp. 418-422 and *ibid.*, Suppl. No. 2, vol. III, pp. 515-517.

It is gratifying, furthermore, to see from the proposal of Belgium, Denmark and India, that States members of the United Nations and related agencies have kept in mind the possibility of international co-operative endeavours.

In the instant case, the possible concern of the United Nations is for future developments rather than for the present. While the Organization will probably find no necessity for licensing a nuclear ship to operate under its own flag in the years which lie immediately ahead, it may prove undesirable to preclude it from doing so in the more distant future. Circumstances have in the past already given rise to several instances where the United Nations flag has been used as the sole maritime flag on vessels. During 1954 ten fishing trawlers constructed in Hong Kong by the United Nations Korean Reconstruction Agency were navigated to Pusan, in Korea, for delivery to future Korean owners under United Nations registration and flag, as practical and other considerations did not permit of their being placed upon a national register for that particular voyage. Similarly, the United Nations Emergency Force has operated a Landing Craft (Mechanized) between Gaza and Beirut under United Nations registration and flag. While these examples appear of small import in comparison with the licensing and operation of a nuclear ship, indications are not wanting that the United Nations or specialized agencies might have occasion to navigate their own vessels, under their own flags, for considerable periods of time. Thus I understand that some thought has been given to the use by UNESCO of international oceanographic vessels, for research purposes, using the United Nations flag as the maritime flag. Co-operative ventures of a similar nature may eventually become a commonplace in the work of international organizations.

The establishment of a maritime register by the United Nations involves certain problems, such as those relating to the exercise of criminal and civil jurisdiction over the crews, which have perhaps so far limited the examples in which ships have been navigated under the United Nations flag alone. However, these problems have been under active consideration and are by no means insoluble. In this respect it would be possible to conclude agreements with States, whereby they would extend their jurisdiction to vessels navigated under the United Nations flag.

32. As regards the question of jurisdiction, the International Law Commission commented in 1955<sup>18</sup> that:

... Member States will obviously respect the protection exercised by the United Nations over a ship where the competent body has authorized the vessel to fly the United Nations flag. It must, however, not be forgotten that the legal system of the flag State applies to the vessel authorized to fly the flag. In this respect the flag of the United Nations or that of another international organization cannot be assimilated to the flag of a State. The Commission was of the opinion that the question calls for further study, and it proposes to undertake such study in due course.

33. It may also be noted that in the exchange of letters between the United Nations and the Government of Egypt regarding the clearance of the Suez Canal it was stated by the Secretary-General that "in keeping with the United Nations responsibilities, the vessels would fly the flag of the United Nations in place of their national flag."<sup>19</sup>

<sup>18</sup> Comment on provisional article 4, Régime of the High Seas, *Yearbook of the International Law Commission*, 1955, vol. II, p. 22. See also the discussion at the 320th meeting, *Yearbook of the International Law Commission*, 1955, vol. 1, p. 224 *et seq.*

<sup>19</sup> See also the opinion contained in the *United Nations Juridical Yearbook* 1963, p. 180, in which the Office of Legal Affairs recommended that vessels used for the purposes of a Special Fund fishery project should fly the United Nations flag in addition to their own maritime flag.

(iii) *Aircraft*

34. In answer to an inquiry made in 1960 by ICAO as to the registration and ownership of aircraft by the United Nations, the Office of Legal Affairs stated that the only aircraft which the United Nations had owned up to that date had been one which had been used for approximately a year in order to service the supply and personnel requirements of the United Nations Commission in Korea. The aircraft, which crashed in May 1951, had apparently not been registered; its only markings were the words "United Nations" on the fuselage, the letters "U.N." on the wings, and the United Nations flag, together with the letters "U.N. 99" on the rudder. It was stated that the case was an exceptional one, brought about by a particular emergency, and could not be regarded as typical of the arrangements normally made by the United Nations with respect to aircraft. On all other occasions aircraft had either been chartered or had been made available by a Government at the request of the United Nations; these aircraft had retained their national registration and marks, though in some instances, for example in the case of aircraft used by UNEF, planes had been painted white and bore the United Nations emblem. The reply of the Office of Legal Affairs continued as follows:

We have not, in the past, given any extensive consideration to possible distinctions between "public" and other aircraft used by the United Nations. We have taken the position that a United Nations aircraft, regardless of the particular operation in which it is used, is entitled to the privileges and immunities accorded to United Nations property in the Convention on the Privileges and Immunities of the United Nations.

As you surmise, there are some provisions relating to United Nations aircraft in certain special agreements governing particular United Nations operations. For example, the Agreement between the United Nations and Egypt concerning the status of UNEF provides, *inter alia*, in paragraph 21 that:

"... Service vehicles, vessels and aircraft shall carry a distinctive United Nations identification mark and licence which shall be notified by the Commander to the Egyptian authorities. Such vehicles, vessels and aircraft shall not be subject to registration and licensing under the laws and regulations of Egypt. Egyptian authorities shall accept as valid, without a test or fee, a permit or licence for the operation of service vehicles, vessels and aircraft issued by the Commander."

Paragraph 32 states that:

"The Force and its members shall enjoy together with service vehicles, vessels, aircraft and equipment, freedom of movement between Force headquarters, camps and other premises, within the area of operations, and to and from points of access to Egyptian territory agreed upon or to be agreed upon by the Egyptian Government and the Commander. . . ."

Under paragraph 33 UNEF has the right "to the use of . . . airfields without the payment of dues, tolls or charges either by way of registration or otherwise, in the area of operations and the normal points of access, except for charges that are related directly to services rendered."

The "Provisional Arrangement" between the United Nations and Lebanon, concerning the UNEF Leave Centre in Lebanon, contains, in paragraph 12, a provision similar to paragraph 21 of the Agreement just discussed. Should you wish to refer further to the Agreement and the Arrangement you will find them reproduced in volumes 260 and 266 of the United Nations Treaty Series.

It is our understanding, however, that special agreements of the above nature merely define in more detail some of the privileges to which United Nations aircraft are entitled under the Convention on Privileges and Immunities of the United Nations.

35. In response to a further inquiry, the Office of Legal Affairs notified ICAO in 1965 of certain developments which had occurred since 1960.

. . . A number of aircraft for instance were purchased by the United Nations between 1960 and 1963 for its operations in the Congo.

These aircraft were exempt from the requirements of Congolese law relating to the registration of aircraft, by reason of the Agreement between the United Nations and the Republic of the Congo concerning the status of the United Nations in the Congo. The Agreement provided in paragraph 32 that:

"United Nations vehicles, aircraft and vessels shall carry a distinctive United Nations identification mark. They shall not be subject to the registration or licensing prescribed by Congolese laws or regulations."

The United Nations accordingly did not register these aircraft in the Congo. Nor were they registered by the United Nations in any other country.

Many of these aircraft were purchased by the United Nations from Governments and, depending on national law requirements concerning the registration of government aircraft, these aircraft may or may not have been registered when purchased. However, in the case of aircraft that were in fact registered when purchased by the United Nations, I assume that their national registrations would have expired in consequence of the change in ownership.

It seems likely therefore that while these aircraft were being operated by the United Nations they were without national registration.

While in United Nations ownership, all these aircraft bore only United Nations distinguishing marks and United Nations identification numbers.

I should add that there are, as of now, only two of these aircraft that are still owned by the United Nations. Both aircraft are in the Congo but are to be sold in the near future.

Aside from the aircraft that were purchased for the Congo I am informed that the United Nations has, while acting as Executing Agency for the Special Fund, purchased three other aircraft.

The first of these was an Aero-Commander aircraft which was purchased in 1961 for the Special Fund's Mineral Survey Project in Chile. When purchased the aircraft was registered in the United States. Such registration, however, expired in consequence of the sale, and the United Nations then re-registered the aircraft in the United States. The aircraft which bears the United States registration marks "N. 4113 B" is still in Chile and in United Nations ownership.

The second was a Twin Pioneer aircraft which was purchased by the United Nations in 1962 for the Special Fund's Survey of Metallic Mineral Deposits in Mexico. When purchased the aircraft was registered in the United Kingdom. This registration, however, expired in consequence of the sale of the aircraft, and the United Nations then registered the aircraft in Mexico. The aircraft which bears the Mexican registration marks "XC-CUJ" is still in Mexico and is still owned by the United Nations, though it is to be sold shortly.

The third was a Pilatus Porter aircraft which was purchased by the United Nations in 1963 for the Special Fund's Karnali River Hydroelectric Development Project in Nepal. When purchased the aircraft was registered in Switzerland. Swiss registration, however, expired in consequence of the sale of the aircraft, and the aircraft was thereafter registered by the United Nations in Nepal. The aircraft which bears the Nepalese registration marks "GN-AAN" is still in Nepal and still in United Nations ownership.

*Section 4. Legal proceedings brought by and against the United Nations*

36. Section 1 (c) of the General Convention refers expressly to the capacity of the United Nations "to institute legal proceedings". This capacity has been widely recognized by judicial and other state authorities; apart from arbitrations, the United Nations has not instituted proceedings before any international tribunals, other than the International Court of Justice in the form of requests for advisory opinions.

37. United Nations practice in respect of the receipt of private law claims, and the steps taken to avoid or mitigate such claims, is also considered below.

(a) *Legal proceedings brought by the United Nations in respect of commercial contracts*

38. In *Balfour, Guthrie & Co. Ltd., et al. v. United States et al.*,<sup>20</sup> the United Nations brought an action for damages against the United States Government arising out of the loss of and damage to a cargo of milk which had been shipped on behalf of UNICEF on a United States vessel; the United Nations action was joined with that of six other shippers. The Court stated that, having regard to the terms of Article 104 of the Charter which, as a treaty ratified by the United States formed part of the law of the United States "No implemental legislation would appear to be necessary to endow the United Nations with legal capacity in the United States". The President, however, "has removed any possible doubt by designating the United Nations as one of the organizations entitled to enjoy the privileges conferred by the International Organizations Immunities Act", under section 2 (a) of that Act. These privileges included "to the extent consistent with the instrument creating them," the capacity "to institute legal proceedings."

39. In *UNKRA v. Glass Production Methods, Inc. et al.*,<sup>21</sup> UNKRA brought an action against a corporation domiciled in New York and against three individuals, two of whom were residents of Connecticut. The individual defendants moved to dismiss the suit on grounds of improper venue; UNKRA contended that the International Organizations Immunities Act, which invested international organizations with the power to institute legal proceedings, was intended to afford access to the federal courts irrespective of venue requirements. The Court held that the action should be severed and, with respect to the two defendants who resided in Connecticut, transferred to the District Court there. The statute granting the privilege of instituting legal proceedings to international organizations did not alter or provide an exemption from the normal venue requirements. It was pointed out that even the United States Government

<sup>20</sup> United States District Court for the Northern District of California, 5 May 1950; 90 F. Supp. 831. See also the case of *International Refugee Organization v. Republic S.S. Corp. et al.* referred to in *Summary of practice relating to the status, privileges and immunities of the specialized agencies and of the International Atomic Energy Agency*, section 1, para. 5, below.

<sup>21</sup> District Court, Southern District of New York, 3 August 1956; 143 F. Supp. 248.

when it commenced an action had to comply with the federal venue statutes; in the opinion of the Court, Congress had not intended to confer upon United Nations agencies greater privileges in this respect than were afforded to citizens of the United States, or to the United States Government itself.

40. A Canadian decision in which attention was paid to the formal requirements of the United Nations capacity to institute legal proceedings was that of *United Nations v. Canada Asiatic Lines Ltd.*<sup>22</sup> The United Nations brought an action to recover money owed to it by the defendant. The lawyer acting on behalf of the United Nations produced a power of attorney signed by the Secretary-General, whose signature had been duly authenticated. The defendant sought to reject the power of attorney on the ground that the person who signed it, namely the Secretary-General, had no authority to bind the United Nations in respect thereof. The motion was dismissed by the Court which declared, on the basis of Canadian Order-in-Council No. 3946 and Article 104 of the Charter, "the United Nations has the legal capacity of a body corporate". The Court distinguished the cases which had been cited to it relating to companies on the grounds that, "the affairs of the United Nations are administered by the Secretariat and not by a Board of Directors as is done in the case of a company incorporated under Letters Patent." The Secretary-General was chief administrative officer of the United Nations and the institution of the present action fell within the scope of the authority of the Secretariat. The Court therefore concluded that:

The power of attorney signed by the Secretary-General of the United Nations and bearing the Seal of the United Nations makes *prima facie* proof of its contents and of the authority of its signatory. The said power of attorney is good, valid and sufficient and the defendant's action to reject is unfounded.

(b) *Legal proceedings brought by the United Nations in respect of non-commercial contracts and criminal acts*

41. In *United Nations v. B.*<sup>23</sup> the United Nations sought to recover before a Belgian Court an over-payment of salary made to a former UNKRA staff member after he had left the service. The defendant contended that UNKRA and the United Nations lacked legal personality and that, in any case, the United Nations had not succeeded to the rights of UNKRA. The Court held that the sum should be repaid; UNKRA and the United Nations enjoyed legal personality in Belgium and UNKRA had, by its agreement with the United Nations, transferred its rights to the latter, on behalf of UNICEF.<sup>24</sup>

42. In 1960 UNICEF considered bringing legal proceedings in Mexico following the embezzlement of part of its funds. The following memorandum prepared by the Office of Legal Affairs describes the legal foundations for UNICEF's capacity to do so.

<sup>22</sup> Superior Court of Montreal, 2 December 1952.

<sup>23</sup> Tribunal Civil of Brussels, 27 March 1952.

<sup>24</sup> For a similar case in Holland regarding overpayment see *UNRRA v. Daan*, Cantonal Court, Amersfoort, 16 June 1948; District Court of Utrecht, 23 February 1959; Supreme Court, 19 May 1950.

1. UNICEF is a subsidiary organ of the United Nations, established by General Assembly resolution 57 (1) of 11 December 1946. Consequently it possesses the legal capacity conferred upon the United Nations by Article 104 of the Charter which states that:

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

Article 104 has always been interpreted as endowing the United Nations with the capacity to institute legal proceedings in national courts. For example, the Convention on the Privileges and Immunities of the United Nations, which details some of the constituent elements of Articles 104 and 105 of the Charter provides, in article 1, section 1, that the Organization shall “have the capacity . . . to institute legal proceedings”. National courts have always in the past recognized the capacity of the Organization and its subsidiary organs to institute legal proceedings before them even in States Members of the United Nations, which are not parties to the Convention on Privileges and Immunities.

2. While Mexico is not yet a party to the Convention on Privileges and Immunities it is, of course, bound by Article 104 of the Charter. Furthermore, on 20 May 1954 Mexico and UNICEF signed an Agreement concerning the activities of the latter in Mexico. Under Article VIII of this Agreement Mexico undertakes to grant to UNICEF and its representatives “the privileges and immunities granted to other subsidiary organizations and Specialized Agencies of the United Nations and their representatives in Mexico”. In this respect it is relevant to note that under Article III of an Agreement signed on 5 January 1955 between Mexico and the ILO, a specialized agency of the United Nations, the former recognizes that an office of the ILO in Mexico “shall possess juridical personality including the capacity to institute legal proceedings”. It has been the practice of the Organization, endorsed by the General Assembly in its adoption of the Convention on the Privileges and Immunities of the United Nations, to consider the question of juridical personality as an integral part of the question of privileges and immunities. It must be concluded, therefore, that in accordance with Article 104 of the Charter and Article VIII of the Agreement of 20 May 1954 between Mexico and UNICEF, the latter has the right to institute legal proceedings in Mexico.

43. Following a complaint for criminal fraud filed by UNICEF, in a judgement handed down on 18 February 1954, the *Tribunal Correctionnel de la Seine* found two persons guilty of fraud and, *inter alia*, ordered them to pay damages to UNICEF, in a case arising out of a contract entered into by UNICEF on behalf of UNRWA.<sup>25</sup>

(c) *Claims of a private law nature made against the United Nations and the steps taken to avoid or mitigate such claims*

44. Apart from the cases it has itself instituted, the United Nations has received a number of claims of a private law nature. Claims arising out of commercial contracts have been settled by negotiation and arbitration; disputes concerning contracts of employment have been determined by means of internal appellate procedures.<sup>26</sup>

<sup>25</sup> See Annual Report of the Secretary-General, *Official Records of the General Assembly, Ninth Session, Supplement No. 1 (A/2663)*, p. 106. Several cases brought by UNRWA are also noted, *ibid.*

<sup>26</sup> See section 1 (b), para. 5 and footnote 2, above. See, however, section 7, paras. 68-71, below, for a number of cases in which persons sought to bring actions against the United Nations in respect of private claims, in particular of claims arising out of contracts of employment.

Other claims of a private law nature, for example, in respect of personal injuries incurred on United Nations premises or caused by vehicles operated by the United Nations, have for the most part been met by means of insurance coverage or, in the relatively few cases where such coverage did not exist, by agreement following discussions between the United Nations and the injured party.

45. The remaining category of claims has chiefly concerned the operational programmes of the United Nations. In order to anticipate possible liability in this sphere, the United Nations has concluded a number of agreements whereby the beneficiary State has agreed to hold harmless the United Nations in respect of any claims which may arise; the procedure used thus operated both at an international level and in terms of national law. The revised model Agreement concerning the activities of UNICEF,<sup>27</sup> for example, provides as follows:

*Article VI. Claims against UNICEF*

1. The Government shall assume, subject to the provisions of this Article, responsibility in respect of claims resulting from the execution of Plans of Operations within the territory of . . . .

2. The Government shall accordingly defend, indemnify and hold harmless UNICEF and its employees or agents against all liabilities, suits, actions, demands, damages, costs or fees on account of death or injury to persons or property resulting from anything done or committed to be done in the execution within the territory concerned of Plans of Operations made pursuant to this Agreement, not amounting to a reckless misconduct of such employees or agents.

3. In the event of the Government making any payment in accordance with the provisions of paragraph 2 of this Article, the Government shall be entitled to exercise and enjoy the benefit of all rights and claims of UNICEF against third persons.

4. This Article shall not apply with respect to any claim against UNICEF for injuries incurred by a staff member of UNICEF.

5. UNICEF shall place at the disposal of the Government any information or other assistance required for the handling of any case to which paragraph 2 of this Article relates or for the fulfilment of the purposes of paragraph 3.

46. Similarly the model revised Standard Agreement concerning technical assistance<sup>28</sup> states in article I, paragraph 6:

6. The Government shall be responsible for dealing with claims which may be brought by third parties against the Organizations and their experts, agents or employees and shall hold harmless such Organizations and their experts, agents and employees in case of any claim or liabilities resulting from operations under this Agreement, except where it is agreed by the Government, the Executive Chairman of the Technical Assistance Board and the Organizations concerned that such claims or liabilities arise from the gross negligence or wilful misconduct of such experts, agents or employees.

47. The model Agreement concerning assistance from the Special Fund<sup>29</sup> provides in article VIII, paragraph 6, that:

<sup>27</sup> UNICEF *Field Manual*, vol. II, part IV-2, appendix A (16 August 1961).

<sup>28</sup> Technical Assistance Board/Special Fund, *Field Manual*, section D1/1 a (i) (February 1963).

<sup>29</sup> Technical Assistance Board/Special Fund, *Field Manual*, section D1/1 a (ii) (February 1963).

6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Special Fund or an Executing Agency, against the personnel of either, or against other persons performing services on behalf of either under this Agreement, and shall hold the Special Fund, the Executing Agency concerned and the above-mentioned persons harmless in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Parties hereto, and the Executing Agency that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons.

48. Lastly, the model Agreement for the provision of operational, executive and administrative personnel declares that:

6. The assistance rendered pursuant to the terms of this Agreement is in the exclusive interest and for the exclusive benefit of the people and Government of . . . . In recognition thereof, the Government shall bear all risks and claims resulting from, occurring in the course of, or otherwise connected with any operation covered by this Agreement. Without restricting the generality of the preceding sentence, the Government shall indemnify and hold harmless the United Nations and the officers against any and all liability suits, actions, demands, damages, costs or fees on account of death, injuries to person or property or any other losses resulting from or connected with any act or omission performed in the course of operations covered by this Agreement.

*Section 5. International claims brought by and against the United Nations*

*(a) Capacity of the United Nations to bring claims against other subjects of international law*

49. In its Advisory Opinion of 11 April 1949, on the *Reparation for Injuries Suffered in the Service of the United Nations*,<sup>30</sup> the International Court of Justice held unanimously that, having regard to the powers necessary for the exercise of its functions, the United Nations had the capacity to bring an international claim in respect of the damage it had itself incurred. The Court also held, by 11 votes to 4, that the United Nations might claim in respect of damage caused to its agents or their dependants. Lastly, the Court held, by 10 votes to 5, that a conflict between a claim brought by the United Nations and a potential claim by the national State arising out of the injury of an individual who had been acting in the service of the United Nations might normally be avoided by virtue of the fact that, in bringing a claim in respect of injury to its agent, the Organization would be seeking reparation for a breach of an obligation due to itself; if a reconciliation of such claims was necessary, however, it would depend on considerations applicable to the particular case and on agreements reached between the Organization and the national State concerned.<sup>31</sup>

50. Following the delivery of this opinion the Secretary-General submitted a report to the General Assembly<sup>32</sup> in which he stated that:

In his judgement the Secretary-General, as chief administrative officer of the Organization, is the appropriate organ for the presentation and settlement of the claims here involved. The Secretary-General has acted on behalf of the Organization in the prosecution

of all other claims, and there is no apparent reason for differentiation here.

51. Having regard to the Advisory Opinion, the Secretary-General outlined a proposed procedure for dealing with claims for reparation of injuries suffered in the service of the United Nations. Under this procedure, the Secretary-General would: (a) determine whether the case appeared likely to involve the responsibilities of a State; (b) consult with the Government of the State of which the victim was a national, in order to determine whether the Government had any objection to the presentation of claims by the United Nations or desired to join in submission; and (c) negotiate with the State responsible for the injury, for the purpose of determining the facts of the case and the amount of reparations, if any. The Secretary-General would be given discretion in negotiating a settlement of the claims both with respect to the elements of damage included in any claim, and with respect to the amount of reparation to be requested or eventually accepted; but he would not be authorized to advance any claim for exemplary damages. If the claim could not be settled by negotiation, the Secretary-General might submit any differences of opinion to arbitration by a tribunal of three members, one of whom was to be named by him.

52. In resolution 365 (IV) the General Assembly authorized the Secretary-General to act in accordance with the procedure outlined above. In pursuance of this resolution the Secretary-General presented a number of international claims against the Governments of Israel, Jordan and Egypt respectively, and reported to the General Assembly regarding them.<sup>33</sup> The following is a succinct summary of the claims formally presented in respect of the death or injury of United Nations personnel.

*(i) Claim in respect of the death of Count F. Bernadotte, United Nations Mediator*

A claim for reparation of \$54,628, representing the expenses incurred by the United Nations in respect of the death of the United Nations Mediator was presented against the Government of Israel and paid in full.

*(ii) Claims in respect of the death or injury of military observers*

(a) *Col. A. Sérot.* Col. Sérot, a French Officer serving on the staff of the United Nations Mediator in Palestine, was killed at the same time as the Mediator in circumstances involving the responsibility of the Government of Israel. A claim in respect of \$25,000, paid by the United Nations to Col. Sérot's widow, \$233 funeral expenses, and 200,000 Fr. francs (\$575) on behalf of Col. Sérot's eighty-nine year old father, was presented against the Government of Israel and paid in full.

<sup>30</sup> See the Annual Report of the Secretary-General, *Official Records of the General Assembly, Fifth Session, Supplement No. 1 (A/1287)*, p. 124; *ibid.*, *Sixth Session, Supplement No. 1 (A/1844)*, p. 188; *ibid.*, *Seventh Session, Supplement No. 1 (A/2141)*, p. 160; *ibid.*, *Eighth Session, Supplement No. 1 (A/2404)*, p. 144; *ibid.*, *Ninth Session, Supplement No. 1 (A/2663)*, p. 101; *ibid.*, *Tenth Session, Supplement No. 1 (A/2911)*, p. 109. None of the national States of the victims raised any objection to claims being made by the United Nations, or themselves pursued claims.

<sup>30</sup> *I.C.J. Reports*, 1949, p. 174.

<sup>31</sup> *Ibid.*, pp. 187 and 188.

<sup>32</sup> *Official Records of the General Assembly, Fourth Session, Sixth Committee, annex, A/955*, p. 6.

(b) *Lt.-Col. J. Queru and Capt. P. Jeannel.* These two United Nations military observers from France were killed on 28 August 1948 at Gaza airfield by Saudi Arabian troops to which the Egyptian Army had entrusted the guarding of the airfield. A claim was presented against the Government of Egypt for \$52,874.20, with respect to their deaths. This amount consisted of \$25,000 paid by the United Nations to the beneficiary of each of the deceased and \$2,874.20 for damage to aircraft. The claim has not yet been settled.

(c) *Lt.-Col. E. Thalen.* Lt.-Col. Thalen, a Swedish military observer serving with UNTSO, suffered an injury resulting in total disability when fired upon by members of the Jordanian National Guard. A claim for \$26,518.26 in respect of the monetary damage borne by the United Nations with respect to Lt.-Col. Thalen's injuries was presented to the Government of Jordan and was paid in full. This amount consisted of \$18,000 paid by the United Nations to Lt.-Col. Thalen and \$8,518.26 in medical expenses.

(d) *Colonel Flint.* Colonel Flint, a Canadian military observer serving with UNTSO, was killed on Mt. Scopus in 1958. A claim was presented to the Government of Jordan in 1966 and remains under consideration.

(iii) *Claim in respect of a member of a UNEF contingent*

The Government of the United Arab Republic paid reparations amounting to \$21,433 to the Government of Canada, in respect of the damages incurred by the latter by reason of the death of a member of the Canadian contingent to UNEF in circumstances for which the Government of the United Arab Republic admitted responsibility.

Under regulation 40 of the UNEF Regulations, responsibility for benefits or compensation awards in respect of service-incurred death, injury or illness rests with the State from whose military services the individual soldier has come. Unlike the case of military observers or of staff members, therefore, the United Nations does not itself incur a financial loss unless the Government concerned claims reimbursement. In the case under discussion the Government of the United Arab Republic admitted responsibility and paid the amount asked by the Canadian Government through the Commander of UNEF.

(iv) *Claim in respect of a United Nations staff member*

Mr. Ole Helge Bakke, a United Nations staff member, was killed in circumstances involving the responsibility of the Government of Jordan. A claim for \$36,803.76 and 22,000 Norwegian Kroner (\$3,080) was presented against the Government of Jordan but the case has not yet been settled. The sum claimed consisted of \$25,000 paid to the widow and of funeral, administrative and excess insurance expenses. The claim for 22,000 Norwegian Kroner was made on behalf of Mr. Bakke's dependent mother.

53. In the case of certain United Nations peace-keeping operations, and to some extent in various headquarters agreements, regular machinery and procedures exist to deal with international claims arising between the

United Nations and States; none of the cases which have arisen, either in these or in other instances have been the subject of third-party settlement, whether before a court or by means of an agreed form of arbitration. In the majority of these cases, however, the element of material damage has been slight and the major issue has been the duty of protection owed to the Organization, its premises and its staff, and the obligation of the State concerned to respect the Organization's inviolability and freedom from interference. No international claims have been presented by the United Nations against subjects of international law other than States.

(b) *Claims made against the United Nations by States or by other international organizations*

54. No claims have been made against the United Nations by other international organizations in respect of a breach of international law. As regards claims made against the United Nations by States, these have been comparatively rare. Apart from cases involving car accidents, the only claims of any significance brought by States (whether on their own behalf or on behalf of their nationals) arose out of the United Nations activities in the Democratic Republic of the Congo. Belgium submitted a number of claims in respect of injuries suffered by Belgian nationals and for loss of or damage to Belgian owned property, alleged to have been caused by troops under United Nations command. These claims, together with certain United Nations counter-claims, were settled following lengthy negotiations, without recourse to third party procedures. In an exchange of letters dated 20 February 1965, between the Secretary-General and the Minister for Foreign Affairs of Belgium, the Secretary-General wrote as follows:

Sir,

A number of Belgian nationals have lodged with the United Nations claims for damage to persons and property arising from the operations of the United Nations Force in the Congo, particularly those which took place in Katanga. The claims in question have been examined by United Nations officials assigned to assemble all the information necessary for establishing the fact submitted by the claimants or their beneficiaries and any other available information.

The United Nations has agreed that the claims of Belgian nationals who may have suffered damage as a result of harmful acts committed by ONUC personnel, not arising from military necessity, should be dealt with in an equitable manner.

It has stated it would not evade responsibility where it was established that United Nations agents had in fact caused unjustifiable damage to innocent parties.

It is pointed out that under these principles, the Organization does not assume liability for damage to persons or property, which resulted solely from military operations or which, although caused by third parties, gave rise to claims against the United Nations; such cases are therefore excluded from the proposed compensation.

Consultations have taken place with the Belgian Government. The examination of the claims having now been completed, the Secretary-General, shall, without prejudice to the privileges and immunities enjoyed by the United Nations, pay to the Belgian Government one million five hundred thousand United States dollars in lump-sum and final settlement of all claims arising from the causes mentioned in the first paragraph of this letter.

The distribution to be made of the sum referred to in the preceding paragraph shall be the responsibility of the Belgian Government. Upon the entry into force of this exchange of letters, the Secretary-General shall supply to the Belgian Government all information at his disposal which might be useful in carrying out the distribution of the amount in question, including the list of individual cases in respect of which the United Nations has considered that it must bear financial responsibility, and any other information relevant to the determination of such responsibility.

Acceptance of the above-mentioned payment shall constitute lump-sum and final settlement between Belgium and the United Nations of all the matters referred to in this letter. It is understood that this settlement does not affect any claims arising from contractual relationships between the claimants and the Organization or those which are at present still handled by United Nations administrative departments, such as ordinary requisitions.

Accept, Sir, the assurances of my highest consideration.

(Signed) U THANT  
Secretary-General<sup>34</sup>

The Minister for Foreign Affairs of Belgium accepted the proposals made and the agreement entered into force on 17 May 1965.

55. The Acting Permanent Representative of the Soviet Union wrote to the Secretary-General on 2 August 1965<sup>35</sup> stating that Belgium had "committed aggression against the Democratic Republic of the Congo and as an aggressor has no moral or legal basis for making claims against the United Nations either on its own behalf or on behalf of its citizens". In these circumstances

... the payment of compensation by the United Nations Secretariat to the Belgian Government for the so-called losses caused to Belgian citizens in the Congo by United Nations forces cannot be regarded as other than an encouragement to aggressors, as a reward for brigandage. In accordance with the generally recognized rule of international law concerning the responsibility of the aggressor for the aggression committed by him, the Belgian Government should itself bear full moral and material responsibility for all consequences of its aggression against the Republic of the Congo.

The Permanent Mission of the USSR to the United Nations draws the Secretariat's attention to the fact that it has no right in this case to enter into any agreements on behalf of the United Nations concerning the payment of compensation without the authorization of the Security Council.

Accordingly, the Permanent Mission of the USSR to the United Nations expects the Secretary-General to take immediate steps to cancel the agreement concluded by the Secretariat concerning the payment of the above-mentioned compensation.

56. The Secretary-General replied as follows:

... The arrangement to which your letter refers was brought about in the following circumstances. In the course of the United Nations activities in the Congo, the Secretariat received a number of claims from Belgian citizens as well as from individuals of various other nationalities alleging that they had suffered injury or damage to property by acts of United Nations personnel which gave rise to liability on the part of the Organization.

It has always been the policy of the United Nations, acting through the Secretary-General, to compensate individuals who have suffered damages for which the Organization was legally liable. This policy is in keeping with generally recognized legal

principles and with the Convention on Privileges and Immunities of the United Nations. In addition, in regard to the United Nations activities in the Congo, it is reinforced by the principles set forth in the international conventions concerning the protection of the life and property of civilian population during hostilities as well as by considerations of equity and humanity which the United Nations cannot ignore.

Accordingly, the claims submitted were investigated by the competent services of ONUC and at United Nations Headquarters in order to collect all of the data relevant to determining the responsibility of the Organization. Claims of damage which were found to be solely due to military operations or military necessity were excluded. Also expressly excluded were claims for damage found to have been caused by persons other than United Nations personnel.

On this basis, all individual claims submitted by Belgian nationals, as well as those submitted by nationals of other countries, were carefully scrutinized and a list of cases was established by the Secretariat with regard to which it was concluded that compensation should be paid. Of approximately 1,400 claims submitted by Belgian nationals, the United Nations accepted 581 as entitled to compensation.

As regards the role of the Belgian Government, it was considered that there was an advantage for the Organization both on practical and legal grounds that payment to the Belgian claimants whose claim has been examined by the United Nations should be effected through the intermediary of their Governments. This procedure obviously avoided the costly and protracted proceedings that might have been necessary to deal with the 1,400 cases submitted and to settle those in which United Nations responsibility was found.

Following consultations, the Belgian Government agreed to act as an intermediary and also agreed that the payment of a lump sum amounting to \$1.5 million would constitute a final and definite settlement of the matter. At the same time, a number of financial questions which were outstanding between the United Nations and Belgium were settled. Payment was effected by off-setting the amount of \$1.5 million against unpaid ONUC assessments amounting approximately to \$3.2 million.

Similar arrangements are being discussed with the Governments of other countries, the nationals of which have similarly suffered damage giving rise to United Nations liability. About 300 unsettled claims fall within this category.

In making these arrangements, the Secretary-General has acted in his capacity of chief administrative officer of the Organization, consistently with the established practice of the United Nations under which claims addressed to the Organization by private individuals are considered and settled under the authority of the Secretary-General.<sup>36</sup>

There have been a number of other claims presented by States on behalf of their nationals arising out of ONUC operations, which were settled on a broadly similar basis.

### Section 6. Treaty-making capacity

#### (a) Treaty-making capacity of the United Nations

57. The United Nations has concluded a large number of international agreements with other subjects of international law i.e. both with States and with other international organizations. The capacity of the Organization or its organs to conclude agreements is provided in various provisions of the Charter itself. In Article 43 the Security Council is empowered to enter into agree-

<sup>34</sup> *Official Records of the Security Council, Twentieth Year, Supplement for July, August and September 1965*, document S/6597.

<sup>35</sup> *Ibid.*, document S/6589.

<sup>36</sup> See foot-note 34, above.

ments with Member States or groups of Members regarding the armed forces, assistance and facilities to be made available to the Security Council for the purpose of maintaining international peace and security; Article 43 concludes by providing that these agreements "shall be subject to ratification by the signatory States in accordance with their constitutional processes". Furthermore, as was stated by the United Nations before the International Court of Justice in the hearings of the case relating to "Reparation for Injuries suffered in the service of the United Nations", by virtue of Article 105 the Organization is a party to the General Convention, "which binds the United Nations as an Organization, on the one part, and each of its Members individually, on the other part".<sup>37</sup> Reference was also made in the United Nations statement to the agreements concluded with individual States, such as the Headquarters Agreement and the Agreement with Switzerland, and to Article 63 of the Charter whereby the United Nations may enter into agreements with the specialized agencies.<sup>38</sup> In its Advisory Opinion the International Court affirmed the possession by the United Nations of international personality by reference, *inter alia*, to its treaty-making capacity.

Practice — in particular the conclusion of conventions to which the Organization is a party — has confirmed this character of the Organization, which occupies a position in certain respects in detachment from its Members, and which is under a duty to remind them, if need be, of certain obligations. . . The "Convention on the Privileges and Immunities of the United Nations" of 1946 creates rights and duties between each of the signatories and the Organization (see, in particular, section 35).<sup>39</sup>

The Court also laid down the following principle:

Under international law, the Organization must be deemed to have those powers which, though not expressly provided for in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties.<sup>40</sup>

58. It was on this basis that Sir Humphrey Waldock, Special Rapporteur on the Law of Treaties, proposed<sup>41</sup> that the International Law Commission should consider adopting a provision recognizing the capacity of subjects of international law other than States to conclude treaties when invested with capacity to do so by treaty or custom. The International Law Commission examined the question but finally decided that its articles relating to treaties should deal only with agreements between States. Nevertheless, as the Rapporteur noted, in its discussions the Commission

fully accepted that international organizations may possess treaty-making capacity and that international agreements concluded by international organizations possessing such capacity fall within the scope of the law of treaties.<sup>42</sup>

<sup>37</sup> *I.C.J. Pleadings, Oral Arguments, Documents, 1949. Reparation for Injuries Suffered in the Service of the United Nations*, p. 71.

<sup>38</sup> *Ibid.*

<sup>39</sup> *I.C.J. Reports 1949*, pp. 174 and 179.

<sup>40</sup> *Ibid.*, p. 182.

<sup>41</sup> "First Report on the Law of Treaties", A/CN.4/144, *Yearbook of the International Law Commission 1962*, vol. II, p. 35. See also the references to earlier consideration of the question by the International Law Commission at p. 30.

<sup>42</sup> "First Report on the Law of Treaties" A/CN.4/144, *Yearbook of the International Law Commission 1962*, vol. II, p. 30.

59. It may be noted that the Regulations adopted by the General Assembly to give effect to Article 102 of the Charter concerning treaty registration, expressly refer to cases where the United Nations is a party to a treaty or agreement.<sup>43</sup> The United Nations *Treaty Series* accordingly contains a large number of agreements concluded by the United Nations with different States and other international organizations. Some of the major topics covered by such agreements are the following: the provision of technical assistance; the holding of *ad hoc* conferences or seminars; the establishment of permanent installations (for example, in the case of information centres or of the regional economic commissions); the operations conducted in given countries by subsidiary organs such as UNICEF and UNRWA; status-of-forces agreements with respect to United Nations peace-keeping forces and agreements with States providing troops for such forces; and the arrangement of communication and associated facilities, for example as regards the sale of stamps, the dispatch of mail, or United Nations radio operations.

60. The treaty-making capacity possessed by the Organization may only be exercised, normally by the Secretary-General on behalf of the Organization, upon the basis of authorization contained, expressly or impliedly, in the provisions of the Charter;<sup>44</sup> or in resolutions adopted by one of the principal organs on which Member States are represented; in the case of subsidiary organs, such as UNICEF, and UNRWA, agreements may be concluded by the body concerned on the basis of resolutions of the parent organ or by the Secretary-General or his representative, acting on their behalf. It is not possible to give a categorical answer to the question of the precise extent to which authorization from a representative organ is required (other than in cases arising directly from Charter provisions) before an international agreement may be concluded by the United Nations, or whether agreements must receive the approval of such an organ before entering into force. It may be noted that the General Assembly has adopted a number of resolutions specifically approving the terms of agreements between the United Nations and certain Governments relating to privileges and immunities.<sup>45</sup> In the case of "standard" agreements, e.g. those concluded by UNICEF or by the various technical assistance bodies, a general authorization has been relied on.

61. As regards procedural aspects of United Nations treaty practice, the following extract from a letter dated 22 November 1961, sent by the Office of Legal Affairs in response to an inquiry by the Special Rapporteur

<sup>43</sup> Article 4, para. 1 (a) and art. 10 (a) of the Regulations, United Nations, *Treaty Series*, vol. 76, pp. XXII and XXVI.

<sup>44</sup> Besides Articles 43, 63 and 105 of the Charter, these provisions include Chapter XII dealing with the International Trusteeship System and Chapter XV dealing with the powers of the Secretary-General.

<sup>45</sup> See "Resolutions of the General Assembly concerning the Law of Treaties" (A/CN.4/154) in *Yearbook of the International Law Commission 1963*, vol. II, pp. 9-11. The question of the conclusion of international agreements by Member States by means of United Nations resolutions is a separate issue, falling outside the scope of the present study.

of the International Law Commission on the Law of Treaties as to whether the United Nations issues anything that corresponds to credentials or full-powers, provides a general survey of the arrangements which have been adopted.

... The procedures heretofore followed in the United Nations in this regard have been rather informal. Where the Secretary-General concluded an agreement with the Government of a State on behalf of the Organization, in the implementation of a decision of one of its organs or in the performance of his regular duties, there is of course no question of credentials or full-powers since, as Chief Administrative Officer of the Organization under Article 97 of the Charter, his power of making treaties on behalf of the Organization in the performance of his functions is implied.

On occasion, the Secretary-General has been authorized by an organ of the United Nations to conclude with the Government of a State an agreement for a specific purpose. Thus, in view of the decision to establish the seat of the United Nations in the United States, the General Assembly first adopted a resolution by which it "authorizes" persons appointed by certain Governments, to negotiate with the competent authorities of the United States the arrangements required (resolution 22 B (I), 13 February 1946). Upon receipt of a report by the Secretary-General and the negotiating committee on the negotiations carried out in pursuance of the above-mentioned resolution, the General Assembly further authorized the Secretary-General "to negotiate and conclude with the appropriate authorities of the United States of America an agreement concerning the arrangements required as a result of the establishment of the permanent headquarters of the United Nations in the City of New York, such agreement to come into force only upon approval by the General Assembly" (resolution 99 (I), 14 December 1946). On the basis of this resolution, the Secretary-General signed with the Secretary of State of the United States an agreement between the United Nations and the United States on 26 June 1947 regarding the headquarters of the United Nations and submitted it to the General Assembly for approval. By a third resolution, the General Assembly approved the agreement as signed and authorized the Secretary-General to bring it into force (resolution 169 A (II), 31 October 1947).

Where an Under-Secretary of the United Nations signs an agreement on behalf of the United Nations, his authority for doing so is deemed to have derived from the Secretary-General, express or implied, in the normal courses of administration and no full-powers or any other form of specific authorization to sign such agreement have been considered necessary.

In cases of agreements negotiated and concluded overseas by a Representative of a subsidiary organ of the United Nations, such as the United Nations Special Fund, with the Government of a State the executive head of the subsidiary organ usually issues a letter stating simply that the Representative has been authorized to sign such agreement on his behalf. This letter may be addressed to the Representative or to the Government concerned, depending on the preference of the Government. There have been occasions where a telegram was sent instead of a letter when time was of the essence. In the case of Standard Agreements on Technical Assistance negotiated by a Resident Representative of the United Nations Technical Assistance Board, such Representative receives authorization, again in a similarly informal manner from the Executive Chairman of the said Board and signs such agreements on behalf of all the participating agencies on the Board, namely the United Nations, the International Atomic Energy Agency and seven specialized agencies. . .

62. When agreements have been signed on behalf of the United Nations by officials below the rank of Under-Secretary, full powers have sometimes been issued by the Secretary-General at the request of the other party.

(b) *Treaties with non-member States*

63. The United Nations has entered into a number of agreements with non-member States. Examples of such treaties include the Agreement with Switzerland concluded in 1946; the Agreement of 27 September 1951 entered into with the Republic of Korea; and the Agreement signed on 25 July 1952, between the United Nations and Japan, before that country became a Member State. Each of these Agreements concerned the privileges and immunities to be enjoyed by the United Nations in the States concerned.

(c) *Registration, or filing and recording, of agreements on the status, privileges and immunities of the United Nations*

64. The United Nations Secretariat has registered, or filed and recorded, all agreements which have been entered into by the United Nations dealing with the status, privileges and immunities of the Organization, in accordance with the Regulations to give effect to Article 102 of the Charter, adopted by the General Assembly in resolution 97 (I), as modified by resolutions 364 B (IV) and 482 (V).<sup>46</sup>

CHAPTER II. — PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS IN RELATION TO ITS PROPERTY, FUNDS AND ASSETS

*Section 7. Immunity of the United Nations from legal process*

(a) *Recognition of the immunity of the United Nations from legal process*

65. As stated in section 2 of the General Convention,

The United Nations, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. . .

66. Similar provisions are contained in the majority of other international agreements relating to the privileges and immunities of the United Nations.<sup>47</sup> Article I, section 1, of the Agreement with Switzerland expresses the privilege as one derived from international law:

The Swiss Federal Council recognizes the international personality and legal capacity of the United Nations. Consequently, according to the rules of international law, the Organization cannot be sued before the Swiss Courts without its express consent.

67. Immunity from legal process is not one of the privileges granted to the Organization under the Headquarters Agreement with the United States. Since the

<sup>46</sup> United Nations, *Treaty Series*, vol. 76, p. XVIII.

<sup>47</sup> For the economic commissions see section 7 of the ECLA Agreement and section 6 of the ECAFE Agreement. In the case of the ECA Agreement, no immunity from legal process is provided for the Commission itself, *expressis verbis*, though the Headquarters of the Commission are declared inviolable (section 2), its officials are granted immunity in respect of officials' acts (section 11a), and the Executive Secretary himself and his immediate assistants are granted diplomatic privileges and immunities (section 13); the Agreement and the General Convention are stated to be complementary, however, in so far as their provisions relate to the same subject matter (section 17).

United States is not a party to the General Convention,<sup>48</sup> the Organization's immunity from suit in that country has been based on national enactments.<sup>49</sup> Title I, section 2 (b) of the International Organizations Immunities Act provides:

International organizations, their property and their assets, wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

68. A number of judicial decisions may be noted. In *Curran v. City of New York et al.*,<sup>50</sup> the plaintiff brought an action against the City of New York, the Secretary-General and others, to set aside grants of lands and easements by the City to the United Nations for its headquarters site, exemption of the site from taxation and the allocation of funds by the City for the improvement of nearby streets. The Secretary-General moved to dismiss the action against him on grounds of his immunity from suit and legal process. The United States Attorney for the Eastern District of New York informed the Court that the State Department recognized and certified the immunity of the United Nations and of the Secretary-General. The City of New York sought to dismiss the complaint on the ground that it failed to state a sufficient cause of action. The Court held that the complaint should be dismissed. As regards the Secretary-General, the Court stated:

The Department of State, the Political branch of our Government, having, without any reservation or qualification whatsoever, recognized and certified the immunity of the United Nations and the defendant Lie to judicial process, there is no longer any question for independent determination by this Court.

69. In the case of *Gregoire v. Gregoire*<sup>51</sup> the plaintiff wife, in an action for divorce, sought an order directing the sequestration of the defendant's property within the State of New York. The only property of the defendant which might be sequestered were the benefits he was due to receive from the United Nations Provident and Pension Funds and from the United Nations (by which he had formerly been employed) in respect of accumulated leave. After citing the International Organizations Immunities Act, the Court declared that the United Nations was immune from process in respect of the action unless it had expressly waived its immunity. Since the Organization had not done so, the motion was denied.

<sup>48</sup> Although *nota bene*, in section 26 of the Headquarters Agreement, the Agreement is said to be complementary to the General Convention.

<sup>49</sup> It is the position of the United Nations that its immunity from suit forms part of general international law, and thus part of the law of the United States, even in the absence of any legislation and, moreover, that the Organization's immunity from suit is derived from Articles 105 and 104 of the Charter, a treaty to which the United States is a party and which similarly forms part of the law of the land. United States courts have preferred to rely on national legislation, however, in upholding the Organization's immunity.

<sup>50</sup> Supreme Court (Special Term) of Queens' County, 29 December 1947; 77 N.Y.S. 2d 266. The United Nations was not a defendant as such. It may be assumed, however, that the Secretary-General was named in his representative capacity.

<sup>51</sup> *New York Law Journal*, 28 February 1952.

70. In *Wencak v. United Nations*<sup>52</sup> the plaintiff contended that he had been injured on 1 December 1945, in an accident for which UNRRA was responsible. UNRRA having been liquidated and the United Nations having agreed in 1948 to settle claims against UNRRA, subject to certain conditions, the plaintiff brought an action against the United Nations in respect of his injury. The United Nations moved to dismiss the case on the ground that it was immune from suit under section 2 of the International Organizations Immunities Act, which had come into effect on 29 December 1945. The plaintiff argued that the statute was inapplicable since the accident had occurred before the statute became effective. The Court held that the plaintiff had had no cause of action against the United Nations on the date the injury was incurred. The United Nations, though it had undertaken to administer the liquidation of UNRRA, was in no sense the successor of the latter organization. The administration of the liquidation was not an assumption of liabilities upon succession to the assets, as in the case of business corporations. The United Nations had agreed on 27 September 1948, to settle the claims which were on the UNRRA's books for liquidation and any claims subsequently presented, if there were sufficient funds and the claim itself appeared just. The books had been closed on 31 March 1949. Thus, even assuming that the facts might disclose a cause of action against the United Nations, this had only arisen after the statute had come into force. The certification of the immunity of the Organization, which had been filed with the Court by the Attorney-General on behalf of the Department of State, had not indicated any limitation of the immunity conferred by the statute. The case was therefore dismissed.

71. In *Awad Iskandar Guirgis v. UNRWA Representative and the Director, Department of Palestine Affairs*<sup>53</sup> a former UNRWA staff member initiated proceedings, claiming compensation for the allegedly wrongful termination of his appointment. The plaintiff argued, *inter alia*, that though UNRWA officials, including the head of that body, had immunity, no immunity extended to UNRWA itself. The Court held that UNRWA, as a subsidiary organ of the United Nations, enjoyed the privileges and immunities of the General Convention and that, since immunity from suit had not been waived, the case should be dismissed.

(b) *Action taken by the United Nations when its immunity from legal process was not recognized*

72. On a number of occasions, most notably in the case of actions involving United Nations immunities brought before United States courts, the United Nations has entered an *amicus curiae* brief. The majority of these cases, however, were in the early years of the Organization's history. The established practice at the present time is to assert the immunity from suit of the United

<sup>52</sup> Supreme Court of New York, Special Term, 18 January 1956.

<sup>53</sup> Cairo Court of First Instance, Department 23 — Labour Tribunal, Case No. 258 of 1958; judgement delivered on 31 December 1961. See also the case of *Bergaveche v. United Nations Information Centre*, referred to in sub-section (b), paras. 74 and 75, below.

Nations in a written communication to the Ministry of Foreign Affairs of the State concerned. When time permits this communication is sent through the Permanent Representative of the State concerned at United Nations Headquarters. In the written communication the Ministry of Foreign Affairs is requested to take the necessary steps to inform the appropriate office of government (usually the Ministry of Justice or the Attorney-General's Office) to appear or otherwise move the court to dismiss the suit on the grounds of the Organization's immunity. When a summons or notification of appearance has been received, this is returned to the Ministry of Foreign Affairs. In cases brought by former staff members, the United Nations has usually referred in its note to the Ministry of Foreign Affairs to the fact that an alternative means of recourse exists for the staff member in the internal appellate machinery maintained by the Organization for its staff.

73. In some instances local courts have taken decisions denying the immunity of the Organization or of its subsidiary organs despite the non-waiver of immunity.<sup>54</sup>

74. The case of *Bergaveche v. United Nations Information Centre*<sup>55</sup> concerned an employee of the United Nations Information Centre in Buenos Aires. In 1954, when his fixed-term contract was not renewed, he brought an action before the local Labour Court for termination indemnities. The United Nations Information Centre did not submit to the jurisdiction and requested the Ministry of Foreign Relations to notify the Court of its immunity from suit. The Court dismissed the action on the grounds that under the terms of Article 105 of the Charter and of the General Convention it lacked jurisdiction.

75. In response to a fresh submission by Mr. Bergaveche, another Labour Court gave a decision on 7 February 1956, in which it assumed jurisdiction by virtue of the fact that Argentina was not a party to the General Convention. Argentina acceded to the Convention on 31 August 1956 and in April 1957 the *Ministerio Público* advised the Labour Court that the action should be dismissed since the United Nations and its agencies enjoyed immunity from suit under the Convention and the Convention had become law in Argentina. The Court therefore dismissed the action on 23 April 1957. On appeal it was argued that, since the employment of Mr. Bergaveche had ended in 1954, the Statute adopted in 1956 could not be applied retroactively to his case, or, if retroactivity was intended, this could not affect rights under labour legislation already acquired. In its

<sup>54</sup> A number of these cases, mostly given by courts of first instance, involved UNRWA. For a summary see Annual Report of the Secretary-General, *Official Records of the General Assembly, Ninth Session, Supplement No. 1 (A/2663)*, pp. 106 and 107, and *Repertory of Practice of United Nations Organs*, Suppl. No. 2, vol. III, pp. 518 and 519. Further information is contained in the Annual Reports of the Director of UNRWA, *Official Records of the General Assembly, Ninth Session, Supplement No. 17 (A/2717)*, Annex G, para. 11 (i); *ibid.*, *Tenth Session, Supplement No. 15, (A/2978)*, Annex G, para. 19; *ibid.*, *Eleventh Session, Supplement No. 14 (A/3212)*, Annex G, para. 19; *ibid.*, *Thirteenth Session, Supplement No. 14 (A/3931)*, Annex H, para. 26.

<sup>55</sup> *Camara Nacional de Apelaciones del Trabajo de la Capital Federal*, 19 March 1958.

decision of 19 March 1958, the Court held that the appellant's argument did not succeed since the statute concerned was a procedural one which was immediately applicable in the case of both pending and future proceedings.

(c) *Interpretation of the phrase "every form of legal process"*

76. These words have been broadly interpreted to include every form of legal process before national authorities, whether judicial, administrative or executive functions according to national law. The Organization's immunity from "every form of legal process" has also been regarded as extending irrespective of whether the Organization was named as defendant or was asked to provide information or to perform some ancillary role.<sup>56</sup> This interpretation, the essence of which is the maintenance of the freedom from interference of the United Nations, does not, however, imply that the United Nations may not itself decide to take part in such proceedings, in particular if it considers that the requirements of justice so demand,<sup>57</sup> but only that the determination in each case is one to be made by the United Nations itself.

77. One particular application of this principle concerns the possibility of a garnishee order being issued against the Organization in respect of the salary to be paid to a staff member who has incurred a private debt. Although the specific inviolability of the Organization's financial assets is also a defence for the Organization, its immunity "from every form of legal process" in itself prevents the issue of a garnishee order and the incurring by the United Nations of any legal obligation to participate in the proceedings themselves or to abide by any judgement given. Although Switzerland is not a party to the General Convention, the Swiss case of *In re Poncet*<sup>58</sup> is of interest in this connexion. Mr. Poncet instituted proceedings for the attachment of the salary of a staff member employed at the European Office of the United Nations, in order to satisfy debts incurred by the staff member. The local authorities declined to issue the appropriate order on the grounds that the garnishee, the United Nations, was not subject to local jurisdiction. On appeal to the Federal Tribunal it was held that the case must be returned to the cantonal authorities for a decision as to whether the judgement debtor herself was immune; the immunity of the garnishee, in particular the fact that notice of attachment could not be served on the United Nations, was not a bar to proceedings for attachment for debt. The Court stated:

Notice to the garnishee is not an essential condition of the validity of the attachment. Its main object is to prevent the garnishee from paying his debt to the defendant. Whether chattels or debts are involved, the execution of the attachment consists in a declaration made by the court office that a certain asset has been

<sup>56</sup> This position was recognized in the case of *Gregoire v. Gregoire*, referred to in sub-section (a), para. 69, above.

<sup>57</sup> See section 32, paras. 337 and 338, below regarding co-operation with national authorities to facilitate the proper administration of justice.

<sup>58</sup> Federal Tribunal, *Chambre des Poursuites et des Faillites*, 12 January 1948.

seized, and in the entry of that declaration in the record. . . It is not true that the attachment of a salary without notice to the garnishee must remain devoid of effect. In the first instance, the garnishee may have been informed of the attachment by other means. . . and it may feel bound to pay the sum in question to the court office. It is also possible that the defendant, who knows or is deemed to know that she is not entitled to dispose of the attached funds. . . will herself pay the equivalent sum. . .

78. As envisaged in the judgement, administrative arrangements have been made at the European Office and at other offices to enable creditors to receive satisfaction in accordance with relevant court orders; such arrangements have not, however, amounted to a waiver of the United Nations immunity from legal process.

79. The United Nations considers its immunity from any measure of execution under section 2 of the General Convention extends to garnishee orders.<sup>60</sup>

#### *Section 8. Waiver of the immunity of the United Nations from legal process*

##### *(a) Practice relating to the waiver by the United Nations of its immunity from legal process*<sup>60</sup>

80. Section 2 of the General Convention provides that the United Nations shall enjoy immunity from every form of legal process,

except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

81. The Agreement with Switzerland states that, in view of the recognition given by the Swiss Federal Council to the international personality and legal capacity of the Organization, it "cannot be sued before the Swiss Courts without its express consent". In the United States the question is regulated by section 2 (b) of the International Organizations Immunities Act, which grants to such organizations:

the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract.

82. In an internal memorandum prepared by the Office of Legal Affairs in 1948 it was stated with reference to section 2 of the General Convention that, since the words "except in so far as in any particular case it shall have waived its immunity" must refer to the immediately preceding words ("shall enjoy immunity from every form of legal process"),

it would appear that by this Article permission is given to the United Nations to waive its immunity only in so far as legal process in any particular case is concerned, and such waiver cannot extend to any measure of execution.

83. This conclusion was said to be in accordance with a number of municipal decisions, notably those given by English and United States courts, in respect of the waiver of state immunities. The memorandum then continued:

<sup>60</sup> See section 8 (c), paras. 88 and 89, below.

<sup>60</sup> Questions relating to the service of legal process within the United Nations premises are considered under section 9 (b), paras. 118-121 (iv), below.

According to the reports of the Preparatory Commission of the United Nations, Article 2 of the General Convention was based on similar articles in the constitutions of international organizations. Some of these constitutional instruments, such as that of UNRRA, provide that the member government accord to the administration the facilities, privileges, exemptions and immunities which they accord to each other "including immunity from suit and legal process except with the consent of or so far as is provided for in any contract entered into by or on behalf of the Administration".

A similar provision is contained in Article IX, Section 3 of the Articles of the International Monetary Fund, providing for waiver of immunity for the purposes of any proceedings *or by the terms of any contract* thereby differentiating between the two forms of waiver. Apparently, it was not the intention of the Preparatory Commission or the General Assembly to extend waiver this far in so far as the United Nations was concerned, or such a provision would have been included, rather than just the words "legal process". In fact the words used in the original draft of this section were: "The Organization, its property and its assets wherever located and by whomsoever held shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract".

This wording was changed by the Legal Committee of the Preparatory Commission to read in the more restrictive fashion that it now stands. It must be concluded, therefore, that it was not the intention of the Preparatory Commission, or of the General Assembly, to extend the right of waiver to waiver in future by the terms of a contract.

Since permission is given by the General Convention to the United Nations to waive its immunity in any particular case in so far as legal process is concerned, it is to be supposed that the authority to carry out such a waiver is placed with the Secretary-General, since the Secretary-General is responsible for the administration of the United Nations. It would not be possible to expect the Secretary-General to ask further authority from the General Assembly in each instance that legal process is to be served upon the United Nations; also the fact that the General Assembly found it necessary to write in a limitation upon the extent of any waiver, in so far as execution is concerned, would indicate that the General Assembly intended to transfer this authority to the Secretary-General, since if it were itself the waiving authority, there would be no necessity for making a limitation for its own right of waiver. This argument might be countered by stating that it is specifically provided in the General Convention that the Secretary-General may waive immunity in so far as officials and experts of the United Nations are concerned (Sections 20, 23, 29). However, such a provision would be necessary in this instance since otherwise it might be supposed that the official or expert was entitled to waive his own immunity. In the case of the United Nations, the Secretary-General is "the chief administrative officer of the organization" and therefore such a clarification concerning the ability probably did not appear to be necessary to the Preparatory Commission or the General Assembly.

In practice, the Secretary-General has determined in all cases whether or not the immunity of the Organization should be waived.

84. In 1949 a suit was commenced by a private individual against the United Nations for damages arising out of a motor car accident in New York in which a United Nations vehicle was involved. Under the terms of the insurance policy held by the United Nations, the insurers were ready to defend the action in court. Before they could do so, however, it was necessary for the United Nations to waive its immunity. In an internal

memorandum the Office of Legal Affairs recommended that this should be done

for the purpose of allowing this particular suit to go to trial and that as a matter of policy it also be prepared to waive its immunity in any other case of a similar nature, subject to each such case being first reviewed by the Office of Legal Affairs to make sure that it has no complication such as might merit special treatment.

The memorandum then continued:

The question arises as to how this immunity may be waived. Resolution 23 (I), paragraph E, instructs the Secretary-General "to insure that the drivers of all official motor cars of the United Nations and all members of the staff who own or drive motor cars shall be properly insured against third party risk".

Under this resolution the Secretary-General has clear authority to take whatever steps he may deem necessary to implement its terms. As it is really not feasible to take out insurance without permitting the insurance carrier the right to defend any suits which might be brought against the United Nations, the Secretary-General clearly has the power to waive the immunity of the United Nations for the purpose of permitting such suits to be brought.

This memorandum is only intended to deal with the waiver of the Organization's immunity in insurance cases. The question as to under what circumstances the United Nations might be prepared to waive its immunity in other cases is complex, but as this question has no bearing on the insurance cases which are in a class by themselves, the necessity for discussing the waiver of immunity as a whole does not arise at this time.

In accordance with the conclusions reached in this memorandum, it is proposed that the Office of Legal Affairs should authorize the insurance carrier to defend this particular suit on behalf of the United Nations, thereby, of course, resulting in the United Nations waiving its immunity for this particular case and that the Office of Legal Affairs take similar action in all other insurance cases where it considers it would be within the spirit of the relevant General Assembly Resolution so to do.

The same policy has been followed in subsequent cases.

(b) *Special agreements obliging the United Nations to waive its immunity in specified circumstances*

85. The United Nations has not normally entered into agreements, either with private contractors, other international organizations, or with Governments, whereby it has agreed in advance to waive its immunity if specified events occurred.

86. In 1960 one of the specialized agencies proposed that article II of the standard Special Fund Agreement<sup>61</sup> with executing agencies should be amended so that the executing agency would no longer be obliged, as at present, to waive the privileges and immunities of private firms employed on Special Fund projects in cases where the Special Fund requested such a waiver, but would merely "consider the possibility of waiving such immunity".

87. The Office of Legal Affairs informed the Special Fund that in its opinion this amendment was not acceptable and gave its reasons, which are of interest in the present connexion, and were as follows:

<sup>61</sup> It may be noted that under the Special Fund Agreement both the General Convention and the Specialized Agencies Convention are declared applicable. A similar provision is contained in other agreements whereby the United Nations and the specialized agencies provide technical assistance.

It should first be observed that a private firm would only receive privileges and immunities from a Government on the basis of the Agreement between the Government and the Special Fund. Any rights and obligations deriving from the latter Agreement can obviously be waived only by the parties thereto, and it was for this reason that our earlier drafts of the standard agreement with Executing Agencies provided for waiver of such immunities by the Special Fund only. During . . . discussions with the other Specialized Agencies on these earlier drafts, they proposed that the waiver should be effected by the Executing Agency upon request of the Special Fund. We agreed to this proposal inasmuch as the Special Fund still retained an effective right to waive the immunities in question, and we did not think that any Government would object if such a waiver were nominally effected by an Executive Agency rather than by the Special Fund.

In contrast, however, the present proposal would vest in the Executive Agency the sole right to waive, and the Special Fund would lose a right belonging to it under its agreement with a Government. It is legally questionable whether the arrangement proposed. . . could be made effective as against the Government, which after all is a party directly affected by a decision whether or not to waive. In other words, the Government could simply refuse to recognize the right of the Agency to demand immunities for a private firm since the Agency would have no such right in the Special Fund — Government Agreement, and could look to the Special Fund to waive such immunities where such a waiver is called for, notwithstanding any provision to the contrary in the Special Fund — Agency agreement.

The only reason given to justify the proposal is that the Executing Agency may have information concerning the circumstance of a particular case involving waiver of immunity which the Managing Director does not have. The General Assembly has expressly and specifically placed on the Managing Director the over-all responsibility for the Special Fund [para. 21, part D, resolution 1240 (XIII)]. It seems to us only proper that any information on such an important matter should be brought to his attention and that he should have substantial control over the application of any provision in a Government agreement granting immunities to a private firm.

(c) *Interpretation of the phrase "any measure of execution"*

88. The provision that the Organization's waiver of immunity should not extend to "any measure of execution" has received relatively little interpretation in decided cases. In the understanding of the Secretariat the words are to be interpreted in their plain meaning, namely, that even in the event that the Organization does waive its immunity in a particular case, no judgement given against the Organization can be enforced by court orders or by actions taken by the executive or other authorities and directed against the Organization itself, or its property and assets. In short, the manner of compliance with any decision remains within the discretion of the United Nations, even though the United Nations may have agreed to submit to the substantive provisions of national law as regards the issue in dispute.

89. The immunity of the United Nations from any measure of execution does not render its contracts void or unenforceable.<sup>62</sup> The immunity extends to cover immunity from garnishee orders.<sup>63</sup>

<sup>62</sup> See also section 1 (a), paras. 1-4, above.

<sup>63</sup> See also section 7 (c), paras. 77-79, above.

*Section 9. Inviolability of United Nations premises and the exercise of control by the United Nations over its premises*

(a) *Inviolability of United Nations premises*

90. The inviolability of United Nations premises and of areas under United Nations control (e.g. the Headquarters District in New York) has been expressly provided for in the pertinent international agreements.<sup>64</sup> The principle laid down, that United Nations premises may not be entered and that the United Nations must itself be permitted to control activities occurring on those premises unless it requests the local authorities to intervene, has in general been well observed.

91. In 1965, in response to an inquiry raised by a Member State, the United Nations prepared the following *aide-mémoire*, setting out the grounds for the inviolability of rented premises no less than for those owned by the Organization.

With only a very few exceptions, notably in the United States and Switzerland, all offices of the United Nations throughout the world are located in rented premises comprising either whole buildings or parts thereof. These premises enjoy inviolability either directly under the Convention on the Privileges and Immunities of the United Nations to which ninety Member States have acceded, or, where the State was not a party to the Convention, by special agreement with the Government concerned.

Article II, Section 3, of the Convention provides, *inter alia*, that "the premises of the United Nations shall be inviolable".

In those cases where the State is not a party to the Convention-agreements concerning privileges and immunities are included which incorporate all the provisions of the Convention or set forth those privileges and immunities considered essential including inviolability of premises. For example, agreements with the Republic of Korea, which is not a member of the United Nations, and with Japan, before it became a member of the United Nations, provided that the United Nations would enjoy, *inter alia*, the privileges and immunities defined in Article I, II and III of the Convention on the Privileges and Immunities of the United Nations. (See paragraph 1 of Article IV of the exchange of letters constituting an agreement between the United Nations and Korea regarding privileges and immunities to be enjoyed by the United Nations in the Republic of Korea, signed at Pusan on 21 September 1951, United Nations, *Treaty Series*, vol. 104, page 323, and Article I, paragraph (1) of the Agreement between the United Nations and Japan on privileges and immunities of the United Nations, signed at Tokyo on 25 July 1952, United Nations *Treaty Series*, vol. 135, page 305). The status of ONUC Agreement concluded with the Congo, before it became a party to the Convention on the Privileges and Immunities of the United Nations, contained a special article on premises as follows:

*Premises*

"24. The Government shall provide, in agreement with the United Nations accommodation service, such buildings or areas for headquarters, camps or other premises as may be necessary for the accommodation of the personnel and services of the United Nations and enable them to carry out their functions. Without prejudice to the fact that all such premises remain Congolese territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations.

<sup>64</sup> See section 3, General Convention; section 2, Agreement with Switzerland; section 9 (a), Headquarters Agreement with the United States; section 3 (a) and 8, ECLA Agreement; section 3, ECAFE Agreement; and section 2, ECA Agreement.

This authority and control extend to the adjacent public ways to the extent necessary to regulate access to the premises. The United Nations alone may consent to the entry of any government officials to perform duties on such premises or of any other person. Every person who so desires for a lawful purpose shall be allowed free access to the premises placed under the authority of the United Nations.

"25. If the United Nations should take over premises previously occupied by private persons and thus represented a source of income, the Government shall assist the United Nations to lease them at a reasonable rental." (S/5004 and A/4986.)

TAB and the Special Fund concluded special agreements which follow a model text committing the government, where it is not already a party, to apply the provisions of the Convention on the Privileges and Immunities of the United Nations (see ST/LEG/SERIES B/10, pages 374 and 377).

In summary, the vast majority of the United Nations offices are in rented premises which are inviolable either under the Convention on the Privileges and Immunities of the United Nations or under special agreements.

Incidentally it may also be noted that the Vienna Convention on Diplomatic Relations, 1961, makes no distinction with respect to rented premises. Article 1 (i) gives the following definition:

"the premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, *irrespective of ownership*, used for the purposes of the mission including the residence of the head of the mission." (italics added).

"Article 22 of the Vienna Convention provides:

"1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

"2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

"3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution."

While the Vienna Convention of course does not apply to international organizations, it is indicative of the fact that no distinction is made in the inviolability of those premises which are owned and those premises which are rented or otherwise held on a more temporary basis. In this respect it is declaratory of existing international law.

92. A number of cases in which the inviolability of United Nations premises was not respected are described briefly below; the list is not exhaustive of all incidents which might be included under this section.

93. In 1949 officials of a Member State entered a United Nations Information Centre without authorization and requested a United Nations official employed there to leave the premises for questioning.<sup>65</sup> The official declined to leave and remained in the premises of the Centre until the matter had been clarified. The Secretary-General protested to the Ministry of Foreign Affairs over this infringement of the inviolability of United Nations premises. The Ministry of Foreign Affairs apologized for the incident.

94. Members of the armed forces of a Member State entered premises occupied by the members of a United

<sup>65</sup> See also section 23 (c), paras. 264-269, below.

Nations Mixed Armistice Commission in 1952 without the consent of the United Nations; a protest was made to the Government concerned.

95. In 1954 the Secretary-General protested to a Member Government after an army officer entered the premises jointly occupied by two United Nations subsidiary organs and sealed a United Nations radio station which was installed there. In 1956 a further violation of the same premises occurred when military police entered the building without authorization and forcibly removed a United Nations official; approximately ten minutes later three detectives returned and ordered another official to follow them. The Secretary-General protested to the Permanent Representative of the State concerned over the incident. In January 1957, a subsequent incident took place when a security officer entered the premises without the consent of the official in charge and sought to take a United Nations official into custody for questioning.<sup>66</sup>

96. The obligation imposed on host authorities to respect the inviolability of United Nations premises extends, firstly, to the possibility of direct interference through the acts of public officials. It also includes, however, the obligation of the host authorities to take reasonable steps to ensure that the inviolability of United Nations premises is respected by private individuals. This obligation, though less absolute in character than that in respect of the acts of public officials, is in turn wider in scope than the inviolability of United Nations premises *per se*; it may in general be expressed as an obligation to allow the United Nations to perform its allotted functions without improper interference or interruption which, whilst not in itself an immediate violation of United Nations premises, may nevertheless achieve an effect within those premises. *Ex hypothesi*, the obligation in respect of private acts extends to the prevention of actual attacks on or unauthorized entry into United Nations premises on the part of private individuals, where such actions could and ought reasonably to have been foreseen by the host authorities concerned. A number of host agreements refer expressly to the duty of the national authorities in this regard.<sup>67</sup>

97. In 1956 the Legal Counsel wrote to the Secretariat official in charge of the Security and Safety Section, setting out the relevant provisions of the Headquarters Agreement and referring to the statutory and other steps taken under local law regarding picketing at United Nations Headquarters.

1. It appears that certain organizations may attempt to picket, distribute leaflets, or otherwise demonstrate on the East side of First Avenue immediately adjacent to the United Nations Headquarters District or even within the Headquarters property. I assume that the Security and Safety Section will seek an understanding with the New York City police to cope with any such situation as may arise.

2. This matter does not raise any question as to the public character of the City sidewalks, ordinary rights of peaceful picketing, or civil liberties in general. As far as concerns the area imme-

diately contiguous to the United Nations Headquarters District it relates solely to the implementation of the undertaking by the United States Government that the strictly international character and the tranquillity of the Headquarters will be preserved at all times.

3. There can be no legal doubt as to police requirements on this score. The New York City Administrative Code in Section D41-28.0. d., implementing for municipal purposes the establishment of the Headquarters in New York City and declaring as a matter of legislative determination that a public purpose and the interests of the State and City of New York were promoted thereby, authorized the board of estimate, among other things, to regulate and limit exhibits and displays contiguous to, fronting upon or surrounding the lands occupied by the United Nations. It stated that the purpose was "to insure the safe and orderly conduct of such United Nations and to protect the useful and desirable purpose of the same and to provide for the safety, convenience and comfort of officials, delegates, personnel and visitors to the same". Any violation of such regulations is a misdemeanour.

4. Likewise the Headquarters Agreement was adopted by a Joint Resolution of the United States Congress and under the US Constitution is the supreme law of the land. Section 16 (a) states:

"The appropriate American authorities shall exercise due diligence to ensure that the tranquillity of the Headquarters District is not disturbed by the unauthorized entry of groups of persons from outside or by disturbances in its immediate vicinity and shall cause to be provided on the boundaries of the Headquarters District such police protection as is required for these purposes."

It is well established in international law that picketing or other demonstrations concerning the political or social views of any foreign government constitutes a disturbance when conducted in the immediate vicinity of diplomatic territory. This is true even when the activity is otherwise of an orderly nature.

In addition, Section 18 of the Headquarters Agreement provides that:

"The appropriate American authorities shall take all reasonable steps to ensure that the amenities of the Headquarters District are not prejudiced and the purposes for which the district is required are not obstructed by any use made of the land in the vicinity of the district."

United States courts have also upheld a congressional enactment against picketing in front of embassies as in no way violating civil rights under the Constitution but merely carrying out US obligations under international law to protect the dignity of diplomatic property and to prevent any action in its immediate vicinity tending to bring a foreign government into public disrepute.

Any one of the above provisions would be sufficient in itself to authorize and support police action in prohibiting any kind of demonstration on the edge of the Headquarters District which might give offence to Member Governments and so cause harm to US foreign relations. Read together, there can be no doubt that the New York City Administrative Code implements the cited provisions of the Headquarters Agreement and authorizes action by City authorities to give full force and effect to the requirements of police protection.

In addition, if any attempt should be made to demonstrate or carry on political activities within the Headquarters District, strict application of Section 16 (b) of the Headquarters Agreement will be necessary. It provides:

"If so requested by the Secretary-General, the appropriate American authorities shall provide a sufficient number of police for the preservation of law and order in the Headquarters District, and for the removal therefrom of persons as requested under the authority of the United Nations."

<sup>66</sup> *Ibid.*

<sup>67</sup> See e.g., section 5 (a) ECAFE Agreement and section 4 (a) ECA Agreement.

The New York case of *People v. Carcel et al* (City Magistrate's Court of City of New York, Upper Manhattan Arrest Court, 30 March 1956 2 Misc. 2d 827, 150 N.Y.S. 2d 436 and Court of Appeals of New York, 3 July 1957, 3 N.Y.S. 2d 327, 165 N.Y.S. 2d 113, 114 N.E. 2d. 81) may also be noted. The defendants were arrested by the police and charged with disorderly conduct after they had refused to discontinue picketing on the eastern side of First Avenue immediately outside the main entrance of the United Nations; the police had previously requested them to picket on the other side of the street. The arrest followed a complaint by the United Nations. The defendants maintained that their arrest was in breach of their right to free speech and assemblage. The Magistrate found the defendants guilty of disorderly conduct. After citing the relevant provisions of the Headquarters Agreement and various court decisions given in respect of the restrictions placed on picketing near embassy premises in Washington, he declared:

"It is rather evident that because of the necessity of affording to the Member Nations of the United Nations such protection as will not involve the United States in any difficulty with the members of the United Nations because of the failure on the part of the United States as host to give ample protection to the members, the courts have felt it proper to approve such measures which aid towards the protection of foreign governments. . . It is indeed a duty upon the United States to take reasonable precautions to prevent the doing of things which might lead to a disruption of the proceedings of the United Nations."

The defendants' appeal was dismissed by the Court of Special Sessions of the City of New York. On further appeal to the Court of Appeals of New York, however, the convictions were reversed on the ground that the conduct of the defendants did not amount to disorderly conduct under S. 722 of the New York Penal Law; the Court held that the case did not turn upon the provisions of the Headquarters Agreement but arose solely under New York Law.

(b) *The exercise of control by the United Nations over its premises*

98. The principle that the premises of the United Nations are inviolable has as its counterpart the principle that, unless otherwise provided, the United Nations is alone competent to exercise control over its premises and activities conducted there. The following description of the way in which the United Nations has exercised the control conferred upon it in relation to premises is subdivided, so far as is practicable, under four headings:

- (i) The extent of the headquarters or other area in which United Nations premises are situated.
- (ii) The power of the United Nations to make regulations and the applicability of local law.
- (iii) The exercise of police and other official functions.
- (iv) The service of legal process within United Nations premises.

(i) *The extent of the headquarters or other area in which United Nations premises are situated*

99. When entering into an agreement with a host State regarding permanent installations, such as those in New York or Geneva or the headquarters of the economic commissions, the United Nations has sought to define, either in the Headquarters Agreement itself or in a supplementary agreement or annex, the precise limits of the area in which its premises are situated or over which it

has control. Thus in the case of the Headquarters Agreement with the United States, Annex I to that Agreement gives an exact definition of the "Headquarters District" referred to in the Agreement; it also provides that the expression "Headquarters District" may include:

(2) any other lands or buildings which may from time to time be included therein by supplemental agreement with the appropriate American authorities.

100. In 1966, following the acquisition by the United Nations of premises outside the Headquarters District, as originally defined, the United Nations and the United States entered into the Supplemental Agreement set out below.

The United States of America and the United Nations:

Considering that the office space available within the Headquarters District as defined in Annex 1 to the Agreement Regarding the Headquarters of the United Nations signed at Lake Success on 26 June 1947 is inadequate and it has become necessary for units of the Secretariat of the United Nations to be provided with other premises outside the area so delineated;

Considering that, for the purpose, the United Nations has acquired the building and long-term lease to the land known as 805-7 First Avenue (801 United Nations Plaza) and 343 East 45th Street in the Borough of Manhattan and has also acquired a five-year lease of certain office space in the Alcoa Plaza Associates Building in New York City;

Considering that it is desirable that, with respect to those premises, the United Nations, officials of the United Nations, and Representatives of the Members of the United Nations be accorded the necessary privileges and immunities as envisaged in Article 105 of the Charter of the United Nations and in the Headquarters Agreement; and

Desiring to conclude a supplemental agreement, in accordance with Section 1 (a) of the Headquarters Agreement, in order to include those premises within the Headquarters District in addition to the area defined in Annex 1 to the Headquarters Agreement;

Have agreed as follows:

*Article 1*

The Headquarters District, within the meaning of Section 1 (a) of the Agreement between the United States of America and the United Nations Regarding the Headquarters of the United Nations signed at Lake Success on 26 June 1947, shall include, in addition to the area defined in Annex 1 to that Agreement, the following premises:

(1) All of the office building known as 805-7 First Avenue (801 United Nations Plaza) and 343 East 45th Street, located on a parcel of land in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

"Beginning at a point formed by the inter-section of the Westerly side of First Avenue and the Northerly side of 45th Street; running thence Westerly along the Northerly side of 45th Street 100 feet; thence Northerly parallel with First Avenue and part of the way through a party wall 80 feet; thence Easterly parallel with 45th Street 20 feet; thence Southerly parallel with First Avenue 39 feet 7 inches; thence again Easterly parallel with 45th Street and part of the way through another party wall 80 feet to the Westerly side of First Avenue; thence Southerly along the Westerly side of First Avenue 40 feet 5 inches to the point or place of beginning."

Provided, however, that the foregoing shall not include those parts of the building on the street floor and basement which are sublet to the Ninth Federal Savings and Loan Association of New York City and to the Radnor Delicatessen, Inc. (with an assignment to Deli-Napoli, Inc.) until such time as the United Nations shall occupy and use those parts for offices of the Secretariat.

(2) That part of the Alcoa Plaza Associates Building located at 866 United Nations Plaza, New York City, as identified by the cross-hatching on the plan annexed hereto. Said premises shall include all offices, rooms, halls and corridors located on the third floor of said building within the space identified by said cross-hatching. These premises shall further include the remainder of the third floor from the date that the United Nations takes possession thereof. Said premises shall not, however, include any stairways and elevators giving public access to other floors.

#### Article II

The Secretary-General of the United Nations shall notify the Permanent Representative of the United States to the United Nations immediately should any of the premises described in Article I, or any part of such premises, cease to be used for offices by the Secretariat of the United Nations. Such premises, or such part thereof, shall cease to be a part of the Headquarters District from the date of such notification.

#### Article III

The Secretary-General of the United Nations shall notify the Permanent Representative of the United States to the United Nations immediately of the termination of any subleases of parts of the premises described in Article I and of the possession of such parts by the United Nations. Such parts of such premises shall become a part of the Headquarters District from the date of such occupation.

#### Article IV

This Supplemental Agreement shall enter into force upon its signature.

*In witness whereof* the respective representatives have signed this Supplemental Agreement.

*Done* in duplicate, in the English language, at New York this ninth day of February, 1966.

101. The United Nations notified the United States on taking possession of the remainder of the third floor of the premises (see article I (2) above). The Agreement was subsequently amended so as to include a further paragraph, extending the Headquarters District to that part of the sixth floor of 886 United Nations Plaza which is used by UNICEF.

#### (ii) *The power of the United Nations to make regulations and the applicability of local law*

102. Apart from declaring United Nations premises inviolable, the General Convention and the Agreement with Switzerland contain no provision dealing with the question of how United Nations control over its premises is to be exercised. The Headquarters Agreement with the United States, however, regulates the matter with some precision. Sections 7 and 8 of that Agreement provide as follows:

Section 7. (a) The Headquarters District shall be under the control and authority of the United Nations as provided in this agreement.

(b) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local law of the United States shall apply within the Headquarters District.

(c) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local courts of the United States shall have jurisdiction over acts done and transactions taking place in the Headquarters District as provided in applicable federal, state and local laws.

(d) The federal, state and local courts of the United States, when dealing with cases arising out of or relating to acts done or

transactions taking place in the Headquarters District, shall take into account the regulations enacted by the United Nations under section 8.

Section 8. The United Nations shall have the power to make regulations operative within the Headquarters District, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the Headquarters District. Any dispute, between the United Nations and the United States, as to whether a regulation of the United Nations is authorized by this section or as to whether a federal, state or local law or regulation is inconsistent with any regulation of the United Nations authorized by this section, shall be promptly settled as provided in section 21. Pending such settlement, the regulation of the United Nations shall apply, and the federal, state or local law or regulation shall be inapplicable in the Headquarters District to the extent that the United Nations claims it to be inconsistent with the regulation of the United Nations. This section shall not prevent the reasonable application of fire protection regulations of the appropriate American authorities.

103. In resolution 481 (V), adopted on 12 December 1950, the General Assembly requested the Secretary-General to present to the Assembly for approval any draft regulation "within the provisions of the Headquarters Agreement which may in his opinion be necessary for the full execution of the functions of the United Nations" and decided that,

if, in the opinion of the Secretary-General it is necessary to give immediate effect to any regulation within the provisions of the Headquarters Agreement, he shall have authority to make such regulation. The Secretary-General shall report any action so taken to the General Assembly as soon as possible.

104. In accordance with resolution 481 (V) the General Assembly adopted resolution 604 (VI) on 1 February 1952, in which it confirmed Headquarters Regulation No. 1, relating to the United Nations social security system, which had been promulgated by the Secretary-General on 26 February 1951, and approved Headquarters Regulation No. 2, a qualification for professional or other special occupational services within the United Nations, and Headquarters Regulation No. 3 on the operation of services within the Headquarters District. These regulations are reproduced below; the United Nations has not adopted any regulations since 1962.

#### *Headquarters Regulations*

For the purpose of establishing in the Headquarters District conditions in all respects necessary for the full execution of the functions of the United Nations, and in particular for the purposes specified in each regulation, the following regulations are in effect:

#### *Regulation No. 1*

##### *United Nations Social Security System*

For the purpose, in the field of staff social security, of giving immediate effect to measures necessary for avoiding multiple obligations arising from the possible application of overlapping laws and regulations:

1. A comprehensive United Nations social security system having been established for the purpose of affording protection against all reasonable risks arising out of or incurred during service with the United Nations, the provisions of the United Nations social security system shall constitute the only obligations of the United Nations in respect of such risks.

2. The provisions of the United Nations social security system shall constitute the sole provisions under which persons in the service of the United Nations shall be entitled to claim against the United Nations in respect of any risks within the purview of the United Nations social security system, and any payments made under the United Nations social security system shall constitute the sole payments which any such person shall be entitled to receive from the United Nations in respect of any such risks.

3. This regulation shall take effect on the date of its promulgation, without prejudice, however, to any elements of the United Nations social security system, or any rights or obligations thereunder, already existing at the date of this regulation.

*Regulation No. 2*

*Qualifications for professional or other special occupational services with the United Nations*

For the purpose of availing the United Nations of the professional or special occupational services of persons recruited on as wide a geographical basis as possible:

The qualifications and requirements necessary for the performance of professional or other special occupational services within the Headquarters District shall be determined by the Secretary-General; provided that, prior to authorizing medical or nursing services by any person, the Secretary-General shall ascertain that such person has been duly qualified to perform such services in his own or another country.

*Regulation No. 3*

*Operation of services within the Headquarters District*

For the purpose of ensuring uninterrupted services necessary to the proper functioning of the principal and subsidiary organs of the United Nations:

The times and hours of operation of any services and facilities or retail establishments authorized within the Headquarters District shall be in compliance with schedules fixed by the Secretary-General; no regulations, requirements or prohibitions beyond those so prescribed shall be imposed without his approval.

105. In 1951 the Attorney-General of the State of New York advised the State Liquor Authority that the Alcoholic Beverage Control Law of New York State was not applicable within the United Nations premises in New York. The major portions of his opinion were as follows:

Gentlemen:

This is in reply to your letter of September 21, 1951, requesting my opinion as to whether the Conference Building and the General Assembly Building of the United Nations Headquarters in the Borough of Manhattan, City of New York, are subject to the jurisdiction of the State of New York and to the provisions of the Alcoholic Beverage Control Law.

Although Article IV-B of the State Law (added by Chapter 25 of the Laws of 1947) authorizes the Governor, upon fulfilment of certain prescribed conditions, to execute in the name of the State a deed or release ceding jurisdiction of any land in the State acquired by the United Nations, and although the United Nations has acquired or is in possession under contract to acquire the lands constituting its Headquarters District in the Borough of Manhattan in the City of New York. . . no formal cession of jurisdiction pursuant to Article IV of the State Law has been made, nor has any application therefor been received, and since the jurisdiction of the State over lands within its territorial limits cannot be abrogated except by its consent, it must be stated as a general principle that the United Nations Headquarters District in the Borough of Manhattan is subject to the political jurisdiction of this State. However, this conclusion does not dispose of your question.

106. The opinion then refers to Articles II and VI of the United States Constitution, relating to the treaty-making power of the United States; to Articles 104 and 105 of the Charter; to the International Organizations Immunities Act, Section 2 (b) and (c); and to the General Convention, Sections 2, 3 and 7 (a), and Sections 7, 8, 9 and 26 of the Headquarters Agreement. The opinion continues:

In the light of the foregoing statement of facts, I think the conviction is inescapable that while the Headquarters District of the United Nations in the Borough of Manhattan continues to be under the general political jurisdiction of the State of New York, there has come into existence a concurrent jurisdiction of the United Nations to make regulations, operative within the district for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions, and that in any case of conflict between a regulation so made and any law of this State, the regulation of the United Nations must prevail; and that the jurisdiction of the State may not be so exercised or its laws so enforced as to deny or interfere with the enjoyment by the United Nations within the Headquarters District of any privileges or immunity necessary for the unhampered exercise of its functions or fulfilment of its purposes. This limitation upon the State in the exercise of its right of sovereignty is by the consent of the State, given by its ratification on July 26, 1788, of the Constitution of the United States; for the privileges and immunities and the powers of the United Nations in the premises flow from and have their fountainhead in the multilateral treaty known as the United Nations Charter which, by express provision of the Federal Constitution, is declared to be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding.

I think it is self-evident that any attempt to assert the applicability of the State Alcoholic Beverage Control Law as against the United Nations within its Headquarters District would tend to embarrass it in the exercise of its functions and would interfere with the enjoyment by it of privileges and immunities necessary for the fulfilment of its purposes; would be contrary to its Charter and to measures taken by the United States and the United Nations to give practical effect to the provisions thereof; and that, therefore, such State Law is not applicable as against the United Nations within its Headquarters District in the Borough of Manhattan.

107. The United Nations occupation of premises has raised a number of detailed problems as regards the maintenance of machinery, and indeed of the premises in general, in accordance with proper safety and health standards. In general the United Nations has declined to permit inspections or similar measures, either of the premises or of installations (e.g. of fire alarms, elevators, escalators) to be conducted by the local authorities, in particular if those authorities claimed the right to conduct such inspections at any time, but has ensured, in conjunction with the pertinent authorities, that the substantive conditions as to safety and adequacy were fully met. These conditions have been satisfied by means of inspections carried out by United Nations maintenance and security staff. This approach was followed in 1963, for example, in respect of the smoke detectors installed in the Headquarters District as part of a fire protection scheme. In a very few instances, where the United Nations considered that it could not itself inspect or otherwise ensure that the apparatus in question was in proper condition (e.g. in the case of a window-washing machine) local officials have been permitted to enter, subject to

advance notice, to survey and conduct tests of the equipment concerned.

(iii) *The exercise of police and other official functions*

108. Sections 9 and 10 of the Headquarters Agreement provide as follows:

Section 9 (a). The Headquarters District shall be inviolable. Federal, state or local officers or officials of the United States, whether administrative, judicial, military or police, shall not enter the headquarters district to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General. The service of legal process, including the seizure of private property, may take place within the Headquarters District only with the consent of and under conditions approved by the Secretary-General. (b) Without prejudice to the provisions of the General Convention or Article IV of this Agreement, the United Nations shall prevent the Headquarters District from becoming a refuge either for persons who are avoiding arrest under the federal, state, or local law of the United States or are required by the Government of the United States for extradition to another country, or for persons who are endeavouring to avoid service of legal process.

Section 10. The United Nations may expel or exclude persons from the Headquarters District for violation of its regulations adopted under Section 8 or for other cause. Persons who violate such regulations shall be subject to other penalties or to detention under arrest only in accordance with the provisions of such laws or regulations as may be adopted by the appropriate American authorities.

109. Various arrangements have been made with the local police authorities in New York, in strict accordance with the terms of these sections, in order to deal with particular problems which have arisen. In 1949, for example, the United States Mission forwarded a request from the New York City Police authorities that police officers and other municipal authorities should be permitted to enter the Headquarters District during the construction of the present Headquarters in New York City "for the purpose of making inspections provided by law and regulation for the public safety, and for other law enforcement purposes". After a meeting with United States Mission and City officials, agreement was reached on the steps which might be taken by the local authorities. On 1 July 1949, the Secretary-General wrote to the United States representative as follows:

... It is the understanding of the Secretary-General that it is the desire of the United States Representative for certain appropriate officials to be allowed entry into the Headquarters District of the United Nations temporarily in order that the following matters may be taken care of:

- (i) Pursuit and arrest in case criminals seek refuge in the Headquarters District or crime is committed in the District, or vagrants establish themselves in the District;
- (ii) Immediate entrance in case of disaster, in order that assistance may be brought, and investigation made;
- (iii) Entrance for municipal authorities in order that appropriate inspections in connection with laws and regulations provided for the public safety may be made and the Secretary-General notified in case of violations of such laws and regulations.

The Secretary-General has the honour to inform the United States Permanent Representative at the Seat of the United Nations that he would be ready to enter into the following temporary arrangements, it being understood, however, that these arrangements are to apply only during the period of the construction of the Permanent Headquarters site and until the Secretary-Gen-

eral has notified the United States representative that suitable administrative arrangements including security precautions in the Headquarters District have been undertaken by the United Nations. It would also be understood that these temporary arrangements would apply only to that area of the Permanent Headquarters District not occupied by the United Nations, thus excluding the United Nations Manhattan Building, and that the Secretary-General would reserve the right to notify the United States representative from time to time that certain other buildings in the Permanent Headquarters site are being used for the official business of the United Nations and that, therefore, such arrangements would no longer apply to the corresponding areas of the Permanent Headquarters District:

1. Authority shall be given to the appropriate officials of the United States to enter the Headquarters area for the purpose of pursuing criminals, removing vagrants and preventing disturbances of the peace. Arrests may be made on the premises, it being understood, however, that under no circumstances shall an arrest of a United Nations official be made on the premises (or for an act which has occurred on the premises), without the prior consent of the Secretary-General, and in all cases where an arrest has been made of other persons, the Secretary-General will be notified as soon as possible.

2. If and when a disaster occurs, the Secretary-General will welcome the immediate entrance of the competent authorities in the Headquarters District for assistance in disaster relief. It is, however, requested that when it is felt appropriate for an investigation to be made of such a disaster, that the Secretary-General be immediately notified so that he may be associated through a representative with such investigation *ab initio*.

3. The Secretary-General is further prepared to give a general consent to municipal authorities to enter the Headquarters District in order to enable them to verify that precautions prescribed by local laws and regulations concerning public safety are being taken. The Secretary-General has the honour to request, however, that any information in regard to violation of such regulations shall be communicated to him as soon as possible in order that he may direct that the appropriate steps be taken. . .

The arrangements outlined went into effect upon notification from the United States Representative.

110. Since the occupation of its present Headquarters the United Nations has assumed responsibility for the maintenance of security and general police functions there through its own security staff. On comparatively rare occasions New York City police have been invited to enter the building, following the commission of acts of violence or other wrongdoing. When Heads of State or other distinguished persons visit the United Nations, United States police have been permitted to enter, not in order to perform police duties but in order that there shall be no gap in liaison between the protection provided by them and that provided by the United Nations. Responsibility thus remains with the United Nations.

111. A broader problem arose in 1952-53 in connexion with the investigations conducted by the United States of its nationals on the staff.<sup>68</sup> As part of those investigations, the United States authorities, acting under a Presidential Executive Order, sought the finger-prints of staff members of United States nationality and required them to complete a questionnaire; the staff members concerned were

<sup>68</sup> See *Repertory of Practice of United Nations Organs*, vol. V, pp. 209-210, from which the following account is taken.

also interviewed by United States officials. The Secretary-General permitted the finger-printing to be conducted in the United Nations building, the distribution of the questionnaire to be made by the Secretariat officials, and the interviews to be conducted in the offices of staff members. The Secretary-General defended his action in a statement made to the General Assembly at its 413th plenary meeting during its seventh session, chiefly on the grounds that the authorization given the United States officials was for limited purpose only and that the convenience and morale of the staff required that the matter be handled as expeditiously as possible.

112. In the course of the discussion which followed the Secretary-General's statement the view was expressed that the convenience of the staff was not a valid ground for a procedure not in keeping with the international character of the Secretariat. It was said to be inconsistent with respect for that international character for a host State to request and for the Secretary-General to permit the use of premises and facilities of the Organization to enforce the internal laws and regulations of that State. In reply to these comments, at the Assembly's 421st plenary meeting the Secretary-General reiterated the reasons he had previously given and cited precedents in support of his action as follows:

It has happened in the past, when the interests of the United Nations have required it, that national police and other officials have been admitted to United Nations premises. This was not the first time, and I think we have some of them here today too. At the first part of the first session in London, British security police were admitted to Church House for the purpose of protection, and French police were invited and admitted to the Palais de Chaillot during the third and sixth sessions of the Assembly in Paris, both for security and for investigative reasons. Any secretary-general must have some latitude or discretion in specific circumstances to admit national officials to United Nations premises when he believes that the interests of the United Nations require it.

113. In 1961 a United Nations employee was arrested outside the Headquarters District and indicted for larceny committed within United Nations Headquarters. The Office of Legal Affairs informed the judge trying the case that the United Nations had no regulation in the field of criminal law and, accordingly, had no objection under sections 7 and 8 of the Headquarters Agreement to the case being determined according to the local law. When the case was brought before the Court of General Sessions, New York County<sup>69</sup> the defendant objected to the proceeding on the ground that the Court lacked jurisdiction in view of his position as a United Nations employee and the fact that the alleged crime had taken place on United Nations premises. The Court found the defendant guilty. The judge referred to section 7 (b) of the International Organizations Immunities Act, under which immunity from suit and legal process was granted to United Nations officials only in respect of acts performed in their official capacity. After examining the defendant's claim based on sections 8 and 9 of the Headquarters Agreement, the judge stated:

Accordingly, it would appear from this agreement that the local law shall have jurisdiction over any acts done or transactions taking place within the Headquarters District which are in violation of such laws and the courts of the appropriate American authorities shall have jurisdiction to try and determine issues between the parties. However, such Federal, State or local laws shall, of course, not be inconsistent with any regulation that has been authorized by the United Nations. . .

For the Court to recognize the existence of a general and unrestricted immunity over suits or transactions, as proposed by defendant, would be to establish a large preferred class of people within our borders who would be immune to punishment inasmuch as the United Nations has no tribunal for the control and punishment of defendants among its personnel. It can at best expel or eject them from the Headquarters District and such persons would escape trial and punishment completely. Such a blanket immunity is contrary to our sense of justice and cannot be supported by any reference to the United Nations Charter, Acts of Congress or executive orders of the President.

114. The defendant also argued, on the basis of article III, section 9 (a) of the Headquarters Agreement, that even if he was not immune from legal process, the United Nations had to give its consent prior to the indictment and, since its consent was obtained after the indictment, such consent had no effect. The Court held that that section of the Headquarters Agreement was not applicable in the case since the defendant had been arrested outside the United Nations Headquarters.

115. At the United Nations Office at Geneva local police have been asked on specific occasions to co-operate with United Nations security guards within United Nations premises; for example, during the 1954 Geneva Conference Swiss plain clothes as well as uniformed policemen and gendarmes were in charge of security at the Palais des Nations, both within the building and outside. More recently the exercise of police functions has been raised in relation to traffic accidents occurring within United Nations grounds. In 1959 it was suggested that in the event of such accidents any immunity of the person or persons involved should be waived and the competent Swiss authorities allowed to enter the grounds in order to conduct the customary inquiry and report. Whilst there appeared little difficulty in permitting the Swiss authorities to enter the grounds, the different procedures applicable for the waiver of the various parties which might be involved (e.g., United Nations officials with and without diplomatic immunity, officials of the various specialized agencies with and without diplomatic immunity, the representatives of Member States, members of the governing bodies of various international organizations) effectively prevented any simple administrative procedure from being adopted.

116. At offices away from New York and Geneva the problems have been generally smaller in scale. In 1956 ECAFE raised a number of questions as to the exercise of police functions in the ECAFE premises in Bangkok. The Office of Legal Affairs advised that the matter was regulated by the General Convention, to which Thailand was a party, and by the ECAFE Agreement which the Government was applying pending formal ratification. The Office of Legal Affairs stated that it would be proper to allow the local police to make an investigation within ECAFE premises in the event of the possible

<sup>69</sup> *People of the State of New York v. Nicholas Coumatos*, 19 January 1962, 224 N.Y.S. 2d 507, Gen. Sess., 224 N.Y.S. 2d 504. See also section 23 (b), paras. 262 and 263 below.

theft of property on the premises, whether belonging to ECAFE or to staff members. The only restrictions were that the entry of police must be authorized by the Executive Secretary and that the provision of information by staff members should not extend to supplying information on their official functions or official knowledge not already having a public character, unless the Executive Secretary had first obtained permission for an appropriate waiver from the Secretary-General.

117. It may be noted that the ECAFE Agreement (which has now been ratified) includes the following provisions:

Section 4 (a). Officers or officials of the Government, whether administrative, judicial, military or police shall not enter the working site to perform any official duties therein except with the consent of and under conditions agreed to by the Executive Secretary;

(b) Without prejudice to the provisions of Article VIII, the ECAFE shall prevent the working site from being used as a refuge by persons who are avoiding arrest under any law of Thailand, or who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process or a judicial proceeding;

Section 5 (a). The appropriate Thai authorities shall exercise due diligence to ensure that the tranquillity of the working site is not disturbed by the unauthorized entry of groups of persons from outside or by disturbances in its immediate vicinity, and shall cause to be provided on the boundaries of the working site such police protection as is required for these purposes;

(b) If so requested by the Executive Secretary, the appropriate Thai authorities shall provide a sufficient number of police for the preservation of law and order in the working site, and for the removal therefrom of persons as requested under the authority of the ECAFE.

Sections 3 and 4 of the ECA Agreement provide for similar arrangements vis-à-vis the Ethiopian authorities.

(iv) *The service of legal process within United Nations premises*

118. The service of legal process within United Nations premises, whether directed to the Organization itself or to an individual, constitutes a breach of the obligation to respect the inviolability of United Nations premises. In section 9 (a) of the Headquarters Agreement it is expressly stated that:

The service of legal process, including the seizure of private property, may take place within the Headquarters District only with the consent of and under conditions approved by the Secretary-General;

119. The United Nations has consistently refused to accept the service of legal process within its premises and, where attempts have been made (e.g. by leaving the process on the floor), it has returned the process to the local authorities. It may be noted that in the case of service of process upon the Organization, or upon an official who is protected by reason of his official position, there is, in effect, a double immunity, namely in respect of the place of service and in respect of the Organization itself or the person concerned. In the case where process is served, or attempted to be served, on a person who does not enjoy immunity in respect of the matter in question, only the first immunity applies (i.e., in respect of the place of service) so as to render the service of legal

process without effect. Where it appeared that the matter involved a purely private transaction of an official, the United Nations has on occasions given information as to the home address of the person concerned.

120. A special exception to this principle was made in the case of the branch of the Chemical Bank and Trust Co. operating in the Headquarters District. In a letter to the Bank dated 29 December 1949, the Secretary-General referred to the legality of service of legal process against accounts maintained by the Bank at its branch within the Headquarters District, and continued:

In pursuance to the authority vested in me under Section 9 (a)<sup>70</sup> consent is hereby given to the service of legal process against all accounts maintained by the above-referred to branches of your Bank with the exception of such of these accounts as are in the name of the United Nations itself, or as are in the name of any other international organization within the meaning of Public Law 291, or are in the name of a Government, or are in the name of any individual falling within Section 19 of the Convention on the Privileges and Immunities of the United Nations, or are in the name of any other individual or other entity entitled to the privileges and immunities, exemptions and facilities accorded to diplomatic envoys under international law.

121. The United Nations reserved the right to amend the terms of this consent at any time or to withdraw it entirely, upon written notice, if it considers the consequences were impairing, or might impair, the proper functioning of the Organization. The United Nations subsequently requested the Bank to arrange to receive service of any legal process which might be issued in respect of the accounts concerned at an office outside the Headquarters District.

*Section 10. Immunity of United Nations property and assets from search and from any other form of interference*

122. As provided in section 3 of the General Convention,

The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

123. As regards the meaning of the word "search", the United Nations has interpreted this to include immunity from any actual inspection by national authorities and immunity from verification of the contents of United Nations property. Thus, in the case of United Nations food or other supplies, for example, contained in sacks, envelopes or other containers, in the opinion of the United Nations its official statement of what the contents are should be accepted by national authorities; any search of the containers would be in violation of section 3. Similarly, in the case of a United Nations means of transport (car or lorry, plane, railway truck, etc.) an official statement by the United Nations as to the contents should be accepted, without unauthorized inspection (e.g., by opening the trunk of a car).

124. Amongst other forms of governmental action which the United Nations has considered in contravention of section 3 of the General Convention, it may be

<sup>70</sup> *Sc. of the Headquarters Agreement.*

noted that in 1959 the United Nations protested to the Government of a Member State after it had devalued certain large denomination bank notes to one tenth of their former value. The notes, whether held by the United Nations itself or by specialized agencies or by technical assistance personnel, had been supplied by the Government as part of its contribution to the local costs of technical assistance. It was declared by the United Nations that in these circumstances the devaluation, as it applied to the United Nations, amounted to a "confiscation" falling within section 3 of the General Convention and section 5 of the Specialized Agencies Convention.<sup>71</sup>

125. The interpretation of the phrase relating to immunity "from . . . any other form of interference" has been considered in a number of contexts. On occasion it has been pointed out in correspondence that unusually burdensome requirements in respect of the documents needed for customs purposes might constitute interference. More direct forms of interference have also occurred. In 1952, for example, a United Nations plane was impounded at an airport by being refused clearance to take off. The United Nations informed the authorities of the State concerned that the incident, which it was presumed must have resulted from a misunderstanding, did not accord with section 3 of the General Convention. It was also stated that if the impounding of the aircraft was for the purpose of enforcing payments of fees (which were in dispute), it was also contrary to the intent of section 2 regarding the immunity of the United Nations from any measure of execution. In addition the refusal to grant clearance was inconsistent with the tenor of sections 25 and 26 which provided for facilities for speedy travel for persons on United Nations business. Finally, since the refusal resulted in a delay for a senior official while he was travelling on official business, the matter was sufficiently important to be covered by Article 105 of the Charter.

### *Section 11. United Nations name, emblem and flag*

#### *(a) United Nations name and emblem*

126. At its first session in 1946 the General Assembly adopted resolution 92 (I) relating to the official seal and emblem of the United Nations.

#### *The General Assembly,*

1. *Recognizes* that it is desirable to approve a distinctive emblem of the United Nations and to authorize its use for the official seal of the Organization,

*Resolves* therefore that the design reproduced below<sup>72</sup> shall be the emblem and distinctive sign of the United Nations and shall be used for the official seal of the Organization,

2. *Considers* that it is necessary to protect the name of the Organization, and its distinctive emblem and official seal,

#### *Recommends* therefore:

(a) That Members of the United Nations should take such legislative or other appropriate measures as are necessary to prevent the use, without authorization by the Secretary-General

<sup>71</sup> See section 13, paras. 139 and 140, below.

<sup>72</sup> The official seal and emblem were reproduced at the end of the text of the resolution.

of the United Nations, and in particular for commercial purposes by means of trade marks or commercial labels, of the emblem, the official seal and the name of the United Nations, and of abbreviations of that name through the use of its initial letters;

(b) That the prohibition should take effect as soon as practicable but in any event not later than the expiration of two years from the adoption of this resolution by the General Assembly;

(c) That each Member of the United Nations, pending the putting into effect within its territory of any such prohibition should use its best endeavours to prevent any use, without authorization by the Secretary-General of the United Nations of the emblem, name, or initials of the United Nations, and in particular for commercial purposes by means of trade marks or commercial labels.

127. After cases had been brought to the notice of the Secretary-General of the unauthorized use of the emblem and name of the United Nations, the following letter was sent to all Member States:

Sir,

I have the honour to inform you that cases have been brought to the notice of the Secretary-General of the use without his authorization of the emblem and the name of the United Nations, both in its full and in its abbreviated form, by private persons and commercial organizations in different countries, contrary to the recommendations contained in Resolution 92 (I) which was adopted by the General Assembly on 7 December 1946. Many of the violations which I have in mind are particularly flagrant in view of the fact that the emblem and name of the United Nations have been used for commercial purposes, against which abuse the resolution of the General Assembly was particularly directed.

The adoption of this resolution by the General Assembly was a clear indication that the Members of the United Nations considered it highly undesirable for the United Nations to be connected in any way with private commercial enterprise. To prevent abuses the resolution recommended that the Members of the United Nations should take such legislative or other appropriate measures as might be necessary to protect the emblem, official seal and name of the United Nations, and that pending the taking of such legislative or other appropriate measures, each Member should use its best endeavours to prevent any use, without authorization by the Secretary-General of the emblem, official seal and name of the United Nations.

I have, therefore, the honour to request you to be so good as to direct the attention of the appropriate authority of your Government to this recommendation and to inform the Secretary-General in due course of such provisional measures as your Government has been able to take to protect the interests of the United Nations in this matter.

I have the honour to be, Sir,  
Your obedient Servant,

Adrian PELT  
*Acting Secretary-General.*

128. A number of Member States have adopted legislative enactments protecting the use of the United Nations name and emblem, in accordance with this request and in furtherance of resolution 92 (I).<sup>73</sup> In the case of *People v. Wright*<sup>74</sup> the defendant was charged with a violation of Section 964-a of the Penal Law of the State of New York, in that he,

<sup>73</sup> See e.g. the Swiss Federal Act of 15 December 1961 concerning protection of the names and emblems of the United Nations and other intergovernmental organizations, cited in full in *United Nations Juridical Yearbook 1962*, p. 40.

<sup>74</sup> Court of Special Sessions of the City of New York, New York County, 22 April 1958, 12 Misc. 2d 961, 173 N.Y.S. 2d 160.

without express authority from the Secretary-General of the United Nations, and with the intent to deceive and mislead the public, unlawfully did assume, adopt and use the name of the United Nations, and abbreviation thereof, and simulation thereof which might deceive and mislead the public as to the true identity of the said defendant, and as to the official connection of the said defendant with the United Nations.

129. The defendant sought to dismiss the charge on the ground that the Section was unconstitutional. The Court held that the motion to dismiss the action should be disallowed. The statute concerned was valid under United States law without Congressional authorization and did not constitute a denial of due process or of the equal protection of law. Furthermore the fact that the Secretary-General was alone authorized to grant permission to use the name "United Nations" was not an improper delegation by the New York Legislature of its own legislative powers.

#### (b) *United Nations flag*

130. The United Nations flag code, as amended by the Secretary-General on 11 November 1952, is reproduced below:

Whereas by Resolution 167 (II) of 20 October 1947 the General Assembly decided that the flag of the United Nations should be the official emblem adopted by the General Assembly in Resolution 92 (I) of 7 December 1946, centred on a United Nations blue background, and authorized the Secretary-General to adopt a Flag Code, having in mind the desirability of a regulated use of the flag and the protection of its dignity;

Whereas under this authority a Flag Code was issued by the Secretary-General on 19 December 1947; and

Whereas it has become desirable to amend this Flag Code to permit display of the United Nations Flag by organizations and persons desiring to demonstrate their support of the United Nations;

The Secretary-General, by virtue of the authority vested in him, hereby rescinds the Flag Code of 19 December 1947 and adopts the following Flag Code:

#### 1. *Design of Flag*

The flag of the United Nations shall be the official emblem of the United Nations, centred on a United Nations blue background. Such emblem shall appear in white on both sides of the flag except when otherwise prescribed by regulation. The flag shall be made in such sizes as may from time to time be prescribed by regulation.

#### 2. *Dignity of Flag*

The flag shall not be subjected to any indignity.

#### 3. *Flag Protocol*

(1) The flag of the United Nations shall not be subordinated to any other flag.

(2) The manner in which the flag of the United Nations may be flown, in relation to any other flag, shall be prescribed by regulation.

#### 4. *Use of Flag by the United Nations and Specialized Agencies of the United Nations*

(1) The flag shall be flown

(a) From all buildings, offices and other property occupied by the United Nations.

(b) From any official residence when such residence has been so designated by regulation.

(2) The flag shall be used by any unit acting on behalf of the United Nations such as any committee or Commission or other

entity established by the United Nations, in such circumstances not covered in this Code as may become necessary in the interests of the United Nations.

(3) The flag may be flown from all buildings, offices and other property occupied by any Specialized Agency of the United Nations.

#### 5. *Use of Flag Generally*

The flag may be used in accordance with this Flag Code by Governments, organizations and individuals to demonstrate support of the United Nations and to further its principles and purposes. The manner and circumstances of display shall conform, in so far as appropriate, to the laws and customs applicable to the display of the national flag of the country in which the display is made.

#### 6. *Use of Flag in Military Operations*

The flag may be used in military operations only upon express authorization to that effect by a competent organ of the United Nations.

#### 7. *Prohibition*

The flag shall not be used in any manner inconsistent with this Code or with any regulations made pursuant thereto. On no account shall the flag or a replica thereof be used for commercial purposes or in direct association with an article of merchandise.

#### 8. *Mourning*

The Secretary-General will prescribe by regulation or otherwise the cases in which the flag shall be flown at half-mast as sign of mourning.

#### 9. *Manufacture and Sale of Flag*

(1) The flag may be manufactured for sale only upon written consent of the Secretary-General.

(2) Such consent shall be subject to the following conditions:

(a) The flag shall be sold at a price to be agreed upon with the Secretary-General.

(b) It shall be the responsibility of the manufacturer to ensure that every purchaser of the flag is furnished with a copy of this Code as well as a copy of any regulations issued pursuant thereto, and that each purchaser is informed that his use of the flag is subject to the conditions contained in this Code and in the regulations made pursuant thereto.

#### 10. *Violation*

Any violation of this Flag Code may be punished in accordance with the law of the country in which such violation takes place.

#### 11. *Regulations*

(1) The Secretary-General may delegate his authority under this Code.

(2) The Secretary-General or his duly authorized representative is the only person empowered to make regulations under this Code. Such regulations may be made for the purposes indicated in this Code and generally for the purpose of implementing or clarifying any provision of this Code whenever the Secretary-General or his duly authorized representative considers such implementation or clarification necessary.

*Secretary-General.*

#### *Regulations*

131. The following is the text of the regulations which came into effect on 1 January 1967, replacing the Regulations as amended by the Secretary-General on 11 November 1952:

#### I. *Dimensions of flag*

(1) In pursuance to article 1 of the Flag Code the proportions of the United Nations Flag shall be:

(a) Hoist (width) of the United Nations Flag--2;  
Fly (length) of the United Nations Flag--3;  
or

(b) Hoist (width) of the United Nations Flag--3,  
Fly (length) of the United Nations Flag--5;  
or

(c) The same proportions as those of the national flag of any country in which the United Nations Flag is flown;

(2) The emblem shall in all cases be one half of the hoist of the United Nations Flag and entirely centered.

## II. Flag protocol

In pursuance to article 3 (2) of the United Nations Flag Code the manner in which the United Nations Flag may be displayed is as follows:

### 1. General Provisions

(a) Under article 5 of the Flag Code the United Nations Flag may be displayed or otherwise used in accordance with the Flag Code by Governments, organizations and individuals to demonstrate support of the United Nations and to further its principles and purposes;

(b) The United Nations Flag may be displayed alone or with one or more other flags to demonstrate support of the United Nations and to further its principles and purposes. The Secretary-General may, however, limit such display to special occasions either generally or in particular areas. In special circumstances he may restrict the display of the United Nations Flag to official use by United Nations organs and specialized agencies;

(c) When the United Nations Flag is displayed with one or more other Flags, all flags so displayed should be displayed on the same level and should be of approximately equal size;

(d) On no account may any flag displayed with the United Nations Flag be displayed on a higher level than the United Nations Flag and on no account may any flag so displayed with the United Nations Flag be larger than the United Nations Flag;

(e) The United Nations Flag may be displayed on either side of any other flag without being deemed to be subordinated to any such flag within the meaning of article 3 (1) of the United Nations Flag Code;

(f) The United Nations Flag should normally only be displayed on buildings and on stationary flagstaffs from sunrise to sunset. The United Nations Flag may also be so displayed at night upon special occasions;

(g) The Flag should never be used as drapery of any sort, never festooned, drawn back, nor up, in folds, but always allowed to fall free.

### 2. Closed circle of flags

The United Nations Flag should in no case be made a part of a circle of flags. In such a circle of flags, flags other than the United Nations Flag should be displayed in the English alphabetical order of the countries represented reading clockwise. The United Nations Flag itself should always be displayed on the flagpole in the centre of the circle of flags or in an appropriate adjoining area.

### 3. Line, cluster or semi-circle of flags

In line, cluster or semi-circle groupings all flags other than the United Nations Flag shall be displayed in the English alphabetical order of the countries represented starting from the left. The United Nations Flag, in such cases, should either be displayed separately in an appropriate area on in the centre of the line, cluster or semi-circle or, in cases where two United Nations Flags are available, at both ends of the line, cluster or semi-circle.

### 4. National flag of the country in which the display takes place

(a) The national flag of the country in which the display takes place should appear in its normal position according to the English alphabetical order;

(b) When the country in which the display takes place wishes to make a special display of its national flag, such a special display can only be made where the arrangement of the flags takes the form of a line, cluster or semi-circle grouping, in which case the national flag of the country in which the display is taking place should be displayed at each end of the line of flags separated from the grouping by an interval of not less than one fifth of the total length of the line.

## III. Use of flag generally

(a) In accordance with article 5 of the United Nations Flag Code the United Nations Flag may be used to demonstrate the support of the United Nations and to further its principles and purposes;

(b) It is deemed especially appropriate that the United Nations Flag should be displayed on the following occasions:

- (i) On all national and official holidays,
- (ii) On United Nations Day, 24 October,
- (iii) On the occasion of any official event, particularly in honour of the United Nations,
- (iv) On the occasion of any official event which might or is desired to be related in some way to the United Nations.

## IV. Prohibitions

(a) In accordance with article 7 of the United Nations Flag Code on no account shall the United Nations Flag or a replica thereof be used for commercial purposes or in direct association with an article of merchandise;

(b) Notwithstanding anything to the contrary contained in clause (a) of this section, neither the United Nations Flag nor any replica thereof shall be stamped, printed, engraved or otherwise affixed on any stationery, books, magazines, periodicals or other publications of any nature whatsoever in a manner such as could imply that any such stationery, books, magazines, periodicals or other publications were published by or on behalf of the United Nations unless such is in fact the case or in a manner such as has the effect of advertising a commercial product;

(c) Subject to the provisions of clauses (b) and (d) of this section neither the United Nations Flag nor any replica thereof should be affixed in any manner on any article of any kind which is not strictly necessary to the display of the United Nations Flag itself. Without restricting the generality of the foregoing sentence the United Nations Flag should not be reproduced on such articles as cushions, handkerchiefs and the like, nor printed nor otherwise impressed on paper napkins or boxes, nor used as any portion of a costume or athletic uniform or other clothing of any kind, nor used on jewellery;

(d) Notwithstanding anything to the contrary contained in this section, a replica of the United Nations Flag may be manufactured in the form of a lapel button;

(e) No mark, insignia, letter, word, figure, design, picture or drawing of any nature shall ever be placed upon or attached to the United Nations Flag or placed upon any replica thereof.

## V. Mourning

(a) Upon the death of a Head of State or Head of Government of a Member State, the United Nations Flag will be flown at half-mast at United Nations Headquarters, at the United Nations Office at Geneva and at United Nations offices located in that Member State;

(b) On such occasions, at Headquarters and at Geneva, the United Nations Flag will be flown at half-mast for one day immediately upon learning of the death. If, however, Flags have already been flying on that day they will not normally be lowered, but will instead be flown at half-mast on the day following the death;

(c) Should the procedure in paragraph (b) above not be practicable due to weather conditions or other reasons, the United Nations Flag may be flown at half-mast on the day of the funeral.

Under exceptional circumstances it may be flown at half-mast on both the day of the death and the day of the funeral;

(d) United Nations offices other than those covered by paragraph (a) above, in the case of the death of a national figure or a Head of State or Head of Government of a Member State, will use their discretion, taking into account the local practice, in consultation with the Protocol Office of the Ministry of Foreign Affairs and/or the Dean of the locally accredited Diplomatic Corps;

(e) The head of a specialized agency is authorized by the Secretary-General to lower the United Nations Flag flown by the agency to half-mast in cases where he wishes to follow the official mourning of the country in which the office of the agency is located. He may also lower the United Nations Flag to half-mast on any occasion when the specialized agency is in official mourning;

(f) The United Nations Flag may also be flown at half-mast on special instructions of the Secretary-General on the death of a world leader who has had a significant connexion with the United Nations;

(g) The Secretary-General may in special circumstances decide that the United Nations Flag, wherever displayed, shall be flown at half-mast during a period of official United Nations mourning;

(h) The United Nations Flag when displayed at half-mast should first be hoisted to the peak for an instant and then lowered to the half-mast position. The Flag should again be raised to the peak before it is lowered for the day;

(i) When the United Nations Flag is flown at half-mast no other flag will be displayed;

(j) Crepe streamers may be affixed to flagstaffs flying the United Nations Flag in a funeral procession only by order of the Secretary-General of the United Nations;

(k) When the United Nations Flag is used to cover a casket, it should not be lowered into the grave or allowed to touch the ground.

#### VI. *Manufacture of United Nations flag*

In accordance with article 9 (2) (a) of the United Nations Flag Code the Secretary-General hereby grants permission to sell the United Nations Flag without reference to the Secretary-General as to the price to be charged.

#### VII. *Alphabetical order*

Attached is a schedule setting out the English alphabetical order of the Members of the United Nations.

*Secretary-General*

#### *Schedule of Member Nations in the English Alphabetical Order* (not reproduced)

NOTE: In the event of any provision contained in this code or in any regulation made under this code being in conflict with the laws of any State governing the use of its national flag, said laws of any such State shall prevail.

The use of the United Nations flag in connexion with the operation of vessels by the United Nations is considered in section 3 (b) (ii), paras. 31-33, above.

#### *Section 12. Inviolability of United Nations archives and documents*

132. As stated in section 4 of the General Convention,

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

In the ECLA Agreement, which contains the same provisions, the term "archives" is defined in section 1 (g) as including

the records, correspondence, documents, manuscripts, photographs, cinematograph films and sound recordings, belonging to or held by ECLA.

A similar definition of the term is given in section 1 (g) of the ECAFE Agreement. The United Nations has interpreted section 4 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.

133. Questions relating to the inviolability of United Nations documents have been raised on several occasions in connexion with judicial proceedings against United Nations staff members. In March 1949 the United States police arrested a member of the United Nations Secretariat on charges of espionage. The Permanent Representative of the Member State of which the staff member concerned was a national protested against this action on the ground that the official held the rank of a third Secretary in the Ministry of Foreign Affairs of his country and that his diplomatic immunity continued even after his appointment by the United Nations. In addition, the Permanent Representative alleged that material 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.

134. A somewhat different aspect arose in the case of *Keeney v. United States*,<sup>75</sup> where the defendant was prosecuted for a contempt of Congress following her refusal to answer, when testifying before a Senate Subcommittee, the question whether anyone in the State Department had aided her in obtaining employment with the United Nations. The main issue in the case turned on whether the defendant, as a former employee of the United Nations, was herself privileged from answering the question. The District Court held that her motion of privilege should be denied. The Court of Appeals reversed the conviction and granted a new trial on the ground that the answer sought by the Subcommittee, 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 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.

135. The latter quotation was from Staff Rule 7 of the United Nations (now Staff regulation 1.5), requiring staff members not to communicate unpublished information, "except in the course of their duties or by

<sup>75</sup> District Court, District of Columbia, 17 March 1953, 111 F. Supp. 223 and Court of Appeals, District of Columbia Circuit, 26 August 1954, 218 F.2d 843.

authorization of the Secretary-General". It was also stated that the privilege of non-disclosure as it applied to officials was "necessary for the independent exercise of their functions in connexion with the Organization".

136. As an instance where information was supplied, not amounting to access to United Nations files, reference may be made to 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 Labour 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.

### *Section 13. Immunity from currency controls*

137. The basic provisions of the General Convention are as follows:

*Section 5.* Without being restricted by financial controls, regulations or moratoria of any kind,

(a) The United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

(b) The United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

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

Similar articles are contained in a number of other instruments.<sup>76</sup>

138. Problems have arisen involving the interpretation of these provisions in various spheres of United Nations activities. One issue has concerned the payment by a Member State of contributions in a particular currency or the requirement that all goods purchased in that country should be paid for in a specified currency. In 1950, following discussion in the Administrative Committee on Co-ordination, the Office of Legal Affairs gave an opinion to the administrative and financial services of the Secretariat regarding some of the matters raised. The opinion considered in particular

... the application of the Convention on the Privileges and Immunities of the United Nations should a government, whose regulations provide that all goods exported must be paid for in dollars, require that these regulations be applied to purchases made by the United Nations.

In relation to the subject of maximum utilization of soft currencies and the methods for collecting and disbursing soft currencies, it appears that the Consultative Committee on Administrative Questions had recommended to the ACC that the plan for the

soft currencies to be collected by international organizations, to be practicable, should be limited to a few currencies, the contributing governments to agree to the convertibility of such currencies into their own soft currencies within a given area.

The relevant clauses of the Convention on the Privileges and Immunities of the United Nations are Sections 5 and 6 of Article II on Property, Funds and Assets, which read as follows: (the Sections are then cited).

The equivalent provisions of the Convention on the Privileges and Immunities of the Specialized Agencies, Sections 7 and 8 in Article III, contains similar language, substituting the term "specialized agencies" where "United Nations" appears above, and requiring due regard to the representations of any State party to the Specialized Agencies Convention.

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

It naturally follows from the purposes of each of the two Conventions that a given government is strictly obligated to recognize these privileges only if it has acceded to the United Nations Convention or has agreed to apply to any given specialized agency the Specialized Agencies Convention. Nevertheless, the provisions of the Convention on the Privileges and Immunities of the United Nations would be entitled to great weight in a negotiation with a Member Government which had not yet acceded thereto, since the General Assembly in its Resolution No. 93 (I) has recommended that Members, pending their accession to the Convention, should follow, so far as possible, the provisions of the Convention in their relations with the United Nations.

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

There is one proviso, as a consequence of Section 6 of the United Nations Convention and Section 7 of the Specialized Agencies Convention. Although the authority to transfer accounts and convert currencies would for the most part be unqualified as between equally soft currencies within a given area, it would be necessary to pay due regard to any representations made by a government if a right exercised under the convertibility clause of the Conventions were likely to have a substantially adverse effect on that government's balance of payments. But since the recommended negotiations would in the first place have as their very purpose the easing of such problems by the use of soft cur-

<sup>76</sup> Section 4 of the Agreement with Switzerland, section 10 of the ECAFE Agreement and section 11 (a) (i), ECLA Agreement.

rencies, and since the negotiations themselves would constitute the appropriate channel for any governmental representations as contemplated by the Conventions, it may be assumed that this proviso is not a practical limitation on efforts to establish convertibility. The fact that a so-called "soft" currency in one country within a given area is not necessarily soft in another country within that area would merely be a factor to which due regard would have to be paid in the course of the negotiations, and would not in itself alter the basic obligation established by the convertibility in the Convention.

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

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

139. Although the arrangements envisaged in this memorandum have been generally observed, individual countries have on occasion interfered with the exercise by the United Nations of its freedom to transfer currencies and to make payments in furtherance of particular programmes undertaken by the Organization. The most serious difficulties which arose were in respect of activities undertaken under the Expanded Programme of Technical Assistance in a Member State following a number of financial decisions taken by the Government concerned in 1959. The Government sought to impose a 20 per cent tax on foreign exchange transactions made by the Technical Assistance Board, introduced a new exchange rate, froze bank deposits, and reduced the value of large denomination bank notes. The Executive Chairman of the Technical Assistance Board protested to the

Government regarding the application of these measures to the Technical Assistance programme. He pointed out the United States dollars used to buy local currency were not the product of a sale of goods or service but were part of the contributions of other Governments participating in the Expanded Programme. Moreover, once local currency had been purchased with dollars, it was not transferred out of the country. Application of the new exchange rate would reduce the value of the technical assistance services which could be provided. The Government was therefore requested to exempt technical assistance funds and transactions from the new regulations and to free the bank deposits held by the United Nations and the specialized agencies, in accordance with section 5 of the General Convention and section 7 of the Specialized Agencies Convention. The action of the Government in reducing the value of large-denomination bank notes to one-tenth of their respective face values was described as amounting to an outright confiscation of the property and assets of the United Nations and the specialized agencies, in contravention of section 3 of the General Convention and section 5 of the Specialized Agencies Convention. It was pointed out in this connexion that under the Technical Assistance Agreement which the Government had concluded earlier, the Government had undertaken to meet certain costs, including that for the provision of local personnel services and 50 per cent of the daily subsistence allowances of the technical assistance experts. These contributions were made by the Government in local currency and all large-denomination notes held, either by the organizations or by their employees, were derived from these payments. It was suggested that it could scarcely have been the Government's intention to make or to apply its regulations in such a manner as to contribute its currency at one value and then to reduce the purchasing power by 90 per cent.

140. Following this correspondence arrangements were made by the Government to exempt the United Nations from the regulations which had been introduced. In 1961, when the Government introduced a new exchange rate for tourists, the United Nations pointed out that this rate was also applicable, under the terms of the pertinent Technical Assistance Agreement, to the United Nations and its officials. The Government eventually agreed to grant this exchange rate to the United Nations in respect of the technical assistance programme conducted in the country concerned.

141. Besides enjoying immunity from currency controls as regards sums it has received, it may be noted that the United Nations may also determine the currency in which its contributions are to be paid.

142. Under the Financial Regulations and Rules of the United Nations, adopted by the General Assembly, the annual contributions of Member States may only be assessed and paid in United States dollars, except to the extent that the General Assembly may authorize the Secretary-General to accept payment in other currencies.<sup>77</sup>

<sup>77</sup> Regulation 5.5 and Rule 105.2, Financial Regulations and Rules of the United Nations (ST/SGB/Financial Rules/1).

Certain States, however, have offered to make payments of their shares of the appropriations for technical assistance, as provided for in part V of the United Nations budget, in the equivalent amount of their national currencies and not, as required under Regulation 5.5 and Rule 105.2 of the Financial Regulations and Rules, in United States currency. Since the Secretary-General has not so far been able to use these currencies, he has not credited the amounts deposited in national currencies against the assessments of the States concerned. The total amount involved is about \$1.1 million a year.<sup>78</sup>

#### Section 14. Direct taxes

##### (a) Definition of direct taxes

143. Section 7 of the General Convention provides that:

The United Nations, its assets, income and other property shall be:

(a) Exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services.

144. The ECLA and ECAFE Agreements contain the same clause.<sup>79</sup> The Agreement with Switzerland supplements the provision as follows:

Section 5. The United Nations, its assets, income and other property shall be:

(a) Exempt from all direct and indirect taxes whether federal, cantonal or communal. It is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(b) Exempt from the *droit de timbre* on coupons instituted by the Swiss Federal Law of 25 June 1921, and from the *impôt anticipé* introduced by the Federal Council decree, 1 September 1943, and supplemented by the Federal Council decree of 31 October 1944. The exemption shall be effected by the repayment to the United Nations of the amount of tax levied on its assets.

145. In view of the fact that the General Convention was drawn up for uniform application in all Member States of the United Nations, the meaning to be given to the term "direct taxes" cannot depend on the particular meaning given to that expression by the fiscal laws of a particular State. Thus, whilst the terms "direct" and "indirect" taxes are interpreted differently in the various national legal systems of Member States, according to the tax system or administration adopted, the meaning to be given to those terms in relation to the application of the General Convention must be found by reference to the nature of that instrument and to the incidence of the tax in question, that is to say, according to the party upon whom the burden of payment directly falls. Moreover, in interpreting the Convention, the United Nations and its Members must be guided by the

overlying principles of the Charter, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. In accordance with that provision, no Member State can hinder the working of the Organization or take any measure which might increase its financial or other burdens.<sup>80</sup> Under Article IV of the Convention, therefore, the Organization is relieved of the burden of all direct taxes, and is to be granted the remission or return of indirect taxes where the amount involved is important enough to make this administratively possible.

146. As regards the actual incidence of direct and indirect taxes, the Legal Counsel summarized the position as follows in the course of a statement made to the Fifth Committee in 1963.

Now, as the Committee knows, the Convention is categorical in the matter of direct taxes on the United Nations. Direct taxes may not be assessed against the United Nations, and no office of this Organization would have authority to pay them. While I would be foolish to pretend that there could never have been a slip, in some office somewhere, the fact is that we are simply not addressing ourselves to a serious practical problem if we worry about payment of direct taxes in United Nations offices around the world. Member States honour the Convention. Information Centres and other offices are expected to consult Headquarters whenever they are in doubt as to whether a given charge represents a tax against the Organization. Even in the minority of Member States not yet bound by the Convention, we know of no direct taxation of the United Nations. Indeed (even in the absence of adherence to the Convention) we would firmly oppose it as clearly prohibited by the well documented intent of the drafters of Article 105 of the Charter.

Therefore, if we do not pay direct taxes, there remains only the question of indirect taxes. Again, let me emphasize how limited is this problem. For our immediate purposes, an indirect tax is one which is not assessed directly against the purchaser but is paid by the manufacturer or vendor and then merely passed on to the purchaser as a part of the price to be paid. I remind the Committee, therefore, that the Convention does not pretend to accord to the Organization an outright exemption from such taxes. It merely states, in its section 8, that "when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax". It follows that even this question can arise, in any of our offices around the world, only when an important purchase is being made. I believe that relatively few important purchases are made by small offices such as Information Centres — for the obvious reason that they have no significant procurement function and that even if they did, reasons of economy would militate in favour of concentrated purchases at other larger and more central offices. Moreover, apart from Headquarters, the Governments which are hosts to all of our regional offices and to our major operating agencies are all either party to the Convention or have otherwise bound themselves to a provision equivalent to the section 8 of the Convention which I have just quoted.

From this review, I must conclude — again leaving aside for the moment the question of the situation at Headquarters — that I fail to see any significant savings to be made by the Organization

<sup>78</sup> See Report of the *Ad Hoc* Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies, *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 80, document A/6289 and Add.1 and 2, para. 38. See also the discussion regarding inconvertible currencies, *ibid.*, annex V.

<sup>79</sup> Section 10 (a), ECLA Agreement, section 8 (a), ECAFE Agreement. See also section 9 of the ECAFE Agreement.

<sup>80</sup> See the opinion expressed at the United Nations Conference on International Organization, San Francisco, 1945, quoted in paragraph 6 of the memorandum cited in paragraph 159, below.

out of taxes, either direct or indirect, payable at United Nations offices in general, and this for the simple reason that we do not pay direct taxes and there are refund procedures where we have made important purchases subject to indirect taxes.

On earlier occasions, when this question was raised in the Committee, it had been suggested that the Secretariat should undertake a study of the application of taxes to the Organization anywhere in the world. Since it will be evident, I am sure, from what I have said, that the only taxes payable are by definition hidden taxes — those which are stated in the price of a commodity — such a study would require a detailed review of the excise tax laws in all the host countries of the world, and that study would have to be related to the particular types of purchases that might, in one year or another, be made in any such territory in the world. Even this would not provide us with definite information about the savings to be made, because we could not obtain remission of the taxes so found until we determined that a specific purchase was “important” within the interpretation of Section 8 of the Convention. For such an enterprise it is my own professional opinion that we would have to employ expert consultants familiar with the laws and tax systems in the many countries concerned. I have not the slightest doubt that we would have to pay more by way of stipends to the experts than we could save from the remittance of the few taxes which they might discover which had escaped our notice. For again, I ask leave to repeat that such indirect taxes, even when located, would not be subject to an exemption; we could claim their refund, by special administrative arrangements, only where the purchase was substantial.

Finally, I therefore return to what I have indicated in previous exchanges with the Fifth Committee. The more substantial problem arises only in the United States of America — because it is host to the Headquarters, because significant procurement naturally takes place here, and because the United States has not yet acceded to the Convention. Even here, however, I must once more emphasize that basically we are not dealing with a question of direct taxes. By federal statute the Organization is exempt from customs duties and from income, social security, transportation and other direct taxes; by New York law it is exempted from taxation of real property, sales, income and the like. As I have had occasion to mention to the Committee in earlier sessions, the only significant financial impact results from the absence in United States law of any equivalent of Section 8 of the Convention or of administrative procedures for the remission of substantial indirect excise taxes. These can affect a number of commodities which from time to time are the object of United Nations procurement. Of course, when, for example, typewriters, required for Headquarters, are less expensive abroad — and even the United States excise tax can contribute to making them less expensive abroad — we import them. The purchase is then free of tax, because, as I said, we are exempt from United States duties on imports.

If the amount of United States excises in any given year is not usually very considerable, the principle remains important. As I have previously reported to the Committee, the Secretary-General has proposed to the United States Government two main ways of providing relief. The preference of the Organization must always be for the solution which is both the simpler one and the one more completely in accord with the frequently expressed desires of the General Assembly. I refer, of course, to accession by the United States to the Convention. The alternative which we have suggested, however, based on various United States precedents, involves a number of measures — administrative in nature but not necessarily easy of application — which would serve to put the Organization in a position not less favourable, as to excise taxes, than the missions accredited to it. We know that each alternative has received serious consideration by the United States Government, and we remain hopeful. But there is a limit to what a Secretariat can accomplish in dealing with a Member State, and I accordingly conclude by saying that we very much appreciate

the advice, interest and support which we receive from the Fifth Committee.<sup>81</sup>

147. The summary of United Nations practice given below is subdivided under the following headings:

- (i) Stamp taxes
- (ii) Transport taxes, including taxes on tickets
- (iii) Taxes on United Nations financial assets
- (iv) Taxes in respect of the occupation or construction of United Nations premises.

(i) *Stamp taxes*<sup>82</sup>

148. The United Nations has distinguished, in this as in other connexions, between governmental charges for services rendered and charges which are in the nature of a tax. As a test whether a stamp affixed to a legal document represents a tax or not, the United Nations has usually looked to see whether the amount was nominal and related to a clerical function or whether it related to the value of the document, or whether it was known that the government was in fact using the particular requirement as a revenue-raising measure.

149. In 1951 the United Nations declined to pay a stamp tax on its lease of premises for an Information Centre, the tax being computed on the amount of the rent. The United Nations claim was accepted by the local authorities. In 1953 the Legal Department requested the Minister for External Relations of a Member State to give effect, in accordance with section 7 of the Convention, to the exemption to which the United Nations Technical Assistance Operations bank account was entitled, from the provisions of a tax on receipts, stamp tax on payment orders, and tax on commissions. The request was granted. In 1954 a draft lease for the premises of a United Nations subsidiary organ provided for payment by the United Nations, as tenant, of registration fees in respect of the lease, stamp duties for copies thereof, and charges for delivery and consignment. United Nations Headquarters gave instructions for re-negotiation of the clause concerned to eliminate whatever could be shown to involve an actual tax.

150. Several Governments, however, argued that stamp taxes were indirect taxes and as such did not come within the purview of the General Convention. Extracts from an exchange of correspondence in 1959 between the Legal Counsel and the Permanent Representative of a Member State regarding this issue is given below; the first extract is from the letter of the Legal Counsel.

... It is generally accepted that a direct tax is one that is assessed against the person intended to pay it. An indirect tax is, on the other hand, one that is demanded from one person in the expectation that he shall indemnify himself at the expense of another. (See, for instance, Wharton's Law Lexicon, 14th edition, page 978.) One element indicative of an indirect tax is that the tax forms part of the price to be paid. Such a tax is referred to in Section 8 of

<sup>81</sup> Payment of taxes by the United Nations, *Official Records of the General Assembly, Eighteenth Session, Annexes*, agenda item 58, document A/C.5/1005. For further details as to the position in the United States see section 17 (a), paras. 206-208, below.

<sup>82</sup> For stamp taxes in relation to United Nations financial assets, see sub-section (a) (iii), paras. 161-166, below.

the Convention, according to which the United Nations "will not, as a general rule, claim exemption" but Member States will, under certain conditions, "make appropriate administrative arrangements for the remission or return of the amount of tax or duty". In the case of the fiscal stamp taxes here under consideration, the United Nations is directly required to pay for the stamps and to affix them in prescribed amounts to letters and forms required as a part of the procedure of importation of supplies for its own use. The burden of the charges is directly borne by the United Nations. There is no other party on whom the tax could fall. Hence the fiscal stamp taxes are direct taxes within the purview of Section 7 (a) of the Convention on the Privileges and Immunities of the United Nations. . .

151. The reply of the Government concerned included the following:

. . . the recent theory in the distinction between the direct and indirect taxes is that the direct tax is imposed upon assets or at least continual sources such as property and profession; the performance of a profession, or exercising of an artisanship constitutes the basic elements that could be pursued by the Taxation Department, in other words direct tax is imposed on the wealth itself, whether gained or in the process of being gained, for example taxes on capital including income tax and different taxes on different incomes as the tax on profits, tax on non-commercial profession (as taxes on labour), but the indirect taxes are not related to quality or property or profession, that is to say not related to continual elements but imposed on specific acts or uncontinuous or casual actions as consumption or circulation, in other words the indirect taxes are imposed on transactions and movements related to wealth in its movements and utilization, for example, taxes on legal or material circulation, or taxes on action as fees of transportation or juridical fees, fees of transfer of property, fiscal stamps duties, taxes on consumer goods and customs duties.

Hence the fiscal stamp taxes are indirect taxes, and therefore the United Nations is subject to them.

The matter has remained under discussion with the authorities of the Member State in question.

152. A Member State which levied a substantial stamp tax on insurance policies, payable by the purchaser at the time that the policy was issued, imposed this tax on a United Nations subsidiary organ operating within its territory. By 1 January 1966, these taxes had amounted to over \$80,000 and were increasing at the rate of approximately \$14,000 a year. During discussions the Ministry of Foreign Affairs took the position that the organ was not entitled under section 7 (a) of the General Convention to recovery of the money already paid, but indicated that steps would be taken to relieve the organ in respect of future payments. In the course of correspondence the United Nations dealt with an argument raised regarding the meaning of the term "*impôt direct*" within the French legal system, which was in force in the State in question.

It is understood, however, that because the French text uses the term "*impôt direct*" which in the French legal system has a narrower meaning than the term "direct taxes" in the English text, it has been argued that Section 7 (a) does not cover stamp taxes. The characterization given to a tax in a particular municipal law system cannot be controlling in the application of the provisions of the Convention on the Privileges and Immunities of the United Nations which must be interpreted uniformly in respect of all Member States. Otherwise there would be inequality of treatment between Members.

The United Nations has been exempt from stamp duty on contracts and other official documents in Switzerland.

(ii) *Transport taxes, including taxes on tickets*

153. The United Nations has consistently sought exemption from taxes of this nature on the ground that they were direct taxes from which the Organization was exempt.

154. In 1947 the United States Internal Revenue Service replied to an inquiry made by the United Nations regarding the conditions under which the Revenue Service recognized exemption from transportation tax. The operative portion of the reply is given below.

. . . Inasmuch as the United Nations was designated in Executive Order 9698 as a public international organization entitled to enjoy the privileges, exemptions and immunities conferred by the International Organizations Immunities Act, amounts paid on or after December 29, 1945, for the transportation of property to or from the United Nations are exempt from the tax imposed by section 3475 of the Internal Revenue Code, as amended. Accordingly, the designation of the United Nations as consignor or as consignee of the shipping papers is sufficient to establish the right of exemption in those cases where property is shipped to or by the United Nations. However, in any case where the shipment is made to or by an official of the United Nations in connexion with its official business, and payment will be made by the United Nations through reimbursement of the official, the shipping papers must show by an appropriate reference that the shipment is made on behalf of the United Nations and, therefore, exempt from the tax. No particular form has been prescribed for this purpose, and all that is required is sufficient explanation of the transaction as will clearly show its exempt character and justify the noncollection of tax by the carrier.

155. In 1954 the Legal Counsel wrote to the Ministry of Foreign Relations of Argentina, seeking exemption from a 10 per cent tax on steamship passages between Argentina and foreign ports. Following further correspondence, the Government of Argentina acceded to this request in Decree No. 9307 of 7 September 1962.

156. A request made to the Government of a Member State by the Secretary-General in respect of a "surcharge" on tickets was denied on the ground that the additional charge arose from the fact that the foreign transportation companies operating in the State concerned calculated the fares in question according to a rate of exchange higher than the official rate. The United Nations did not therefore pursue its claim. In the case of another Member State a travel tax was imposed on transportation tickets purchased for United Nations officials of the nationality in question, together with an exit permit fee. The United Nations protested, pointing out that the fact that the persons involved were citizens could not prevail as against the terms of the General Convention. The matter remains under consideration.

157. The United Nations obtained exemption from airport terminal tax imposed on several national contingents flown from their home State for service with United Nations forces on the ground that this fee was in the nature of a direct tax on the Organization.

158. A Technical Assistance Board representative reported in 1962 that the Government of the Member

State in which he was stationed had required all Technical Assistance Board personnel to pay tolls at booths which had been set up on the roads in that country. It was stated that the tolls were a means of raising funds. The Office of Legal Affairs advised that the United Nations was exempt from such tolls as regards its own vehicles and in respect of journeys on official business undertaken by United Nations personnel.

159. The United Nations also experienced certain difficulties in 1964 in respect of a tax on circulation which the tax authorities of a Member State sought to impose on United Nations vehicles operating in that country. The Legal Counsel wrote to the Permanent Representative as follows:

1. We have the honour to bring to your urgent attention a question concerning the exemption of the United Nations from the tax on circulation with respect to the official vehicles operated by the United Nations, in connexion with operations of a United Nations organ in your country.

2. Under section 7 of the Convention on the Privileges and Immunities of the United Nations, it is provided that "The United Nations, its assets, income and other property shall be: (a) exempt from all direct taxes". The aforementioned tax on circulation, in so far as it is directly imposed on the United Nations is, within the meaning of the above-mentioned provision of the Convention, a direct tax. This view, we are gratified to learn, has also been supported by your Ministry of Foreign Affairs.

3. The United Nations organ has, however, been advised by the Customs District Office that the Head Office of Taxes and Indirect Taxation maintains that the tax on circulation (which applies to the circulation of vehicles on roads and public areas) was an indirect tax and that the United Nations could not therefore be exempt from it. In view of this, the Customs Office has informed the United Nations organ that it should make payment of the tax as soon as possible and should notify customs of the details of payment, and has indicated that the import licenses would not be renewed and the vehicles would be considered as operating illegally until the taxes are paid.

4. We are deeply grateful for the intervention of the Foreign Ministry on behalf of the United Nations in this matter. I should like to take this opportunity to present in more detail the view of the Organization, and to request your assistance in obtaining a further consideration of the question by all competent authorities of your Government so as to accord exemption to the United Nations from the "tax on circulation" with respect to the official vehicles of the United Nations.

5. The difference of opinion in this matter appears to hinge on the meaning of the expression "direct taxes" as used in section 7 (a) of the Convention on the Privileges and Immunities of the United Nations. It is true that the terms "direct" and "indirect" taxes, etc. are interpreted differently in the various national legal systems of Member States, varying according to tradition, usage or tax system or administration. It should be pointed out to the tax authorities, however, that the above-mentioned Convention was drawn up for application in all Member States of the United Nations and its terms were conceived and have to be applied uniformly in all countries in accordance with their generally-understood reference to its nature and to its incidence, that is to say, according to upon whom the burden of payment directly falls. You will understand that in respect of a Convention intended for application in all Member States, its interpretation cannot be made to depend upon the technical meaning of a term in varying tax systems of each Member. Since the tax on circulation is levied directly upon the United Nations, it is, within the meaning of the Convention, a "direct tax" and the United Nations should be accorded exemption from it. This is the consistent position and

practice of the United Nations in asserting its immunity in all States to which the provisions of the Convention apply.

6. Moreover, in interpreting the Convention, the United Nations and its Members must be guided by the overlying principles of the United Nations Charter, and in particular Article 105 which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. The Report of the Committee of the San Francisco Conference responsible for the drafting of Article 105 pointed out that "if there is one principle certain it is that no Member State may hinder in any way the working of the Organization or *take any measure the effect of which might be to increase its burdens financial or otherwise*"\* (italics added). With this principle in view, the economy of the Convention which was adopted by the General Assembly in implementation of Article 105 of the Charter is quite clear. The Organization was to be relieved of the burden of all taxes — Article 7 providing an exemption for those taxes to be paid directly by the United Nations, and Article 8 providing for remission or return of indirect taxes where the amount involved is important enough to make it administratively possible.

7. Apart from the application of the Convention, I should like to refer to the fact that a specialized agency is granted exemption by your Government in respect to that agency's official automobiles. This exemption is expressly provided for in an agreement between your Government and the specialized agency. As this was an agreement with your Government alone, it was of course possible to take notice of the particular terminology of the tax system employed in your country. Obviously this was not possible in the General Convention applicable to all Member States.

8. Since a United Nations specialized agency has been granted exemption from the tax on circulation, it is hoped that your Government will also find it possible to extend a similar exemption to the United Nations itself.

9. We shall therefore be very grateful if you would be good enough to request the Ministry of Foreign Affairs to intercede again with the competent authorities to authorize the exemption of United Nations official vehicles operating in your country from the tax on circulation.

10. Should there be any delay involved in obtaining the agreement of the tax authorities I am confident that no unilateral steps will be taken by any Government authority which would in any way impede or interfere with the operation of the United Nations vehicles, and we are certain that the Foreign Ministry will, if it deems it necessary, call this to the attention of the appropriate officials concerned. May we again express our appreciation for your assistance and that of the Ministry of Foreign Affairs in this matter.

160. Whilst the matter remained under consideration the United Nations officials in the country in question received a further request for payment of the tax on circulation. It further appeared that the local customs authorities were using the payment of the road tax as a precondition for the renewal of the "importation licences" for United Nations vehicles. The Legal Council stated that this precondition was not in accordance with section 7 (b) of the General Convention. In an internal memorandum he commented,

In virtue of this provision the right of the United Nations to import vehicles for its official use may not be denied or abridged on the ground that the Organization has failed to pay a tax which falls due subsequent to the importation of such vehicles. If, on the other hand, the road tax is imposed as a condition-precident for the importation of United Nations official vehicles, such tax would be

\* Documents of the United Nations Conference on International Organization San Francisco, 1945, vol. XIII, pp. 705 and 780.

in the nature of customs duties, and the same Section 7 (b) of the Convention exempts the United Nations from such levies.

(iii) *Taxes on United Nations financial assets*

161. The exemption from direct taxes extends to cover taxes levied on financial assets and interests held by the United Nations.

162. The Agreement with Switzerland deals expressly with this aspect in section 5 (b) whereby the United Nations, its assets, income and other property are declared

(b) Exempt from the *droit de timbre* on coupons instituted by the Swiss Federal Law of 25 June 1921, and from the *impôt anticipé* introduced by the Federal Council decree, 1 September 1943, and supplemented by the Federal Council decree of 31 October 1944. The exemption shall be effected by the repayment to the United Nations of the amount of tax levied on its assets.

The reference to "coupons" includes bonds, shares, mortgages, transfers of title, certain cheques, bills of exchange, insurance premiums and similar documents.

163. In 1961 a bank in Geneva holding a United Nations interest-bearing account withheld a federal tax of 27 per cent on the interest earned. In response to a United Nations request for exemption, the Swiss Permanent Observer stated that the tax in question was the *impôt anticipé* referred to in section 5 (b) and that the bank had behaved correctly. Upon request by the United Nations to the federal authorities a reimbursement would be obtained.

164. Under the more general provisions of section 5 of the Agreement with Switzerland, the Office of Legal Affairs advised in 1959 that the High Commissioner for Refugees was exempt from paying cantonal tax on a legacy bequeathed to him for refugee purposes.

165. As regards the position in the United States, in 1960 negotiations were undertaken with the United States Permanent Representative on the exemption of the United Nations from certain customs duties and excise taxes, including the federal documentary stamp taxes upon sales and transfers by the United Nations of capital stock and certificates of indebtedness. These negotiations were undertaken in pursuance of a decision of the Fifth Committee of the General Assembly taken during the thirteenth session in 1958. With regard to the documentary stamp taxes, the position of the United Nations was given by means of the following quotation from a letter from the Secretary-General to the Permanent Representative of the United States, dated 9 September 1959.

They constitute direct taxes on the United Nations, impinging to some extent, on operations of the United Nations Joint Staff Pension Fund. . . If the United States were a party to the Convention on the Privileges and Immunities of the United Nations, the Organization would be exempt by its Section 7 (a), as it is in other States Members of the Organization. The tax constitutes a direct burden on the Organization to the advantage of a single Member. Moreover, . . . it is illogical that the members of Missions should enjoy an exemption by reason of their accreditation to the United Nations when the Organization is denied the exemption on its own official transactions.<sup>89</sup>

166. In Canada and the United Kingdom the United Nations obtained exemption from a withholding tax

otherwise levied on cash dividends paid on securities, including securities forming part of the assets of the United Nations Joint Staff Pension Fund.

(iv) *Taxes in respect of the occupation or construction of United Nations premises*

167. A memorandum of law was prepared by the Office of Legal Affairs in 1953 setting forth the grounds for the immunity of the United Nations from real property tax in respect of its ownership and occupation of the Headquarters District. The study was drawn up following a claim by the company which had sold the land that, under the tax law of New York, the United Nations was taxable for the portion of the first year of its ownership following the date on which it had gained title.

*Memorandum of Law*

*United Nations Immunity from Real Property Tax*

1. *Question*

The United Nations owns and occupies property in the City of New York known as the United Nations Headquarters District, acquired under the authority of the Acts of 27 February 1947 (Laws of New York 1947) which among other things amended the Administrative Code of the City of New York and declared as a matter of legislative determination that a public purpose was served and that the interests of the State and City of New York were promoted by this acquisition.

The United Nations Headquarters District is exempt from real property taxation. The New York Tax Law, Section 4, subdivision 20, provides: "Real property of United Nations. . . shall be exempt from taxation and assessment. . ."

The question has been raised, however, whether the real property of the United Nations in its Headquarters District might nevertheless be taxable, despite the outright exemption under the Tax Law, for the portion of the first year of United Nations ownership following the date on which title vested. This would be on the grounds that title had not vested until after that year's taxable status date.

It is not necessary for present purposes to consider whether real property of an institution enjoying exemption under Section 4 of the Tax Law may nevertheless be taxed for the period between the date on which title vests and the first subsequent taxable status date. In so far as concerns the United Nations, its property is exempt from taxation even without the benefit of the declaration made by the legislature in Section 4, subdivision 20 of the Tax Law.

2. *Immunity from taxation is conferred by the United Nations Charter*

Paragraph 1 of Article 105 of the United Nations Charter provides:

"1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes."

It cannot be doubted that immunity from taxation is one of such "immunities as are necessary for the fulfilment of its purposes", conferred on the United Nations by Article 105 of the Charter. The necessity of immunity from taxation is too universally recognized by international law to require the citation of authorities. Without this immunity the independent functioning of the Organization would be compromised by the ability of Member Governments, or political subdivisions thereof, to impose taxes on the essential assets of the Organization. This would not only constitute enrichment of one Member Government at the expense of all others but (even as a power not exercised but only held in reserve) it would give the taxing authority a measure of indirect control over the workings of the Organization. "But if there is one certain principle", said the United Nations Conference

<sup>89</sup> See also section 17, paras. 206 and 207, below.

on International Organization at San Francisco in 1945, in recommending that Article 105 be included in the Charter, "it is that no Member State may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other". (Report of Commission IV on Judicial Organization, UNCIO, Documents, Volume 13, p. 705).

### 3. *The Charter supersedes inconsistent state and local law*

The Charter of the United Nations is a multilateral treaty entered into by the United States with other nations in the execution of the federal treaty power. As a treaty "under the Authority of the United States" the Charter is "the supreme Law of the Land; . . . anything in the Constitution or Laws of any State to the contrary notwithstanding". U.S. Const., Art. 6, Cl. 2.

As a treaty of the United States the Charter supersedes and overrides inconsistent state or local policy or law without exception, even on questions normally within state or local authority, such as, for example, matters relating to local real property. *Hauenstein v. Lynham*, 100 U.S. 483, and cases there cited. The Charter provision granting the United Nations tax immunity is therefore "as much a part of the law of every State as its own local laws and Constitution". *Ibid.*

### 4. *Article 105 of the Charter is self-executing*

This tax immunity was conferred upon the United Nations by the operation and force of the treaty (i.e., the Charter) itself. "No special legislation in the United States was necessary to make it effective." *Bacardi Corp v. Domenech*, 311 U.S. 150, 161 and cases cited.

Moreover, the legislative history of the Charter makes it clear that the requirement of Article 105 of the Charter is directly binding upon Member Governments and their political subdivisions, from the date on which the Charter became effective, and that the essential immunities which it provides are in no way dependent upon accession by a Member State to the Convention on the Privileges and Immunities of the United Nations. The Report of the Committee (of which the United States was a member) which drafted Article 105 of the Charter, as adopted by Commission IV on Judicial Organization and subsequently by the Plenary of the United Nations Conference on International Organization at San Francisco in 1945, stated that the first paragraph of Article 105, as already quoted, "sets forth a rule obligatory for all members as soon as the Charter becomes operative. . .

"The terms *privileges* and *immunities* indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, to the free functioning of its organs and to the independent exercise of the functions and duties of their officials: exemption from tax. . .", etc. (UNCIO, Documents, Volume 13, Doc. 933 (English) IV/2/42 (2), June 12, 1945).

The judicial and executive authorities of the United States have consistently given effect to Article 105 of the Charter.

In *Curran v. City of New York*, 77 N.Y.S. 2d 206 (1947) the Court, referring to the immunities clauses of the Charter, in particular Article 105, held:

"That these provisions, in a Treaty made under the Authority of the United States, are the law of the land, needs no argument. . .

"Also that without further action by Congress or the State, the immunities 'necessary for the fulfilment of its purposes', conferred upon the United Nations by Article 105, includes immunity from taxation." *Id.* at page 212.

In *Balfour, Guthrie and Co., Ltd. v. United States* 90 F. Supp. 831 (USDC, ND, Cal. 1950) the Federal Court had before it the related question as to whether Article 104 of the Charter, conferring legal capacity on the United Nations was self-executing. It held:

"As a treaty ratified by the United States, the Charter is part of the supreme law of the land. No implemental legislation would appear to be necessary to endow the United Nations with legal capacity in the United States."

The Attorney-General of New York, in an opinion of 26 October 1951 addressed to the State Liquor Authority, found that

"the conviction is inescapable that. . . the jurisdiction of the State may not be so exercised or its laws so enforced as to deny or interfere with the enjoyment by the United Nations within the Headquarters District of any privilege or immunity necessary for the unhampered exercise of its functions or fulfilment of its purposes. This limitation upon the State in the exercise of its right of sovereignty or by the consent of the State, given by its ratification on July 26, 1788, of the Constitution of the United States; for the privileges and immunities and the powers of the United Nations in the premises flow from and have their fountainhead in the multilateral treaty known as the United Nations Charter which, by express provision of the Federal Constitution, is declared to be the supreme law of the land, anything in the Constitution or laws of any State to the contrary notwithstanding.

"I think it is self-evident that any attempt to asset the applicability of the State Alcoholic Beverage Control Law as against the United Nations within its Headquarters District would tend to embarrass it in the exercise of its functions and would interfere with the enjoyment by it of privileges and immunities necessary for the fulfilment of its purposes; would be contrary to its Charter and to measures taken by the United States and the United Nations to give practical effect to the provisions thereof; and that, therefore, such State Law is not applicable as against the United Nations within its Headquarters District in the Borough of Manhattan."

### 5. *Conclusion*

It must be concluded from the foregoing that the United Nations Charter, as a part of the supreme law of the land, confers upon the United Nations the immunities necessary for the fulfilment of its purposes, without the requirement of any state legislation; that these immunities include exemption from real property taxes; and that the tax exemption became operative from the effective date of the Charter, without regard to the taxable status date under ordinary local practice.

Nothing in this conclusion is, in any case, inconsistent with the express terms of Section 4, subdivision 20 of the Tax Law. Indeed, the latter must to this extent be considered to be declaratory legislation enacted to provide administrative certainty for the assistance of state and city officials. For the Attorney-General, by an opinion of 29 January 1946, advised the Governor of New York that Article 105 of the Charter would be recognized in New York even before the proposed convention was executed, and that it would not be necessary to enact state legislation to implement the federal treaty unless the Governor thought it desirable of for reasons of clarity or otherwise.

168. The United Nations is believed not to have paid real property taxes, as distinct from charges for public utilities, on any of the premises it has occupied.

169. In 1962 the Syrian Council of State (Advisory Section) gave the following opinion regarding the exemption of UNRWA from municipal construction licence fees:

The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) asked leave of the municipality of Homs to build within the municipal limits, and the municipality demanded payment of the construction licence fee payable under Act No. 151 of 8 January 1938 concerning municipal taxation. The Agency objected, citing the Convention on the Privileges and Immunities of the United Nations, applied to Syria by

Legislative Decree No. 12 of 3 August 1953, as amended by Act No. 196 of 13 June 1960. The Ministry of Municipal and Rural Affairs sought the opinion of the Council of State. The Council, in an opinion of 16 December 1962 delivered by the plenary assembly of its advisory section, held that the fee was one of the "direct taxes" referred to in Article II, Section 7 (a), of the Convention, and that the Agency was therefore exempt. The Council pointed out that this term should not be interpreted according to Syrian law only but that account must also be taken of the meaning which the United Nations had attributed to it in drafting the Convention, since otherwise the text might be interpreted differently in different States Parties. Syrian legislation itself did not always draw a very clear distinction between a *tax* and a *fee*, and the municipal construction licence fee was a *direct tax* because it was levied directly for the benefit of the public funds, and the payer could not recover it from a third person. The draftsmen of the Convention on the Privileges and Immunities of the United Nations had intended to treat fees as, in principle, identical with direct taxes; since, after stipulating in Article II, Section 7 (a), that the United Nations and its property should be "exempt from all direct taxes", they had added: "it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services". Even if under Syrian Law the construction licence fee was not a direct tax, the term at issue must be interpreted in accordance with international law.<sup>84</sup>

(b) *Practice in respect of "charges for public utility services"*

170. As noted in sub-section (a) above, United Nations exemption from direct taxes does not extend to exemption from charges for public utility services. In addition to the treaty provisions referred to earlier, a number of international agreements specify that the premises of the United Nations shall be supplied "on equitable terms" with the necessary public services. In section 17 (a) of the Headquarters Agreement these services are defined as including "electricity, water, gas, post, telephone, telegraph, transportation, drainage, collection of refuse, fire protection, snow removal, *et cetera*". Section 24 of the ECAFE Agreement provides that, whilst ECAFE will be supplied "on equitable terms" with public services of this nature, the Government will be responsible for all charges in respect of their installation, maintenance and repair. No serious difficulty appears to have arisen over the interpretation of these provisions.

171. In 1958 a United Nations subsidiary organ reported that the host Government was seeking to obtain municipal taxes on premises leased to the organ. The local authorities stated that the taxes were applied towards the furnishing of municipal services, including street lighting, street cleaning, fire protection, anti-malaria measures, the removal of waste, and general services. In reply to the argument of the United Nations organ that it was exempt from the taxes since they were directly imposed and not a charge for public utilities, such as water or electricity, the local authorities declared that water and electricity were mere commodities, not public utility services, and that accordingly the non-exemption from public utility charges contained in the Convention implied that the Organization should pay for the whole of the services listed above. The Legal Counsel wrote to the Legal

Adviser of the organ concerned, examining the distinction between real property taxes (*qua* direct taxes) and public utility charges.

... The notion that water and electricity are not public utility services is wholly erroneous. Water and electricity are the types *par excellence* of public utility services, precisely those had in mind by the General Assembly in adopting the Convention. As you know, a public utility is a corporation, very often privately owned, though sometimes owned or controlled by a municipality or other governmental unit, but in either case impressed with a public interest which causes a close statutory supervision of the production and sale of the service or commodity in question. This supervision is ordinarily carried out by Public Utilities Commissions; I am sure it is not necessary to refer to the fact that the public utilities supervised by such governmental bodies in any of a large number of countries are principally gas and electricity, water and transport. For example, Quemner, *Dictionnaire Juridique* gives the following entry:

"Public utilities, public services corporation — services publics concédés (transports, gaz, électricité, etc.)."

I think it is clear that the Convention had specifically in mind the payment by the United Nations of water and electricity charges on the grounds that the costs as billed are no more than the *quid pro quo* for commodities or services received; since these would be payable to a private corporation like the price of any other sale made, it was logical that there should not be an exemption merely because the same service happened to be rendered by a municipality or municipally owned company.

A different situation prevails when we come to examine the other municipal services listed above. Whatever may be the advantage to the individual house-holder of the rendering of such services, it seems clear that these represent normal functions commonly thought of as falling within the responsibilities of municipal government. They are usually carried out by the municipality itself or at least paid for by the municipality out of its own budgeted funds obtained from real property taxation and not from prices charged in respect of the specific amounts of each separate service rendered. It is important to note that water and electricity services are charged for on the basis of units of measurement, such as the kilowatt hour in the latter case. The contrary is true in the case of the various services now under examination. The authorities in international law generally seem to make a distinction as to whether the services rendered by a municipality or other public agency are special ones for which a special charge is made, with definite rates payable by the individual in his character as a consumer and not as a general taxpayer according to fixed principles of real property taxation. (Thus, municipal taxation is normally by area and valuation of real property, not by the amount of street lighting furnished to a given frontage. In this manner, a leading international law case on the subject makes the distinction that "taxes and rates imposed by statute in general terms in respect of the occupation or the ownership of real property are not recoverable from diplomatic agents". In the Matter of a Reference as to the Powers of the Corporation of the City of Ottawa to Levy Rates on Foreign Legations, Supreme Court of Canada, 1943.) . . .

172. The major problem which has arisen regarding public utility charges has been in respect of United Nations use of transport facilities, in particular of airport facilities. The following extract from a note sent in 1963 by the Secretary-General to the Government of a Member State which had sought to levy fees for various airport facilities provided to United Nations aircraft, describes the legal position taken by the United Nations.

... In the view of the Secretariat of the United Nations, charges exacted by a Government upon aircraft for landing or parking

<sup>84</sup> *United Nations Juridical Yearbook 1962*, p. 291.

at its airport constitute a direct tax, in respect of which the United Nations is exempt pursuant to Section 7 (a) of the Convention on the Privileges and Immunities of the United Nations. That section provides that the United Nations shall be "exempt from all direct taxes". Such charges are levied for the mere fact of calling or stopping at an airport. They cannot be considered as "charges for public utility services" from which the United Nations, by the terms of the same Section 7 (a) of the Convention, will not claim exemption.

The term "public utility" has a restricted connotation applying to particular supplies or services rendered by a government or a corporation under government regulation for which charges are made at a fixed rate according to the amount of supplies furnished or services rendered. The "handling charges" actually levied at . . . Airport would fall into this category and, as may have been noted, the Secretariat has consistently refrained from claiming exemption from such handling charges. Similarly, the Secretariat will not claim exemption, for example, from payment of rental for hangar storage space or for electricity charges for the lighting of runways during night landing or take-off; these are in the realm of public utility charges.

The above-stated position of the Secretariat has been generally accepted by governments. For instance, in connexion with the operations of the United Nations Truce Supervision Organization, the United Nations had reached an agreement with the Government of Lebanon whereby Lebanon exempts the United Nations, in respect of its aircraft, from landing fees at the Beirut Airport while the Organization undertakes to pay storage-rental and night-lighting costs. The same principle was specifically acknowledged in the Agreement of 8 February 1957 between the United Nations and Egypt concerning the Status of the United Nations Emergency Force in Egypt. Paragraph 33 of this Agreement recognized the right of the Force to use the airfields in its area of operation "without the payment of dues, tolls or charges, . . . except for charges that are related directly to services rendered". (United Nations, *Treaty Series*, vol. 260, at pages 78-80). A similar provision may be found in the Agreement of 27 November 1961 between the United Nations and the Republic of the Congo paragraph 31 states: "*L'Organisation des Nations Unies a le droit d'utiliser les . . . aérodromes, sans acquitter de droits, de péages ou taxes, que ce soit aux fins d'enregistrement ou pour tout autre motif, à l'exception des taxes perçues directement en rémunérations de services spécifiés.*" (A/4986, page 11).

As concerns the feeling of the Government that the payments made were for actual services rendered, the Secretary-General wishes to emphasize that, both as a matter of principle and as a matter of obvious practical necessity, charges for actual services rendered must relate to services which can be specifically identified, described and itemized. Moreover, it follows that the charge would then differ for each aircraft or each landing according to some predetermined unit (such as a day, a night, the mere act of landing on the runway or parking on the apron, or the type of aircraft), then clearly the Organization is being subjected to a standard rate of assessment in the nature of a tax.

If, therefore, the Government, in the light of these criteria, should adhere to the views that the payments in question were for actual services, the Secretary-General would ask to be furnished (and the auditors would no doubt eventually require) an itemized account showing the specific services provided on each occasion, the cost of each service, and how the total was arrived at. The Secretary-General is satisfied that the submission of such a voucher would be normal practice wherever a party is billed for specific services. Thus, labour is normally charged by hours of work provided, electricity by kilowatt-hour, etc. On the other hand, if the charges have been established by fixed statutory or regulatory fee, it would seem evident that Section 7 (a) is applicable.

In the light of these considerations of legal principles and of the practice of States, the Secretary-General hopes that the Govern-

ment will be good enough to give the matter further sympathetic consideration and will be able to see its way clear to accepting the position that the United Nations should be exempt from landing fees, parking fees and user charges at airports in its territory in respect of aircraft in United Nations service."

173. Paragraph 33 of the UNFICYP Agreement<sup>85</sup> provides that the Force shall have the right to use airfields and other transport facilities "without the payment of dues, tolls or charges, either by way of registration or otherwise". Section 8 (b) of the ECA Agreement states that:

Aircraft operated by or for the United Nations shall be exempt from all charges, except those for actual service rendered, and from fees or taxes incidental to the landing at, parking on or taking off from any aerodrome in Ethiopia. Except as limited by the preceding sentence, nothing herein shall be construed as exempting such aircraft from full compliance with all applicable rules and regulations governing the operation of flights into, within, or out of the territory of the Empire of Ethiopia.

174. In the case of aircraft under commercial charter, the United Nations does not request exemption from landing or housing fees where, under the terms of the charter agreement, the amount of tax would not be passed on to the United Nations and any exemption would only accrue to the financial advantage of the private company. In all instances where there is a direct burden on the United Nations, however, it has claimed exemption. While the entitlement of the United Nations to this exemption has been challenged on occasions, the United Nations has not paid landing fees in any Member State.

#### *Section 15. Customs duties*

(a) *Imports and exports by the United Nations "for its official use"*

175. Under section 7 (b) of the General Convention the United Nations is declared

exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use.

Section 10 (b) of the ECLA Agreement, section 8 (b) of the ECAFE Agreement and section 5 (c) of the Agreement with Switzerland provide similarly. In Switzerland a printed form has been established by the Swiss authorities on which persons specifically authorized by the United Nations certify that a particular import is for official use; this certification is accepted as conclusive by the Swiss authorities.

176. In paragraph 23 of the UNEF Agreement the Government of Egypt recognized "the right of the Force to import free of duty equipment for the Force and provisions, supplies and other goods for the exclusive use of members of the Force" and of members of the Secretariat serving with the Force. A similar provision was contained in the corresponding agreements relating to ONUC and UNFICYP.<sup>86</sup>

<sup>85</sup> United Nations, *Treaty Series*, vol. 492, p. 76.

<sup>86</sup> Paragraph 16 (b), ONUC Agreement, United Nations, *Treaty Series*, vol. 414, p. 239, and paragraph 23, UNFICYP Agreement, *ibid.*, vol. 492, p. 70.

177. Provisions contained in two of the agreements concluded by UNRWA may also be noted. Article III of the Agreement between UNRWA and Egypt of 12 September 1950 states that:

1) *Les fournitures, approvisionnements, produits et équipements y compris les produits pétroliers destinés aux réfugiés en Palestine du Sud sous contrôle égyptien seront exemptés de tous droits de douane, taxes ou frais d'importation et d'exportation habituellement perçus par l'État ou par des administrations publiques.*

2) *Sous réserve des mesures concernant la sécurité et l'ordre public, seront exemptés de la visite et de la vérification des fournitures, approvisionnements, produits et équipements ci-dessus mentionnés.*

*Cette exemption pourra être retirée si la Douane constate qu'il en est fait abus.*

*De plus l'Office est exempté de la nécessité d'obtenir des permis d'importation en Égypte, des permis d'entrée en Palestine du Sud ou des autorisations de change pour ce qui concerne les matières ci-dessus.*

In article V of the Agreement between UNRWA and Jordan, signed on 14 March and 20 August 1951, exemption is granted in similar terms.

178. Government authorities have, in the great majority of cases, accepted without question that any goods being transported were for the official use of the Organization. Such problems as have arisen have been mostly over comestible articles such as food and drink. Thus an opinion from the Attorney-General of the State of New York was required in 1946 to enable the United Nations to import liquor, free of duty, for purposes of official hospitality. After citing Article 105 of the Charter and section 2 (d) of United States Public Law 291, the Attorney-General continued:

I am informed that, upon request from the United Nations to the Secretary of State, a shipment of liquor from Canada, consigned to United Nations in New York City, has been cleared for admittance without payment of customs duties or internal revenue taxes, but that it is being held in Warehouse pending the issuance of a release by the State Liquor Authority, and that the State Liquor Authority is unwilling to act without a ruling by me.

It appears also that the State Liquor Authority has permitted the entry of liquor imported by ambassadors for their personal use. Under the terms of Public Law 291 it appears that the United Nations is entitled to the same rights and immunities as a foreign government. If an ambassador, the representative of a foreign government, is entitled to import liquor free from State restrictions, United Nations would appear to have the same privileges.

Restricting this ruling to imports by the United Nations itself, to be used only for purposes of its own official hospitality, it is my opinion that the State Liquor Authority should recognize the rights conferred by Public Law 291 of the United States Congress, and permit the delivery of such liquor to the United Nations, upon request by the United Nations specifying the amount and nature of the shipment.

179. In 1959 the question was raised as to the right or privilege of information centre directors to import duty-free liquor for hospitality purposes. The Office of Legal Affairs advised the Office of Public Information as follows:

Under the Convention on the Privileges and Immunities of the United Nations, the directors of information centres, as officials of the United Nations, are of course not legally entitled to duty-free importation of liquor, which the General Assembly, in adopt-

ing the Convention, did not treat as necessary for the independent exercise of their functions in connexion with the Organization.

... A distinction, however, should be made between imports by the Information Centre for the official use of the Organization. Imports of liquor for official receptions, for example, should, by the terms of Section 7 (b) of the Convention on the Privileges and Immunities of the United Nations, be exempt from customs duties. This applies also to gasoline, whenever it is "for official use". As to what constitutes "official use", we believe it a matter for administrative regulation, which should conform to the restrictions prevailing at Headquarters. When the information centre imports such articles for such official use, it may itself properly request the Government for exemption from customs duties on the basis of Section 7 (b) of the Convention, and no request from Headquarters would be necessary.

180. The distinction referred to, namely that between the right of individual officials to import goods and the right of the Organization (or of officials on behalf of the Organization) to import goods, has been raised on a number of other occasions in connexion with the import of consumable articles.

181. In 1952 a host Government sought to confine the exemption from customs duties enjoyed by UNRWA to objects and materials required for administrative purposes only, as opposed to imports destined for its refugee programme in general. The opinion of the Office of Legal Affairs was given as follows, in a letter to the Legal Adviser of UNRWA.

We are not of the opinion that the contention of the Government that the provisions of Section 7 (b) of the Convention on the Privileges and Immunities of the United Nations are restricted to imports required for administrative purposes only can be legally justified. It is our view that the phrase "for its official use" in Section 7 (b) must be interpreted to include the importation of any goods, materials, foodstuffs or otherwise, which are used in and form a part of the official programme of UNRWA. The fact that such goods imported by the United Nations are thereafter distributed to individuals within the country in accordance with the purpose and aims of the programme instituted by UNRWA can hardly be regarded as negating the purposes of the exemption under this Section, when the very reason for the existence of UNRWA is to perform such functions, and not merely to consume administrative supplies.

The Government might be assisted by a reminder as to the motives of the General Assembly in recognizing the necessity of the customs exemption for the United Nations. First of all, any special charge upon the resources of the Organization or a subsidiary organ are a burden reducing its ability to carry out its international function. Secondly, all other Member States contributing to the budget of the programme will have the strongest grounds for complaint, because the payment of customs by the Agency merely constitutes an indirect payment by the other Member Governments into the treasury of a single State, which thus enriches itself not only to the detriment of the programme but from the resources of the other contributing States. Obviously, the work of UNRWA in itself provides assistance to States having refugees on their territory, and could hardly afford a basis for further payments directly to a single Government.

For this reason, any discussion with the Government on the meaning of Section 7 of the Convention must relate back to the criterion of necessity set up in Article 105 of the Charter, which the Convention merely implements. It should likewise be borne in mind that the General Assembly, in paragraph 17 of its Resolution 302 (IV), called upon the Governments concerned to accord to the UNRWA the privileges, immunities, exemptions and facilities which had been granted to its predecessor, United Nations

Relief for Palestine Refugees, together with all other privileges, immunities, exemptions and facilities necessary for the fulfilment of its functions.

182. It may be noted that, speaking before the Fifth Committee at its 982nd meeting, the Legal Counsel referred to another problem which had arisen in interpreting the meaning of the term "official use".

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.<sup>87</sup>

183. Lastly, on the grounds that the goods are not for official use, the United Nations pays duty in respect of all items imported for sale in the gift shop maintained by the United Nations in the Headquarters District.<sup>88</sup> The co-operative shops run at New York and Geneva for the benefit of staff and accredited representatives are also not exempt from customs or excise taxes.

(b) *Imposition of "customs duties... prohibitions and restrictions"*

184. As regards the position at United Nations Headquarters, under section 2 (d) of the United States International Organizations Immunities Act the United Nations is granted "in so far as concerns customs duties and internal revenue taxes imposed upon or by reason of importation, and the procedures in connexion therewith", the privileges, exemptions and immunities which are accorded under similar circumstances to foreign Governments. In accordance with the terms of this provision, the United Nations imports goods for official use at Headquarters without restriction and without paying customs or internal revenue taxes. As regards exports, in a few cases (chiefly certain medical supplies, narcotic drugs, and some items of technical equipment) the United Nations has to obtain a special licence from the United States Department of Commerce; such licences have been obtained without serious difficulty.<sup>89</sup> In 1962, however, an export restriction was introduced whereby the United Nations was required to obtain a licence from the Office of Export Control of the Bureau of International Programmes of the Department of Commerce, in respect of public information materials sent from the United States to certain countries. The United Nations protested against this requirement, pointing out that the restriction might cripple its information activities in the States concerned. Reference was made to the provisions of Article 105 of the Charter and to section 7 (b) of the General Convention. The United States authorities agreed to exempt the United Nations from the requirement that a licence be obtained in respect of the articles in question.

<sup>87</sup> Statement by the Legal Counsel before the Fifth Committee, document A/C.5/972. For summary see A/C.5/SR.982, paras. 1-8.

<sup>88</sup> See also section 17 (a), paras. 206 and 207, below.

<sup>89</sup> For further details of the position in relation to United States customs and excise duties see section 17 (a), paras. 206 and 207, below, in particular the list of taxes annexed to the letter from the Legal Counsel to the United States Mission of 10 April 1959.

185. The United Nations has experienced relatively little difficulty as regards the grant of exemption from "customs duties... prohibitions and restrictions", in accordance with the Convention, in the case of imports and exports made other than at Headquarters. On such occasions as problems have been presented (e.g. owing to an official embargo on goods originating from certain countries) the matter has usually been satisfactorily resolved in the United Nations favour, following representations made by the Organization to the responsible national authorities.

186. When customs duties have been paid by the importer, from whom the United Nations has then bought the goods, the United Nations has sought to obtain a refund, either directly, by means of a request to the Government concerned, or indirectly, by supplying suitable proof to the importer to enable him to do so, in cases where the Organization has bought at the duty-free price.

(c) *Sales of articles imported by the United Nations or by officials*

187. Section 7 (b) of the General Convention provides that articles granted exemption from customs duties by virtue of their importation by the United Nations "will not be sold in the country into which they were imported except under conditions agreed with the Government of that country".

188. Relatively little practice appears to have emerged under this provision. Most sales of articles imported by the United Nations have been of used office equipment or of used vehicles. The United Nations has usually made the satisfaction, by the purchaser, of any customs or similar obligation, a condition of the contract of purchase. This practice has usually been followed by operational bodies, such as UNRWA, which have on occasions disposed of sizable quantities of surplus or used articles. In Switzerland, under the *Règlement Douanier* of 23 April 1952, articles imported duty-free may not be sold within five years, except on payment of duty. Cars belonging to the Geneva Office may be sold after three years without payment of duty.

189. In 1964 the Legal Counsel advised the Legal Adviser of a United Nations subsidiary organ concerning the duty-free importation and sale on the local market of personal effects belonging to staff members. After referring to section 7 (b) the memorandum continued:

It can never have been the intention of the Convention on the Privileges and Immunities of the United Nations or of the agreement with the host country that conditions should be more severe than those for a private person in the country. Of course, a staff member should not place himself in a position of appearing to deal in imported articles even where he pays the customs, but where as in the present case there was a legitimate explanation for the importation of the article, it seems to us that you were perfectly correct in supporting the staff member's case with the host Government.

The procedure requested by the host Government, under which individual authorization of each sale would be required without reference to any objective standards, is not the type of condition which was envisaged. Such condition has not been imposed in any other country. The conditions which have been agreed are

those necessary to ensure that taxes are paid and otherwise that relevant laws and regulations are applied. Such conditions should not put the staff member in a position less favourable than that of a private person, nor should they be such as to negate the privilege of imported personal effects which is accorded by the Convention on the Privileges and Immunities of the United Nations and by the Status Agreement.

While conditions for sale must be agreed with the host country, it was not intended that such conditions should be unilaterally and arbitrarily established but that they should be negotiated with the purpose of protecting the legitimate interests of both parties, that is, to ensure the host country against the abuse of import privileges and to ensure the United Nations and its staff effective use of such privileges for the purposes that they were intended.

The question of the sale of official publications and of UNICEF greeting cards is considered in section 16 (a) paras. 192-198, below.

190. In the case of the UNEF, ONUC and UNFICYP Agreements, provision is made for the establishment of service institutes which may sell duty-free consumable goods to members of the Force concerned and to members of the Secretariat serving with the Force. Paragraph 23 of the UNFICYP Agreement<sup>90</sup> states that:

The Commander shall take all necessary measures to prevent any abuse of the exemption and to prevent the sale or resale of the goods to persons other than those aforesaid. Sympathetic consideration shall be given by the Commander to observations or requests of the Government concerning the operation of service institutes.

191. Paragraph 23 of the UNEF Agreement is closely similar. Paragraph 16 of the ONUC Agreement<sup>91</sup> provided that goods imported duty-free including those for sale to persons serving with the Force might not be resold to third parties except under conditions approved by the host Government.

### Section 16. Publications

#### (a) Interpretation of the term "publications" and problems relating to the distribution of publications

192. Under section 7 (c) of the General Convention the United Nations is declared:

Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Similar provisions are contained in a number of other agreements.<sup>92</sup>

193. The term "publications" has been widely interpreted to cover films and recording prepared by or at the request of the United Nations, as well as printed matter.<sup>93</sup> In an internal memorandum prepared by the Office of Legal Affairs in 1952 it was stated that

... 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

<sup>90</sup> United Nations, *Treaty Series*, vol. 492, p. 70.

<sup>91</sup> *Ibid.*, vol. 414, p. 239.

<sup>92</sup> Section 5 (e) Agreement with Switzerland, section 10 (c) ECLA Agreement, section 8 (c) ECAFE Agreement.

<sup>93</sup> See e.g., the statement by the Legal Counsel before the Fifth Committee at its 982nd meeting, quoted in section 15 (a), para. 182, above.

under the film rental agreements, so long as the United Nations is carrying out an official purpose in effecting the distribution.

194. It may be noted that the Agreement on the importation of educational, scientific and cultural materials,<sup>94</sup> which entered into force on 21 May 1952, provides in Article 1, paragraph 1, that:

The contracting States undertake not to apply customs duties or other charges on, or in connection with, the importation of:

...

(b) Educational, scientific and cultural materials, listed in annexes B, C, D, and E to this Agreement, which are the products of another contracting State, subject to the conditions laid down in those annexes.

Annex C (iv) reads as follows:

Films, filmstrips, microfilms and sound recordings of an educational, scientific or cultural character produced by the United Nations or any of its specialized agencies.

Thus both United Nations films and those produced by specialized agencies are expressly excluded from customs duties and other charges imposed in connexion with their importation.

195. In a memorandum prepared in 1953 the Office of Legal Affairs advised the Office of Public Information regarding certain aspects of the importation of films for distribution and sale in a Member State. After restating that films were to be considered as "publications" within section 7 (c) of the General Convention and that their importation for distribution constituted an "official use", the memorandum then dealt with the fact that some of the films were to be shown under rental agreements whilst others were to be sold.

... With regard to the rental agreements, the proviso in paragraph (b) of Section 7 will have no application, since it is our understanding that the United Nations retains title to films imported under such agreements throughout their duration.

With regard to the sale agreements we have the following comments to make. Firstly, notwithstanding the fact that under such agreements a transfer of title takes place, we do not think that they are of the nature contemplated by the proviso in paragraph (b) of Section 7. Thus, the transaction which is effected by these sale agreements, the subject matter of which is the United Nations films, is clearly distinguishable from an ordinary commercial transaction. The controlling objective of the United Nations film distribution programme, which is to disseminate knowledge of United Nations activities within the territory of the country concerned, remains unchanged notwithstanding the fact that the United Nations' agent in the country is necessarily compensated for the importation of the films. In this connexion it is the purposes for which the agreement is concluded which are the essential factor. Furthermore, in our understanding the present method of importing and distributing United Nations films is the only way of getting them on to the various circuits. The fact that the films must go through the ordinary and usual commercial channels in order to gain a place on the screens does not of itself change the official United Nations character of the transaction involved in the sale agreements. For the sale proviso in the Convention plainly applies after use by the United Nations has ended, whereas the sale in this case is merely a first step in bringing about the official use. . .

196. As regards the importation "for resale" of United Nations publications, the Legal Counsel gave the following opinion in an internal memorandum prepared

<sup>94</sup> United Nations, *Treaty Series*, vol. 131, p. 25.

in 1959; the particular case concerned the sale of the printed volumes of the United Nations Conference on the Peaceful Uses of Atomic Energy, which had been printed outside the United States.

... As a general proposition, I do not believe that the United Nations can acquiesce in exaction of customs duties on its publications by any Member Government. Since this is true as to all of the routine publications of the Organization, it would be particularly anomalous if the proceedings of so important a conference as that on Peaceful Uses of Atomic Energy were to encounter obstacles in their world distribution, directly contrary to the purposes for which the Conference was convened, simply because the special demand for the volumes brought them to the attention of governments.

The question of resale in the case of publications has no legal significance. It was assumed from the beginning that the normal channels of distribution of the printed publications of the United Nations would be through resale by sales agents.

197. After referring to section 7, paragraphs (a) and (b), of the General Convention, the opinion continued:

I do not consider that the mere fact that the sales agent may sell at a mark-up, or that our sales price may in some way take into account the agent's commission or profit, in any way affects the assumptions on which the exemption was based. I therefore leave aside for the present the question of any mark-up reasonably related to the distribution services rendered the Organization by booksellers or other commercial channels.

In addition to our own Convention, our publications are also protected from customs duties or other charges by the numerous States parties to the UNESCO Agreement on the Importation of Educational, Scientific and Cultural Materials, which in addition provides special facilities for the importation of the books and publications of the United Nations or of any of its specialized agencies (including licences and foreign exchange) (article II (c)).

In so far as the position in the United States is concerned, section 2 (d) of the International Organizations Immunities Act accords the Organization the same exemptions in respect of customs duties as are "accorded under similar circumstances to foreign governments". I would suggest that we treat this section, as interpreted by more than a decade of official practice, as conferring upon the United Nations as importer no less an exemption than that intended by the General Assembly in section 7 (c) of the Convention.

198. One of the most regular, as well as the largest, sale of United Nations publications is the annual sale of UNICEF greeting cards. The great majority of the hundred or more countries in which these cards are now sold permit their entry and sale without imposing any duty. The following is the list of countries which imposed customs duties on UNICEF cards in 1964: Argentina, Australia, Ceylon, Chile, Denmark, Gambia, India, Japan, Kenya, New Zealand, Spain, Sweden, Tanzania and the United States. Purchase tax was paid in the United Kingdom.

199. Distinct from the question of customs and similar restrictions placed on the import of United Nations publications is that of the possibility of more direct forms of control by way of governmental censorship or licensing.<sup>95</sup> A Member State requested the United

Nations Information Centre situated in its territory to stop showing United Nations films until these had been cleared with the Board of Censors. Following discussions with the host authorities, the United Nations Secretariat wrote to the Permanent Mission of the State concerned in 1966, setting out the basis on which exemption was claimed from this requirement:

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.

200. After citing these provisions of the Convention, the letter continued:

As you will appreciate, a demand to censor United Nations films would constitute interference as prohibited in section 3 of the Convention. As regards section 4, United Nations films are part of United Nations documentation, and censorship therefore would be in violation of this section which provides for inviolability of documentation "wherever located". United Nations films are also covered by the exemption under section 7 (c) since they are a part of United Nations publications.

Furthermore, if a government were to demand, in particular, the right to censor United Nations material and if that demand were complied with, the question would arise of a contravention of Article 100 of the Charter, under which a Member State is required to refrain from influencing the Secretariat in the discharge of its responsibilities and the latter is prohibited from receiving instructions from any authority external to the Organization.

The matter remains under discussion with the Government concerned.

201. It may be noted that in section 6 of the ECLA Agreement the freedom from censorship enjoyed in respect of correspondence and other communications is expressly extended "without limitation by reason of this enumeration, to printed matter, still and moving pictures, films and sound recordings". Section 6 (a) of the ECA Agreement and section 13 (a) of the ECAFE Agreement contain similar provisions.

(b) *United Nations copyright and patents*

202. The United Nations has obtained copyright protection, in cases where it has considered such protection desirable, through the registration of its publications and other works with the appropriate national authorities. In 1950-51 there was an exchange of correspondence with the United States Copyright Office regarding the legal capacity of the United Nations to effect copyright registration. The letter sent on behalf of the United Nations included the following passage:

With regard to the status of the United Nations and the specialized agencies under the United States Copyright Law (17 USC), there seems to be no doubt that these Organizations may be either authors or proprietors of works to copyright. They are legal entities capable of acquiring property, and may be "authors" under the definition in section 26, which includes employers in the case of works made for hire. When the United Nations or a specialized agency is "the author or proprietor of any work made the subject of copyright", it would appear to be entitled to copyright protection under the terms of the first sentence of section 9 and would not be subject to the proviso which is applicable only

<sup>95</sup> In 1962, the United States sought to require the United Nations to obtain a licence in respect of the export of public information materials to certain States. Following correspondence the United States acknowledged the United Nations exemption from this requirement; see section 15 (b), para. 184, above.

to citizens or subjects of foreign States or nations. The United Nations being an international person *sui generis* is not a citizen or a subject of a foreign State or Nations. Likewise the *raison d'être* for the reciprocity requirement in the proviso does not exist since the United Nations and the specialized agencies do not grant copyright protection of any kind.

While there should be no implication that the United Nations and the specialized agencies are to be considered "stateless persons", the reasoning of the Circuit Court of Appeals in *Houghton Mifflin Co. v. Stackpole Sons, Inc.* (104 F. 2d 306) does, as you suggest, apply equally to them. If, as was held by the Court in that case, a stateless person may be granted copyright protection without being subject to the reciprocity provision, then it would seem to me that *a fortiori* the requirement of reciprocity would not be applicable to the United Nations and specialized agencies.

This conclusion is further supported, as you suggest, by Public Law 291. The capacity to acquire property, which is broadly applicable to the right to copyright protection, is a privilege recognized by section 2, and under section 9 its grant is not to be conditioned upon any requirement of reciprocity which might exist in the case of foreign governments.

203. During the preparation of the Universal Copyright Convention in 1951, it was proposed that an article should be incorporated expressly permitting the United Nations to receive copyright protection in all contracting States. Although a proposal in this sense was not included in the Convention, the entry into force of the Convention in 1955, and its ratification by the United States, reduced some of the procedural and technical difficulties which the United Nations had previously experienced in connexion with copyright registration.

204. In 1956 the Office of Legal Affairs wrote to the Office of General Services setting out a number of general considerations with respect to the possible patenting of inventions developed by or for the United Nations.

... It should be noted first of all that a patent right is a property right. There are no United Nations regulations or rules in existence specifically applying to the administration of patent rights belonging to the United Nations, but the Financial Regulations and Rules include provisions dealing with the management and disposal of United Nations property in general. In the absence of any regulations or rules specifically relating to patents, those general provisions must be deemed applicable to the administration of patent right belonging to the United Nations.

Moreover, it is entirely possible that the United Nations might on future occasions wish to take out patents covering inventions belonging to it. This might be the case not only with respect to inventions which could constitute a significant source of revenue for the United Nations and which could thus reduce the contributions of member states, but also as regards inventions the exploitation of which the United Nations might wish to control for one reason or another.

The question thus arises as to whether it is necessary or desirable to adopt a general policy making inventions belonging to the United Nations generally available to the public. It will readily be seen that this may be desirable in some cases but not in others. It would thus appear that each case should be considered on its own merits.

#### *Section 17. Excise duties and taxes on sales; important purchases*

##### *(a) Excise duties and taxes on sales forming part of the price to be paid*

205. Section 8 of the General Convention provides that

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

Section 6 of the Agreement with Switzerland establishes a similar rule.<sup>96</sup>

206. In the case of the United States, the Headquarters Agreement does not deal with the exemption of the United Nations from excise duties and sales taxes. All exemptions are therefore dependent on enactments of either the federal, state or city authorities, except in so far as the terms of the Charter and of the General Convention represent obligations upon the United States under international law. In 1958 the question of the tax position of the United Nations was discussed in the Fifth Committee with particular relation to United States taxes affecting the United Nations. Both the United States representative and the Legal Counsel, speaking on behalf of the Secretary-General, made statements at the 704th meeting of the Fifth Committee during the thirteenth session of the General Assembly; in the light of those statements it was decided that further consideration should be deferred until the Secretariat and the United States Mission had had an opportunity to discuss outstanding issues. Accordingly, the Legal Counsel wrote<sup>97</sup> to the Legal Adviser of the United States Mission on 10 April 1959, *inter alia* listing the various taxes applicable to the United Nations.

... I should like to refer to our several discussions of the numerous questions relating to the application to the United Nations of excise taxes in the United States as raised by the Fifth Committee of the General Assembly at its 667th meeting. You will recall that, in accordance with statements which each of us made to the Committee at its 704th meeting, it was decided by the Advisory Committee and the General Assembly that consideration of these questions might best be deferred pending discussions to take place between the Secretariat and the United States Mission to the United Nations.

I have had prepared a list of various taxes affecting the United Nations in the United States, which does not purport, at least in any technical sense, to be complete but which might nevertheless serve informally as agenda items for our discussions. Accordingly, I should now like to suggest that you examine the enclosed list, make any additions or other proposals which you wish, and that we then arrange a meeting with a view to determining whether we cannot arrive at a common understanding as to the conclusions

<sup>96</sup> In the case of the economic commissions only the ECAFE Agreement contains a specific provision. Section 9 of that Agreement states: "The United Nations shall be exempt from excise duties, sales, and luxury taxes and all other indirect taxes when it is making important purchases for official use by the ECAFE of property on which such duties or taxes are normally chargeable. However, the ECAFE will not as a general rule claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, and cannot be identified separately from the sales price."

<sup>97</sup> This letter, and that sent by the Secretary-General on 9 September 1959, which is quoted below, effectively reproduce the substance of the statement made by the Legal Counsel at the 704th meeting of the Fifth Committee.

which could be reported, or the possible legal measures suggested, to the General Assembly. . .

Meanwhile, the following observations may be of interest. Tax provisions are listed either because of the specific interest in their application shown by members of the Fifth Committee or because they may have application to the United Nations in ways which might have been precluded by a United States accession to the Convention on the Privileges and Immunities of the United Nations. In a number of cases certain of the existing exemptions are noted, not because they have any direct bearing on the United Nations but because of their interest in indicating the policy of the tax or the degree of scope available to United States authorities in adjusting the application of the tax.

As pointed out in my statement to the Fifth Committee, the most appropriate legal technique for modifying the incidence on the United Nations of any given tax will vary according to its nature. Subject to settlement of any anterior policy considerations, agreed action could conceivably be taken by any of a number of means: simply by United States accession to the Convention, by amendment to the Headquarters agreement, by Headquarters Regulation, by state or federal legislation, or (most conveniently perhaps, in some cases) by common understanding, official interpretation or written ruling. I take it that it will be our natural desire to seek the most effective measures appropriate to the needs of the Organization by the simplest available legal devices. In this connexion you will recall that just prior to these points being raised in the Fifth Committee, the Secretary-General had asked me to take up with your Mission the particular question of the importation of liquor by the United Nations for service in the Delegates' bars as an official use of the Organization. This would, of course, need to be done under proper safeguards and at appropriate prices, as has now been suggested by some representatives on the Fifth Committee. Under none of the taxes set out in the enclosure, however, has any attempt been made to suggest the type of action which could or should be taken; this is on the theory that the list offers agenda items and not a brief to argue points in advance of our discussions. . .

#### INCIDENCE OF TAXATION IN THE UNITED STATES AFFECTING THE UNITED NATIONS

##### I. Excise Taxes

###### A. Federal

1. *Manufacturers excise taxes* on articles sold by manufacturer, producer or importer (Chapter 32, Internal Revenue Code of 1954; Part II, Excise Tax Technical Changes Act of 1958, 72 Stat. 1275).

###### (a) Relevant examples:

Motor vehicles, parts and accessories, tires and tubes; gasoline and lubricating oils; various household-type appliances, electric light bulbs; photographic equipment, parts and accessories; business machines.

###### (b) Present exemptions:

- (i) Statute (Excise Tax Technical Changes Act, Section 4221): sale for export to a state or local government, or to a non-profit educational organization for its exclusive use.
- (ii) Revenue Ruling: accredited diplomatic personnel, irrespective of treaty, who purchase from the manufacturer (Rev. Rul. 296, 1953-2 CB 325).

###### 2. *Retailers excise taxes*

(a) Application: 10 per cent, of sales price of numerous types of articles sold by United Nations Gift Centre or Souvenir Shop (Chapter 31, 1954 Internal Revenue Code; Part I, Excise Tax Technical Changes Act).

###### (b) Present exemptions:

- (i) As under 1 (b) (i) above, as to the vendee.

- (ii) As under 1 (b) (ii) above, for accredited diplomatic personnel on purchases from a retailer otherwise taxed.
- (iii) No exemption as to sales by United States (or by a United States agency unless a statute specifically exempts it).

###### 3. *Alcohol*

(a) Imposed on all distilled spirits and compounds (including perfumes) and wines and wine compounds in bond or produced or imported, or beer produced and removed or imported, within the United States (1954) Internal Revenue Code Chapter 51 as amended by Excise Tax Technical Changes Act).

###### (b) Exemptions:

- (i) Withdrawal for use of United States (Internal Revenue Code, Section 7510, 26 CFR 225.890).
- (ii) Withdrawal for export (Excise Tax Technical Changes Act, Sections 5053, 5062, 5247; "exportation" defined: 26 CFR 252.18).
- (iii) Miscellaneous technical, manufacturing and non-beverage exemptions (see, e.g. Excise Tax Technical Change Act, Sections 5003, 5214).

4. *Occupational tax*: retail dealers in liquors and beer (Excise Tax Technical Changes Act, Section 5121: \$54 per year — including organizations selling to their members: 26 CFR 194.37).

###### 5. *Tobacco*

(a) Imposed on tobacco (at 10¢ per pound), cigars (at 75¢ to \$20 per thousand), cigarettes (at \$3.50 — \$8.40 per thousand) etc. manufactured in or imported into the United States (Excise Tax Technical Changes Act, Section 5701, 26 CFR 270.60-62), the manufacturer or importer being liable for the taxes (Excise Tax Technical Changes Act, Section 5703), and each affixing the stamps before removal subject to tax (26 CFR 270.149 and .193, 275.138 and .182).

###### (b) Exemptions:

- (i) Shipment for consumption beyond the jurisdiction of the internal revenue laws of the United States (Excise Tax Technical Changes Act, Section 5704).
- (ii) Cigars and cigarettes imported by appropriate consular officers of staff for personal or official use (26 CFR 270.196, 275.185).
- (iii) Federal agencies and institutions for gratuitous distribution in the United States (26 CFR 295.50).

6. *Documentary stamp taxes*: Internal Revenue Code, Chapter 34 as amended by Excise Tax Technical Changes Act.

###### (a) Imposition (principally affecting Joint Staff Pension Fund):

- (i) Sales and transfers of capital stock (4 to 8¢ per \$100 of actual share value: Section 4321) and certificates of indebtedness (at 11¢ on transfer: Sections 4311 and 4331).
- (ii) Specific exemptions: fiduciaries and custodians (Section 4342), transfers by operation of law (Section 4343).
- (iii) Policies and indemnity bonds issued by foreign insurers (at 1 to 4¢ per premium dollar: Section 4371).
- (iv) Specific exemptions: policies signed or countersigned by agent of insurer in the state where insurer is authorized to do business (Section 4373).

###### (b) General exemptions:

- (i) Instruments issued by federal, foreign, state or local government and certain domestic associations (Section 4382).
- (ii) United States and its agencies are not liable for stamp tax on instruments to which it is a party, but tax may be assessed against any other party liable therefor (Section 4384).
- (iii) Diplomatic personnel are exempted from documentary stamp taxes as taxes the legal incidence of which would otherwise fall to them (Rev. Rul. 296, 1953-2 CE 325).

### B. New York State

1. Exemption: United Nations not required to pay "excise and sales taxes imposed by the State upon the sale of tangible personal property" acquired for its official use (New York Tax Law, Section 5-e).

2. Deferred applications: exemption inoperative until U.S. shall accede to Convention on Privileges and Immunities of United Nations (Laws 1948, e.745, Section 2).

3. State taxes on such sales of tangible personal property.

#### (a) Gasoline tax:

(i) Imposition: on excise tax of 6¢ per gallon on sales within the State by any distributor (New York Tax Law, Section 284); payable by the distributor but borne by the purchaser (Section 289-c).

(ii) Exemption: Sales "under circumstances which preclude the collection of such tax by reason of the United States Constitution and of laws of the United States enacted pursuant thereto." (Section 284); consular officers (1938, Op. Atty. Gen. 336); state, municipalities, public bodies, federal instrumentalities (various Attorney General opinions).

#### (b) Cigarette tax:

(i) Imposition:

(1) "A tax on all cigarettes possessed in the State by any person for sale", whereby the "sales of cigarettes are subject to tax" and the stamp-affixing agents as "liable as taxpayers" (New York Tax Law, Section 471) at 5¢ per pack; and other tobacco products at 15 % of wholesale price.

(2) Alternative use tax "on all cigarettes used in the State by any person" (Section 471-b).

(ii) Exemption: sales to United States or "under circumstances that this State is without power to impose such tax" (Section 471).

4. State taxes otherwise exempted:

(a) *Alcoholic beverage tax* (New York Tax Law, Section 424) : subject to refund (under Section 434) to the United Nations pursuant to opinion of Counsel of State Department of Taxation and Finance dated 19 August 1952 as to alcoholic beverages sold in restricted bars and restaurants in the Headquarters District, on the ground that such sales are for official purposes and the Organization is exempt from taxes incurred in connexion with its official functions.

(b) *Alcoholic beverage retail licence fees* (New York Alcoholic Beverage Control Law, Sections 56, 66, 83): exemption established by Opinion of Attorney General of 26 October 1951 on the basis of Article 105 of the Charter.

5. Additional State tax not specifically exempted: *stock transfer tax*.

(a) Imposition: on all sales or transfers of stock, at one to 4¢ per share (New York Tax Law, Section 270).

(b) Exemptions: technical exemptions similar to the federal (Sections 270, 270-b, 270-c).

### C. New York City

#### 1. Cigarettes

(a) Imposition on sale and use in the City in terms similar to the State cigarette tax, *supra*, (New York City Administrative Code, Section D 46-2.0).

2. *Cigars and tobacco*: new: Presumably in preparation.

#### 3. Retail liquor licensee tax

(a) Imposition: on privilege of licensee of State Liquor Authority to sell liquor, wine or beer at retail within the City, annually, at 25 % of State licence fees (Administrative Code, Section 46-2.0).

(b) Exemption: United Nations (Administrative Code, Section F 46-3.0, para. 3).

## II. Customs Duties

A. *Imposition*: "Except as otherwise specially provided. . . upon all articles when imported from any foreign country into the United States" (Tariff Act of 1930, 19 USC 1001): Dutiable list being too extensive for specific examination, the following can be noted:

1. Tobacco products (Schedule 6).

2. Spirits, wine and other beverage (Schedule 8).

3. Gift Centre or Souvenir Shop merchandise in general.

### B. Exemptions

#### 1. United Nations

(a) Statute: "As concerns customs duties and internal revenue taxes imposed upon or by reason of importation" the exemptions "accorded under similar circumstances to foreign governments". (International Organizations Immunities Act, Section 2d, 22 USC 288a (d)).

(b) Regulations: The statutory "free entry privileges" are further defined as covering "property" of the Organization "upon the receipt in each instance of the Department's instructions which will be issued only upon the request of the Department of State". (19 CFR 10.30a (b)).

(c) Practice: Certification by the United Nations for the purposes of the departmental instruction required in the above regulation has always extended to alcoholic beverages under the phrase "for the official use of the United Nations", but the Organization has limited its application of this term to use in its official entertainment.

(d) Ruling: The exemption of the Organization does not include articles manufactured abroad, imported by a domestic corporation and sold to the United Nations, the former being liable for the excise tax on the sale (Special Ruling of 17 February 1955, CCH Standard Federal Tax Reporter, Supplemental Volume, paragraph 48, 274).

2. Permanent Representatives of Member States and agreed resident members of their staffs (per Headquarters Agreement, Section 15): "The privileges of importing without entry and free of duty and internal revenue tax articles for their personal or family use" (19 CFR 10.30b (b)).

3. Special merchandising situations (e.g. United Nations Gift Centre, Souvenir Shop)

(a) Exemption from customs duties or internal revenues taxes on importation does not extend to importation by an entity not itself forming part of the United Nations (e.g. United Nations Cooperative, WFUNA).

(b) United Nations has not had occasion to claim the privilege on importation by the Organization of its property if intended for resale.

207. This letter was followed by one dated 9 September 1959 from the Secretary-General to the Permanent Representative of the United States.

. . . I have the honour to refer to the 667th meeting of the Fifth Committee of the General Assembly in which a variety of questions were raised concerning the application to the United Nations or in the United Nations Headquarters District of United States excise taxes or, in certain situations, customs duties. It will be recalled that, in accordance with statements made to the Committee by the representative of the Secretary-General and the representative of the United States at the 704th meeting, it was decided that the legal, financial and policy questions involved should first be the subject of discussions between the United Nations Secretariat and the United States Mission to the United Nations, prior to

the submission of recommendations to the Advisory Committee on Administrative and Budgetary Questions and the General Assembly.

After preliminary study by both parties, all specific points raised, and the incidence in general of United States excise taxes on the United Nations, were thoroughly examined in the course of joint meetings held at the United Nations on 11 and 12 June 1959. The following brief survey will summarize the problems reviewed and the conclusions I have reached as a result of this review. It has seemed best to submit my views on all points to you in the first instance, in order that any report made to the Advisory Committee may take into account any conclusions, legal problems, or practical prospects which their consideration by your Government may permit.

#### A. *Manufacturers excise taxes*

1. Federal manufacturers excise taxes apply to a considerable variety of articles regularly purchased by the United Nations (Chapter 32, Internal Revenue Code of 1954; Part II, Excise Tax Technical Changes Act of 1958, 72 Stat. 1275). Examples would be motor vehicles, parts and accessories, tires and tubes; gasoline and lubricating oils; certain appliances and electric light bulbs; photographic equipment; and business machines (including rentals). As a technical matter there is no specific legislative provision for the exemption of international organizations (apart from the general abatement of the tax on all sales for export) and, since the tax is assessed against the manufacturer and thereafter forms a part of the price to be paid, it would not be automatically exempted either by regulation operative within the Headquarters District under the authority of Section 8 of the Headquarters Agreement between the United Nations and the United States of America or by United States accession to the Convention on the Privileges and Immunities of the United Nations, Section 7 of which exempts the Organization from all direct taxes.

2. On the other hand, it is my conclusion from the joint discussions that there is a strong case for urging some appropriate form of action to extend the exemption to the United Nations. The following reasons seem persuasive:

(a) In determining the details of the application of Article 105 of the Charter, as authorized by that article, the General Assembly has established the policy that, while the United Nations will not, as a general rule, claim exemption from excise and sales taxes which form part of the price to be paid, nevertheless, when it is making important purchases for official use of property on which such taxes have been charged, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of the tax. This principle has been set out in Section 8 of the Convention on the Privileges and Immunities of the United Nations and has become a regular element in the customary practice of the States Parties. At the time of the adoption by the General Assembly of this Convention there already existed United States legislation which information placed before the General Assembly described as containing "95 per cent", of the substance of the Convention. Unfortunately, however, the International Organizations Immunities Act (59 Stat. 669) has no provision equivalent to Section 8 of the Convention. Considering the number and value of important purchases which the Organization must make in the country of its Headquarters, this omission is of consequence. Pending accession by the United States to the Convention, it therefore seems desirable that means be found for the host Government to be placed on the same footing in respect of the remission of excise taxes as other States Members. The United Nations attaches great importance to the principle of remission because it is an equitable one designed to equalize the procurement costs of the Organization throughout the world, and the consequent charges upon Members.

(b) Diplomatic personnel of the Permanent Missions of Member States to the United Nations who purchase from the manufacturer

are exempted from the payment of these federal excise taxes. (Rev. Rul. 296, 1953-2 CB 325). It would not seem logical for the United Nations to pay United States taxes, the financial burden of which falls on all Members, where the same purchases would not be taxed if made by a resident representative of a Member, and that by reason of his accreditation to the United Nations. (It may also be permissible to observe that the existence of the revenue ruling testifies to the power to exempt such transactions.)

#### B. *Retailers excise taxes*

3. These taxes are assessed against the retailer on the sales price of a variety of articles, some of which are sold by the United Nations Gift Centre or Souvenir Shop (Chapter 31, 1954 IRC; Part I, Excise Tax Technical Changes Act). Diplomatic staff of missions to the United Nations enjoy the exemption under the same ruling as that cited immediately above, but there is no exemption for sales by the United Nations. The Legal Counsel of the United Nations believes that in certain circumstances a regulation authorized by Section 8 of the Headquarters Agreement, being operative within the Headquarters District where such transactions take place, could bring about the exemption of these taxes. On the other hand, representatives of the United States have pointed out that a large majority of the purchasers are members of the American public who themselves have no claim to the exemption of a tax they would pay on a similar purchase made outside of the Headquarters District, while the diplomatic staff of missions can already obtain the exemption when purchasing here; and that a question of public relations and of competition with local merchandising might at some point arise. In reply to these considerations some representatives on the Fifth Committee have felt that an element of principle militating against tax collection on behalf of one Member State within the Headquarters District was involved.

4. I have reached the conclusion that for the present no recommendation should be made as to exemption of retailers excise taxes. This view is based not only on the difficulty of weighing the competing considerations mentioned in paragraph 3 above but also and specially because the United Nations still has under review the question whether these services in the public areas of the General Assembly building should be operated by the Organization itself or by another entity, as well as the degree of emphasis to be placed on the various functions fulfilled by these services (whether revenue, the introduction of products and handicrafts from less developed areas of the world, or other official considerations). The same conclusion and reasoning apply to customs duties on articles imported for sale by the Gift Centre or Souvenir Shop.

#### C. *Sale of alcoholic beverage within the Headquarters*

5. When the United Nations purchases alcoholic beverages on the United States market there has already attached to them an internal revenue tax, and no relevant exemption is provided by statute (Chapter 51, Internal Revenue Code of 1954, as amended by Excise Tax Technical Changes Act of 1958). On the other hand, when the Organization imports such supplies for its "official use", it is exempted from "customs duties and internal revenue taxes imposed upon or by reason of importation" (International Organizations Immunities Act, Section 2 (d); 19 C.F.R. 10.30). It has never been doubted that the official entertainment of the United Nations, such as a reception given by the Secretary-General, constitutes official use, and for this purpose the Organization imports alcoholic beverages free of duty, certifying, in accordance with a long-standing arrangement with the United States, that they are for official use. The question was posed in the Fifth Committee, however, as to why the United Nations was not entitled to the same benefits with regard to the alcoholic beverages which it uses in operating the bars in the Delegates' Lounges and the Delegates' Dining Room. A resale by the United Nations is, of course, involved, but this takes place in restricted facilities operated

for the convenience of delegations whose resident members are themselves entitled to customs privileges.

6. (a) I have concluded on the basis of the joint discussions that the existing arrangement could and should be extended to cover the importation by the United Nations of alcoholic beverages which it uses for the operation of these official facilities, and that the United States should therefore be asked to acquiesce in the Organization's henceforward certifying such imports as being for its official use. The following arguments and advantages give strong support to this procedure. The facilities in question were installed in the United Nations Headquarters District as an essential service to which delegations rightly consider themselves entitled, and one which greatly assists them in the convenient conduct of their work within the Headquarters. Their operation is therefore in name and in fact an official use by the United Nations. The installations are not only confined to the Headquarters District but also are within the restricted delegates area. While it is not claimed that members of the public do not have an opportunity, within relatively narrow limitations and close controls, to use these facilities, there is no question but that the great majority of purchasers of alcoholic beverages are delegates and others in official relation with the Organization. Security guards maintain a strict surveillance at all doors giving entry to the delegates area in order to prevent public access; visitors to the bar must be guests of delegates; those to the Dining Room must either be guests or specifically admitted on visits officially authorized by the United Nations. Guards also maintain a watch within the reserved areas as well as at the entrances.

(b) The recommended procedure would have the advantage of merely extending an existing arrangement — by which the United Nations already certifies to the Department of State the official use intended for the supplies it imports — to this additional branch of its operations. Because the proposal would be confined to imported supplies within Section 2 (d) of the International Organizations Immunities Act, no exemption would now be requested from the excise taxes on domestic production of alcoholic beverages, which presumably would require legislative action.

(c) The result would be conducive to the achievement of a basic principle of the General Assembly in tax matters, that of equity among the Member States. The sale of alcoholic beverages in the delegates' service facilities would continue at present prices, the more so as the Organization would neither desire to establish a competitive position disadvantageous to similar commercial facilities in the vicinity nor to increase its own security requirements by tempting members of the general public to seek an entry. The equivalent of the present United States taxes would therefore, as an incidental revenue advantage, rebound to the benefit of all Members proportionately to their contribution to the expenses of the Organization and not as, some representatives have pointed out, to the host Government alone by virtue solely of the Headquarters' happening to be on its territory.

(d) The procedure would to a considerable extent eliminate a legal anomaly, the State and federal positions having been heretofore inconsistent. On the basis of its Attorney General's opinion of 26 October 1951, firmly recognizing the official nature of these facilities, the State of New York has for many years remitted to the Organization the State taxes imposed upon the alcoholic beverages sold in the Headquarters District. For the same reason the State does not apply its licensing laws to these facilities nor New York City its sales tax on the transactions here.

(e) The result would likewise be generally consistent with the procedure at UNESCO Headquarters in Paris, where the French Government has authorized the tax-free resale of domestic alcoholic beverages in the restaurant, cafeteria and bars operated by UNESCO within its Headquarters and restricted to UNESCO and other international organization personnel, delegates and other representatives of organizations in official relation with UNESCO.

(f) The arrangement would simplify and perfect the control and audit procedures by which the United Nations at present assures that no portion of its liquor stocks departs from authorized channels. Invoices are kept at Headquarters in such form that an audit can at any time establish the amounts purchased, the amounts consumed, and the amounts on hand. As a special measure under Section 9 of the Headquarters Agreement, the entry of New York State alcoholic beverage control inspectors into the Headquarters District is invited in order that they too may verify that there is no diversion of the supplies on which the State reimburses its taxes. Heretofore, however, the Organization has had to maintain two separate stocks, that for its official functions and therefore exempted from federal duties on the one hand, and on the other hand that for resale in its Delegates' bars and restaurant. This has resulted not only in administrative complexity but also in the necessity on the part of the delegations, when giving receptions at Headquarters through the use of the United Nations' catering facilities, to deliver to the United Nations their own duty-free liquor supplies and later pick up the left-overs. The new procedure would centralize the United Nations stocks and therefore tighten controls, to the advantage both of the Organization and presumably of the host Government as well. In substituting a single bulk purchaser and a simple billing transaction for the present large number of purchasers, and eliminating the physical movement back and forth of duty-free supplies (with the present risk of losses or diversions in transit), the new procedure would offer the host Government a stricter enforcement situation without any corresponding reduction in revenue, since the present large number of Delegation purchasers enjoy the customs exemption in any case.

#### D. Tobacco

7. The tax position on cigars, cigarettes and tobacco is not dissimilar to that of alcoholic beverages, as stated in paragraph 5 above (Internal Revenue Code of 1954, Chapter 52, as amended by Excise Tax Technical Changes Act of 1958). A number of key factual elements do differ, however. Sales in the Headquarters District are not confined to the delegates' facilities but are in large proportion also made at the counter at the entrance to the general staff cafeteria. Thus, either the exemption would have to extend to any sales within the Headquarters District, or, if confined to the delegates' facilities, would require the Organization to maintain and control two separate stocks of tobacco products. There is also a difference in relation to the argument, very relevant in the case of alcoholic beverages, that members of Missions to the United Nations are entitled to the duty-free privilege in any case and ought also to be able to enjoy it at the Headquarters of the Organization: cigars and cigarettes are by nature portable and the delegates can carry their own duty-free supplies when they come to the Headquarters. Moreover, if no amending legislation were to be requested, the exemption would apply only to imported tobacco products and therefore the many popular domestic brands of cigarettes would in any case be excluded. I have therefore decided to refrain from making any request looking to a tobacco tax exemption in the Headquarters District at the present time.

#### E. Documentary stamp taxes

8. These taxes are imposed upon the sales and transfers of capital stock and certificates of indebtedness (Internal Revenue Code of 1954, Chapter 34, as amended by Excise Tax Technical Changes Act). They constitute direct taxes on the United Nations, impinging to some extent on the United Nations Treasury and to a considerable extent on the operations of the United Nations Joint Staff Pension Fund. On the basis of the joint discussions I have concluded that the transactions of the Organization should be exempted from the documentary stamp taxes. If the United States were a party to the Convention on the Privileges and Immunities of the United Nations, the Organization would be exempted by

its Section 7 (a), as it is in other States Members of the Organization. The tax constitutes a direct burden on the Organization to the advantage of a single Member. Moreover, the objection stated in paragraph 2 (b) above applies equally to these taxes: it is illogical that the members of Missions should enjoy an exemption by reason of their accreditation to the United Nations when that Organization is denied the exemption on its own official transactions.

#### F. Conclusion

9. I should be grateful to receive from you an indication of the action which your Government might contemplate on each of the above proposals in order that I may report to the Advisory Committee on Administrative and Budgetary Questions, which in turn will wish to report to the fourteenth session of the General Assembly in accordance with the procedure suggested in the 704th meeting of the Fifth Committee. . .

208. At the fourteenth session of the General Assembly the Legal Counsel informed the Fifth Committee of the steps taken; in 1960 and in 1962 he spoke again, noting that, although negotiations had been conducted in a spirit of mutual goodwill no substantive results had been achieved.<sup>98</sup> Except that the United Nations has now been accorded exemption from New York State and City tobacco tax, the position in regard to excise and similar taxes in the United States thus remains as stated in the two letters quoted above.

209. The position in other countries has, in general, been less complicated than in the United States and has usually involved the application of a single tax in respect of a particular transaction. In Switzerland all articles imported for official use are exempt from turnover taxes and statistical charges; in addition the United Nations is exempt from stamp duty on official documents and from taxes on its financial assets or on any income derived from them.

#### (b) Important purchases

210. The question whether particular purchases are "important" within the meaning of section 8 of the General Convention has usually been determined by reference either to the quantity of goods purchased (or on occasions, to the fact that the goods were purchased regularly, thus forming a large purchase in the aggregate) or to the large amount paid. In 1953 the Office of Legal Affairs summarized its interpretation in a memorandum sent to a United Nations subsidiary organ, in the following terms:

. . . Purchases may be said to be important when they are made on a recurring basis or involve considerable quantities of goods, commodities or materials. Moreover, any item in question may well constitute an "important" purchase where the expenditure to be made is considerable. Further, in all such cases weight is to be attached to the intent of the General Assembly in unanimously adopting the section, together with the rest of the Convention. Thus it was felt on the one hand, that the Organization should not seek exemption with regard to purchases which were both irregular and of minor importance. On the other hand, it was intended that Section 8 should protect the assets of the Organiza-

tion from such taxes whose incidence would be specially heavy and constitute an undue burden upon it.

211. A Special Fund project was required to pay customs duties and taxes on gasoline used for the operation of its vehicles and other equipment. The Office of Legal Affairs advised that:

. . . Since the vehicles, generators and pumps appear, according to the letter of the Project Manager, to be operated for the project, the gasoline imported for their operation would obviously be for the official use of the Special Fund and therefore of the United Nations. It should be exempt from customs duties and taxes levied on it. If the amount of the tax figures on the invoice separately from the price, it is a "direct tax" on the Special Fund within the meaning of Section 7 (a) of the Convention. If, on the other hand, the tax forms a part of the price to be paid, the Special Fund would be entitled to claim remission or return (or exemption) in virtue of section 8 of the Convention. Since the Project consumes a large amount of gasoline in proportion to its scope, and since the base price is estimated to total \$14,000 —, with excise taxes at \$15,000, —, there can be little doubt that the requirement that the purchases be "important" is fully met.

In Switzerland a purchase is regarded as "important" if the total purchase price is over 100 Swiss francs.

#### (c) Remission or return of taxes paid

212. A number of arrangements have been made, in some cases culminating in legislative or administrative enactments on the part of national authorities, to enable the United Nations to obtain the remission or return of taxes paid in accordance with section 8 of the General Convention. Thus the Canadian Order in Council, P.C. 3766 of 25 August 1948, for example, grants authority

for the refund or remission of sales and excise taxes imposed under the Excise Tax Act on goods supplied to, and services performed, in Canada for the United Nations when the charges for such goods and services are made directly to the United Nations and not to individuals.

213. In the case of the United Kingdom, the United Nations was notified in 1953 that certain government departments had been specially authorized to supply goods required by the United Nations and the specialized agencies for official use, without the addition of purchase tax to the selling price.

214. In the case of the United Nations Office at Geneva, the procedures adopted were described by the Deputy-Director of that Office as follows:

. . . The arrangement we have with the Swiss authorities is a simple one. In the first instance we pay the tax (*impôt sur le chiffre d'affaires*) where it is included in the purchase price charged in the invoice, or, shown as a separate item therein. Periodically, about once each month, we claim reimbursement of the tax from the Swiss authorities by sending them copies of all our payment vouchers where tax has been paid. If the tax has not been shown as a separate item in the invoice, but is known to be included, the Swiss authorities themselves calculate the amount of the tax. In practice, we do not claim refund of the small amount of tax included in purchases of less than 100 Swiss francs.

Of course, in the direct importation by the United Nations of supplies, etc. for its official use, we do not pay customs duties or the "*impôt sur le chiffre d'affaires*".

215. In an exchange of notes dated 26 November 1954, Lebanon undertook to reimburse UNRWA in respect

<sup>98</sup> The statements by the Legal Counsel were made at the 748th, 778th and 982nd meetings of the Fifth Committee, at the fourteenth, fifteenth and seventeenth sessions of the General Assembly respectively.

of all duties and taxes paid for fuels, alcohol and cement. The provision in question reads as follows:

1. *Les mesures appropriées seront adoptées par le Ministère compétent pour que soient remboursés à l'Office, selon une procédure simplifiée, tous les droits et taxes afférents à la consommation de carburants liquides, d'alcool et de ciment (Article II, Section 8 de la Convention sur les privilèges et immunités des Nations Unies). Au besoin et dans le même esprit, cette réglementation pourra être appliquée à d'autres produits dans le cadre de la Convention.*

2. *Les sommes afférentes à la consommation passée desdits produits seront remboursées à l'Office sur la base des pièces comptables nécessaires, dont la plupart ont déjà été déposées auprès des Autorités compétentes.*

216. In Presidential Decree No. 698, dated 15 May 1954, the Syrian Government also agreed to grant the United Nations exemption from taxes on inflammable materials on the basis of section 8 of the General Convention.

### CHAPTER III. — PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS IN RESPECT OF COMMUNICATION FACILITIES

#### Section 18. Treatment equal to that accorded to Governments in respect of mails, telegrams and other communications

217. Section 9 of the General Convention declares that:

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 communications; 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.

Similar articles are contained in other international agreements.<sup>99</sup>

218. The provisions of section 9 have in general been well observed. It may be noted that 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 is allowed free postage within the country. In Mexico the matter is 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.

219. In El Salvador a similar franking privilege was given in 1961; in the official notification sent by the Director-General of Posts express 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 this privilege.

220. The International Telecommunication Convention which was adopted at Atlantic City in 1947 provided that telegrams and telephone calls sent by the United Nations should be treated as though sent by a Government. The assimilation to Government telegrams and telephone calls was made in the following terms:

#### Article 36

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.

Article 45 gives "absolute priority" to "distress calls and messages".

Annex 2, giving a definition of terms used in the Convention, 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.

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

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

Difficulties arose, however, over the question of which bodies or offices constituted subsidiary organs of the United Nations. Following 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 made by them were therefore entitled to governmental treatment, as having been made on behalf of the Secretary-General, without being specially listed. In the Buenos Aires Convention, adopted by ITU in 1952, the earlier definitions clause was amended so as to include under "Government Telegrams and Government Telephone Calls" those sent by:

The Secretary-General of the United Nations, the Heads of the principal organs and the Heads of the subsidiary organs of the United Nations.

222. However, in the Geneva Convention of 1959 this definition was changed again 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". Nevertheless, apart from this problem of definition, it is believed that United Nations telegrams and telephone calls (unlike those of the specialized agencies) now receive treatment at least as favourable as that given to government telegrams and telephone calls. As regards priority (the only aspect covered expressly in the Telecommunication Convention) it may be noted that, under the provisions of chapter XVII,

<sup>99</sup> Article III, ECLA Agreement, sections 11-13, ECAFE Agreement, sections 5 and 6, ECA Agreement. It may be noted that in section 7 of the Agreement with Switzerland the words "in conformity with the International Convention on Telecommunications" are added at the end of the first sentence.

article 62, paragraph 7, of the Telegraph Regulations, as revised at Geneva in 1959, a special priority, over and above that afforded to Government telegrams, is granted to United Nations telegrams which are sent by the Secretary-General, the Presidents of the Security Council and the General Assembly, and by certain other officials, in connexion with the application of the provisions of Chapters VI, VII and VIII of the United Nations Charter. 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. Where, in a particular case, no government rate applies in the case of telegrams sent between two countries, the United Nations has accordingly paid the normal rate; it appears that in no case has it paid taxes in respect of its telecommunications.

223. The United Nations is not aware of any acts of censorship being applied by national authorities to its official correspondence and other communications. Questions relating to restrictions on United Nations publications are dealt with in section 16 (a), paras. 192-201, above.

*Section 19. Use of codes and dispatch of correspondence by courier or in bags*

224. As stated in section 10 of the General Convention, the United Nations has 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.

The United Nations has used codes in cases where it considered this advisable. No legal problems appear to have arisen from this usage.

225. Although the United Nations has used couriers, the dispatch of communications in bags has been much more frequent; in each case the United Nations has received full diplomatic privileges and immunities. A few incidents have occurred, however, when government officials (usually minor officials, acting in error) have opened United Nations bags. Writing to the Legal Adviser of a United Nations subsidiary organ after an incident in which customs' authorities had opened a sealed pouch which was being carried in a United Nations vehicle, the Legal Counsel 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 proved 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.

226. In 1962 a Member State granted permission for the establishment of a pouch service between its capital and United Nations Headquarters on the condition that, in case of doubt, the Government might open the

pouch in the presence of a United Nations official. The Government based its position on the ground that it had not signed the General Convention. The United Nations stated that it found the condition unacceptable. It also pointed out that, under the standard Technical Assistance Agreement which the Member State had concluded earlier, the State had agreed to apply the General Convention in respect of technical assistance operations for which the pouch service was required. The Government subsequently withdrew the restriction and granted the United Nations the right to use the diplomatic bag unconditionally.

227. It may be noted that in the case of the economic commissions (other than ECE) the relevant agreements expressly provide that the correspondence which may be sent by courier or in sealed bags includes "publications, documents, still and moving pictures, films and sound recordings".<sup>100</sup>

*Section 20. United Nations postal services*

228. The United Nations has entered into special agreements with the United States<sup>101</sup> and with Switzerland<sup>102</sup> regarding the operation of postal facilities in United Nations premises situated in those countries. By and large these agreements have worked smoothly. After the Agreement with the United States had been signed on 28 March 1951, 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. The following memorandum was sent by the Office of Legal Affairs to the United Nations Postal Administration in September 1951.

. . . In your memorandum of 20 August 1951 you have raised the problem of the legal relationship between the United Nations Postal Administration and the United States Post Office Department which operates the United Nations Post Office Station.

Neither the Headquarters Agreement, which authorizes the United Nations to organize "its own postal service" nor the Postal Agreement itself, which recites the language in its preamble, leaves any doubt that the United Nations Postal Administration, together with the United Nations Post Office Station which forms but one operating element of the former, is a United Nations activity. It is well known that it was for the convenience of both parties that the United States Post Office Department became the agent of the United Nations to operate the United Nations Post Office Station; the Station, however, is not directly incorporated into the Post Office Department but merely provides the same services at the same rates as would any United States Post Office "having comparable operations". It could hardly be otherwise since certain essential functions normally pertaining to a national government are retained by the United Nations under the Agreement, in particular the supply of postage stamps, postmarking stamps and, of course, the Post Office Station premises.

On the other hand, it naturally does not follow that the United States Post Office Department, in carrying out the specific func-

<sup>100</sup> Section 13 (b), ECAFE Agreement, see also section 6 ECLA Agreement and section 6, ECA Agreement.

<sup>101</sup> United Nations, *Treaty Series*, vol. 108, p. 231, amended in *ibid.*, vol. 149, p. 414.

<sup>102</sup> *Ibid.*, vol. 43, p. 327.

tions assigned to it under the Agreement, is subject to detailed control or directions from the United Nations. Section 1 (i) makes clear that the United Nations Post Office Station "shall be operated by the United States Post Office Department", while Sections 5 and 6 divide between the parties the responsibility for furnishing the various services and equipment "necessary to enable the United States Post Office Department to operate the United Nations Post Office Station".

By the same token, however, it is equally clear that the United States Post Office Department has an obligation to see that its operation of the Post Office Station does not interfere with the operation by the United Nations of a function retained solely by the latter, the maintenance of a separate agency for philatelic purposes. The problem of interpretation raised by the issue of first day covers accordingly seems to derive less from the question of the extent to which the Post Office Department is acting as the agent of the United Nations than from the formula tentatively established by the Agreement for the division of revenues. Where functions which in a national administration would be performed by a single agency are here split between two separate authorities, it is natural and reasonable that every effort should be made by both parties to arrive at a co-operative result which would conform with the basic intent of the Postal Agreement. In the matter of first day covers both their preparation and the cancellation of the stamps would normally be performed by the same authority. Since first day covers represent purely philatelic sales, it follows from the plain language of the Agreement and the intent of all governments represented in the General Assembly including the United States, that the revenue from all first day covers not posted like ordinary mail matter is to be retained by the United Nations for its own use. Moreover, both the broad language of Section 3\* of the Agreement and the entire documentary background of the Agreement makes clear that the postal services entitling the United States Post Office Department to reimbursement of the value of "postage on mail matter posted at the United Nations Post Office Station" did not include incidental post services but only the complete services involved in the receipt, transmission and delivery of mail matter so posted.

Applying these considerations to the problem of the act of cancellation of stamps on first day covers which are then delivered otherwise than by posting at the United Nations Post Office Station, it seems clear that this function could be performed by either party without any inconsistency with the terms of the Agreement. Since cancellation in this case is merely ancillary to the philatelic purpose of preparing and selling a first day cover, it would be normal to think that the Post Office Department would prefer to leave it to the United Nations philatelic agency to perform that labour — the more so because the revenue accrues to the United Nations. If, however, as a matter of operational preference, the Post Office Department wishes to accept the onus of carrying out the cancellation, this would not seem in any way to contradict the terms of the Agreement. By contrast, it would clearly contradict the Agreement if the Post Office Department were to ask for the operational advantage of retaining sole control of cancellation and at the same time claiming the purely philatelic

revenues from first day cover stamps so cancelled on envelopes which are not then posted.

It does not seem reasonable to suppose that the United States Government will insist on this last position when the formula for the division of revenue was made so public an element of the terms which permitted the Agreement to be concluded in its present form. The history of the preparation of the Agreement is such that the United States is clearly party to the understandings of the General Assembly as to philatelic revenue, and United States representatives were careful to emphasize the fact that the revenue formula was worked out subject to adjustment in the course of practical experience. . .

229. After discussions with the United States Post Office Department, section 3 (ii) of the Agreement was amended<sup>103</sup> by the deletion of the words "in response to orders received by mail".

230. Under the Agreement with Switzerland, the United Nations agrees to use exclusively Swiss postage stamps for the statutory franking of postal dispatches sent by the Geneva Office. The Swiss Postal Administration issues special postage stamps (*timbres de service*) for use by the Geneva Office, staff members and visitors. The Swiss postal authorities cede to the United Nations 50 per cent of the net proceeds obtained from the sale of stamps to private persons for philatelic purposes. United Nations stamps as such are sold solely for non-franking purposes by the United Nations Postal Administration.

231. Special postal arrangements have been made in respect of mail sent to or by United Nations peace-keeping forces. Paragraph 31 of the UNEF Agreement provides as follows:

31. The Government of Egypt recognizes the right of the Force to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of the Force. The Government of Egypt will be informed of the nature of such arrangements. No interference shall take place with, and no censorship shall be applied to, the mail of the Force by the Government of Egypt. In the event postal arrangements applying to private mail of members of the Force are extended to operations involving transfer of currency, or transport of packages or parcels from Egypt, the conditions under which such operations shall be conducted in Egypt will be agreed upon between the Government of Egypt and the Commander.

An Agreement was also made with Lebanon regarding the establishment of a UNEF base post office at Beirut.

232. Provisions similar to those set out in paragraph 31 of the UNEF Agreement were included in the Agreements relating to ONUC and UNFICYP.<sup>104</sup>

#### Section 21. United Nations radio administration

233. A number of agreements entered into by the United Nations make provision for the operation of a United Nations radio system. The Headquarters Agreement regulates the matter in some detail.

Section 4. (a) The United Nations may establish and operate in the Headquarters District:

<sup>103</sup> *Ibid.*, vol. 149, p. 414.

<sup>104</sup> Paragraph 35 of the ONUC Agreement, *ibid.*, vol. 414, p. 245, and paragraph 31 of the UNFICYP Agreement, *ibid.*, vol. 492, p. 74.

\* "Section 3, Sale of United Nations Postage Stamps: (i) The United Nations Post Office Section shall sell only United Nations postage stamps which shall be provided by the United Nations free of charge in such quantities as may be necessary to fulfil all reasonable needs of the United Nations Post Office Station. All revenue derived from such sales of United Nations postage stamps and from other services rendered by the United Nations Post Office Station shall be retained by the United States Post Office Department as full and complete compensation for performance of its obligations under the terms of this Agreement, except, however, that the United States Post Office Department shall be reimbursed for performance of any postal services resulting from use of United Nations postage stamps sold for philatelic purposes under the provisions of paragraph (ii) of this section which are used as postage on mail matter posted at the United Nations Post Office Station by being paid an amount equal to the face value of any such stamps so used as postage.

(ii) The United Nations may maintain a separate agency for the sale of United Nations postage stamps for philatelic purposes in response to orders received by mail. Subject to the provisions of paragraph (i) of this section all revenue derived from such philatelic sales of United Nations postage stamps shall be retained by the United Nations for its own use."

(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 tolerance prescribed by the broadcasting service by applicable United States regulations) for radiotelegraph, radioteletype, radiotelephone, radiotelephoto, and similar services;

(2) one point-to-point circuit between the Headquarters District and the office of the United Nations in Geneva (using single sideband equipment) to be used exclusively for the exchange of broadcasting programs and inter-office communications;

(3) low power, micro-wave, low or medium frequency facilities for communication within Headquarters buildings only, or such other buildings as may temporarily be used by the United Nations;

(4) facilities for point-to-point communications to the same extent and subject to the same conditions as permitted under applicable rules and regulations for amateur operators in the United States, except that such rules and regulations shall not be applied in a manner inconsistent with the inviolability of the Headquarters District provided by section 9 (a);

(5) such other radio facilities as may be specified by supplemental agreement between the United Nations and the appropriate American authorities.

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

(c) The facilities provided for in this section may, to the extent necessary for efficient operation, be established and operated outside the Headquarters District. The appropriate American authorities will, on request of the United Nations, make arrangements, on such terms and in such manner as may be agreed upon by supplemental agreement, for the acquisition or use by United Nations of appropriate premises for such purposes and the inclusion of such premises in the Headquarters District.

Similar arrangements have been made with the Swiss Government.<sup>105</sup> Section 14 of the ECAFE Agreement also provides for the operation of telecommunication circuits and of radio facilities.

234. In addition to these provisions contained in general host agreements, arrangements have been made, usually on the basis of an exchange of letters, for the operation of United Nations radio stations in a number of countries around the world. In 1955 an *aide-mémoire* was prepared by the Office of Legal Affairs setting out the essential legal points which needed to be considered before telecommunication operations or negotiations could be undertaken in any given country.

*Aide-mémoire of points for guidance in preparing, or in instructing United Nations representatives to negotiate agreements with national authorities for the installation of United Nations radio stations*

#### I. Rights of the United Nations under the International Telecommunication Convention (Buenos Aires 1952)

Under Article 26 of this Convention and in accordance with the provisions of Article XVI of the UN/ITU Agreement annexed thereto, the telecommunication operating services of the UN are entitled to the rights and bound by the obligations of the Convention and the Regulations annexed to it. The ITU recognizes that

it is important that the UN shall benefit by the same rights as the members of the Union for operating telecommunication services (Article XVI). The precise arrangements for implementing Article XVI are to be dealt with separately.

The only "precise arrangement", if it can be called such, which has been made is contained in Resolution No. 26 of the Buenos Aires Telecommunication Conference (1952), in which the ITU decided that in normal circumstances the UN network should not carry the telegraph traffic of the specialized agencies in competition with existing public channels or commercial networks. Such traffic may, however, be carried, in cases of emergency, free or at normal commercial rates.

Thus, as far as the ITU is concerned, the UN has the rights of a member Administration including, as to radio, that of registering the frequencies, for protection against interference, with the International Frequency Registration Board (IFRB) of the ITU. The UN, however, from the nature of its circumstances, can only operate as an Administration on the territory of a host government (except in rare circumstances such as apply to the present station at Government House, Jerusalem), by virtue of arrangements reached with that Government. In seeking such arrangements with governments the Organization is in a position to invoke strong support for any request based upon its communication needs. Especially — though not exclusively — in political functions (such as truce supervision) it is essential that the United Nations have direct point-to-point contacts which cannot be effectively established (as regards in particular speed, location, and security) by ordinary channels. Such support includes:

(i) Article 105, paragraph 1 of the Charter providing that the "Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes".

(ii) Resolutions 240 (III) and 460 (V) of the General Assembly approving the establishment and operation of the UN telecommunication system, including in particular the reaffirmation in the former resolution of the United Nations position as an operating agency in the field of international telecommunications, and calling upon all Member Governments to support at all international telecommunications conferences the requirements of the United Nations for frequencies and services.

(iii) The relevant provisions of the Convention on the Privileges and Immunities of the United Nations as noted under appropriate headings below.

(iv) Precedents relating to the UN network established by bilateral agreements between the UN and other host governments. At the moment the only formal agreements are contained in the Headquarters Agreement between the UN and the USA; in the Agreement for the ECAFE Headquarters in Bangkok (still subject to ratification by the Thai Government), and the exchange of letters with the Government of the Republic of Korea concerning privileges and immunities.

(v) Article 41 of the Telecommunication Convention which permits Administrations "to make special arrangements on telecommunication matters which do not concern Members and Associate Members (of the ITU) in general". Such arrangements must not be in conflict with the terms of the Convention and the Regulations as regards harmful interference to the radio services of other countries.

#### II. Premises and Necessary Privileges

Where technical considerations permit, it is desirable that the United Nations radio station or any part of it be established on existing UN premises. Apart from the advantages of administrative concentration, this establishes the inviolability of the station and the equipment under Section 3 of the Convention on the Privileges and Immunities of the United Nations. Where any or all of the radio equipment requires installation outsidejo estab-

<sup>105</sup> See the exchange of letters dated 22 October and 4 November 1946.

lished UN premises, it is desirable that the installation represent a separate and identifiable unit, even if no more than a radio room, in order that it may be designated as separate UN premises immune from search or entry or other governmental interference under Section 3 of the Convention. Should the Host Government not yet have acceded to the Convention, the terms of Section 3 should be expressly inserted in the Agreement with reference to the radio facilities.

In all cases the equivalent of Section 4 (c) of the Headquarters Agreement should be inserted in the local agreement, even though it is not assumed that facilities will need to be installed outside of the local UN premises. It is necessary that in the event of a needful enlargement of the facilities, the discovery of interference or like technical considerations, the Government be committed in principle to the installation of separate facilities to be operated away from UN offices, to the negotiation of the supplemental agreement necessary to that end, and to giving assistance in obtaining appropriate premises. Provision should also be made for Government guarantee of any tie-lines that may prove necessary between the UN radio facilities and the regular UN premises.

The right to exchange traffic in code or cipher is guaranteed by Section 10 of the Convention, but should be expressly inserted in any arrangement with a government not a party thereto. Similarly, Section 9 provides that no censorship may be applied to the official communications of the UN, but this requires express coverage in the case of a non-party.

### III. Traffic

Under Article 1 of the Convention on the Privileges and Immunities of the United Nations the United Nations is a single international personality and it therefore operates its network as a single agency in the telecommunications field. The UN network is accordingly entitled to carry traffic emanating from or destined for *all* UN organs. Each radio station is therefore a "UN station" and the local authorities should not regard it as belonging to any single UN subsidiary organ. A representative of the UN should be instructed to make it plain that he negotiates on behalf of the Organization as a whole and as agent of the Secretary-General.

"UN traffic" includes messages concerning United Nations programmes in which the specialized agencies are participating and exchanges between the agencies (or their representatives in the fields) and the appropriate UN organs or the TAB, provided that they are paid for by the UN or TAB.

### IV. Communications

Consideration should be given to the desirability or necessity of seeking the right to establish connection and exchange traffic with other stations in the UN network, including the right to act as a relay station. Governments may not, of course, be willing to concede such wide powers in all instances.

In the light of local conditions it may be advisable to secure permission to deal with traffic "forwarded" from the territory of another administration. The consent of all administrations concerned would have to be obtained.

### V. Frequencies

Administrations protect their frequencies by registering them with the IFRB. The Extraordinary Administrative Radio Conference (EARC), Geneva 1951, adopted an opinion (Resolution No. 10) that "unless it is specifically stipulated otherwise by special arrangements communicated to the Union by the parties concerned", assignments of or notifications of frequencies should be communicated by the Government on whose territory the station is installed. Administrations were invited to adopt this procedure. The host government should be invited to agree that the frequencies to be used by the UN station be notified to the IFRB by the UN.

Where the local use of the frequency spectrum is heavy it may be advisable to get the host government to agree to help in a search for suitable frequencies for the UN station. It may also be necessary to provide some machinery whereby mutual interference can be reported and eliminated.

### VI. Security

United Nations representatives negotiating telecommunication arrangements with a host government should be instructed to report back to the Secretary-General promptly for further instructions in the event that the Government proposes that the UN station must comply with any special security measures.

235. Paragraphs 29 and 30 of the UNEF Agreement provide as follows:

29. The Force enjoys the facilities in respect to communications provided in Article III of the Convention on the Privileges and Immunities of the United Nations. The Commander shall have authority to install and operate a radio sending and receiving station or stations to connect at appropriate points and exchange traffic with the United Nations radio network, subject to the provisions of Article 45 of the International Telecommunication Convention relating to harmful interference. The frequencies on which any such station may be operated will be duly communicated by the United Nations to the appropriate Egyptian authorities and to the International Frequency Registration Board. The right of the Commander is likewise recognized to enjoy the priorities of government telegrams and telephone calls as provided for the United Nations in Article 37 and Annex 3 of the latter Convention and in Article 83 of the Telegraph Regulations annexed thereto.

30. The Force shall also enjoy, within its area of operations, the right of unrestricted communication by radio, telephone, telegraph or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of the Force, including the laying of cables and land lines and the establishment of fixed and mobile radio sending and receiving stations. It is understood that the telegraph and telephone cables and lines herein referred to will be situated within or directly between the premises of the Force and the area of operations, and that connexion with the Egyptian system of telegraphs and telephones will be made in accordance with arrangements with the appropriate Egyptian authorities.<sup>106</sup>

236. The standard text which has been designed for use in the case of agreements relating to United Nations Administrative Centres is set out below:

The United Nations shall have the authority to install and operate a radio sending and receiving station or stations to connect at appropriate points and exchange traffic with the United Nations radio network. The United Nations as a telecommunications administration will operate its telecommunications services in accordance with the International Telecommunication Convention and the Regulations annexed thereto. The frequencies used by these stations will be communicated by the United Nations to the Government and to the International Frequency Registration Board.

237. The substance of this text is used in article II, section 4, of the Agreement between the United Nations and Austria regarding the headquarters of the United Nations Industrial Development Organization.

(a) The United Nations shall for official purposes have the authority to install and operate a radio sending and receiving

<sup>106</sup> Similar provisions are contained in paragraphs 35 and 36 of the ONUC Agreement, United Nations, *Treaty Series*, vol. 414, p. 245, and paragraphs 29 and 30 of the UNFICYP Agreement, *ibid.*, vol. 492, p. 74.

station or stations to connect at appropriate points and exchange traffic with the United Nations radio network. The United Nations as a telecommunications administration will operate its telecommunications services in accordance with the International Telecommunication Convention and the Regulations annexed thereto. The frequencies used by these stations will be communicated by the United Nations to the Government and to the International Frequency Registration Board.

(b) The Government shall, upon request, grant to the UNIDO for official purposes appropriate radio and other telecommunications facilities in conformity with technical arrangements to be made with the International Telecommunication Union.<sup>107</sup>

238. A different wording is used in the ECA Agreement, section 7 (a) of which provides as follows:

Section 7. (a) The ECA shall have the authority to install and operate at the Headquarters for its exclusive official use a radio sending and receiving station or stations to exchange traffic with the United Nations radio network, subject to the provisions of Article 45 of the International Telecommunications Convention relating to harmful interference. The frequencies on which any such station may be operated will be agreed between the ECA and the Imperial Telecommunications Board of Ethiopia and will be duly communicated by the ECA to the International Frequency Registration Board.

#### CHAPTER IV. — PRIVILEGES AND IMMUNITIES OF OFFICIALS

##### *Section 22. Categories of officials to which the provisions of articles V and VII apply*

239. Section 17 of article V of the General Convention states:

The Secretary-General will specify the categories of officials to which the provisions of this article and article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.<sup>108</sup>

240. On the basis of a proposal made by the Secretary-General, the General Assembly adopted resolution 76 (I) on 7 December 1946. Entitled "Privileges and Immunities of the Staff of the Secretariat of the United Nations", the resolution

Approves the granting of the privileges and immunities referred to in articles V and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates.

241. The categories established in resolution 76 (I) have remained unchanged. The Secretary-General has accordingly maintained that the determination made by the General Assembly in that resolution precludes any distinction being drawn (e.g. on grounds of nationality or rank) so as to exclude a given category of staff from the

benefit of the privileges and immunities referred to in articles V and VII, except in the case of locally recruited staff employed at hourly rates. In this position the United Nations has enjoyed the understanding and co-operation of practically all Member States.<sup>109</sup>

242. After the introduction of technical assistance programmes it proved necessary to draw the attention of Governments to the status of technical assistance experts and, in particular, to the fact that although called "experts" as a description of their function, they are not "experts on missions for the United Nations" within the meaning of article VI of the General Convention (which expressly envisages experts who are not officials), except possibly when employed on short-term contracts. The following circular note was sent by the Secretary-General to all interested Governments on 9 May 1951.

... I have the honour, at the request of the Technical Assistance Board, to refer to the status of the technical assistance experts who are engaged by the United Nations and by the participating specialized agencies to carry out functions under the expanded programme of technical assistance in accordance with resolution 304 (IV) of the General Assembly.

With particular reference to article V, section 17 of the Convention on the Privileges and Immunities of the United Nations, I wish to invite your attention to the fact that technical assistance experts recruited by the United Nations fall within the categories of officials heretofore specified by the Secretary-General and approved by the General Assembly in its resolution 76 (I), namely all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates. Thus, technical assistance experts are engaged on substantially similar terms and serve under the same conditions as other members of the staff. Upon accepting appointment they subscribe to the same oath, as required by the Staff Regulations, as other staff members. They are subject to the authority of the Organization and are responsible to it in the exercise of their functions, and they receive no instructions from any authority external to the Organization. For tax equalization purposes, the gross salary paid to them by the United Nations is subjected, under the Staff Assessment Plan, to direct assessment comparable to national income taxes, in the same manner as the gross salary of any other staff member, as required by resolutions 239 (III) and 359 (IV) of the General Assembly. It will therefore be appreciated that they are entitled to the privileges and immunities of officials of the United Nations provided for by articles V and VII of the Convention on Privileges and Immunities of the United Nations.

I am also requested by the specialized agencies participating in the technical assistance programme to specify on their behalf, in accordance with Section 18 of the Convention on the Privileges and Immunities of the Specialized Agencies, that technical assistance experts appointed by them are serving as members of their respective staffs and are therefore within the categories of officials to which the provisions of articles VI and VIII of that Convention apply.

The names of the technical assistance experts included in the categories of officials of the several participating organizations will from time to time be made known to your Government in accordance with regular practice and as provided by Section 17 of the Privileges and Immunities of the United Nations and Section 18 of the Convention on the Privileges and Immunities of the Specialized Agencies.

<sup>107</sup> United Nations Industrial Development Organization, ID/B/6/Add.1, 3 April 1967. The Agreement was signed on 13 April 1967.

<sup>108</sup> Section 14 of the Agreement with Switzerland provides that the Secretary-General shall inform the Swiss Federal Council of the names of officials in the same manner as the Governments of Member States.

<sup>109</sup> On questions relating to the attempt of certain Governments to levy taxation on locally-recruited officials, employed at other than hourly rates, see section 24 (d), paras. 289-292, below.

Finally, it is understood that short-term experts engaged under such conditions as would differentiate them from members of the staff may qualify not as officials of any of the organizations but either as experts on missions for the United Nations under article VI of the Convention on the Privileges and Immunities of the United Nations or as experts travelling on the business of the specialized agencies. In such cases these experts on missions will be so identified in the appropriate certificate to be issued under the provisions, as the case may be, of Section 26 of the Convention on the Privileges and Immunities of the United Nations or Section 29 of the Convention on the Privileges and Immunities of the Specialized Agencies.

243. Despite the dispatch of this letter, Governments have on occasions attempted to impose income tax on the salaries of technical assistance experts on the grounds that these persons were not "officials" within the scope of article V. In the revised standard Technical Assistance Agreement reference is made to "officials including technical assistance experts" and to "experts and other officials", in order to emphasize that technical assistance experts are "officials" within the ambit of both the General Convention and the Specialized Agencies Convention.

244. In accordance with the requirement contained in the last sentence of section 17, that "the names of the officials" included in the categories of officials to which articles V and VII apply "shall from time to time be made known to the Governments of Members", the Secretary-General has prepared annual lists of the United Nations officials concerned. Up to 1956 the list sent to each Member State contained only the names of those officials who were its nationals. Since 1956 the list has included the names of officials of all nationalities. This list is not identical with that furnished by the Secretary-General to the Fifth Committee for budgetary purposes each year. The Secretariat has been unable, owing to the administrative difficulties involved, to include in the lists prepared in pursuance of section 17 the names of the locally engaged employees of all field offices; the host Government or Governments concerned have been separately informed of the names of such staff. In the case of UNRWA, which employs a large locally recruited staff, special lists are prepared and sent to each of the Governments in whose territories UNRWA operates.

245. The notifications contained in the lists sent to Member States do not constitute the legal basis or condition for application of the Convention. If this were to be the case it would be impossible, for example, for an official to receive the benefit of articles V and VI if his contract began just after a list had been compiled and ended before the next one were issued, or even if he were to change duty station in the meantime. The parties to the General Convention are bound to apply its terms in all cases without any such precondition: the annual lists merely constitute an administrative device to assist in the practical application of the Convention.

### *Section 23. Immunity of officials in respect of official acts*

246. Section 18 of the General Convention provides that officials of the United Nations shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity.

The same provision is contained in section 15 (a) of the Agreement with Switzerland and in virtually all the other agreements concluded by the United Nations relating to privileges and immunities. In the opinion of the Secretariat this provision arises directly under Article 105 of the Charter and constitutes an essential condition for the conduct of all United Nations activities.

247. Although there is a considerable overlap between the matters covered, for purposes of presentation the section is divided as follows:

- (a) General
- (b) Judicial decisions
- (c) Cases of detention or questioning of United Nations officials; testifying before public bodies
- (d) Cases arising out of driving accidents
- (e) Cases involving attempted application of Official Secrets Acts
- (f) Duration of immunity

#### (a) *General*<sup>110</sup>

248. In a memorandum dated 11 July 1963, addressed to the Deputy *Chef de Cabinet*,<sup>111</sup> the Legal Counsel briefly summarized the attitude taken by the Secretary-General in relation to alleged illegal acts not constituting part of official duties.

... we should like to confirm that the Secretary-General has, on a number of occasions, informed delegations that United Nations personnel do not enjoy immunity from arrest or prosecution for alleged acts which are not related to their official duties. . . . Needless to say, this position has been taken on many occasions and in a number of countries in which United Nations personnel work. For example, we are attaching a copy of a press release dated 24 June 1949, containing a statement by the Secretary-General on this point raised as a result of a case in regard to which the Secretary-General . . . considered that he could not assert immunity from arrest or interrogation where the alleged acts were not connected with the staff member's official duties. . .

249. The press release is given below:

#### *Statement by Secretary-General Trygve Lie on immunities*

In connexion with the case of the Prague Information Center, I should like to explain a bit further the situation with respect to immunities. United Nations Secretariat personnel enjoy immunity from arrest or questioning in connexion with any of their official duties or acts written or spoken.

United Nations personnel do not enjoy immunity from arrest or interrogation for alleged acts unrelated to their official duties which are unlawful in the Member State where they are committed, or alleged to have been committed.

There has been some confusion about the immunities of United Nations personnel.

Under the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, in Section 15, a limited number of persons are granted the same diplomatic privileges and immunities as are granted to diplomats accredited to the United States Government.

<sup>110</sup> See also section 45, para. 393, below, regarding a proposed reservation to the General Convention *inter alia* denying to nationals of the State concerned immunity in respect of official acts.

<sup>111</sup> *United Nations Juridical Yearbook 1963*, p. 188.

These persons have the official status of ambassadors or ministers in their own country for the main part, except for those persons who are put on the diplomatic list because they have been agreed upon by the United States Government, the United Nations and the member country concerned as entitled to such a status because they are resident members of staff and need such immunities in order to carry on necessary work for their own countries in connexion with the United Nations. These diplomatic functionaries are not put on this diplomatic list unless they hold a status at least as high as diplomatic secretary of delegation.

The privileges and immunities granted to this small number of persons are exactly similar to those granted in Washington to diplomatic representatives of foreign governments there. The same privileges and immunities are granted to American diplomats serving in foreign countries.

They were not invented especially for the United Nations since, for at least three centuries in every civilized country, ambassadors and ministers serving abroad have enjoyed diplomatic privileges and immunities under international law as a necessary facility for their work.

That refers to delegations. The Secretary-General and the eight assistant Secretaries-General have diplomatic immunity in those countries which have acceded to the Convention on Privileges and Immunities. Other Secretariat members do not have diplomatic immunity outside of performance of their official duties. If there is any infringement of any laws, traffic violations for example, a Secretariat member is in the same group — unless on official business — as the average citizen who may pass a red light or step on the gas too hard. He just pays his fine, and many already have.

250. The expression "legal process" has been interpreted by the United Nations in accordance with the standard definition as comprising the entire judicial proceedings, including the writ, mandate, summons or act by which the court assumes jurisdiction and compels the appearance of the defendant and witnesses and acts of execution, as well as other acts on the part of public authorities, such as arrest and detention in custody, in connexion with legal proceedings.

251. Following the arrest of a United Nations staff member on charges of espionage in 1963, the United Nations successfully claimed the right to visit him while he was in custody. In an internal memorandum prepared by the Office of Legal Affairs, the basis of the United Nations right to do so was expressed as follows:

1. In connexion with the recent arrest of a staff member, the question has arisen of the extent of the right of the United Nations to visit and converse with staff members held in custody or detention by the authorities of a State.

2. It is established by the advisory opinion of the International Court of Justice of 11 April 1949, on reparation for injuries suffered in the service of the United Nations (I.C.J. Reports, 1949, p. 174), that in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, the United Nations has the capacity to bring an international claim against the responsible State (whether it is or not a member of the Organization), with a view to obtaining the reparation due in respect of the damage caused both to the United Nations and to the victim or to persons entitled through him. The United Nations therefore has, beyond any doubt, a right of diplomatic protection of its staff, at least within the limits of the questions put to the Court in the request for the advisory opinion.

3. The right to visit and converse with the person in respect of whom a State may possibly have violated its international obliga-

tions is a necessary consequence of a right of diplomatic protection. The State or organization having such a right of protection cannot exercise it unless there is an adequate opportunity to find out the facts of a case, and where the person concerned is in custody or detention, the only such opportunity is through access to that person. This is recognized, for example, in the Vienna Convention on Consular Relations of 24 April 1963 (A/CONF.25/12). Consuls are the usual channel through which States ascertain the facts about persons to whom they are in a position to afford diplomatic protection. Consequently the Convention provides in article 36:

"1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

". . .

"(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. . .".

4. It is therefore clear that the United Nations has the right to visit and converse with one of its staff members in custody or detention whenever there is any possibility that the United Nations or the staff member in the performance of his duties may have been injured through the violation by a State of any of its obligations either toward the United Nations or toward the person concerned. During such visits and conversations the United Nations representatives must have the right to pursue any line of discussion which would clarify the questions both whether an injury has occurred, and whether it was incurred in connexion with performance of the staff member's duties. The mere fact that there is no obvious connexion between the reason given for the detention by the State and the staff member's duties is insufficient to nullify the right of the United Nations to visit. If that were so, the right of protection of the United Nations would be made entirely dependent upon the reasons given by the detaining State, and that would make the right practically ineffective.

5. Even if in fact there is no connexion between the staff member's duties and the reason for the detention, the United Nations should nevertheless be allowed to visit a staff member under detention, and to ascertain through all appropriate discussions not only whether there has been any legal injury but also whether the person is being treated with humanity and with full observance of an international standard of human rights. This is particularly true when the presence of the staff member in what is to him a foreign country is due to his employment by the United Nations. In such cases it is inappropriate to apply narrowly the test of connexion with official duty, since the person's very presence in the country is the result of, and a necessary condition for, the performance of that duty, and hence, in a sense, is connected with it. This broader scope of protection by the United Nations follows from the undesirability — stressed by the International Court of Justice in its advisory opinion on Reparations for injuries — that staff members should have to rely on protection by their own States. The Court said (*ICJ Reports, 1949, pp. 183-184*):

"In order that the agent (of the United Nations) may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization, and that he may count on it. To ensure the independence of the agent, and consequently, the independent action of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization (save of course for the more direct and immediate protection due from the State in whose territory he may be). In particular, he should not have to rely on the protection of his own State. If he had to rely on that State, his independence might well be compromised, contrary to the principle applied by Article 100 of the Charter. And lastly, it is essential that — whether the agent belongs to a powerful or to a weak State; to one more affected or less affected

by the complications of international life; to one in sympathy or not in sympathy with the mission of the agent — he should know that in the performance of his duties he is under the protection of the Organization. This assurance is even more necessary when the agent is stateless.”

6. It follows from the foregoing that, when a United Nations staff member is arrested or detained by the authorities of a State, the Organization always has a right to send representatives to visit and converse with him with a view to ascertaining whether or not an injury has occurred to the United Nations or to him through non-observance by the State concerned of its international obligations, and whether or not such injury is connected with the performance of his duties. Furthermore, at least when the staff member is not a national of the detaining State, there are reasons for recognizing a broader interest of the United Nations in the matter, so that the staff member will not have to rely exclusively on the protection of his own State.<sup>112</sup>

252. It may be noted that Staff Rule 104.4, promulgated on 8 March 1954, provides as follows:

A staff member who is arrested, charged with an offence other than a minor traffic violation, or summoned before a Court as a defendant in a criminal proceeding, or convicted, fined or imprisoned for any offence other than a minor traffic violation, shall immediately report the fact to the Secretary-General.

253 In view of the various cases which have arisen involving driving accidents, it may be recalled that, in accordance with General Assembly resolution 22 (E) (I), Staff Rule 112.4 requires staff members to carry public liability and property damage insurance in an amount adequate to insure them against claims arising from injury or death to other persons, or from damage to the property of others, caused by their cars.

#### (b) *Judicial decisions*

(i) *Westchester County on complaint of Donnelly v. Ranollo*<sup>113</sup>

254. The defendant was charged with having driven a car at an excessive speed. He pleaded that he was immune from jurisdiction since he was driving the vehicle as a United Nations official, whilst acting as the chauffeur of the Secretary-General. The claim to immunity was based on Article 105 of the Charter and on the International Organizations Immunities Act, section 7 (b) of which provides that:

Representatives of foreign governments in or to international organizations and officers and employees of such organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers, or employees, except in so far as such immunity may be waived by the foreign government or international organization concerned.

255. It was held that the defendant was not entitled to immunity as a matter of law without a trial of the issue of fact. A distinction was drawn by the Court between those personnel whose activities were such as to be necessary to the actual execution of the purposes and deliberations of the United Nations and others. Since the defendant's responsibilities did not cause him to come

within the former category, he did not enjoy the immunity claimed. The Secretariat does not accept this case as properly decided, nor does it represent current United States practice.

#### (ii) *United States v. Coplton*<sup>114</sup>

256. Judith Coplton and Valentine Gubitchev were indicted on charges of violation of espionage laws. Mr. Gubitchev was a United Nations official, of USSR nationality. He claimed diplomatic immunity on the ground that he had entered the United States as Third Secretary of the Soviet delegation to the United Nations, and still retained a post with the Foreign Ministry of the USSR.

The Court rejected the arguments advanced in behalf of Mr. Gubitchev. Referring to the defendant's position as a member of the staff of the Secretariat, the Court declared:

Such status does not *per se* confer diplomatic immunity under generally accepted principles of international law. . . Nor does the defendant, by reason of such employment, possess immunity from prosecution for the offense charged by virtue of any law or treaty of the United States. . .

It seems clear that unlawful espionage is not a function of the defendant as an employee of the United Nations. Freedom from arrest for such conduct, it would seem, is not a privilege or immunity necessary for the independent exercise of the defendant's function in connexion with the United Nations.

As regards the Headquarters Agreement, the Court stated:

Suffice it to say at this point that this agreement does not, by virtue of his employment relationship to the United Nations alone, confer any immunity upon the defendant. It follows from the foregoing that the defendant's status as an employee of the United Nations conferred upon him no privilege or immunity which should constitute an obstacle to his apprehension, trial or conviction for the offense charged in the indictment.

257. The Court dismissed the defendant's claim of diplomatic immunity as a Third Secretary of the USSR Ministry of Foreign Affairs in the light of the views expressed by the Department of State:

Even if we assume that at the time of his arrest defendant was still a Third Secretary of the Soviet Ministry of Foreign Affairs it is clear that he is not thereby clothed with diplomatic immunity. The dispositive fact is that the State Department has declared to the Soviet Embassy by aide-mémoire of March 24, 1949, and aide-mémoire of April 29, 1949, that defendant does not enjoy diplomatic status. That is a political decision which courts do not review.

. . . even if we assume that he is a foreign emissary and that he entered as such, it is clear that he was not so received.

258. As regards the claim to immunity derived from the defendant's alleged position as a member of the USSR delegation to the United Nations, the Judge declared that, even assuming that he was, or had been, a member, he derived no benefit from this fact.

The State Department informs me that it has consistently drawn a distinction between representatives of a foreign government and representatives or members of an international organization. It has never recognized the latter as possessed of diplomatic status

<sup>112</sup> *Ibid.*, p. 191.

<sup>113</sup> City Court of New Rochelle, 8 November 1946, 67 N.Y.S. 2d 31. Although spelt "Ranollo" in the report, the defendant's name was in fact "Ranallo".

<sup>114</sup> District Court, Southern District, New York, 10 May 1949, 84 F. Suppl. 472.

*ipso facto* even if the United States is a party to the particular international organization. See 4 Hackworth, *Digest of International Law*, 419-423. The Government argues that by virtue of Article 100 of the United Nations Charter, one may not simultaneously be an employee of the United Nations and a member of one of the national delegations and that defendant's acceptance of employment in the UN Secretariat terminated any membership he may have had in the Soviet Delegation.

The judge found that he did not need to pass on this question. The defendant was not entitled to diplomatic immunities under the Headquarters Agreement since he did not satisfy the conditions of section 15 of that Agreement, being neither a principal resident representative nor "a person agreed upon by the United States, the United Nations and the Soviet Government".

259. Lastly, the Court held that the case was not one falling within the original jurisdiction of the Supreme Court since the defendant was not a "public minister" within the meaning of the term. It may be noted that the defendant Gubitchev was later permitted to return to the USSR.

(iii) *Essayan v. Jouve*<sup>115</sup>

260. In an action relating to the occupation of a private dwelling the defendant, a French national and a representative of the United Nations High Commissioner for Refugees, had contested the jurisdiction of the Court on the ground that, as a diplomatic agent in France of an international body, he enjoyed diplomatic immunity which he could not waive and which according to judicial authority even covered acts done by an agent as a private person. He cited in particular an agreement of 18 February 1953 between the French Government and the United Nations High Commissioner for Refugees in which the Government had granted to the High Commissioner's representatives in France the benefits and immunities conferred by the Convention on the Privileges and Immunities of the United Nations.

261. In its judgement the Court rejected this plea, pointing out that the immunity from legal process granted to representatives of the High Commissioner by article V, section 18 (a), of that Convention, which had been ratified by France, was expressly restricted to their official acts and thus clearly differed from the total immunity granted to the envoys of foreign governments by the decree of 13 Ventose, year II. The court stated further that the granting of a special immunity to United Nations officials obviously implied that they could not, simply as such, be equated with envoys of foreign governments, and that such equality of treatment was also precluded by the fact that the United Nations was constituted quite differently from a foreign government.

(iv) *People of the State of New York v. Coumatos*<sup>116</sup>

262. The defendant, an American citizen employed at the United Nations Headquarters as an inventory

clerk on the payroll of the United Nations, was arrested by the New York City Police outside the United Nations Headquarters and indicted for grand larceny committed in the United Nations Headquarters. He objected to the proceeding on the ground that the Court lacked jurisdiction by virtue of his position as a United Nations employee and in view of the fact that the alleged crime had taken place on the United Nations premises.

263. By a judgement of 19 January 1962, the Court of General Sessions sustained the indictment and found the defendant guilty. The Court pointed out that, while diplomatic immunity was extended to some categories of resident representatives of Member States to the United Nations under article V of the Headquarters Agreement of 26 June 1947, between the United States and the United Nations, officers and employees of the United Nations could rely on the International Organizations Immunities Act of 1945, whose provisions on immunity from suit and legal process (section 7 (b)), are limited to acts performed by them in their official capacity.

(c) *Cases of detention or questioning of United Nations officials; testifying before public bodies*

264. In 1949 the authorities of a Member State sought to interrogate an employee of a United Nations Information Centre. National officials entered the premises of the Centre and asked the employee to accompany them, which he declined to do.<sup>117</sup> The Chief of Diplomatic Protocol informed the Director of the Centre that the official concerned "was suspected of contact with a group engaged in anti-state activities" and requested the delivery of the official for interrogation. With reference to this request, the Secretary-General instructed the Director,

to ask, in accordance with the general practice of United Nations, for written confirmation of the subject of the interrogation including specific assurance that the matters upon which the official will be questioned do not refer to United Nations activities or to words spoken or written and acts performed by him in his official capacity.

265. This assurance was given by the Ministry of Foreign Affairs. The Permanent Representative of the Member State subsequently informed the Legal Counsel that the official had been convicted for acts which had no connexion with his work at the United Nations Information Centre, and provided a copy of the judgement given.

266. In 1952 a subpoena was served on three United Nations officials, including the Director of the Bureau of Personnel, in connexion with the case of the *United States v. Keeney*.<sup>118</sup> The Secretary-General wrote to the United States Permanent Representative, requesting the Secretary of State to inform the court that each subpoena was addressed to the officer in question in his official capacity and that the process on its face related to matters falling within their functions as United Nations officials. They therefore enjoyed immunity in respect of the acts in

<sup>115</sup> Lower Court of the Seine. 1 October 1962. *Gazette du Palais*, 16-19 February 1963. (*United Nations Juridical Yearbook 1962*, p. 290).

<sup>116</sup> Court of General Sessions, New York County, 19 January 1962. 224 N.Y.S. 2d 507. (*United Nations Juridical Yearbook 1962*, p. 294). See also section 9, paras. 113 and 114, above.

<sup>117</sup> Regarding the violation of United Nations premises, see section 9 (a), paras. 92-95, above.

<sup>118</sup> See also section 12, para 134, above and section 31, paras. 334-336, below.

question under the International Organizations Immunities Act and by virtue of Article 105 of the Charter. The officials concerned were not required to appear before the court.

267. In 1956 military police violated the premises of a United Nations subsidiary organ,<sup>119</sup> arrested two United Nations officials and, after a period of confinement, expelled them from the country. The Secretary-General entered a vigorous protest to the Government of the Member State concerned regarding this action. One of the two officials was charged with lighting a match in the inner staircase of the United Nations premises at the time of an air alarm during office hours. In fact, a match had been struck, but not by either of the two officials, and, in any case, it could not be seen except by persons in the yard of the building. The second official was charged with inciting the workers against the Government, though no evidence in support of this charge was presented. Since the Government had broken off diplomatic relations with the countries of the nationality of the two officials, the United Nations had previously obtained an unconditional guarantee of the safety of all such officials from the Foreign Ministry of the State concerned. The Secretary-General accordingly sought an appropriate apology for the arrest, expulsion and indignities suffered by the United Nations officials and for the violation of United Nations premises.

268. In January 1957 a further incident occurred in the same Member State when a security officer entered United Nations premises and sought to take into custody for questioning a United Nations official. The official did not accompany the security officer; the latter stated that in view of this refusal the official would have to leave the country immediately. The Secretary-General protested to the Foreign Ministry of the State regarding this incident and sought assurances that the official concerned would have the right of unmolested entry into the country in future, in order that official functions on behalf of the United Nations might be fulfilled.

269. A United Nations aircraft carrying, amongst others, officials of a United Nations subsidiary organ, made an emergency landing in a Member State in December 1963. The authorities of the Member State forcibly separated those officials who had been recruited in an adjoining territory from the others, interrogated and searched them, and placed them in temporary imprisonment. In answer to the protest made by the United Nations, the Ministry of Foreign Affairs of the State concerned based its action on grounds of national security. The United Nations declared in reply that this ground did not affect the international obligation of the Member State to ensure the immunity of the United Nations and its officials in respect of official acts; the senior United Nations official present had fully explained the circumstances of the landing before the arrest and interrogation took place. Since that landing whilst in the course of an official journey was the result of *force majeure*, the entry of the officials was an act in an official United Nations capacity and not an act undertaken in

a private capacity. Accordingly, it had been incumbent on the Government to treat their entry as an official one and to comply scrupulously with the terms of the Convention.

(d) *Cases arising out of driving accidents*

270. In a number of cases United Nations officials have been arrested, detained in custody, or charged, following driving accidents in which they were involved. Where the journey was one taken solely for private purposes, the United Nations has not intervened unless, at the least, it appeared that the nature of the measures taken were such as to affect the independent operations of the United Nations itself. This consideration has also been of central importance in deciding whether or not immunity should be waived in cases where a criminal charge was laid against an official who was driving on official business.<sup>120</sup> In deciding this question the Secretary-General has needed to consider whether, in the light of the over-all factors, the exercise of punitive measures by the Government concerned might undermine the independent exercise of official functions. It must be emphasized, however, that the facts of each case have been carefully considered by the Secretary-General and the claims of the municipal court to exercise jurisdiction weighed against the interests of the Organization before final decision has been reached. The issue of the personal convenience of the individual staff member has not entered into the matter.

(e) *Cases involving attempted application of Official Secrets Acts*

271. In several cases Governments have requested that United Nations technical assistance experts serving in their countries should sign a declaration, binding themselves not to divulge any information derived from their employment, in accordance with national Official Secrets Acts. In reply the United Nations has pointed out that the proposed declaration was repugnant to section 18 (a) of the General Convention and might be interpreted as a submission to local jurisdiction. The attention of the Government has been drawn also to the provisions of Staff Regulation 1.5 under which staff members are placed under an obligation not to communicate to any person any information made known to them by reason of their official position which has not been made public except in the course of their duties or by authorization of the Secretary-General. This obligation does not cease upon separation from the Secretariat.

(f) *Duration of immunity*

272. In an internal memorandum prepared by the Office of Legal Affairs in 1952, consideration was given to the question whether the immunity from legal process of a United Nations official in respect of official acts survived after the termination of his functions. Unlike section 12, in relation to representatives, section 18 of

<sup>119</sup> Regarding the violation of United Nations premises, see section 9 (a), paras. 92-95, above.

<sup>120</sup> Regarding the question of waiver see also section 31, paras. 334-336, below.

the General Convention is not specific on the point. The opinion was expressed that, on the functional basis of the immunities of both diplomats and officials, international officials should be immune in respect of official acts after ceasing to be officials. In the course of preparing the Specialized Agencies Convention, paragraph 22 of the Rapporteur's Final Report on the work of Sub-Committee 7 to the Sixth Committee, declared:

In connexion with Section 19 (a) which (following the General Convention) prescribes that officials shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity, it was agreed that, to fulfil the purpose of the provision (namely that officials should pursue their official duties, feeling confident that they are protected from all personal liability in regard thereto before municipal tribunals unless immunity is waived), it was necessary that this immunity should continue after the officials had ceased to be officials. It was thought, further, that this interpretation in fact followed from the wording of the Section as a whole and it was pointed out that paragraph (6), dealing with exemption of official salaries from taxation, required a similar interpretation if it was to receive its proper effect.

273. The conclusion reached in the memorandum was that the immunity survived by virtue of Article 105 of the Charter, the functional analogy between United Nations officials and diplomatic representatives, and the relationship between the General and Specialized Agencies Conventions.

#### *Section 24. Exemption from taxation of salaries and emoluments*

274. A number of questions have arisen during the history of the United Nations involving the interpretation of the tax laws of various Member States in the light of the circumstances affecting individual United Nations officials. Since it would not be practical to give a complete account of all such cases which often turned on the particular facts and provisions involved, the present section is divided under the following headings which deal with some of the topics which have arisen most frequently with respect to the immunity of officials from taxation.

- (a) General; Tax Equalization Fund;
- (b) Position in the United States;
- (c) Position in Switzerland;
- (d) Locally recruited staff;
- (e) National taxation in respect of United Nations pension benefits; estate or succession duties.

#### *(a) General; tax equalization fund*

275. Section 18 of the General Convention provides that Officials of the United Nations shall:

- ...
- (b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations.

The United Nations has interpreted this provision as requiring exemption to be given in respect of all forms of national taxation (e.g., social security contributions, as well as income tax) levied on salaries and emoluments received from the Organization.

276. In resolution 239 C (III) of 18 November 1948, the General Assembly requested that:

Members which have not acceded to the Convention on Privileges and Immunities of the United Nations or which have acceded to it with reservations as to its section 18 (b), take the necessary action, legislative or other, to exempt their nationals, employed by the United Nations from national income taxation with respect to their salaries and emoluments paid to them by the United Nations, or in any other manner to grant relief from double taxation to such nationals.

277. With a few exceptions, of which the United States is the most notable, all Member States have either acceded to the General Convention or taken the necessary action to exempt from national taxation the official income of their nationals employed by the United Nations. The inequality nevertheless produced where one or more States do not grant exemption from national taxation led the General Assembly to adopt resolution 13 (I) of 13 February 1946, in which the General Assembly resolved that:

Pending the necessary action being taken by Members to exempt from national taxation salaries and allowances paid out of the budget of the Organization, the Secretary-General is authorized to reimburse staff members who are required to pay taxation on salaries and wages received from the Organization.

In resolution 239 D (III), the General Assembly authorized the Secretary-General to reimburse the members of the staff for national income taxes paid by them in respect of salaries received during 1949, and in subsequent years the Assembly has continued this authority, although by budgetary action rather than by resolution. The Assembly also directed the Secretary-General, by paragraph 2 of resolution 239 B (III), not to include in any future personnel contracts a provision undertaking to reimburse national income taxes. Accordingly, reimbursement of taxes required to be paid by staff on their official salaries was made only from year to year.

278. In the hope of encouraging legislative measures for the relief of double taxation on official salaries, the General Assembly imposed a direct assessment on United Nations staff members comparable to national income taxes; the relevant text is contained in resolution 239 (III) as amended by resolution 359 (IV). The revenue derived from this staff assessment plan was applied as an appropriation-in-aid of the budget.

279. This scheme still left the principle of equality among Member States unachieved. As the Secretary-General, on the instructions of the General Assembly, reported:

A Member State which has not granted either tax exemption or relief from double taxation to its nationals who are staff members benefits twice: firstly from the national taxes it levies on such nationals, and secondly from the income derived from the Staff Assessment Plan. On the other hand, a Member State which has granted tax exemption or relief from double taxation to its nationals who are staff members shoulders an additional burden in contributing to the budget appropriation for reimbursement of national income tax levied by other Member States.<sup>121</sup>

<sup>121</sup> Report of the Secretary-General on the use of income derived from the Staff Assessment Plan, *Official Records of the General Assembly, Ninth Session, Annexes*, agenda item 36, document A/C.5/584, para. 9.

280. The General Assembly accordingly adopted resolutions 973 (X) and 1099 (XI), establishing a tax equalization fund in which revenue from the staff assessment plan is now credited in sub-accounts for each Member State as a credit against, and in the proportion of, its annual contribution to the budget. Where any staff members are subject both to staff assessment and to national (including local and state) income taxation in respect of their official salaries, the Secretary-General is authorized to refund to them out of the staff assessment collected from them, the amount of the income taxes on their United Nations income. There is then charged against the credit of the Member State taxing them all amounts refunded such staff, by way of double taxation relief in respect of national income taxes. Thus, in effect, the Member State taxing the official United Nations income of any of the staff of the Organization sees its annual contribution to the Organization increase (or, at least, fail of a reduction) in the amount of the taxes so assessed. The United Nations has not yet been able to devise a method of ensuring tax equalization in the case of programmes financed by voluntary contributions however.

281. Except in the case where special agreements have been negotiated, the benefits of section 18 (b) are confined to the "categories of officials" referred to in section 17 of the General Convention. Thus amongst those excluded from the exemption given in section 18 (b) are independent contractors, technical assistance fellowship holders and teachers and students receiving fees or cash grants in connexion with UNICEF training projects, as well as locally recruited staff employed at hourly rates.

(b) *Position in the United States*

282. The United States has not acceded to the General Convention, nor has it adopted legislation granting exemption from taxation to its nationals in respect of salaries and emoluments received from the United Nations. This question constituted, indeed, one of the main reasons why the United States declined to accede to the General Convention. The Report of the Senate Committee on Foreign Relations stated:

The main issue raised in the committee hearings with respect to the general convention on privileges and immunities centred about section 18 (b) which provides that officials of the United Nations shall be immune from taxation on the salaries and emoluments paid to them by the United Nations. The committee recognize that certain inequalities in the salary scales within the United Nations would inevitably result if the nationals of different states employed as members of the Secretariat are subjected to widely divergent rates of taxation by their own governments. This might lead to difficult problems of morale within the Secretariat. On the other hand, the committee considered it undesirable to create within the United States a group of nationals not subject to the normal responsibilities of citizenship. Even though American members of the Secretariat have obligations to the United Nations, they still retain their citizenship and they derive many benefits from the United States. As such, the committee members believe they should be called upon to contribute in the form of taxes to the work of our Government as other American citizens.

While the committee agreed that there could be no objection to any arrangement which might be made within the United Nations Secretariat to equalize the tax burden imposed upon staff members, it was believed that the United States should reserve its posi-

tion with respect to section 18 (b) relating to tax immunity. The committee recommends that the terms of the resolution be revised accordingly.<sup>122</sup>

283. It was chiefly owing to United States policy with respect to tax exemption that the General Assembly came to adopt the staff assessment scheme described in sub-section (a) above, and also to authorize the Secretary-General to reimburse to United States citizens the amount of the income taxes which they pay on their United Nations salaries and emoluments. As regards this reimbursement, staff members subject to federal, state or local income tax are informed by the Secretariat administration that the reimbursement is not represented as equivalent to exemption from taxation on United Nations earnings. In calculating the actual amount of reimbursement, the Organization applies the available income-splitting benefit, personal exemptions and optional standard deduction to the United Nations salary as if there were no outside income. In certain limited circumstances additional benefits available are left to be applied to actual outside income, as, for instance, itemized deductions over and above the amount of the optional standard deductions. Where, however, a United States citizen established to the satisfaction of his District Director of Internal Revenue that he has been a *bona fide* resident abroad for an uninterrupted period which includes an entire taxable year, he may exclude his foreign earnings (within specified limits) for the entire period during which he has been a *bona fide* resident abroad; his unearned income is thus taxable at the lower rate. The same result obtains in the case of presence in a foreign country or countries during at least 510 full days in any period of eighteen consecutive months. Under United Nations reimbursement procedures, the staff member is under an obligation to co-operate in lawfully minimizing his taxes, including seeking the exemption of a *bona fide* resident abroad, where applicable.

284. It may be noted that officials who are United States citizens and serving in the United States are required to pay social security contributions in accordance with Public Law 86-778, approved 13 September 1960. Under the provisions of that law United States citizens are taxed on earnings received from the United Nations as if they are self-employed. The United Nations did not formerly reimburse staff members from the tax equalization fund in respect of the social security contributions which were paid.<sup>123</sup> In 1966, however, the General Assembly approved<sup>124</sup> the reimbursement to the staff members concerned of the difference between the social security tax each staff member is required to pay as a United Nations employee and the amount he would have had to pay as the employee of a taxable employer.

<sup>122</sup> Committee on Foreign Relations, United States Senate, Report No. 559, 80th Congress, First session, pp. 6 and 7.

<sup>123</sup> See the decision of the United Nations Administrative Tribunal in *Davidson v. the Secretary-General*, Judgement No. 88, 3 October 1963.

<sup>124</sup> At its 1501st plenary meeting on 20 December 1966, the General Assembly took note of the relevant decision of the Fifth Committee contained in paragraph 35 of its report. *Official Records of the General Assembly, Twenty-first Session, Annexes*, agenda item 81, document A/6605.

This approval, which was concurred in by the United States Government, came into effect on 1 January 1967 and covers reimbursements in respect of 1966 and subsequent years.

(c) *Position in Switzerland*

285. Under Swiss law responsibility for taxation is divided between the Federation, the cantons and the various communes; liability to taxation therefore depends in part on where the official lives.

286. All officials, including those of Swiss nationality, are exempt from federal, cantonal and communal taxes on the salary and indemnities they receive from the United Nations, including lump sum payments received from the United Nations Pension Fund. As regards payments received from non-United Nations sources, officials (other than Swiss nationals) may claim exemption from taxes on personal property (*biens mobiliers*) including tax on capital (*l'impôt sur la fortune*), other than taxes on Swiss shares. Dividend withholding tax (*l'impôt fédéral anticipé*) is levied on dividends and interest received from savings accounts and bonds. However reimbursement of the amount withheld may be claimed from the tax administration. There is no exemption from taxes on real property or on income derived from such property, nor from indirect taxes in general (e.g., on insurance premiums or radio and television licences), whether levied by federal, cantonal or communal authorities. In addition to the above, officials of grade P.2 and above are not required to pay a fee for a driving licence and are not subject to automobile tax.

287. In the canton of Geneva, non-Swiss staff members with taxable income have the choice between a special rate of taxation (article 32 *ter* of the *loi genevoise sur les contributions publiques*), with no deductions allowed for dependants, or the application of the normal system of taxation, which takes into account the salary paid by the United Nations but allows deductions to be made.

288. Officials of Swiss nationality are exempt from social security contributions (*assurance vieillesse et survivants*) if they are full participants in the United Nations Pension Fund, and from contributions to the unemployment fund (*caisse d'assurance contre le chômage*).

(d) *Locally recruited staff*<sup>125</sup>

289. A number of States have sought to tax the salaries of their citizens who are employed by the United Nations and stationed in the home country. In so far as these officials, though locally recruited, have not been assigned to hourly rates, the United Nations has protested against such attempt on the grounds that the officials concerned were exempt from taxation in respect to their United Nations salary and emoluments by virtue of the terms of General Assembly resolution 76 (I) and of the General Convention. In a letter sent to the representative of one such State in 1964, the matter was summarized as follows:

<sup>125</sup> Other than United States or Swiss nationals who are dealt with in the two preceding sub-sections.

... The position of your Government is at variance with the consistent practice of all Member States which have acceded to the General Convention without reservation as to its provision on income tax exemption and with that of all other States which, though not a Member of the United Nations, or a Member of the United Nations but not a party to the Convention, have undertaken to apply the Convention. All these Governments have invariably recognized that staff members of the United Nations, including those who are their own nationals, are entitled to the same income tax exemptions as accorded non-nationals. Among the eighty-six States Members of the United Nations which have acceded to the Convention, only four States have made a reservation at the time of accession so as to deny income tax exemption to officials, whether internationally or locally recruited, of the United Nations who are her own nationals; these States are: Canada, Laos, Mexico and Turkey. But even among these reserving States, only Turkey has actually required their nationals on the staff of the United Nations office in her territory to pay income tax. Laos has waived the tax; Mexico has not so far actually collected the tax and is at present considering administrative measures whereby collection will be "indefinitely deferred"; while no practical difficulty has arisen in Canada, the United Nations having no office in that country.

Of the Member States which have not acceded to the Convention, all those which participate in the Technical Assistance or Special Fund programme have, as has your country, by uniform standard agreements with the United Nations assumed a legal obligation to apply the Convention in so far as concerned those programmes. Among the handful of countries which have neither acceded to the Convention nor otherwise undertaken to apply the Convention since they do not partake in Technical Assistance or the Special Fund, only the United States of America is host to a United Nations office. And the United States has co-operated with the United Nations in establishing the Tax Equalization Fund, through which she returns to the United Nations practically all the income tax she collects from her nationals on the staff of the United Nations. Your country, should she persist in her present position, would be the sole country which has, by agreements with the United Nations, assumed a legal obligation to accord income tax exemption to United Nations officials irrespective of nationality but refused to do so.

We have taken pains to explain these arrangements in order to show that immunity from income taxation on United Nations salaries and emoluments for officials of the United Nations, irrespective of nationality or rank, is a well-established principle steadfastly adhered to by the Organization and that it has in fact been universally recognized or indirectly applied. This immunity is granted United Nations officials, as are other privileges and immunities provided for in the Convention, "in the interests of the United Nations and not for the personal benefit of the individuals themselves", to quote section 20 of the Convention. Thus, if your Government, in concert with all other States, recognizes the immunity from income taxation of its nationals on the staff of the United Nations, it would do so in the interest of the Organization and not for the benefit of those nationals as individuals.

290. In a case which arose later in 1964, the Member State concerned sought to tax nationals, residents and clerical staff regardless of nationality. In a letter to the Permanent Representative, the Legal Counsel described the position as follows:

... According to information from the United Nations Technical Assistance Board Representative, the tax authorities of your country have taken the position that members of the staff in the office of the Representative who are *nationals* or *residents* are not entitled to exemption from taxation on their United Nations salaries. They have also taken the position that the immu-

nity does not extend to clerical staff regardless of nationality. The tax authorities recognize that under Section 18 (b) of the Convention on the Privileges and Immunities of the United Nations officials shall. . . (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations. They, however, expressed doubts that nationals and residents of your country, or clerical staff stationed there, could be considered as "officials of the United Nations". The question having been referred to me, I should like to submit for your consideration the correct legal position.

The Convention on the Privileges and Immunities of the United Nations provides for a procedure for the definition of the term "officials of the United Nations", and, by the definition established by that procedure, no distinction is maintained among the staff members of the United Nations as to nationality or residence. All members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates are officials of the United Nations and enjoy the same privileges and immunities provided in the Convention, including the right to exemption from income taxation.

291. After citing section 17 of the General Convention and resolution 76 (I) and referring to the list of staff members sent to each Member Government each year, the letter continued:

From the above, it will be seen that, under the decision of the General Assembly taken in pursuance of the Convention on the Privileges and Immunities of the United Nations, all staff members in the Office of the Representative of the United Nations Technical Assistance Board in your country, irrespective of nationality or residence, are in the status of "officials of the United Nations" and, as such, are entitled to all privileges and immunities appertaining to such officials. The only exception to this rule is in the case of staff members "who are recruited locally and are assigned to hourly rates". None of the staff members in the said office of the Representative fulfil these conditions, the clerical staff not being assigned to hourly rates. All of them, therefore, are entitled to income tax exemption, including those who are nationals or residents.

292. Following representations by the United Nations, the tax authorities of the States concerned have, in the majority of cases, given appropriate recognition to the immunity from taxation provided under the terms of the General Convention. Where such recognition has not been given, the United Nations has where possible applied the provisions of the tax equalization fund so as to reduce that country's credit in the fund by the amount of any reimbursement made by the United Nations to the staff member concerned.

(e) *National taxation in respect of United Nations pension benefits; estate or succession duties*

293. Whereas section 18 (b) of the General Convention provides that United Nations official shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations, no express provision was made to cover the payment of pension benefits. When the Convention was being prepared during the first part of the first session of the General Assembly, the question was briefly considered by the Sub-Committee on Privileges and Immunities. The second report of the Sub-Committee<sup>126</sup> contains the following statement:

<sup>126</sup> *Official Records of General Assembly, First part of first Session, Sixth Committee, Summary records of meetings, annex 3, document A/C.6/31.*

The Sub-Committee on privileges and immunities examined another proposal submitted by the Advisory Group of Experts on administrative and budgetary matters, made with a view to exempting all members of the staff of the Organization from taxation on retirement benefits and exempting their beneficiaries from taxation on death benefits, either in the form of a lump sum or benefits paid by the Organization to widows and orphans.

The Sub-Committee decided, without prejudice to this question being taken up and considered separately at a later stage, that a provision to this effect should not be included in the General Convention.

No subsequent action was taken by the General Assembly to afford such exemption. Consequently the United Nations has not been in a position to require Member States to grant exemption from national income tax on pensions received from the United Nations Joint Staff Pension Fund. Many countries do not, however, tax United Nations pensions. It may also be noted that the Headquarters Agreement for the United Nations Industrial Development Organization provides expressly in section 27 (d) that the officials of the organization shall be accorded.

Exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by the UNIDO for services past or present or in connexion with their service with the UNIDO.<sup>127</sup>

294. As regards estate and succession duties, in 1963 the Office of Legal Affairs advised the secretariat of the Technical Assistance Board as follows:

It has been the usual position that the estates of international organizations' staff are taxable in accordance with general rules of private international law and the provisions of any Convention for the Avoidance of Double Taxation on Estates which may exist between the country of duty station and the country of nationality or permanent residence of the staff member. While the fact of such taxability may cause an additional administrative burden to the estate of a staff member and even on occasion involve unfortunate delays, the financial position of the heirs is not ordinarily affected in any significant degree. Legislation or a convention commonly provides for taxation of the whole estate in the country of settled residence, with taxation in other countries of so much of the decedent's property as is situated within the taxing jurisdiction, the principal taxing State then giving some form of deduction or credit for estate duties paid abroad.

295. In Switzerland no succession duties or taxes on gifts are payable if the deceased or donor is an official or the dependent of an official, other than a Swiss national, above the rank of an Associate Officer (P.2). In such cases the deceased is not considered as domiciled *de jure* in Switzerland. Officials of below the rank of Associate Officer or who are of Swiss nationality are obliged to pay succession duties or taxes on gifts or property they receive. All officials are obliged to pay duties or taxes in respect of property received from a person legally domiciled in Switzerland.

*Section 25. Immunity from national service obligations*

296. Under section 18 (c) United Nations officials are declared "immune from national service obligations". Four Member States have made reservations or declara-

<sup>127</sup> United Nations Industrial Development Organization, ID/B/6/Add.1, 3 April 1967.

tions regarding the application of this provision when acceding to the General Convention. Laos and Thailand declared that their nationals should not be exempt from national service obligations by virtue of their employment as United Nations officials. In the case of Mexico, the grant of privileges and immunities to United Nations officials who are of Mexican nationality and exercising their functions in Mexican territory is confined to certain provisions of section 18, not including section 18 (c). Turkey acceded to the Convention subject to the following reservation:

The deferment, during service with the United Nations, of the second period of military service of Turkish nationals who occupy posts with the said Organization, will be arranged in accordance with the procedures provided in Military Law No. 1111, account being taken of their position as reserve officers or private soldiers, provided that they complete their previous military service as required under Article 6 of the above-mentioned law, as reserve officers or private soldiers.

297. Under appendix C to the United Nations Staff Rules, entitled "Provisional Arrangements relating to Military Service", detailed provision has been made for cases in which staff members perform military service, with the consent of the Secretary-General. The appendix is reproduced below.

(a) In accordance with section 18 (c) of the Convention on Privileges and Immunities of the United Nations, staff members who are nationals of those Member States which have acceded to that Convention shall be "immune from national service obligations" in the armed services of the country of their nationality.

(b) Any requests to Governments which have not acceded to the Convention to defer or exempt staff members from military service by reason of their employment with the United Nations shall be made by the Secretary-General and not by the staff member concerned.

(c) Staff members who have completed one year of satisfactory probationary service or who have a Permanent or Regular Appointment, may, if called by a Member Government for military service, whether for training or active duty, be placed on special leave without pay for the duration of their required military service. Other staff members, if called for military service, shall be separated from the Secretariat according to the terms of their appointments.

(d) A staff member called for military service who is placed on special leave without pay shall have the terms of his appointment maintained as they were on the last day of service before he went on leave without pay. His re-employment in the Secretariat shall be guaranteed, subject only to the normal rules governing necessary reductions in force or abolition of posts.

(e) In the interpretation of Rule 105.2 (b), the period of special leave without pay for military service shall be counted for the purpose of establishing seniority.

(f) A staff member on special leave without pay for military service shall be required to advise the Secretary-General within 90 days after his release from military service if he wishes to be restored to active duty with the Secretariat. He shall also be required to submit a certificate of completion of military service.

(g) If a staff member, after the period of required military service, elects to continue such service or if he fails to obtain a certified release therefrom, the Secretary-General will determine on the merits of the particular case whether further special leave without pay will be granted, and whether re-employment rights shall be maintained.

(h) If the staff member's absence on special leave without pay appears likely to last six months or more, the United Nations

will pay, if so requested, for transporting the staff member's wife and dependent children to his place of entitlement and for their return travel after the staff member's return to active duty with the Secretariat, provided that the expenses involved will be counted as travel expenses related to the next home leave entitlement of the staff member.

(i) The Secretary-General shall not continue his contribution to the Joint Staff Pension Fund on behalf of the staff member during the staff member's absence on special leave without pay for military service.

(j) The provisions of Rule 106.4 relating to illness, accident or death attributable to the performance of official duties on behalf of the United Nations shall not be applicable during periods of military service.

(k) The Secretary-General may, if the circumstances of the military service appear to warrant it, credit the staff member's period on special leave without pay for military service in fixing the salary step upon the staff member's return to active duty with the Secretariat.

(l) The Secretary-General may apply such of the foregoing provisions as he deems appropriate in the case of a staff member who with the advance approval of the Secretary-General volunteers for military service or requests a waiver of his immunity under Section 18 (c) of the Convention on Privileges and Immunities of the United Nations.

298. In the case of States which have acceded to the General Convention, relatively few difficulties have occurred regarding the application of section 18 (c). It is believed that scarcely any Governments which are parties to that instrument have requested the Secretary-General to permit officials of the nationality in question to perform national service. United Nations officials of a certain nationality have been required to apply for a release from military reserve service, together with certain other official formalities, such as exit permit, and income tax clearance, before leaving the country after spending their home leave there. The United Nations has sought to obtain the waiver or simplification of these requirements in respect of officials.

299. Several States have sought to apply military service provisions to locally recruited officials of United Nations subsidiary organs. Apart from a few isolated cases it is believed that such local employees have not in fact been called upon to perform full military service.

300. In 1962 a staff member informed the Office of Legal Affairs that when he left his home country in 1957, on recruitment by the United Nations to serve as an official at Headquarters, he had been required to furnish two guarantees, each of approximately \$1,200; one was to ensure his eventual return to the country and the other was to ensure that he would eventually fulfil his military service obligations. The Office of Legal Affairs gave the opinion that the first guarantee was a restriction on the movement and exclusively international character of an official of the United Nations which was inconsistent with the authority of the Secretary-General, under Articles 97, 100 and 101 of the Charter, to appoint, deploy and direct the staff of the Organization. The second guarantee was declared incompatible with section 18 (c) as constituting a form of national service obligation.

301. As regards States which have not become parties to the General Convention, under Executive Order No. 10292 amending the Selective Service Regulations,

as amended by Executive Order No. 10659, a male alien admitted other than for permanent residence in the United States is not required to register for military service provided, *inter alia*, he is a United Nations official or a member of the family of an official.

302. In the case of Switzerland, special provision was made in the annex to the Agreement with Switzerland concerning officials of Swiss nationality. The annex provides that the Secretary-General will communicate to the Swiss Federal Council a list of officials of Swiss nationality liable for military service; that the Secretary-General and the Council will agree upon the list of such officials who shall be granted dispensation in view of the office which they hold; and that, if other officials of Swiss nationality are called up, the Secretariat may ask for postponement or some other appropriate measure. In practice the preparation of a list has been dispensed with; cases are now treated separately as they arise. Swiss nationals are frequently called for short periods of two or three weeks of military service. In several instances the United Nations has successfully requested a deferment. In one case, involving a Swiss official of director rank, a general deferment (*congé pour l'étranger*) was requested and granted.

303. The Swiss authorities have contended that, under Swiss law, a military tax is payable by officials of Swiss nationality in lieu of military service. The following extract from a letter sent by the Office of Legal Affairs in 1958, in answer to a query raised by a specialized agency, broadly summarizes the United Nations position in regard to this tax. After referring to the provisions of the annex, the letter continued:

... The Swiss Government thereafter took the position that the tax in lieu of military service was payable by any Swiss national enjoying this exemption on the grounds that the Federal Constitution (Article 18) itself not only provides for universal military service but also requires the Confederation to prescribe a uniform tax on exemption from military service. The United Nations seems to some extent to have acceded to this position after discussions late in 1947. Apart from the constitutional basis for the tax, there is an argument in favour of the Swiss position in that the federal law on the tax on exemption from military service (28 June 1878, as amended) treats the tax as one by way of "compensation" for the non-performance of military service more or less regardless of the reason of the non-fulfilment. Thus, neither unavoidable absence or residence abroad nor even medical disqualification appears to confer any exemption from the tax and, apart from a few very narrow classes of exemption, the tax seems to be levied on the mere fact of non-performance of military service without consideration of the reasons.

Accordingly, the Swiss authorities are understood to have continued to assess the tax against United Nations officials exempted from service. The United Nations, however, does not reimburse the officials so taxed. This is on the grounds that the reimbursement authority of the Secretary-General extends only to income taxes, and the military exemption tax is not properly an income tax. It is assessed on a compound basis, only one element of which is calculated on income, and this is not, in our opinion, sufficient to characterize it as an income tax for reimbursement purposes. The tax consists of a personal tax of 6 francs plus a supplementary tax of 1.5 per cent on income and 1.5 per mill on net worth and expectancy.

The above is the position as we know it and to the best of our knowledge does not differ in the case of the Specialized Agencies,

a number of whom have the same provision in their agreements with Switzerland as that cited in the Annex mentioned above.

#### *Section 26. Immunity from immigration restrictions and alien registration*

304. Officials of the United Nations, together with their spouses and dependent relatives, are declared immune "from immigration restrictions and alien registration" in section 18 (*d*) of the General Convention. A similar provision is contained in many of the international agreements concluded by the United Nations dealing with the privileges and immunities of the Organization and its officials.<sup>128</sup> It may be noted that a number of countries issue special identity cards for United Nations personnel serving in their territory.

##### *(a) Practice in respect of countries other than the United States*

305. In Geneva, the names of all United Nations officials and their dependents living with them (together with the names of minors studying abroad) are communicated to the "*Contrôle de l'habitant*". United Nations officials and their dependents (provided the latter are not working in Switzerland) receive from the Federal Political Department an identity card, called a *carte de légitimation*, the colour of which varies according to the rank of the official. Other members of the family of the staff member do not receive a *carte de légitimation* but their passport is stamped "*dispensé du permis de séjour*", provided they do not work in Switzerland.

306. Two special cases which have occurred regarding residence visas or taxes may be noted. In 1961, the authorities of a Member State sought to impose the "*taxes de résidence*" on all locally recruited United Nations staff members serving in the country. Although the Technical Assistance Board Regional Representative protested against this imposition to the Foreign Ministry, the Ministry declined to change its position. In a memorandum to the Technical Assistance Board administration, the Office of Legal Affairs expressed the view of the United Nations as follows:

The purpose of section 18 (*d*) of the Convention is of course to ensure the freedom of the officials of the United Nations to enter and reside in any country for the exercise of their functions in connexion with the Organization. The imposition of an alien immigration fee would appear to derogate from such freedom, by making the residence of United Nations officials in the country in fact dependent upon the payment of a tax on aliens. The "*taxe de résidence*" may thus be considered to be of the nature of an "immigration restriction", the imposition of which is inconsistent with the letter and spirit of the Convention. Furthermore, the tax in question discriminates against officials in the country concerned as compared to officials in other States which do not impose such a tax. In such circumstances the Organization may feel obliged to reimburse the officials concerned in that State, the tax thus becoming, in fact, one upon the United Nations itself in a manner which would not accord with the letter and spirit of the Convention. . .

<sup>128</sup> See e.g., section 15 (*d*) of the Agreement with Switzerland, section 17 (*c*), ECAFE Agreement, section 11 (*f*), ECA Agreement.

307. The second case concerned "police residence" or "re-entry" visas. The following letter, which was sent by the Legal Counsel to the Permanent Representative of the State concerned in 1963, sets out the facts.

It appears that the local authorities have taken the position that staff members of foreign nationality who remain more than three months are required to obtain a form of visa from the police and, furthermore, are required to pay a fee. This visa is variously referred to as a "residence visa" or "re-entry" visa. Its text states that the alien can re-enter the country as often as he likes during a specific period. Repeated inquiries as to the nature of the visa in question elicit the fact that foreign staff members who are now being required, three months after entry, to obtain the visa, did not have to have an entry visa when they first entered the country to take up their duties there. No visa was indeed required for entering the country. It thus seems obvious that the visa that is now required, after a sojourn of three months, is one for the purpose of staying or residing in the country and not for entering it. Inasmuch as its possession is a requisite to sojourn in the country, the visa in question is therefore in the nature of a residence permit, or as it is often referred to, a "residence visa".

In so far as it concerns the United Nations, the mere requirement that a staff member assigned to your country must possess a visa or a residence permit in order to stay in that host country is in itself unobjectionable, so long as such visa or permit is no more than a friendly formality and is granted without charge or restriction. On the other hand, the fee levied for the visa appears to constitute a restriction on the right of the affected United Nations staff members to remain there for the independent exercise of their functions in connexion with the United Nations. In our considered view, its imposition would consequently appear to be inconsistent with section 18 (d) of the Convention on the Privileges and Immunities of the United Nations, which section provides: "Officials of the United Nations shall. . . (d) be immune, together with their spouses and relatives dependent on them from immigration restrictions. . .". So far as I am aware, no other State requires United Nations officials to pay any fee as a condition for remaining in its territory when on the official business of the Organization.

The authorities in question subsequently agreed to grant all United Nations officials exemption from the fee required for the special visa concerned.

308. On a number of occasions States Parties to the General Convention have taken actions which have affected the employment of United Nations officials. On one such occasion, in 1956, a Member State declined to renew the residence visa of a staff member on the ground that it was not necessary that the post be filled by an "international" official but could be occupied by a locally recruited official. The Secretary-General protested against this measure, and requested its reconsideration. The letter of the Secretary-General included the following passage:

. . . It is beyond question that any device by which a Member Government interposed its unilateral decision as to the continuance in a United Nations post of an international official would be in express contradiction to Articles 100 and 101 of the Charter. Likewise, the right of a Member Government to place its visa on the national passport or the United Nations laissez-passer of a member of the staff does not entail the exercise of any power of decision as to the acceptability of the international official; the right of entering to take up a post of duty, and the right to remain at that post for as long as the responsible authority considers necessary, are fully established by the Charter and under Section 18 (d) and 24 and 25 of the Convention on the Privileges and Immunities of the United Nations. . .

(b) *Practice in respect of the United States*

309. United Nations practice concerning the exemption from immigration restrictions and alien registration of persons (other than representatives of States) required to attend United Nations Headquarters on official business, is chiefly governed by the terms of article IV of the Headquarters Agreement and of the pertinent United States legislation.

310. Article IV, section 11, of the Headquarters Agreement provides that United States authorities shall not impose any impediments to the transit to or from the Headquarters District of any persons having business there (including, in the case of officials, their families).<sup>129</sup> Under section 12, the provisions of section 11 are deemed applicable irrespective of the relations between the Governments of the persons referred to in section 11 and the Government of the United States. Sections 13 and 14 provide:

Section 13. (a) Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11. When visas are required for persons referred to in that section, they shall be granted without charge and as promptly as possible.

(b) Laws and regulations in force in the United States regarding the residence of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11 and, specifically, shall not be applied in such manner as to require any such person to leave the United States on account of any activities performed by him in his official capacity. In case of abuse of such privileges of residence by any such person in activities in the United States outside his official capacity, it is understood that the privileges referred to in Section 11 shall not be construed to grant him exemption from the laws and regulations of the United States regarding the continued residence of aliens, provided that:

(1) No proceedings shall be instituted under such laws or regulations to require any such person to leave the United States except with the prior approval of the Secretary of State of the United States. Such approval shall be given only after consultation with the appropriate Member in the case of a representative of a Member (or a member of his family) or with the Secretary-General or the principal executive officer of the appropriate specialized agency in the case of any other person referred to in Section 11;

(2) A representative of the Member concerned, the Secretary-General or the principal executive officer of the appropriate specialized agency, as the case may be, shall have the right to appear in any such proceedings on behalf of the person against whom they are instituted;

(3) Persons who are entitled to diplomatic privileges and immunities under Section 15 or under the General Convention shall not be required to leave the United States otherwise than in accordance with the customary procedure applicable to diplomatic envoys accredited to the United States.

(c) This section does not prevent the requirement of reasonable evidence to establish that persons claiming the rights granted by Section 11 come within the classes described in that section, or the reasonable application of quarantine and public health regulations.

(d) Except as provided above in this section and in the General Convention, the United States retains full control and authority over the entry of persons or property into the territory of the United States and the conditions under which persons may remain or reside there.

<sup>129</sup> Questions relating to the right of transit are also considered in section 35, paras. 346-355, below.

(e) The Secretary-General shall, at the request of the appropriate American authorities, enter into discussions with such authorities, with a view to making arrangements for registering the arrival and departure of persons who have been granted visas valid only for transit to and from the Headquarters District and sojourn therein and in its immediate vicinity.

(f) The United Nations shall, subject to the foregoing provisions of this section, have the exclusive right to authorize or prohibit entry of persons and property into the Headquarters District and to prescribe the conditions under which persons may remain or reside there.

Section 14. The Secretary-General and the appropriate American authorities shall, at the request of either of them, consult, as to methods of facilitating entrance into the United States, and the use of available means of transportation, by persons coming from abroad who wish to visit the Headquarters District and do not enjoy the rights referred to in this Article.

311. Following the enactment of the United States Immigration and Nationality Act of 1952, the United States Representative forwarded to the Secretary-General a copy of a letter from the United States Attorney-General to the Secretary of State concerning the legal effect to be given to the execution, by United Nations staff members amongst others, of waivers under section 247 of the Immigration and Nationality Act of 1952. It was stated that this opinion was addressed in part to the questions which had been raised by the Secretary-General in earlier correspondence. Extracts from the opinion<sup>130</sup> are given below.

Under section 247, the Attorney General is required to adjust the status of an alien lawfully admitted for permanent residence, and thereby enjoying immigrant status, to that of a non-immigrant in one of three specified classes under section 101 (a) of the Act (roughly, accredited foreign government official, representative to or official of an international organization, or treaty trader), if the alien at the time of entry or thereafter acquires an occupational status which, were he seeking admission to the United States, would entitle him to a non-immigrant status in one of the three classes. The Attorney General's order of adjustment terminates the alien's immigrant status.

However, as provided in section 247 (b), the alien may avoid the loss of and retain his immigrant status, even though he is in one of the three classes of occupations, if he files with the Attorney General a written waiver of "all rights, privileges, exemptions, and immunities under any law or any executive order" which would otherwise accrue to him because of his occupational status. The Attorney General's regulations (Title 8, Part 247, effective December 24, 1952, 17 F.R. 11520) and the prescribed waiver (Form I-508) follow the quoted language of the statute; and the general question is, what are the rights, privileges, exemptions and immunities surrendered by the immigrant alien who is in one of the three occupational classes and files a waiver? More specifically, as Ambassador Lodge's inquiry indicates, the chief concern, in the case of international organizations like the United Nations, is the effect of such waivers on the immunity of officials of the organization from legal process relating to acts performed by them in their official capacity, and the immunity of employees from income taxation on salaries paid by the organization.

The Congress in drafting section 247, and in the legislative history of the Immigration and Nationality Act, made no attempt

<sup>130</sup> See also the opinion of 5 January 1954, cited in United Nations Legislative Series, *Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. I, p. 150, where the United States Attorney-General held that a waiver under section 247 (b) did not apply to rights derived from treaties.

to list the rights, privileges, exemptions, and immunities it had in mind. However, it did leave in the legislative history, an indication of the kind of rights and privileges it felt should be and would be waived by the immigrant alien employed by an international organization or a foreign diplomatic mission if he wished to retain both his immigrant status and his occupation. Based upon these references, we are in a position to offer some general advice on the effect of a waiver under section 247 (b), but must leave to future administrative or judicial rulings the precise effect of individual waivers in the variety of situations that may arise.

The bill which became the Immigration and Nationality Act (H.R. 5678, 82nd Cong.) was one of a number introduced as the result of an investigation and study of the entire immigration and naturalization system by the Senate Committee on the Judiciary, pursuant to Senate Resolution 137 of the 80th Congress. In its report on the investigation made to the 81st Congress, the Committee considered the status of the various classes of non-immigrants and made five recommendations for changes in the immigration laws relating to accredited officials of foreign governments and representatives and officials of international organizations. These recommendations, it stated, would not "in its opinion jeopardize the conduction (*sic*) of the foreign relations of the United States". S. Report 1515, 81st Cong., page 523. The fifth of these recommendations read as follows:

"5. It is also recommended that provision be made for the adjustment of the status of a lawfully admitted permanent alien resident to that of a non-immigrant admitted under the foreign government official or international-organization category where the alien acquires an occupational status which would entitle him to such non-immigrant status if he were applying for admission. The subcommittee recommends that since such persons acquire the wide privileges, exemptions and immunities applicable to such aliens under our laws, they should not have the privilege of acquiring citizenship while in that occupational status." S. Report 1515, 81st Cong., page 525.

This recommendation might have been carried out by including a provision of law depriving of their immigrant status immigrants who acquired the privileges, exemptions, and immunities attaching to their occupations. Instead, the 82nd Congress took a less severe course and, in adopting section 247, gave immigrants in those occupations a choice of retaining privileges and surrendering immigrant status or of waiving privileges and keeping immigrant status.

In so doing, both the House and Senate Committees said: "In section 247, the Attorney General is required to adjust the status of immigrants who, subsequent to entry, acquire an occupational status which would entitle them to a non-immigrant status. . . This is intended to cover the situation where aliens who have entered as immigrants obtain employment with foreign diplomatic missions or international organizations or carry on the activities of treaty traders. Normally, they would be classified as non-immigrants and because of the nature of their occupation, would be entitled to certain privileges, immunities and exemptions. The committee feels that it is undesirable to have such aliens continue in the status of lawful permanent residents and thereby become eligible for citizenship, when, because of their occupational status they are entitled to certain privileges, immunities, and exemptions which are inconsistent with an assumption of the responsibilities of citizenship under our laws. Such an adjustment shall not be required if the alien executes an effective waiver of all rights, privileges, exemptions and immunities under any law or any Executive order which would otherwise accrue to him because of his occupational status". H. Report 1365, 82nd Cong., pp. 63-64, S. Report 1137, 82nd Cong., page 26. (Italics supplied.)

In other words, the concern was that the assertion of certain privileges and exemptions by immigrants, who were employed by international organizations and foreign missions but who entered this country ostensibly with the idea of becoming citizens, was

inconsistent with their proposed assumption of the responsibilities of citizenship; accordingly, such privileges should not be available to them. At the same time, the Congress disclaimed any intention of jeopardizing conduct of the foreign relations of the United States (supra, S. Report 1515, 81st Cong., page 523), which includes not jeopardizing the lawful activities of the international organizations and foreign missions located here, who normally engage Americans as well as aliens to conduct their business. In some instances our laws, granting the necessary protections and privileges for these organizations and missions and their employees, draw no distinctions between American and alien employees, treating all alike; in other cases, the privileges granted are not available to Americans but only to the non-citizen employees. Hence it is clear that the Congress intended to deprive immigrant aliens employed in the international organizations and foreign missions of the privileges and exemptions resulting from the occupational status which would not be equally available to American citizens similarly situated. Conversely, it was not the intention of the Congress to require immigrants in these occupations to surrender privileges which American citizens similarly employed may assert. Obviously, if American citizens may lawfully exercise such privileges, the privileges would not appear to be inconsistent with the responsibilities of citizenship.

The Congress might have discriminated entirely against immigrants in favour of citizens, but it did not do so. On the contrary it sought, by the election offered under section 247, to place immigrants and citizens in the specified categories of employment on an equal footing by denying to immigrants special privileges, exemptions, and immunities not available to citizens similarly employed.

For example, section 116 (h) of the Internal Revenue Code, 26 U.S.C. 116 (h), exempts from federal income taxation the compensation of an employee of an international organization if the employee is not a citizen of the United States. Thus, under this section of the law, American citizen employees of international organizations do not enjoy exemption from federal income taxes. Hence, to the extent that the federal income tax exemptions of employees of an international organization rest upon section 116 (h) of the Internal Revenue Code, American citizen employees individually bear an obligation of citizenship (the payment of taxes) which immigrant employees, who are potential citizens, heretofore had no need to bear as individuals (disregarding any equalization of pay that the employer organization may attempt to work out). Therefore, the tax exemptions under section 116 (h) claimable by an immigrant alien in one of the specified occupations is an exemption which he waives when he files the waiver under section 247 of the Immigration and Nationality Act.

A converse example, in the matter of legal process, is section 7 (b) of the International Organizations Immunities Act, 22 U.S.C. 288d, under which officers and employees of international organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such officers or employees, subject to waiver of the immunity by the international organization. In the case of the United Nations, these privileges together with the others in the Act became effective pursuant to Executive Order No. 9698 of February 19, 1946, 11 F.R. 1809. No distinction is made in the statute between citizen and non-citizen employees of the international organization. Hence it would appear that an immigrant alien employee of the United Nations who properly claims the immunity from suit and legal process for official acts allowed under section 7 (b) asserts no greater privilege than would an American citizen employee similarly situated. Accordingly, the waiver of immunities under section 247 of the Immigration and Nationality Act by the immigrant employee of the United Nations would not appear to be a waiver of the immunity from suit and legal process to which section 7 (b) of the International Organizations Immunities Act entitles him.

Application of the foregoing principles in interpreting waivers under section 247, on a case-by-case basis as different situations arise, should accomplish the objective laid down by the Congress. It should result in placing the employee of an international organization or foreign mission, who happens to be an immigrant, in a position of parity with his fellow American employee of the same organization by allowing the immigrant employee no greater privileges in connection with the employment than an American citizen similarly employed. In maintaining his immigrant status and preparing for American citizenship, the immigrant employee of the international organization or foreign mission will not be asserting privileges which he could not obtain and assert were he an American citizen in the same employment. Whatever rights remain and accrue to him as a result of the occupational status will be consistent with his "assumption of the responsibilities of citizenship under our laws".

### *Section 27. Exchange facilities*

312. Under section 18 (e) officials of the United Nations are

accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned.

313. A similar provision is contained in section 15 (e) of the Agreement with Switzerland and in the ECAFE and ECA Agreements. In each of the latter two Agreements, however, an additional clause is provided similar to section 13 (g) of the ECLA Agreement, which grants:

Freedom for officials of other than Chilean nationality to maintain within the territory of the Republic of Chile or elsewhere, foreign securities, foreign currency accounts and movable and immovable property, and on termination of their employment by ECLA, the right to take their funds out of Chile, without any restrictions or limitations, in the currencies and in the amounts brought by them into Chile through authorized channels.

314. A number of field offices reported difficulty in securing full implementation of this provision, in particular when officials sought to transfer their money into other currencies on completion of their assignment. In some instances, while imposing no restriction on the amount, the consent of the host authorities had to be obtained in order to convert local currency; in others limitations were placed on the total amount which might be transferred and an official permit was required. The procedures involved were frequently complex and lengthy. In a few cases it was said that there was no possibility to transfer local currency into that of the official's own country or into freely convertible currency.

315. It may be noted that in two cases which arose and on the basis of the particular facts, section 18 (e) was interpreted as applying only vis-à-vis a State Party to the General Convention in respect of officials resident within its territory. In the first of these cases in which the national Government of a Technical Assistance Board official froze the account which he maintained there, whilst stationed in another country, the Office of Legal Affairs stated that section 18 (e) was not generally deemed applicable as between an official and his national Government. Since the action was taken as part of a general measure and not aimed solely at the official, it was difficult to make representations to the Government concerned. In a further case which occurred in 1964, the Office of Legal Affairs advised that, since section 18 (e)

generally imposed an obligation on a State Party to the General Convention only in respect of officials resident there, no steps could be taken under that paragraph to request the removal of restrictions imposed on bank accounts maintained in one country by Technical Assistance Board officials stationed in another. The position would be different where accounts held by the United Nations itself were involved.

*Section 28. Repatriation facilities in time of international crisis*

316. Section 18 (f) of the General Convention provides that United Nations officials shall

Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys.

It is believed that the United Nations has not on any occasion directly invoked this provision, or its equivalent in other agreements.<sup>131</sup> United Nations officials have been evacuated from certain areas, however, both in the Congo, chiefly with the help of United Nations facilities and forces, and in the Middle East.

*Section 29. Importation of furniture and effects*

317. Under section 18 of the General Convention, reflected in parallel provisions contained in the majority of host agreements, officials of the United Nations

(g) Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

318. As regards the interpretation of the "effects" which may be imported free of duty, the United Nations has consistently maintained that these include an automobile. The following extract from a letter, sent to one of the specialized agencies in 1955, sets out the United Nations position.

We have consistently taken the position that the term "effects" in the aforementioned section of the Convention includes automobiles and that a United Nations official should, therefore, have the right to import his automobile free of customs duty at the time of first taking up his post, whether at United Nations Headquarters or at any other United Nations duty station. This position is based upon logic and practical necessity. Under present-day conditions, the automobile has become so commonplace a possession among people in circumstances comparable to those of a United Nations official that, for such an official, it would no longer be considered a luxury but should be deemed to constitute a reasonable part of his personal effects. Indeed, the possession of it may facilitate the performance of his functions, wherever he is stationed.

This position of ours has been in accord with the practice of a number of States and we are not aware of any instance where a contrary interpretation had been sustained or, at any rate, where a United Nations official had been required to pay customs duty for the importation of his automobile at the time of first taking up his post. The United States, which has not yet acceded to the Convention but has, under its International Organizations Immunities Act, granted exemption from customs duties on "baggage and effects of alien officers and employees of international organ-

izations imported in connection with the arrival of the owner", has invariably extended that exemption to automobiles.

319. The majority of countries place no restriction on the type of personal belongings which may be imported duty free during the installation period. A minority require duty to be paid on certain articles (e.g., on consumer goods) or prohibit their importation altogether (e.g., firearms).

320. As regards the length of time during which staff members may import their furniture and effects, the Legal Counsel replied to an enquiry from a United Nations subsidiary organ in the following terms:

In the consistent practice of the Secretariat, the expression "at the time of first taking up their post in the country in question" in section 18 (g) of the Convention on the Privileges and Immunities of the United Nations has been interpreted as meaning during a reasonable period of time after the physical arrival of the official concerned. The length of time that is considered reasonable may well depend on the circumstances of each case, such as those arising out of air travel which necessitates the separate transfer of effects by surface means, the great distances often involved and consequently the length of time surface transport entails and, also, the inevitable changes in assignment of staff at the United Nations from one country to another, frequently at short notice, involving at times problems of housing and installation and other practical considerations. Thus we have avoided laying down a hard and fast limit on the period of duty-free importation, but have consistently based ourselves upon the rule of reasonableness.

It was stated that a period of three months would unquestionably be unreasonable. A considerable number of countries either impose no time-limit on the period when personal belongings may be imported duty free or permit additional articles to be imported free of duty even after the period of first installation has elapsed, at least in the case of certain categories of officials (for example, UNDP resident representatives).

321. Section 11 (j) of the ECA Agreement provides that officials may import their furniture and effects free of duty within twelve months of taking up their post in Ethiopia. Owing to cases where officials sought to import their furniture and effects after the expiry of this period (e.g., upon extension of a one-year contract), ECA has sometimes found it necessary to request the Ethiopian authorities to grant an extension beyond twelve months. In 1959 the Brazilian Minister of Finances published a circular granting officials of the United Nations and specialized agencies stationed in Brazil the same customs treatment as that afforded to members of diplomatic missions in Brazil. Officials of Brazilian nationality are also granted the right of duty-free importation of their furniture and effects on returning to Brazil after two years or more service with the United Nations.

322. As regards the position in the United States, the entry free of duty and internal revenue tax of the baggage and effects of United Nations staff holding G-4 visas (i.e., those recruited internationally and who are not United States citizens) is governed by section 3 of the International Organizations Immunities Act and section 10.30A of the Customs Regulations of 1943. These provisions are interpreted and applied, on the basis of "reasonableness", broadly as described below. Baggage and effects may enter free only in connexion with the

<sup>131</sup> Section 15 (f), Agreement with Switzerland, section 13 (h), ECLA Agreement, section 17 (e), ECAFE Agreement, section 11 ECA Agreement.

staff member's own entry into the United States, which may be either upon recruitment, upon change of duty station, or following official travel, including home leave. In the case of entry upon recruitment or following a change of duty station, the staff member may be required to furnish a detailed listing of his effects and the contents of baggage. One automobile and a reasonable amount of alcoholic beverages may be imported free of duty. In other cases newly acquired effects (including alcoholic beverages) may be imported in reasonable amount provided they have been in the staff member's possession abroad, i.e., purchased or shipped from a country which was visited by the staff member. In addition one automobile may be imported free of duty provided it has been at least one year since the previous importation of an automobile. All articles imported, irrespective of the time of entry, must be intended for the *bona fide* personal or household use of the staff member and may not be imported as an accommodation to others or for sale or other commercial use.

323. At the United Nations Office at Geneva the matter is governed in detail by the *Règlement douanier*, adopted by the Federal Council on 23 April 1952; the privilege which is granted extends in some cases beyond that of the duty free importation solely of furniture and effects. Senior officials assimilated to heads of diplomatic missions in Switzerland<sup>132</sup> have the right to import goods of any description from outside the country which are destined for their own use or that of their family without payment of duty. Officials of the rank immediately below this<sup>133</sup> have the right to import furniture and effects on taking up the post and to import any other goods, other than furniture, at any time, provided these are solely for their own use or for that of their family, without payment of duty. Officials in these two categories are also entitled to purchase petrol, diesel oil, liquors and tobacco free of customs duties and other taxes. Other officials have the right of duty-free importation of their furniture and effects at the time of taking up the post, together with foodstuffs and alcohol. Officials, other than those assimilated to the heads of diplomatic missions, are not permitted to dispose of the goods imported by them within a period of less than five years unless the duty has been paid. Swiss nationals have no customs privileges, other than those granted to all persons resident in Switzerland, by virtue of their United Nations employment. It may also be noted that under the *Règlement douanier* senior officials of the United Nations Office at Geneva, officials holding a *laissez-passer* on temporary mission in Switzerland, experts on mission, and officials of the International Court of Justice, are accorded "*une vérification de leurs bagages personnels réduite au strict minimum*" i.e. one-fifth of the baggage.

324. As regards the importation of cars into Switzerland the position in brief<sup>134</sup> is that officials granted diplomatic

status have the right to import a car for their own use, duty-free, every three years. Any official (even a Swiss national) may import a car upon taking up his duties in Geneva, however, provided he has owned the car for at least a year; in this case, the official receives the same treatment as an immigrant. Non-Swiss nationals may later import a new car, duty free, as United Nations officials, provided the importation is made within eighteen months of the importation of their furniture. As regards the conditions under which vehicles may be disposed of, in the case of officials not granted diplomatic status a car imported duty free cannot be sold before five years without paying duty. If the official leaves before the five years are up, the amount of customs duty varies according to the length of time he has owned the car.

*Section 30. Diplomatic privileges and immunities of the Secretary-General and other senior officials*

325. Section 19 of the General Convention provides that:

In addition to the immunities and privileges specified in section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

326. This provision was repeated in section 16 of the Agreement with Switzerland. By a decision of 30 December 1947, the Swiss Federal Council further decided:

*... qu'à partir du 1<sup>er</sup> janvier 1948 les privilèges et immunités accordés aux collaborateurs diplomatiques des chefs des missions accrédités auprès de la Confédération suisse seront également accordés à certains fonctionnaires de rang élevé de l'Office européen des Nations Unies.*

*En proportion de l'effectif actuel des fonctionnaires des Nations Unies à Genève, le nombre des bénéficiaires de cette décision ne devra pas dépasser trente-cinq.*

*Le directeur de l'Office européen des Nations Unies établira une liste des fonctionnaires de rang élevé entrant en ligne de compte et la soumettra au département politique. La même procédure vaudra pour les désignations ultérieures.*

*Les hauts fonctionnaires mis au bénéfice de la section 16 de l'Arrangement provisoire du 19 avril 1946 ne seront pas compris dans cette liste, étant donné qu'ils jouissent déjà des mêmes privilèges et immunités que les chefs de missions diplomatiques accrédités auprès de la Confédération suisse.*

327. The arrangements indicated in the above decision have been followed in respect of the staff of the Geneva Office, subject to an exchange of letters, dated 5 and 11 April 1963, whereby section 16 of the 1946 Agreement was changed to read as follows:

Section 16. The Secretary-General and the Assistant Secretaries-General and the officials assimilated to them, shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law and international usage.

In addition, officials in the categories which are specified by the Secretary-General or by the person authorized by him, and which are agreed to by the Swiss Federal Council, shall be accorded the privileges and immunities, exemptions and facilities accorded to diplomatic agents who are not heads of mission.

<sup>132</sup> This category comprises Under-Secretaries and above, together with a few officials of Director rank (D.2). See section 30 below.

<sup>133</sup> In effect, those holding Director (D.2), Principal Officer (D.1) and certain Senior Officer (P.5) posts.

<sup>134</sup> For details see *Règlement douanier*, chap. X.

The personal baggage of persons coming within the scope of the first sentence of section 16 is not subject to inspection. Other persons coming within the scope of section 16 and who enjoy customs privileges are exempt from verification of their personal baggage by the Swiss authorities, except in the case where those authorities consider they have strong grounds for suspicion. In such a case verification may be required but is reduced to a strict minimum i.e. one-fifth of the baggage.

328. Section 15 of the ECLA Agreement provides:

The Government shall accord to the Executive Secretary and other senior officials of ECLA, recognized as such by the Ministry of Foreign Affairs, to the extent permitted under its constitutional precepts, the diplomatic immunities and privileges specified in Article 105, paragraph 2, of the United Nations Charter.

For this purpose, the said officials of ECLA shall be incorporated by the Ministry of Foreign Affairs into the appropriate diplomatic categories and shall enjoy the customs exemptions provided in section 1901 of the Customs Tariff.

Section 19 of the ECAFE Agreement and section 13 of the ECA Agreement contain similar provisions.

329. The staff of many of the missions sent by the United Nations have also been granted diplomatic privileges and immunities. Thus in the exchange of letters between the Secretary-General and the French and United Kingdom representatives in 1950 regarding the privileges and immunities of the United Nations Commissioner in Libya, the Secretary-General wrote:

It is noted that the Convention on the Privileges and Immunities of the United Nations does not appear to contain any express provision specifically applicable to an office such as that of the Commissioner in Libya. Nevertheless, it is my considered opinion that, in view of the high office which the Commissioner in Libya holds as an agent of this Organization and of the important functions granted to him, it would be necessary for the independent exercise of these functions that the Commissioner in Libya enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys and which are accorded to the Secretary-General and the Assistant Secretaries-General of the United Nations under section 19 of the Convention on the Privileges and Immunities of the United Nations.

The French and United Kingdom Governments agreed to this request.

330. In the case of the United Nations Commission for Indonesia, the Government of Indonesia granted the Principal Secretary and the members of the Secretariat the privileges and immunities accorded to members of the Diplomatic Corps of similar rank accredited in Indonesia.

331. Other examples of missions in which diplomatic privileges and immunities were granted include the United Nations Military Observer Group in Lebanon, the subsidiary organ of the United Nations under the charge of a Special Representative of the Secretary-General stationed in Jordan; the observation operation along the Saudi Arabia-Yemen border; and the United Nations Mediator in Cyprus and his staff. In addition a number of the resident representatives of the United Nations Development Programme enjoy diplomatic privileges and immunities, together with certain members of their staff (e.g., deputy resident representatives), under arrangements made with the State concerned. A similar

situation exists as regards the staff (usually the director and deputy director) of a number of United Nations Information Centres. In Presidential Decree No. 12991 of 10 June 1963, Lebanon granted diplomatic privileges and immunities to all directors and assistant directors of UNRWA residing in Lebanon, and to all other United Nations officials in Lebanon with the rank of director or above.

332. Following the abolition of the title "Assistant Secretary-General" and its replacement by "Under-Secretary", the Office of Legal Affairs prepared an *aide-mémoire* in 1959, reproduced below, covering United Nations practice under section 19 and its application to officials having the rank of Under-Secretaries.

1. Under section 19 of the Convention on the Privileges and Immunities of the United Nations, "the Secretary-General and the Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law". As a result of the reorganization of the Secretariat, carried out with the approval of the General Assembly (resolution 886 (IX) of 17 December 1954 adopted at the Ninth Session), the rank of assistant secretaries-general, as well as that of principal directors, was abolished and, instead, a single top level immediately below the Secretary-General was created of under-secretaries and officials having the status of under-secretaries.\* This top level, as conceived at the time, was to comprise under-secretaries, with or without departments, heads of offices, and deputy under-secretaries. At present, however, there are no deputy under-secretaries. A current list of the actual posts is appended hereto. The question now arises as to whether such top-level officials are entitled to the same privileges and immunities as accorded, under section 19 of the Convention, to assistant secretaries-general.

2. In the opinion of the Secretary-General, the foregoing question should be answered in the affirmative. In other words, officials having the status of under-secretaries should enjoy the privileges and immunities provided for under section 19 of the Convention on the Privileges and Immunities of the United Nations. This position was submitted by the Secretary-General in his Report to the General Assembly as a part of the scheme of the reorganization of the Secretariat. Paragraph 31 of the Report states:

"31. In presenting these new organizational arrangements, I have anticipated that the officials having the status of Under-Secretaries will be accorded the privileges specified in section 19 of the Convention on the Privileges and Immunities of the United Nations. That section, in providing that the Secretary-General and all Assistant Secretaries-General would be granted the privileges and immunities of diplomatic envoys, clearly contemplated that the highest level of officials immediately under the Secretary-General should be accorded the privileges appropriate to their functions. I trust that it will be found consistent with the intentions of that section that those who would now be the highest level of officials immediately under the Secretary-General should enjoy the privileges recognized as appropriate to that status and to the responsibility it carries."\*\*

No objection was expressed to this view by the Fifth Committee or the Advisory Committee on Administrative and Budgetary Questions. Although the resolution adopted by the General

\* The scheme was first presented by the Secretary-General to the General Assembly at its eighth session in 1953. See *Official Records of the General Assembly, Eighth Session, Annexes*, agenda item 48, document A/2554, paras. 21-24. It was further elaborated in a report by the Secretary-General to the ninth session of the General Assembly. See *Official Records of the General Assembly, Ninth Session, Annexes*, agenda item 53, document A/2731, in particular paras. 13 and 14 and 28-32.

\*\* A/2731, *op. cit.*, para. 31.

Assembly does not specifically refer to the privileges and immunities aspect, it "approves generally the measures adopted by the Secretary-General".\*\*\*

3. The principle that the officials ranking immediately below the executive head should be accorded diplomatic privileges and immunities has indeed been applied to a number of specialized agencies. This has been done, for instance, by extending the application of section 21 of the standard clauses of the Convention on the Privileges and Immunities of the Specialized Agencies — a section corresponding to section 19 of the Convention on the Privileges and Immunities of the United Nations. Thus, with respect to the International Labour Organisation, Annex I to the Specialized Agencies Convention provides:

"The privileges, immunities, exemptions and facilities referred to in Section 21 of the standard clauses shall also be accorded to any Deputy Director-General of the International Labour Office and any Assistant Director-General of the International Labour Office." (Paragraph 2 of Annex I.)

Similar provisions in Annexes II and IV to the same Convention extend diplomatic privileges to "any Deputy Director-General" of, respectively, the Food and Agriculture Organization and the United Nations Educational, Scientific and Cultural Organization (paragraph 3 of Annex II and paragraph 2 of Annex IV). Similarly, the Second Revised Annex VII to the same Convention, approved by the Tenth World Health Assembly in 1957 extends diplomatic privileges to any "Deputy Director-General" of the World Health Organization.\*\*\*\* It may be significant to note that the above-cited instruments have all been accepted by a number of States, including the United Kingdom.

4. It is true that, under the re-organization, officials at the level immediately below the Secretary-General are more numerous than were the assistant secretaries-general. It may be pointed out, however, that these officials all have far-reaching responsibility for the conduct of activities within their respective fields. In principle the delegation from the Secretary-General of administrative responsibility is as great as, and their functions are no less than, in the case of the assistant secretaries-general before the re-organization. The fact is that the size, the scope of the responsibilities of the United Nations as a whole, and the number of programmes (including semi-independent subsidiary organs, major regional commissions, and the like) which the Organization has found necessary to establish, have all greatly expanded since the adoption of this Convention early in 1946. Thus, in the case of the heads of the subsidiary organs such as the Commander of the United Nations Emergency Force, the Executive Director of the United Nations Children's Fund, the United Nations High Commissioner for Refugees and the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to name a few, it is obvious that the magnitude and importance of their operations are such that the privileges and immunities envisaged in section 19 of the Convention may be said to be as necessary for the independent exercise of their functions as they were for the assistant secretaries-general. Indeed, their position and degree of responsibility are not dissimilar to that of an executive head of a specialized agency accorded diplomatic status by section 21 of the companion Convention. Finally, it may be noted that in another important respect the under-secretaries occupy a station comparable to that of the former assistant secretaries-general and dissimilar to that of the regular Secretariat officials. Unlike the latter they are not given permanent contracts looking toward a career service. Not only are they selected on the personal judgement of the Secretary-General but their appointments are of limited duration, designed to be generally co-terminous with the Secretary-General's own term of office. This emphasizes the degree of their functional association with the chief

administrative officer of the Organization, with the reasonable implication that their diplomatic status might be expected to be of a similar order.

5. The next question then is: can the number of officials enjoying the privileges and immunities of section 19 of the Convention be reduced by granting such privileges and immunities to some of the officials at the rank immediately below the Secretary-General, and not to others at the same level? This would involve a discrimination as among officials of the same level and the question would arise: What criteria are to be used for differentiating among these officials? They have been given the same status and voted the same salary by the General Assembly. Any attempt at dividing them into classes, as it were, could not fail to lead to invidious results. It is also to be noted that as a practical matter it will be rare for any number of these officials to sojourn at any one time in any one country, other than at the seat of the Organization.

6. In its thirteen years of existence, there has been no case where the operation of section 19 of the Convention on the Privileges and Immunities of the United Nations has given rise to difficulty with any Government. It is therefore with a view to the preservation of a principle consecrated in that Section rather than to securing any short-range advantage, that the Secretary-General has felt constrained to adhere to the position which he presented to the General Assembly and which has not given rise to objection on the part of any Member State.

333. The following is a list of the officials who held the rank of Under-Secretary in 1967:

*Officials holding the rank of Under-Secretary at United Nations Headquarters*

Administrator, United Nations Development Programme  
Associate Administrator, United Nations Development Programme  
Co-Administrator, United Nations Development Programme  
Commissioner for Technical Co-operation  
Executive Director, UNICEF  
Executive Director, United Nations Training and Research Institute  
Secretary-General's Special Representative to the Conference of the Eighteen-Nation Committee on Disarmament  
Under-Secretary, Controller  
Under-Secretary, Director of General Services  
Under-Secretary, Director of Personnel  
Under-Secretary for Conference Services  
Under-Secretary for Economic and Social Affairs  
Under-Secretary for General Assembly Affairs and *Chef de Cabinet* of the Secretary-General  
Under-Secretary for Inter-Agency Affairs  
Under-Secretary, Legal Counsel  
Under-Secretary for Political and Security Council Affairs  
Under-Secretary for Special Political Affairs\*  
Under-Secretary for Special Political Affairs\*  
Under-Secretary for Trusteeship and Non-Self-Governing Territories

*Officials holding the rank of Under-Secretary at established offices elsewhere*

Commissioner-General, UNRWA  
Executive Secretary, ECA  
Executive Secretary, ECAFE  
Executive Secretary, ECE

\*\*\* Resolution 886 (IX), of 17 December 1954, para. 2.

\*\*\*\* United Nations, *Treaty Series*, vol. 275, at page 300.

\* One of the Under-Secretaries for Special Political Affairs was also in charge of the Office of Public Information.

Executive Secretary, ECLA  
 Executive Director, United Nations Industrial Development Organization  
 Secretary-General, United Nations Conference on Trade and Development  
 Under-Secretary, Director-General of the United Nations Office at Geneva  
 United Nations High Commissioner for Refugees  
*Officials holding the rank of Under-Secretary in charge of missions or on special assignment*  
 Chief of Staff, UNTSO  
 Chief Military Observer, UNMOGIP  
 Commander, UNEF  
 Commander, UNFICYP  
 Special Representative of the Secretary-General in Cyprus  
 United Nations Representative for India and Pakistan

*Section 31. Waiver of the privileges and immunities of officials*<sup>135</sup>

334. Section 20 of the General Convention provides as follows:

Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where in his opinion the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

No instance has arisen in which the Security Council has been requested to waive the immunity of the Secretary-General.

335. The position in respect of the waiver of the privileges and immunities of officials was summarized in the following internal memorandum, dated 3 November 1964, prepared by the Office of Legal Affairs.<sup>136</sup>

With reference to the inquiry concerning section 18 (a) of the Convention on the Privileges and Immunities of the United Nations, we should like to make the following comment:

1. The immunity from legal process in respect to official acts provided under section 18 (a) of the Convention applies vis-à-vis the home country of an official as well as vis-à-vis the country in which he is serving. Therefore, a question prior to the determination of what jurisdiction may try the case is whether the Secretary-General should waive the immunity of an official in a particular case.

2. Section 20 of the Convention provides that privileges and immunities are granted to officials in the interest of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General has the right and duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interest of the United Nations. If the Secretary-General, in a particular case, decides that immunity would impede the course of justice and could be waived without

prejudice to the interests of the Organization, then he will waive under this section.

3. Normally, in the case of automobile accidents, where a satisfactory settlement is not negotiated, a waiver will be made with respect to the civil claim and a civil action can be tried in the country where the accident occurred or where the staff member may be located. As an alternative, arrangements could be made for arbitration under section 29 (b). Such arrangements under section 29 (b) are usually made on an *ad hoc* basis permitting the choice of the most appropriate method for each case. In the past there have been few criminal cases in which the question of waiver arose and the Secretary-General's decision under section 20 has been taken in each case in the light of the particular circumstances.

336. Amongst more detailed aspects of United Nations practice in respect of waivers it may be noted that in 1955 the Office of Legal Affairs advised that a decision of the Secretary-General would be required before a United Nations official could testify in connexion with any matter of United Nations concern; it was stated that an official might, however, testify as to his name, title, job description and date of his appointment, without special waiver. In 1963 the Foreign Ministry of a Member State requested the waiver of the immunity of a member of the United Nations Field Service who was involved in a car accident whilst driving on official duty. The United Nations requested the Government to provide in support of its request, not a "bare statement" of the fact that an offence had been committed under the Penal Code, "but a motivated statement of reasoning indicating the manner in which the course of justice" might be impeded by the immunity, as well as any other facts which might help the Secretary-General to determine whether or not the waiver could be granted without prejudice to the interest of the United Nations.

*Section 32. Co-operation with the authorities of Member States to facilitate the proper administration of justice*

337. Section 21 of the General Convention provides that:

The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

338. The United Nations has co-operated with national authorities on a number of occasions where it seemed appropriate for it to do so; some of these occasions concerned judicial actions brought against or concerning staff members, which have been considered above.<sup>137</sup> The obligation to ensure that justice was done has operated as a major consideration in all cases involving requests for the waiver of the immunity of officials.<sup>138</sup> The observance of police regulations and the prevention of abuse of any of the privileges granted to officials under article V, have been secured chiefly through administrative means e.g., by means of the United Nations staff rules and administrative instructions. To a large extent, moreover, since the official has enjoyed the privilege or immunity concerned only through the intermediary of the United Nations, the Organization has been able to

<sup>135</sup> On the waiver of privileges and immunities in relation to United States immigrant status, see section 26 (b), paras. 309-311, above. The issue of the waiver of the immunity of officials in respect of official acts is also considered in section 23, para. 270, above.

<sup>136</sup> *United Nations Juridical Yearbook 1964*, p. 263.

<sup>137</sup> See section 23, para. 270, above.

<sup>138</sup> *Ibid.*, and section 31, paras. 334-336, above.

control the manner and extent of the exercise of each privilege or immunity, and thereby prevent any abuse.

CHAPTER V. — PRIVILEGES AND IMMUNITIES OF EXPERTS ON MISSIONS FOR THE UNITED NATIONS AND OF PERSONS HAVING OFFICIAL BUSINESS WITH THE UNITED NATIONS

*Section 33. Persons falling within the category of "experts on missions for the United Nations"*

339. Under article VI of the General Convention certain immunities, broadly similar to those accorded to officials under article V, are granted to "Experts (other than officials coming within the scope of article V) performing missions for the United Nations".

340. United Nations action at the time of appointment is conclusive in determining whether or not a given person has been appointed as a staff member, so as to be subject to the United Nations staff rules and regulations and to enjoy the benefits of article V of the Convention, or as an expert subject to different contractual conditions and falling under article VI of the Convention as regards privileges and immunities. As noted in sections 22 and 24 above, Governments have on occasions considered that technical assistance experts (who are employed as staff members) were to be classified as experts under article VI of the Convention, and not therefore immune from taxation. In correspondence with a Member State in 1956, the Legal Counsel described the distinction between officials, falling under article V, and experts who come under article VI as follows:

. . . Owing to the similarity of the terms, it is understandable that there should arise a tendency to regard Technical Assistance experts as experts within the meaning of Article VI of the Convention on Privileges and Immunities of the United Nations, or as experts referred to in Section 29 and annexes I, II, III, IV, and VII of the Convention on the Privileges and Immunities of the Specialized Agencies. The resemblance is, however, fortuitous, and the two categories are legally and administratively quite distinct. The terms "experts on missions for the United Nations" and "experts serving on Committees or performing missions" for a Specialized Agency were intended to apply only to persons performing a mission for the United Nations or a Specialized Agency who, by reason of their status, are neither representatives of Governments nor officials of the Organization concerned but who, for the independent exercise of their functions in connection with their respective Organizations, must enjoy certain privileges and immunities. An example of such "experts on missions" would be members of certain commissions and committees of the United Nations or of the Specialized Agencies who serve in their individual capacity and not as government representatives. Another example is the United Nations military observers at present serving in Palestine and Kashmir, whose salaries are paid by their own respective Governments and to whom the United Nations pays only an allowance. In adopting Article VI of the United Nations Convention, the General Assembly had in mind peace missions in particular. It did not provide for the tax exemption of such experts (though it conferred upon them a quasi-diplomatic status not enjoyed by Secretariat officials), because they are commonly made available or even seconded by Governments, or else are designated to serve in a special status deliberately set apart from Secretariat staff. Therefore, whether a person is in the status of an "official" or in that of an "expert on mission" depends on the nature of his contractual relations, his terms of service, with the Organization concerned.

With regard to Technical Assistance experts engaged by the United Nations or by one of the Specialized Agencies, it is felt that, to enable the Executive Head concerned to exercise the responsibilities vested in him in the implementation of the Expanded Programme of Technical Assistance, it is necessary, as far as possible, to bring such experts under the authority of the Executive Head of the Organization with which they serve to a degree similar to staff members. Moreover, in view of the fact that such experts perform functions essentially similar in nature to those of staff members, it is important that there be equality of treatment between such experts and members of the staff — as well as the intended equality of treatment as, among themselves, regardless of nationality. For these reasons, Technical Assistance experts, with certain exceptions which will be explained in the next paragraph, are subject to obligations and accorded rights substantially the same as those of staff members. They subscribe to the same oath; they are similarly subject to the authority of and are responsible to their respective Executive Heads; and they receive a monthly salary, and this salary is subject to staff assessment (in Organizations in which such assessment is applied to the staff) in the same manner as other staff members. Such experts are therefore designated as being in the categories of officials and are entitled to the privileges and immunities appertaining to officials. The result is logical, since all the policies motivating the adoption by the General Assembly in the Conventions of the respective Articles on officials are thus seen to be equally applicable to those serving as Technical Assistance experts.

As an exception to the general rule stated in the preceding paragraph, a small number of technical assistance experts are engaged from time to time who are not brought under the authority of the Executive Head of the Organization with which they serve to a degree similar to staff members because circumstances which vary in every individual case render it unnecessary or inadvisable to do so. Such experts are not considered as falling in the categories of officials but rather as being in the status of "experts on missions for the United Nations" or "experts performing missions" for a Specialized Agency, as the case may be. An example might be the case of an individual whose sole responsibility is the production of a text book or a report for a fixed fee; another example might involve engagement of the services of an individual through contract with a third party such as a university or research institution, the contractual relationship being between the Executive Head and the institution on the one hand, and between the institution and the individual on the other. Such individuals are engaged under special contractual arrangements which neither confer on them the privileges of staff membership nor require of them the obligations of members of the staff. They do not subscribe to the oath of office; their remuneration is normally paid on the basis of a fixed fee which is not related to the international salary scale; and the extent of the authority of the Executive Head over such individuals and of their responsibility to him is narrow in scope and limited to the terms set forth in the contractual agreement under which they are engaged. Many of these Technical Assistance experts are engaged on relatively short-term appointments although, in principle, it is not this fact which distinguishes them from staff members, since some staff members are also engaged on short terms. . .

341. Examples of persons classified as "experts on missions for the United Nations" include UNTSO and UNMOGIP military observers, who are military officers, loaned by Government, and officers serving on the United Nations Command (The Commander's Headquarters Staff) of UNEF and UNFICYP,<sup>139</sup> members of the Administrative Tribunal, of the Advisory Committee

<sup>139</sup> UNEF Agreement, para. 25, United Nations, *Treaty Series*, vol. 260, p. 61, and UNFICYP Agreement, para. 25; *ibid.*, vol. 492, p. 72.

on Administrative and Budgetary Questions, of the International Civil Service Advisory Board, of the International Law Commission, of the Permanent Central Narcotics Board, and consultants.

*Section 34. Privileges and immunities of "experts on missions for the United Nations"*

342. Article VI of the General Convention provides as follows:

*Section 22.* Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connexion with their missions. In particular they shall be accorded:

(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

(b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

(c) Inviolability for all papers and documents;

(d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

*Section 23.* Privileges and Immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

343. In so far as the privileges and immunities listed are similar to those accorded to officials under article V, United Nations practice in respect of the latter may be considered relevant to the interpretation of the provisions of article VI; it may be noted that experts are given an express immunity from personal arrest. The difference between the two articles which has attracted most attention, however, is that in article VI no immunity is granted from national taxation. In the case of United Nations military observers, their only emoluments from the United Nations are normally a *per diem* allowance which is regarded as a subsistence allowance during their period of duty. Members of the International Law Commission and of the Permanent Central Narcotics Board and Drug Supervisory Body, on the other hand, receive honoraria from the United Nations. The taxability of these payments is dependent on the appropriate national tax laws.

344. When acceding to the General Convention in 1962, Mexico did so subject to the reservation that experts of Mexican nationality, exercising their functions in Mexico, should enjoy the privileges of section 22 (a), (b), (c), (d) and (f) respectively, "on the understanding that the inviolability established in . . . Section 22, paragraph (c),

shall be granted only for official papers and documents".

345. It may be noted that in the case of military observers certain privileges and immunities, additional to those contained in article VI, and necessary for the performance of their functions, such as freedom of movement across armistice demarcation lines, have been established by custom, under Security Council resolutions, and by direct intentment of Article 105 of the Charter. Lastly, although article VI contains no provision for the grant of privileges and immunities to the dependants of experts on mission, such dependants have in practice been accorded certain limited privileges.

*Section 35. Privileges and immunities of persons having official business with the United Nations*

346. In addition to United Nations officials and "experts on missions for the United Nations", a remaining category of persons (other than the representatives of Member States) who may enjoy certain privileges and immunities are those having official business with the United Nations. Examples of persons falling within this category are those invited to appear before United Nations bodies, whether in a representative capacity (e.g. on behalf of a non-governmental organization having consultative status) or as individuals able to supply information of interest to the United Nations body concerned, Press representatives, and persons invited to participate in seminars or similar meetings held under United Nations auspices. The privileges and immunities of those attending United Nations proceedings in this way include all those necessary to enable them to perform the official business concerned, as well as the right of transit and of access.

347. A number of agreements contain provisions expressly granting such persons rights of transit to United Nations premises. Section 12 of the ECLA Agreement, for example, states that the Chilean authorities shall impose no impediment to transit to and from the Headquarters of ECLA of persons invited to the Headquarters on official business, as certified by the Executive Secretary of the Commission. The ECA and ECAFE Agreements contain a similar provision. Section 17 of the ECLA Agreement further provides that persons invited on official business (other than those of Chilean nationality) shall enjoy the same privileges and immunities as are granted to officials under section 13 of the ECLA Agreement, with the exception of the right to import furniture and effects free of duty.

348. In the case of the United States, the matter is chiefly regulated by Article IV of the Headquarters Agreement; in particular section 11 of that Article provides:

The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the Headquarters District of . . . (3) representatives of the press, or of radio, film or other information agencies, who have been accredited by the United Nations (or by such a specialized agency) in its discretion after consultation with the United States, (4) representatives of non-governmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the

Charter, or (5) other persons invited to the Headquarters District by the United Nations or by such specialized agency on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the Headquarters District. This section does not apply to general interruptions of transportation which are to be dealt with as provided in Section 17, and does not impair the effectiveness of generally applicable laws and regulations as to the operation of means of transportation.

349. The application of the provisions of article IV to the representatives of non-governmental organizations have been the subject of extensive discussion both in the Economic and Social Council and in the General Assembly.<sup>140</sup> The first phase of the discussion centred on the question of access to the United Nations Headquarters of representatives of non-governmental organizations in consultative status for the purpose of attending the meetings of the General Assembly while their right of access for the purpose of attending the sessions of the Economic and Social Council was not disputed. The discussion resulted in the adoption by the General Assembly of resolution 606 (VI), the operative part of which reads as follows:

1. *Authorizes* the Secretary-General, upon the request of the Economic and Social Council or its Committee on Non-Governmental Organizations, to make arrangements to enable the representative designated by any non-governmental organization having consultative status to attend public meetings of the General Assembly whenever economic and social matters are discussed which are within the competence of the Council and of the Organization concerned;

2. *Requests* the Secretary-General to continue to give assistance to representatives of such non-governmental organizations in facilitating transit to or from sessions of the General Assembly and its Committees.

350. The question of the admission of representatives of non-governmental organizations to United Nations Headquarters arose again when the United States, in denying visas to certain representatives of non-governmental organizations, invoked section 6 of its Public Law 357, as assertedly constituting a reservation to the Headquarters Agreement. Section 6 of Public Law 357 provides that:

Nothing in the agreement shall be construed as in any way diminishing, abridging, or weakening the right of the United States to safeguard its own security and completely to control the entrance of aliens into any territory of the United States other than the Headquarters District and its immediate vicinity, as to be defined and fixed in a supplementary agreement between the Government of the United States and the United Nations in pursuance of section 13 (3) (e) of the agreement, and such areas as it is reasonably necessary to traverse in transit between the same and foreign countries. Moreover, nothing in section 14 of the agreement with respect of facilitating entrance into the United States by persons who wish to visit the Headquarters District and do not enjoy the right of entry provided in Section 11 of the agreement shall be construed to amend or suspend in any way the immigration laws of the United States or to commit the United States in any way to effect any amendment or suspension of such laws.

<sup>140</sup> The following account is taken from the *Repertory of Practice of United Nations Organs*, vol. V, pp. 343-4 and *ibid.*, suppl. No. 1, vol. II, p. 423, where detailed references may be found.

351. The Secretary-General, having conducted a series of negotiations with the representatives of the United States, submitted a progress report to the Economic and Social Council in which he enumerated the rights of the United Nations and the United States under the Headquarters Agreement as follows:

(1) It had been recognized from the outset that the Headquarters Agreement should not be permitted to serve as a cover to enable persons in the United States to engage in activities outside the scope of their official functions;

(2) Subject to the purpose of the Headquarters Agreement, the United States could grant visas only for transit to and from the Headquarters District and sojourn in its immediate vicinity; it could make any reasonable definition of the "immediate vicinity" of the Headquarters District, of the necessary routes of transit, and of the time and manner of expiration of the visa following the completion of official business; and it could carry out deportation proceedings against persons who abused the privileges of residence by engaging in activities in the United States outside their official capacity;

(3) In the case of aliens in transit to the Headquarters District "exclusively on official business of, or before the United Nations", the rights of the United States were limited by the Headquarters Agreement to those mentioned.

On 1 August 1953, the Economic and Social Council adopted resolution 509 (XVI) in which it noted the oral and written reports made by the Secretary-General and expressed the hope that any remaining questions would be satisfactorily resolved within the provisions of the Headquarters Agreement.

352. The question of access was raised again at the twenty-first session of the Economic and Social Council. A representative designated by the World Federation of Trade Unions to attend that session of the Council was refused a visa by the United States authorities. In the Committee on Non-Governmental Organizations, it was alleged that such action on the part of the United States was contrary to the Headquarters Agreement and to the principles laid down in the Secretary-General's report on the subject; reference was also made to resolution 509 (XVI). In reply the United States representative maintained that his Government was well aware of the terms of the Headquarters Agreement and had applied them. However, the Agreement, in the form approved by the United States Senate, was open to different interpretations. He explained that the United States Government had refused the visa to the representative in question on the ground of the national security of the United States and the interests of the United Nations. The Secretary-General requested consultations with the United States authorities in accordance with the arrangements agreed upon in 1953. It was announced to the Economic and Social Council on 3 May 1956 that, as a result of the consultations, the United States had authorized the issue of a visa to the representative and that negotiations were continuing to establish an effective and expeditious procedure in similar cases.

353. In 1963 the Legal Counsel was asked by the Fourth Committee to give an opinion on the question of the right of transit to the Headquarters District in connexion with the possible appearance before the Committee of Mr. Henrique Galvao. The opinion given is reproduced below:

15 November 1963

1. At its 1475th meeting, on 11 November 1963, the Fourth Committee requested an opinion as to the legal implications of the possible appearance before it of Mr. Henrique Galvao.

2. The Committee will wish to take into account the limited character of the legal status of an individual invited to the Headquarters for the purpose of appearing before a Committee of the General Assembly or other organ of the United Nations.

3. Section 11 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (General Assembly resolution 169 (II)) provides that the federal, state or local authorities of the United States shall not impose any impediments to transit to or from the Headquarters District of (among other classes of persons) persons invited to the Headquarters District by the United Nations on official business. While such a person is in transit to or from the Headquarters District, the appropriate American authorities are required to accord him any necessary protection.

4. Apart from police protection, therefore, the obligations imposed on the host Government by the Headquarters Agreement are limited to assuring the right of access to the Headquarters and an eventual right of departure. The Headquarters Agreement does not confer any diplomatic status upon an individual invited because of his status as such. He therefore cannot be said to be immune from suit or legal process during his sojourn in the United States and outside of the Headquarters District.

5. Two other provisions of the Headquarters Agreement serve to reinforce the right of access to the Headquarters. Section 13 (a) specifies that the laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privilege of transit to the Headquarters District. This provision, however, clearly assures admission to the United States without conferring any other privilege or immunity during the sojourn. Similarly, section 13 (b) interposes certain limitations on the right of the host Government to require the departure of persons invited to the Headquarters District while they continue in their official capacity; but this plainly relates to restrictions on the power of deportation and not, conversely, on a duty to bring about departure. Moreover, section 13 (d) makes clear that, apart from the two foregoing restrictions, "the United States retains full control and authority over the entry of persons or property into the territory of the United States and the conditions under which persons may remain or reside".

6. It is thus clear that the United Nations would be in no position to offer general assurances to Mr. Galvao concerning immunity from legal process during his sojourn in the United States. It might be that individual citizens of the United States might have civil causes of action against him and could subject him to service of process. While the Federal Government might have no intention, and might lack jurisdiction, to initiate any criminal proceedings against him, it is a known fact that there are legal limitations on the powers of the Executive Branch of the United States Government to ensure against any type of proceeding by another branch of the Government, including the Judicial Branch.

7. Moreover, apart from general restrictions in the Federal Regulations on the departure of an alien from the United States when he is needed in connexion with any proceeding to be conducted by any executive, legislative, or judicial agency in the United States, the attention of the Committee has already been invited to the possibility that extradition proceedings might be instituted against Mr. Galvao during his presence in this country. By an

Extradition Convention of 1908 between Portugal and the United States\* persons may be delivered up who are charged, among other crimes, with piracy or with mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain of the vessel, or by fraud or violence taking possession of the vessel, or with assault on board ships upon the high seas with intent to do bodily harm, or with abduction or detention of persons for any unlawful end. The extradition is also to take place for the participation in any of such crimes as an accessory before or after the fact. The Convention contains the usual exception for any crime or offence of a political character, or for acts connected with such crimes or offences. (Articles II, III.)

8. Whenever there is an extradition convention between the United States and any foreign Government, any federal or state judge of the United States may issue a warrant for the apprehension of any person found within his jurisdiction who is properly charged with having committed within the jurisdiction of any such foreign Government any of the crimes provided for by the Convention; if, after hearing and considering the evidence of criminality, the judge deems it sufficient to sustain the charge under the convention, he must certify this conclusion to the Secretary of State of the United States in order that a warrant may be issued upon the requisition of the proper authorities of the foreign Government for the surrender of the person according to the terms of the convention.\*\*

9. There is no precedent in the history of the Headquarters Agreement which would indicate whether an application of Federal Regulations restricting departure of an alien, by reason of proceedings against him not related to his presence in the United Nations, would constitute an impediment to transit "from the Headquarters District" within the meaning of section 11 of the Agreement. There is likewise no precedent which would indicate whether compliance by the Federal Government with the terms of an extradition treaty would conflict with the right of transit of an invitee from the Headquarters District. In this connexion it is important to note that what the United States Government has undertaken not to do, by the terms of section 11, is to "impose" any impediment to transit from the Headquarters. To the extent that the presence of Mr. Galvao in the United States might in one manner or another give rise to proceedings against him by the operation of existing law in relation to pre-existing facts (such as previous activities on his part), it could be argued that this did not constitute an action taken by the Government to impose an impediment on his departure.

10. The Legal Counsel is of course not in a position to pass upon the internal operations of United States law, much less upon the relations between the Executive and Judicial Branches of the Government. Even if it should prove possible that the Executive Branch could, in the exercise of its authority over foreign affairs, certify and allow to the Judicial Branch that the freedom of Mr. Galvao to depart without impediment should override the authority of the courts to detain him, it is not clear on what basis an advance assurance could be given him. Likewise, even if a dispute were to arise between the United Nations and the United States on such an issue, it might eventually require referral to a tribunal of arbitrators under the terms of section 21 of the Headquarters Agreement.

11. In these circumstances, it must be recognized that a situation could arise by which the Fourth Committee was deprived of the advantage of receiving oral testimony from Mr. Galvao. Should he not be prepared to attend because of the inability of the host Government to confer upon him a general immunity,

\* See Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers, 1776-1909, William M. Malloy, compiler (Washington, Government Printing Office, 1910), vol. II, pp. 1469-1474.

\*\* See United States Code, 1958 Edition (Washington, United States Government Printing Office, 1959), Vol. Four, Title 18, Sec. 3184.

it is clear that his abstention from appearing would be his own, and not the affirmative imposition of an impediment to his transit. For it might only be at the moment of his attempted departure from the United States that an arbitrable dispute could arise as to whether he was entitled to depart notwithstanding proceedings which might in the meantime have been instituted against him.

12. Two other points of law were raised in the 1475th meeting of the Committee. It was suggested that, in the event of a conflict between the obligations of the United States under its Extradition Treaty with Portugal and the Charter, the obligations under the Charter would prevail by virtue of its Article 103. The difficulty here is that such rights as inure to Mr. Galvao stem directly from the Headquarters Agreement and not from any provision of the Charter, which does not cover invitees. The question was also raised as to whether the Treaty could be invoked before the General Assembly under Article 102 of the Charter. The sanction in the second paragraph of that Article, however, relates to treaties required to be registered with the Secretariat under that Article. The Extradition Treaty in question dates from the year 1908, whereas the duty to register relates only to treaties entered into by a Member after the coming into force of the Charter. It is also true that, in the hypothetical situation dealt with above, the risk is that the Extradition Treaty would be invoked in the United States courts rather than in the General Assembly.<sup>141</sup>

354. In order to obtain assurance that Member States would not raise requests for extradition in respect of petitioners and others invited to United Nations Headquarters, or to regional or other major offices, the Secretary-General addressed an enquiry to all Member States; the majority of replies gave appropriate assurances. In those cases where the replies specifically referred only to United Nations Headquarters, the Secretary-General stated when acknowledging the assurance given that he was confident that the State concerned would be guided by the same principle with respect to persons invited by the United Nations to its offices other than its Headquarters, for example, the offices of the regional commissions, located in countries with which the particular State might have an extradition treaty.

355. As regards the immunity of persons giving evidence before United Nations inquiry bodies, the following paragraphs from the Report of the Commission of Investigation into the Conditions and Circumstances resulting in the Tragic Death of Mr. Dag Hammarskjöld and Members of the Party Accompanying Him may be noted:

54. The Rhodesian authorities, in discussions with the Commission indicated that the laws of the Federation relating to the attendance of witnesses could not be made applicable to the hearing of the United Nations Commission without special legislation, which could not be enacted in time for the United Nations hearings. Consequently, it would not be possible for the United Nations Commission to subpoena witnesses, administer oaths, or commit for contempt. The authorities further expressed the view that it would not be possible to treat the statements of witnesses to the United Nations Commission as "privileged".

55. With respect to the first three points no particular difficulties were envisaged. The Rhodesian authorities assured the Commission that all officials desired by the Commission would appear on request, and that assistance would be given in obtaining the voluntary appearance of witnesses. In fact, while attendance could not

be compelled, there was not a single instance in which a witness requested by the Commission did not appear, and in some cases witnesses were brought many miles to be available to the Commission.

56. The Commission was, however, concerned at the suggestion that the testimony of witnesses who appeared before it might not be privileged. In its view a witness appearing before a United Nations Commission must enjoy privilege against legal process as a result of such appearance. The view was expressed that such privilege was enjoyed under the general principles of law and in accordance with Article 105 of the Charter of the United Nations. Without prejudice to the legal position, the Rhodesian authorities gave assurances that there would be no governmental action against any person by reason of his appearance and or testimony before the United Nations Commission.<sup>142</sup>

## CHAPTER VI. — UNITED NATIONS "LAISSEZ-PASSER" AND FACILITIES FOR TRAVEL

### *Section 36. Issue of United Nations laissez-passer and their recognition by States as valid travel documents*

356. Article VII, section 24 of the General Convention provides that "The United Nations may issue United Nations *laissez-passer* to its officials"; and that "These *laissez-passer* shall be recognized and accepted as valid travel documents by the authorities of Members", taking into account the provisions of section 25 dealing with applications for visas.

357. The United Nations has issued *laissez-passer* to officials travelling on official business (including travel on home leave, at official expense) including technical assistance experts, other than those classified as "experts on missions for the United Nations". It has declined to issue *laissez-passer* to OPEX officers, on the ground that these are servants of Governments and not officials.

358. The issue of *laissez-passer* has been carefully regulated. As regards the locally recruited staff of field missions, *laissez-passer* have been issued only after study of each individual case, solely for the purposes of official business, and subject to the condition that the document be returned to the administration after completion of the mission.

359. The position in respect of dependents was described as follows in a letter dated 13 September 1951 sent by the Office of Legal Affairs to the Legal Adviser of a permanent mission.

Section 24 of the Convention on the Privileges and Immunities of the United Nations provides that the United Nations may issue the *laissez-passer* "to its officials". For that reason it is our view that Member States parties to the Convention are required to accept it as a valid travel document only for the staff member who is technically its sole bearer and who is adequately identified by description and photograph on pages 1, 2 and 4. It would thus follow that an official could not use the *laissez-passer* as a means of obliging a Member Government to accept into its territory persons who claim to be members of his family.

As you have noted, there are nevertheless important reasons for identifying any members of his family who may accompany the bearer of the *laissez-passer*. For this purpose space is provided

<sup>141</sup> *Official Records of the General Assembly, Eighteenth Session, Annexes*, agenda item 23, document A/C.4/621. See also section 38, paras. 371 and 372, below concerning the travel documents of petitioners.

<sup>142</sup> *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 22, document A/5069 and Add.1.

on page 6, although a photograph is not necessarily used. In our view, however, the identification on page 6 does not itself make the *laissez-passer* a valid travel document for the family members but simply helps to identify for the convenience of Member Governments the persons most likely to be claiming the several derivative privileges under the Convention. For example, section 18 (d) and (f) specifically refer to "spouses and relatives dependent" of officials of the United Nations in creating an immunity from immigration restrictions and alien registration and providing a privilege as to repatriation facilities in time of international crisis. Customs officers may likewise be assisted in granting privileges or courtesies by thus being informed as to the members of the immediate family.

At the same time, I might draw your attention to one occasional problem that can arise from this requirement of an additional travel document covering the members of the family of the official. There will be a few cases in which a member of the family will not have been able to obtain a valid passport. In such cases it has been customary for an affidavit of identity, with a photograph and other adequate description of the bearer, and with an indication of the reasons for the inability to have obtained a passport to be carried by the individual concerned. Visas have been entered directly on this affidavit of identity, including the so-called 3 (7) visas admitting persons to the United States under the terms of the Headquarters Agreement. . . A visa would, of course, be required whether or not the issuing Government would require one if a valid passport of the nationality in question were presented.

360. The provision in the General Convention relating to the issue of *laissez-passer* was one of the obstacles to accession by the United States to the General Convention. After referring to section 24, the Committee on Foreign Relations of the United States Senate stated:

The committee was assured that this language does not authorize or require the United Nations or any Member State to issue or accept a document which is a substitute for a passport or other documentation of nationality. It provides only for a certificate attesting to the United Nations affiliation of the bearer in respect to travel and will be accepted by the United States as such a document. Article VII, in other words, would not amend or modify existing provisions of the law with respect to the requirement of issuance of passports or of other documents evidencing nationality of citizens or aliens. To make this point perfectly clear, the committee approved a second amendment to the resolution.<sup>143</sup>

The proposed amendment was as follows:

Nothing in article VII of the said convention with respect to *laissez-passer* shall be construed as in any way amending or modifying the existing or future provisions of the United States law with respect to the requirement or issuance of passports or of other documents evidencing nationality of citizens or agents, or the requirement that aliens visiting the United States obtain visas.

361. The possibility of Member States using their control over the issue of national passports as a means of regulating the selection of their nationals for employment with the United Nations was discounted by the Secretary-General in his report on personnel policy to the General Assembly at its seventh session.<sup>144</sup> He declared that the assumption that this could be done was not in keeping with the actual legal position of the staff of the Organization. After recalling Articles 101

and 105 of the Charter and section 24 of the General Convention, the report stated:

The Secretary-General has never treated this provision as in any way exempting staff from meeting normal travel and documentary requirements of the Governments concerned. On the other hand, it is clear that Member States should not, under the provisions of the Charter, seek to interpose their passport or visa requirements in such a manner as to prevent staff from taking up their post of duty with the United Nations or from travelling from country to country on its business.

362. In the course of discussions on this subject in plenary meeting at the seventh session of the General Assembly, there was disagreement with this interpretation of the General Convention. The view was expressed that when a Member State informed the Secretary-General that a passport had been refused to a staff member, he should immediately inquire into the circumstances of such a refusal and should refrain from issuing a *laissez-passer* to the official concerned pending the results of such an inquiry.

363. Member States have recognized the *laissez-passer* as a valid travel document. No precise information is available, however, as to the extent of this recognition, or how frequently State authorities also require the production of a national passport. To some extent those questions are answered in section 39, paras. 373 and 374, below, dealing with the issue of visas.

*Section 37. Freedom of movement of United Nations personnel;*<sup>145</sup> *inapplicability of persona non grata, doctrine*

364. The United Nations has consistently maintained that its officials and others (e.g. experts on mission) travelling in order to fulfil their functions on behalf of the United Nations should be granted freedom of movement by all Member States. This right has been based on the necessary intentment of Member States in creating the Organization, on the range and nature of the responsibilities entrusted to the Organization, on the particular resolutions under which the officials concerned were dispatched, on the relevant provisions of the Charter, in particular of Article 105, and on various sections of the General Convention, including, in appropriate cases, section 24 requiring the recognition of the United Nations *laissez-passer* as a valid travel document. Member States have, on relatively rare occasions, sought to restrict this freedom of movement of United Nations personnel, either by denying their entry or, when the personnel were already present in the country, seeking to expel them on the grounds that they were *persona non grata* to the Government concerned; in a few instances travel within the country has been dependent on prior notice and approval. In cases of denial of entry, the United Nations has put forward the arguments referred to above, and also cited the provisions of article V, including section 18 (d) regarding immunity from immigration restrictions and alien registration.<sup>146</sup>

<sup>143</sup> Committee on Foreign Relations, United States Senate, Report No. 559, 80th Congress, 1st session, p. 7.

<sup>144</sup> Report of the Secretary-General on Personnel Policy, *Official Records of the General Assembly, Seventh Session, Annexes*, agenda item 75, document A/2364.

<sup>145</sup> This subject is also dealt with in other sections, see in particular section 26. The position in respect of the United States is largely, though not exclusively, regulated by the provisions of the Headquarters Agreement, in particular article IV.

<sup>146</sup> See section 26, paras. 304-306.

Where arguments based on the *persona non grata* doctrine have been invoked, the United Nations has denied the application of the doctrine on the grounds that United Nations personnel are not sent and accredited to given States in a way which is analogous to the bilateral exchange and accreditation of diplomatic representatives following recognition on the part of two States: United Nations personnel are employed, as determined by the Secretary-General, on behalf of all Member States, for purposes chosen by those States as a result of action taken on a multilateral plane. Nevertheless, whilst upholding the independence and international character of United Nations personnel against any unilateral pressure or interference, the Secretary-General has made it clear that he will not tolerate such personnel engaging in subversive activities against any Government. These principles and the practice in implementation thereof have been set forth in several reports to the General Assembly, particularly at the seventh, eighth and twelfth sessions.<sup>147</sup> The position in respect of the freedom of movement of United Nations personnel and their right of entry into a country when travelling on official business was summarized at the seventh session as follows:

... it is clear that Member States should not, under the provisions of the Charter, seek to interpose their passport or visa requirements in such a manner as to prevent staff from taking up their post of duty with the United Nations or from travelling from country to country on its business.

365. Whilst the right of entry of United Nations personnel travelling on official business is an unqualified one, the United Nations would not, however, insist on the entry of a person with respect to whom substantial evidence of improper activities was presented. Since the right belongs to the Organization, it is for the Organization to decide whether or not to forego the exercise of this right in a particular case and, consequently, it is the Organization which must evaluate the evidence of improper activities.

366. Apart from cases of alleged improper activities on the part of individual United Nations personnel, entry has on occasions been denied on the grounds of the nationality of the individuals concerned. In 1961, for example, a Member State refused entry to United Nations and specialized agency officials of certain nationalities owing to a political dispute with the countries concerned. The Secretary-General protested to the Government in 1961, and, after a further incident in 1963, wrote again. In the second letter the Secretary-General recalled the earlier communication, and continued:

... refusal of entry to United Nations and specialized agency personnel on official business presents a serious problem with respect to operations of the Organization and interference with the performance of the functions of its officials. Such interference in the case of United Nations officials is contrary to Article 105 of the Charter and to article 24 of the Convention on the Privi-

leges and Immunities of the United Nations to which your Government is a party. As was pointed out, freedom for officials to travel is one of the most essential privileges which is necessary for the independent exercise of their functions in connexion with the Organization, and for the fulfilment of the purposes of the Organization. The United Nations cannot accept the view that privileges and immunities of international officials are in any way affected by their nationality. . .

367. The Government concerned undertook to exempt United Nations and specialized agency officials of the nationalities in question from the restrictions otherwise imposed on persons of their nationality.

368. In 1964 the Secretary-General entered into correspondence<sup>148</sup> with various Member States regarding the status of military observers serving with UNTSO. In an *aide-mémoire* dated 23 January 1964, the Secretary-General declared:

The principle of *persona non grata* which applies with respect to diplomats accredited to a Government has no application with respect to United Nations staff or military observers who are not accredited to a Government but must serve as independent and impartial international officials responsible to the United Nations. The United Nations military observers are recruited by the Secretary-General for service in pursuance of the four Armistice Agreements and the relevant Security Council resolutions from member countries of the United Nations. They are officers who are seconded by their Governments for service with the United Nations. They are responsible directly to the Chief of Staff of the United Nations Truce Supervision Organization (UNTSO) and through him to the Secretary-General, who is in turn responsible to their Governments for them.

These observers are carefully selected. At times their work is hazardous; indeed, some have given their lives in this service. As military men they would expect to be held strictly to account for any disobedience, disloyalty or dereliction of duty, and the Secretary-General would certainly insist that any observer guilty of such action should be severely dealt with. However, if any State party to any of the General Armistice Agreements were in a position to bring about the automatic recall of a military observer, the other Governments concerned would be placed in an invidious position and the functioning of UNTSO would be rendered ineffectual. Therefore, in order to fulfill the obligations and responsibilities of the Secretary-General in such matters, and particularly to ensure the independence of action of United Nations military observers, the Chief of Staff and the Secretary-General must have the right of decision in these cases following careful investigation of all relevant facts. Since they must themselves make the decision, any information which is supplied to them by Governments must be in sufficient detail to enable them to make their own judgement in the matter. Any other course would be contrary to the principles of the Charter of the United Nations and would seriously interfere with the performance of the functions of the Organization. The Secretary-General is certain that the Governments repose confidence in the Chief of Staff and in himself to act impartially in this regard. He would appreciate assurances that procedures consistent with the foregoing principles will be followed and that the competence of the Chief of Staff and himself in matters of this kind will be respected.

369. One of the Governments concerned replied to this communication in the following *aide-mémoire*, in which

<sup>147</sup> See Report of the Secretary-General on Personnel Policy, *Official Records of the General Assembly, Seventh Session, Annexes*, agenda item 75, document A/2364, (esp. paras. 4-10, 92-103 and 106-115); Report of the Secretary-General on Personnel Policy, *ibid.*, *Eighth Session, Annexes*, agenda item 51, document A/2533, part I; and *ibid.*, *Twelfth Session, Annexes*, agenda item 51, document A/C.5/726, paras. 15 and 16.

<sup>148</sup> *United Nations Juridical Yearbook 1964*, p. 261. Although dealing with military observers who are not "officials" within the meaning of the General Convention, the considerations advanced are equally applicable in the case of all United Nations personnel.

reference was made to the attempt by that Government to exclude or expel a particular military observer.

. . . The Government wishes to make it clear at the outset that its invariable policy in its international relations, has been and will continue to be guided by the established principles of international law.

One such fundamental principle is the right of a State to expel aliens from its territory. This right rests upon the same foundation, and is justified by the same reasons as the power to exclude namely: the sovereignty of the State, its right of self-preservation, and its public interest.

In a case decided by the United States Supreme Court in 1952, considering the status of an alien the Court held that, to remain in the country is not his right, but is a matter of permission and tolerance, and the Government has the power to terminate its hospitality. Such power the Court went on to say is inherent in the United States, as a sovereign State.

It is admitted that in practice though not in theory, it should usually be shown in such cases, that the foreigner's presence in the State's territory, is detrimental to the welfare of such State. The fact remains, however, that the ultimate decision in this regard rests with the authorities of the State concerned.

Although Major. . . has already completed his year's tour of duty as a United Nations military observer on. . . and though it is not denied that as such, he was an international official responsible directly to the Chief of Staff of the UNTSO and through him to the Secretary-General, the Government. . . maintains that it enjoys the right under international law to exclude or expel foreigners from its territory irrespective of any such consideration, and that its exercise of this right is not incompatible with its obligations under the Convention of the Privileges and Immunities of the United Nations or of the Armistice Agreement.

But while maintaining its ultimate competence in this matter, the. . . Government would like to assure the Secretary-General that it will exercise this right in respect of United Nations officials, only after due consideration has been given to any representations he may wish to make in this regard.

370. The Secretary-General commented as follows on the arguments which the Government put forward.

. . . The Government refers to the right of a State to expel aliens from its territory. Without entering into a discussion of the principles of international law generally applicable to aliens having a private status, it is necessary to point out that United Nations officials and military observers serving on a United Nations mission are not in a position comparable to that of such private individuals. Your country, by becoming a Member of the United Nations, assumed certain obligations under the Charter vis-à-vis the Organization. Among these is the undertaking to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and the obligation to accord to the Organization such privileges and immunities as are necessary for the fulfilment of its purposes and to officials such privileges and immunities as are necessary for the independent exercise of their functions.

It of course is not denied that a United Nations official or military observer, by abusing his privileges, may place himself in a position where a Government may demand his withdrawal. But such demand can only be made for sufficient cause and the facts must be placed at the disposal of the Secretary-General, and in the case of the Truce Supervision Organization at the disposal of the Chief of Staff, in order that an independent decision can be made by the Organization.

We must therefore reiterate the principles set forth in the Secretary-General's *aide-mémoire* of 23 January 1964. We are certain that you will appreciate that any other course would impair the

international status of the military observers which is essential for the independent exercise of their functions in connexion with the Organization.<sup>149</sup>

### *Section 38. Travel documents of petitioners*<sup>150</sup>

371. A study of the above subject was made by the Secretary-General in 1956 following a request by the Fourth Committee that he should examine "what procedures could be taken" to enable petitioners, who had been refused passports or travel documents, to appear before the Committee. The memorandum by the Secretary-General, dated 20 November 1956, is reproduced below.<sup>151</sup>

#### *Travel Documents of Petitioners — Memorandum by the Secretary-General*

##### I

1. At its 510th meeting, held on 15 November 1955, the Fourth Committee adopted the following resolution:

#### *"The Fourth Committee,*

*"Considering that some petitioners who have been granted oral hearings but have been refused passports or travel documents by some Administering Powers, have appealed to the United Nations to intervene to enable them to leave the Territory in which they are situated in order to appear before the General Assembly,*

*"Suggests that the Secretary-General should examine what measures could be taken to enable such petitioners to appear before the Fourth Committee of the General Assembly."*

2. It may be useful to recall the circumstances which led to the adoption of this resolution.

In the course of its 470th meeting, at the beginning of the tenth session of the General Assembly, the Fourth Committee was informed of the receipt of five requests for hearings emanating from organizations in Trust Territories. Three of these requests were contained in letters from the Political Section of the "Union des Populations du Cameroun", the Political Section of the Central Board of the "Union démocratique des Femmes camerounaises" and the Executive Committee of the "Jeunesse démocratique du Cameroun", respectively (A/C.4/301). At its 471st meeting, the Committee decided to grant these requests by 36 votes to 11, with 9 abstentions, after a discussion during which it was stated, *inter alia*, by various representatives who wished the hearings to take place, (i) that as the right of petitions was embodied in Article 87 of the Charter, it was the Fourth Committee's duty to examine petitions and grant requests for hearings; (ii) that the petitioners' statements were helpful to the Committee as giving it additional information on conditions in the Trust Territories; (iii) that the granting of hearings was an encouragement to politically-backward masses, and enhanced the prestige of the United Nations. Among the points made by representatives who objected to the hearings, were the following: (i) that a Visiting Mission of the Trusteeship Council was to visit shortly the Trust Territories concerned and would have the opportunity of hearing those who wished to express grievances; (ii) that the "Union des Populations du Cameroun" and affiliated organizations had been dissolved during the previous year by the French Government and that the Fourth Committee should not hear representatives

<sup>149</sup> *Ibid.*, p. 262.

<sup>150</sup> See also section 35, paras. 346-355, above concerning the privileges and immunities of persons having official business with the United Nations.

<sup>151</sup> *Official Records of the General Assembly, Eleventh Session, Annexes*, agenda item 13, document A/C.4/333.

of those organizations, as such hearings would amount to an attempt to overrule a decision of a Government which under the Trusteeship Agreement had full powers of legislation and jurisdiction in the Trust Territory; (iii) that in considering requests for hearings, the Fourth Committee should be guided by the urgency of the subject matter and the consideration whether that subject matter had not already been studied by the Trusteeship Council and its subsidiary organs, which should not be bypassed.

3. At the 479th meeting of the Committee, the Chairman announced that in the absence of opposition he would circulate to the members of the Committee the texts of telegrams which had been received from the organizations concerned. In these telegrams, which were from the Cameroons under British administration, the three organizations communicated the names of their representatives and requested the United Nations to intervene with United Kingdom and United States authorities in order that these representatives might obtain passports and entry visas respectively. The "Union des Populations du Cameroun" states in its telegram that the French Government had burned the passports of the appointed representatives during the May incidents in the Trust Territory (A/C.4/306).

4. The attention of the Fourth Committee having been drawn at the 496th meeting to these telegrams, the representative of the United States informed the Committee that, if the petitioners applied for United States visas, their applications would receive the treatment that the United States Government had always given in similar cases. The representative of the United Kingdom stated that as the petitioners were not British subjects or British protected persons, they could not be granted British passports; there was nothing, however, to prevent their departure from the Cameroons under British administration at any time. Answering a question of the representative of Indonesia, who wondered whether it would be possible for the Secretariat to give to the petitioners United Nations travel documents, the Under-Secretary for Trusteeship and Information from Non-Self-Governing Territories explained that in accordance with the provisions of the Convention on Privileges and Immunities of the United Nations the *laissez-passer*, the official United Nations travel document, could be issued only to the officials of the Organization or of one of the specialized agencies on official mission outside the Headquarters area. A proposal by the representative of Liberia that further consideration of the matter should be postponed in order to give the Chairman the opportunity to explore every possibility of helping the petitioners to reach New York was then adopted.

5. At its 498th meeting, the Fourth Committee decided without objection to circulate a further telegram from the "Union des Populations du Cameroun" in which the Political Bureau of that organization quoted the reply it had received from the Commissioner for the Cameroons under British administration, to its request for passports, similar in substance to the statement made by the representative of the United Kingdom in the Fourth Committee. It further requested the General Assembly to make representations to the United Kingdom Government on the ground that the petitioners were the victims of judicial proceedings instituted for political reasons by the French Authorities and that, as they resided in the Cameroons under British administration, they should have the benefit of the status of political refugees in conformity with the Universal Declaration of Human Rights (A/C.4/306/Add.1).

6. At its 510th meeting, the Fourth Committee had before it a draft resolution submitted for its consideration by the delegation of Liberia. In presenting the draft resolution, the representative of Liberia stated, *inter alia*, that the Committee did not have the time to go fully into all the difficulties which had arisen in connexion with travel facilities for petitioners who had been granted oral hearings and that the Fourth Committee should therefore send the problem to the Secretary-General so that he could explore all possibilities and report on them to the Committee not

later than the eleventh session of the General Assembly. The representative of Liberia stated in a later intervention that the purpose of the study of the whole matter should be to enable the Committee in the future to give an answer to petitioners who approached it for assistance in similar dilemmas. The Liberian draft resolution was adopted by the Committee in the text quoted in paragraph 1 of this report by 30 votes to 8, with 6 abstentions.

## II

7. Following a study of the question which, as recalled above, has been referred to the Secretary-General by the Fourth Committee's resolution of 15 November 1955 in its general aspects, the Secretary-General wishes to bring to the attention of the Committee the following considerations and conclusions.

8. Under arrangements at present in effect, upon notification by the Secretary-General to the United States authorities that a hearing has been granted to a person by the Fourth Committee of the General Assembly, the United States authorities deliver an entry visa to that person, upon application, pursuant to Section 11 and 13 (a) of the Headquarters Agreement. Section 11 provides that "the federal state or local authorities of the United States shall not impose any impediments to transit to or from the Headquarters District of . . . (5) . . . persons invited to the Headquarters District by the United Nations. . . on official business". Section 13 (a) provides that "Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11". Where visas are required for persons referred to in that Section, they shall be granted without charge and as promptly as possible. After the hearings in the General Assembly have been completed, the United States authorities are entitled to require the petitioner to leave the United States for the country of his nationality or any other country willing to receive him.

9. In accordance with United States laws and administrative practices, United States entry visas may be affixed on national passports and also on other documents issued by a competent authority, showing the bearer's origin, identity and nationality, and valid for the entry of the bearer into a foreign country. In certain cases of waiver of the above requirements, United States visa stamps are impressed on an appropriate space on the reverse side of the visa application form.

10. The further question of a general nature which requires comments, under the Fourth Committee's resolution of 15 November 1955, is therefore that of the right of a petitioner to leave the territory in which he finds himself at the time his request for a hearing is granted, and the possibility which may exist for his return to that territory or to another country. It may be noted in this connexion that while it may be assumed by analogy with the rules of procedure of the Trusteeship Council (rule 77), that persons to whom a hearing may be granted by the Fourth Committee may be inhabitants of Trust Territories or other persons, not necessarily resident in Trust Territories, the Fourth Committee's resolution refers only to administrative action with respect to travel documents which may be taken by the Administering Authorities. It may be recalled in this connexion that the relevant agreements concluded in pursuance of the provisions of the United Nations Charter under which States administering Trust Territories have accepted obligations towards the United Nations, e.g. the Convention on Privileges and Immunities of the United Nations or the Trusteeship Agreements, contain no specific provisions obliging the Administering Authorities to grant travel documents or to authorize the departure from the territories under their administration of persons to whom hearings have been granted by United Nations organs. Most of the Trusteeship Agreements recognize the Administering Authorities' full powers of legislation, administration and jurisdiction in the Trust Territories within the framework of these agreements and of the Charter; these agreements also contain the undertaking by the Admin-

istering Authorities to collaborate with the Trusteeship Council and the General Assembly and to assist these organs in the discharge of their functions, as defined in Articles 87 and 88 of the Charter. The question of the extent to which this undertaking to collaborate implies the obligation of the Administering Authority to authorize a resident of a Trust Territory to leave the Territory for the purpose of a hearing before a United Nations organ has not, however, been considered by the General Assembly and there would seem, therefore, to be no present basis on which an over-all solution may be offered.

11. It is generally accepted in present international practice that the authorities exercising governmental functions with respect to a territory determine the conditions applicable to the departure of persons resident in that territory and, in the case of non-nationals who have not acquired a permanent right of residence, fix the conditions of re-entry. Under the system of passports, exit and entry visas, which has prevailed since the end of the first World War competent governmental authorities have reserved to themselves, in this respect, wide discretionary powers seldom defined with precision in their legislation. It may also be recalled in this connexion that national authorities have often invoked as grounds for refusal of the permission to travel abroad the fact that the prospective traveller is subject to judicial proceedings or may be fleeing from his obligations to pay taxes or personal debts or to perform military service, or that while abroad he may endanger the internal security of a foreign State or of his own State.

12. A great variety of rules and practices exist in this field. Some countries permit the departure from their territories of persons who do not hold a passport or a similar travel document. Others treat such a departure — at least by their own nationals — as a punishable offence. Various procedures are utilized by governmental authorities which grant documents necessary for travel to non-nationals and in limited situations international agreements might apply as, for example, for certain groups of refugees. Although in the case of direct travel to New York the question of the nature of the travel document of the petitioner on which a United States visa has been affixed may not normally be raised by the authorities of the countries through which the petitioner would pass in transit, certain problems may possibly arise in cases where transit visas are required or where the petitioner may have reasons to interrupt his travel.

13. In the course of his study of the question submitted to him by the Fourth Committee, the Secretary-General has sought the informal views of the Governments having responsibility for the administration of Trust Territories, as to the policy they would follow with respect to the issuance of passports or similar travel documents to persons resident in Territories under their jurisdiction who may be granted hearings by the General Assembly. It results from the replies received from all Administering Authorities of Territories from which petitioners have so far appeared before the Fourth Committee, that while remaining subject to rules and conditions generally applicable to foreign travel, persons to whom a hearing has been granted would not encounter special obstacles to their leaving the Territory for the purpose of travel to the Headquarters of the United Nations for the purpose of a hearing. It may be recalled in this respect that up to the present, with the exception of the petitioners referred to in Part I of this memorandum, no petitioners from Trust Territories have failed to reach the United Nations Headquarters.

14. In the light of the above-mentioned data and considerations it appears that in the present circumstances no general measures can be suggested which would provide an effective solution to the problem raised by the Fourth Committee's resolution. In view, in particular, of the variety of situations which may be encountered, and the special factors which would have to be taken into account in each case, depending on the nationality and residence status of the petitioners, the applicable legislation

and administrative requirements, and the route and means of travel to be used, it is the opinion of the Secretary-General, based on the experience acquired by the Secretariat in the handling of similar situations in other organs of the United Nations, that it would be preferable for the present to continue to deal with individual cases which may arise, on an *ad hoc* basis, by taking up the actual issues of each case with the national authorities concerned. Any appropriate action could thus take fully into account the nature of the specific obstacles which would exist to the travel of the petitioner to the United Nations Headquarters and to his return to the territory of which he is a resident.

372. In resolution 1062 (XI), adopted on 26 February 1957, the General Assembly invited the Administering Members concerned to grant petitioners the necessary travel documents to enable them to appear before the proper United Nations organs for oral hearings and to return home.

#### *Section 39. Issue of visas for holders of United Nations laissez-passer*<sup>152</sup>

373. Section 25 of the General Convention provides that:

Applications for visas (where required) from the holders of United Nations *laissez-passer*, when accompanied by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

374. All countries have issued visas for *laissez-passer* holders free of charge. In addition, a number of States, chiefly in Africa, have exempted holders of *laissez-passer* from visa requirements altogether. Most headquarters agreements and agreements relating to the holding of meetings provide specifically for the issue of visas without charge.

#### *Section 40. United Nations certificates; family certificates*

375. Section 26 of the General Convention provides that:

Similar facilities to those specified in section 25 shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passer*, have a certificate that they are travelling on the business of the United Nations.

376. The certificate referred to has been used in the case of experts on mission and others who, whilst travelling on United Nations business, could not be classified as officials. The certificate consists of a document eighteen inches by twelve inches in size giving information about the bearer and certifying that he is travelling on United Nations business; the text of Article VI of the Convention is reproduced on the back of the certificate.

377. In 1960 the Legal Office advised the Technical Assistance Board administration that the certificate issued to OPEX officials should include the following wording:

This is to certify that Mr. . . . has been assigned by agreement with the United Nations to the Government of . . . under the Programme for the Provision of Operational, Executive and Administrative Personnel authorized by Resolution 1256 (XIII) of the General Assembly of the United Nations adopted on

<sup>152</sup> See also section 26, paras. 304-306, above on the immunity of officials from immigration restrictions and alien registration.

14 November 1958. He is proceeding under the instructions of the United Nations to . . . in transit to . . . in order to take up his assignment. By Agreement of . . . (date) concluded with the United Nations, the Government of . . . has agreed that Mr. . . . shall be granted certain privileges and immunities including the right to import free of duty furniture and effects at the time of first taking up his post in. . . .

378. It was stated that the model agreements concluded with Governments regarding OPEX officials, and the contracts between the United Nations and the officials themselves, gave the Organization sufficient standing to issue a certificate for the purpose of facilitating travel to the place of assignment.

379. The United Nations also issues family certificates in respect of the family of a United Nations official. The position is described in the following letter, sent in 1963 by the United Nations in answer to a question raised by a permanent mission.

It is quite clear that the Certificate in question is not regarded by the United Nations as an official "travel document". The Family Certificate is really intended to show that the holder or holders are dependents of a United Nations staff member. Normally, the staff member would carry a United Nations *laissez-passer* and this would serve as identification for the family as well, when a staff member and family were travelling together. When the family were travelling apart, the *laissez-passer* would, of course, have to remain in the keeping of the staff member, and the dependents would be given a Family Certificate for identification and to show their connection with the United Nations.

Dependents travelling with a Family Certificate should at all times carry their national Passport as well. Formally, when requesting visas we in this office would submit both the national Passport and the Family Certificate to the Consulate concerned and it would be entirely up to the Consulate as to whether they put the visa on the national Passport or on the Family Certificate. For our own purposes it makes no matter which course is adopted by the Consulates; we must, of course, leave it to the Embassy or Consulate concerned to do as they think best.

The "United Nations Certificate" is quite distinct from the Family Certificate and serves the purpose of identifying someone who is travelling on some special assignment connected with the United Nations although not actually a staff member of the Organization. For instance, it might occur that some technician or special adviser was engaged by the United Nations on a short-term mission which would not involve the traveller in being taken on as a regular United Nations Secretariat member. In such cases, the passenger would travel on his national passport and would be given a United Nations Certificate merely to identify him as undertaking a project for the Organization. In certain countries this Certificate has proved very helpful in enabling the holder to carry out the purposes of his assignment. But, as stated earlier, the holders of this Certificate are not regular staff members. Once again, we would leave it to the Consulate or Embassy concerned as to whether they put any necessary visas in the Passport or on the Certificate. The last-named document, like the Family Certificate, is not considered by us as an official travel document.

*Section 41. Diplomatic facilities for the Secretary-General and other senior officials whilst travelling on official business*

380. Section 27 of the General Convention provides that

The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations *laissez-passer* on the business of

the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

381. The main implementation of this section has lain in the issue of red-backed (as opposed to the usual blue-backed) *laissez-passer* to the Secretary-General and the officials referred to in section 27. It has not been the practice of the United Nations to submit a specific request for a "diplomatic visa" for any of the United Nations' officials, even for the Secretary-General himself.

382. In 1955 the Secretary-General wrote to the Office of General Services listing the instructions for the issue of red-backed *laissez-passer*.

"Having in view the necessity of more precise rules concerning the red-backed *laissez-passer* which has been in use since 1948, and following consultation with the heads of the Specialized Agencies, I have decided that effective from the above date, red-backed *laissez-passer* should be issued in accordance with the following instructions.

*Instructions for the issuance of red-backed laissez-passer*

1. Red-backed *laissez-passer* shall be issued to officials of the United Nations of the following-categories:

- (a) The Secretary-General
- (b) Under-Secretaries and officials of equivalent rank
- (c) Directors (D-2)

2. Exceptionally, red-backed *laissez-passer* may also be issued to staff members below the rank of Director (D-2) who are specially designated by the Secretary-General and fall within the following categories:

- (a) Persons on special mission having the title of Personal Representative of the Secretary-General
- (b) Persons in charge of United Nations missions in the field
- (c) Persons in charge of United Nations Offices away from Headquarters.

Red-backed *laissez-passer* issued pursuant to the present paragraph shall be withdrawn and cancelled on the completion of the assignment for which they are issued.

3. Bearers of red-backed *laissez-passer* shall have in mind that its possession does not denote that the bearer is entitled to diplomatic privileges and immunities except when such entitlement is specifically indicated by a diplomatic stamp or notation on the *laissez-passer*. It shall be understood that the purpose of red-backed *laissez-passer* not having a diplomatic stamp or notation is only to draw the attention of the Government authorities to the special position of the bearer in order that he may be accorded courtesies commensurate with his position in addition to the functional privileges and immunities and facilities of which all officials of the United Nations are entitled under the Convention on the Privileges and Immunities of the United Nations.

4. Red-backed *laissez-passer* issued to officials entitled to diplomatic privileges and immunities under section 19 of Article V of the Convention on the Privileges and Immunities of the United Nations shall have a diplomatic stamp or notation as follows:

(a) *Laissez-passer* issued to the Secretary-General shall have the following stamp or notation:

"Diplomatic"

(b) *Laissez-passer* issued to Under-Secretaries and officials of equivalent rank shall have the following stamp or notation:

"Diplomatic"

"The bearer of this *laissez-passer* is an official of the United Nations whose rank is assimilated to that of 'Assistant Secretary-General'. Under section 19 of Article V of the Convention on the Privileges and Immunities of the United Nations, an

Assistant Secretary-General is entitled to the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law".

5. *Laissez-passer* issued to Directors (D-2) shall have the following stamp or notation:

"The bearer of this *laissez-passer* is a Director and under section 27, Article VII, of the Convention on the Privileges and Immunities of the United Nations is entitled when travelling on the business of the United Nations to the same facilities as are accorded to diplomatic envoys".

The foregoing instructions may be applied *mutatis mutandis* to comparable officials of the Specialized Agencies.

In a subsequent memorandum it was stated:

1. The following designation of the officials to whom red-backed *laissez-passer* should be issued in accordance with paragraph 2 of the Instructions for the issuance of red-backed *laissez-passer* should be annexed to the instructions:

#### Annex 1

In accordance with paragraph 2 of the Instructions for the issuance of red-backed *laissez-passer*, the following staff members who fall within the categories enumerated in that paragraph are hereby designated by the Secretary-General as officials to whom red-backed *laissez-passer* shall be issued:

- (1) All Resident Representatives of the Technical Assistance Board;
- (2) All Principal Secretaries of United Nations Commissions;
- (3) All Directors of United Nations Information Centres.

#### Section 42. Agreements with specialized agencies regarding the issue of *laissez-passer*

383. Section 28 of Article VII of the General Convention provides that

The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

Article 63, paragraph 1, of the Charter is as follows:

The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

384. In a note dated 5 November 1948, the Secretary-General informed Member States that in the Agreements which had been concluded with ITU, IBRD and WHO, special arrangements had been made so as to give officials of those agencies the right to use the United Nations *laissez-passer*. A copy of the Agreement setting out the special arrangements was enclosed with the note.

1. All members of the personnel of [the specialized agency] will be considered as officials of [the specialized agency] under the terms of these arrangements with the exception of those recruited locally and paid by the hour.

2. Requests for issuance of the *laissez-passer* shall be made by [the Director-General or the equivalent Executive Head of the specialized agency] or by such person as he shall deputize. Such requests, which will state that the official is about to travel on official duty or home leave, must be accompanied by:

(a) A form, copy of which is attached, which shall be filled in and signed by the official for whom the *laissez-passer* is required and the contents of which shall be verified and certified as correct by [the Director-General or the equivalent Executive Head of the specialized agency] or his designated representative;

(b) Two photographs of the applicant.

3. Requests for the issue of *laissez-passer* shall be addressed to the Section of Passports and Visas (Transportation Service of the United Nations, 405 East 42nd Street, New York, N.Y.). However, in cases of urgency, such requests may be addressed to the European Office of the United Nations in Geneva which may, in such cases, issue the *laissez-passer*.

4. [The Director-General or the equivalent Executive Head of the specialized agency] shall forward to the Section of Passports and Visas (Transportation Service of the United Nations) specimens of the signatures of such officials as shall have received authority to certify as correct the information given on the application form under Section 2.

5. The issue of United Nations *laissez-passer* to officials of [the specialized agency] shall also be subject to such other conditions as may apply to the issuance of the *laissez-passer* to officials of the United Nations.

The Secretary-General of the United Nations shall immediately notify these conditions to the [Director-General or the equivalent Executive Head of the specialized agency].

6. The *laissez-passer* issued to officials of [the specialized agency] shall make mention of the officials's rank. They shall contain a statement in the five official languages to the effect that the *laissez-passer* is issued to a member of a specialized agency, in accordance with Section 28 of the Convention on Privileges and Immunities of the United Nations and with the relevant section of the Agreement bringing the organization into relation with the United Nations.

7. Upon request of [the Director-General or the equivalent Executive Head of the specialized agency] or such person as he shall deputize, the Secretariat of the United Nations shall, if this arrangement is still in force, renew such *laissez-passer* issued to officials of [the specialized agency] as shall have expired.

8. The Secretariat of the United Nations shall transmit as quickly as possible the *laissez-passer* for which issue or renewal has been requested to the designated representative of [the specialized agency] who shall acknowledge the receipt thereof.

9. [The specialized agency] agrees to take all necessary administrative precautions to prevent the loss or theft of such *laissez-passer*. It shall immediately notify the Section of Passports and Visas in the event of any loss or theft of a *laissez-passer*, giving particulars of the conditions under which such loss or theft occurred.

10. Such *laissez-passer* shall, unless renewed, expire at the end of one year from the date of issuance. [The specialized agency] agrees to return immediately to the United Nations all *laissez-passer* issued to its officials:

(a) on the expiration of the validity of the *laissez-passer*, unless renewal has been authorized;

(b) if the holder ceases to be an official of [the specialized agency].

11. The present arrangement is made for a period of one year.

385. Similar special arrangements, which have now been placed on a permanent basis, have been made with each of the other specialized agencies and with IAEA. The ILO issues its own *laissez-passer*, however, under conditions closely analogous to those observed by the United Nations itself.<sup>153</sup> The Directors-General and certain other senior staff of the specialized agencies receive red-backed

<sup>153</sup> Under an administrative arrangement concluded between the Secretary-General of the United Nations and the Director-General of the ILO, 7 June and 26 July 1950, United Nations, *Treaty Series*, vol. 68, p. 213.

*laissez-passer* in the same way as the Secretary-General and senior officials of the United Nations.<sup>154</sup>

## CHAPTER VII. — SETTLEMENT OF DISPUTES

### *Section 43. Settlement of disputes*

386. Section 29 of the General Convention states that

The United Nations shall make provision for appropriate modes of settlement of:

(a) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;

(b) Disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

387. In order to provide a suitable means of settlement of any disputes of a private law character, the United Nations has regularly made provision in its contracts for recourse to arbitration.<sup>155</sup> In the case of officials, the position varies according to the facts of the case. If the dispute is of a private character, no question of the immunity of an official without diplomatic privileges is involved and the official is in the same position as any other resident in the country in question. Where the Secretary-General determines that the dispute involves the staff member in an official capacity and that the interests of the United Nations do not permit the waiver of the immunity,<sup>156</sup> the usual method of settlement has been by means of discussions and correspondence with the Government concerned, in an effort to reach agreement. In some instances, whilst not agreeing to waive the immunity of the official concerned, the Secretary-General has taken steps, by administrative means, to ensure that the particular cause of the dispute did not reoccur and, where appropriate, has also taken disciplinary action against the offender.

### *Section 44. Reference to the International Court of Justice of differences arising out of the interpretation of the General Convention*

388. Section 30 of the General Convention provides as follows:

All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

389. All differences which have so far arisen regarding the interpretation or application of the General Convention have been settled by means of negotiation and discussion. Although there have been occasional suggestions that particular disputes should be referred to the International Court of Justice, these suggestions have not been carried into effect.

<sup>154</sup> See Section 41, paras. 380-382, above.

<sup>155</sup> See section 1 (b), paras. 5-8, above.

<sup>156</sup> See generally section 31, paras. 334-336, above.

390. The following States have made reservations regarding the reference to the International Court of Justice of disputes as to the interpretation of the General Convention: Albania, Algeria, Bulgaria, Byelorussian SSR, Czechoslovakia, Hungary, Mongolia, Nepal, Romania, Ukrainian SSR, and the USSR. The United Kingdom notified the Secretary-General that it objects to the reservations made by Albania, Byelorussian SSR, Czechoslovakia, Hungary, Romania, Ukrainian SSR and the USSR. Lebanon notified the Secretary-General that it objects to the reservation of the USSR.

391. It may be noted that a number of other agreements contain provisions similar to section 30<sup>157</sup>, or a reference to section 30 as the mode of settlement to be used in the event of a dispute as to the interpretation of the agreement concerned.<sup>158</sup> During its fifteenth session the Economic and Social Council considered at its 686th and 687th meetings a complaint concerning the application of the Headquarters Agreement. In the course of debate, the question was raised whether the Secretary-General would proceed automatically to apply the arbitration procedure provided for in the Headquarters Agreement<sup>159</sup> if negotiations for an amicable settlement proved fruitless, or whether he would first report to the Council or to the General Assembly. The opinion was expressed in the Council that it would be preferable, in the event of failure of the negotiations, that the Secretary-General should proceed to arbitration without further reference to the Council; the Council could be informed of the outcome of the settlement procedures in due course. No final action was taken by the Council, however.

## CHAPTER VIII. — FINAL ARTICLE

### *Section 45. Submission of the General Convention to Member States for accession*

392. In accordance with section 31, the General Convention has been submitted to every Member State for its accession. Up to 1 May 1967, ninety-five Member States had submitted instruments of accession. A relatively

<sup>157</sup> e.g., section 27, Agreement with Switzerland, section 21, Headquarters Agreement, section 21, ECA Agreement.

<sup>158</sup> e.g., section 21, ECLA Agreement, section 26, ECAFE Agreement.

<sup>159</sup> Section 21 of the Headquarters Agreement provides as follows:

“Section 21. (a) Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third then by the President of the International Court of Justice.

“(b) The Secretary-General or the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.”

small number have made declarations or reservations (which have been noted in the appropriate sections of this survey) as to the application of the Convention.

393. In 1963 the United Nations sent the following *aide-mémoire*<sup>160</sup> to the Permanent Representative of a Member State regarding the proposed accession by the Member State concerned to the Convention, subject to a reservation denying to any United Nations official of that State's nationality any privileges or immunities under the Convention.

The first article of the Law approving accession by your country to the Convention on the Privileges and Immunities of the United Nations approves the Convention subject to the reservations set out in the second and third articles of the Law.

The third article of the Law sets forth a reservation to the effect that the proviso contained in article IV, section 15, of the Convention shall also apply in respect of articles V and VI.

Section 15 of the Convention on the Privileges and Immunities of the United Nations reads:

"The provisions of sections 11, 12 and 13 are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative."

Article IV of the Convention, in which not only section 15 is found but also the three sections cross-referenced therein, relates only to representatives which Member States delegate to represent them. Article V of the Convention, to which the proposed reservation seeks to apply the proviso contained in section 15, specifies the privileges and immunities of officials of the Organization and the limitations under which they are intended to be enjoyed. Article VI does the same for experts on missions for the United Nations.

As section 15 of the Convention expressly relates only to the provisions of sections 11, 12 and 13 which, being contained in article IV, have no legal relationship to articles V or VI, it will be assumed that the intent of the reservation in the third article of the Law is to state that the privileges and immunities specified in articles V and VI are not applicable as between an official (or an expert on mission for the United Nations) of your country's nationality and the Government of your country.

In the opinion of the Secretary-General, a closer examination of the true legal operation of this reservation, as so interpreted, will leave no doubt that it is incompatible with the United Nations Charter. It may therefore be that you would wish to consider the possibility of suggesting to your Government that the actual deposit of any instrument of accession intended to embody the foregoing reservation be delayed pending an urgent reconsideration of its legal consequences. In this connexion it may be borne in mind that, should an instrument containing this reservation be submitted to the Secretary-General he would be obliged to take action in two separate capacities, not merely as depositary of the Convention in question under its section 32, but also as the authority designated by section 36 for entering into negotiations with any Member Government as to any adjustments to the terms of the Convention so far as that Member is concerned.

In view of this dual responsibility the following analysis of the proposed reservation is offered for the consideration of your Government.

Numerous privileges and immunities specified in article V are not ordinarily understood to have practical application as between an official of the United Nations and his Government of nationality. Such an official will have no occasion, unless in rare circumstances, to require immunity from immigration restrictions in his own country, or privileges in respect of exchange facilities, or repatriation facilities in time of international crisis; he cannot by

definition require immunity from alien registration, and it would be exceptional for him to have reason to claim duty-free entry for his personal effects on taking up his post in the country.

The situation is quite otherwise in the matter of his official acts, and it is here that the reservation cannot be reconciled with the Charter. Section 18 (a) in article V requires that officials of the United Nations be immune from legal process in respect of words spoken or written and all acts performed by them "*in their official capacity*". (Italics supplied.) It follows that your country, in proposing the reservation quoted above, has (no doubt unintentionally) reserved the right to prosecute United Nations officials of its nationality for words spoken or written or for any acts performed by them in their official capacity, indeed for actions which are in effect the acts of the Organization itself. It would equally be the consequence of the reservation that your country would be reserving jurisdiction to its national courts to entertain private lawsuits against its citizens for acts performed by them as officials of the United Nations.

Article 105 of the Charter provides in its second paragraph that officials of the Organization shall "enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization". Likewise, by the second paragraph of Article 100 each Member of the United Nations "undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff". It needs no argument to demonstrate that the reservation by a Member of the right, even in the abstract, to exercise jurisdiction over the official acts of United Nations staff, either through its courts or through other organs or authorities of the State, would be incompatible with the independent exercise and the exclusively international character of the responsibilities of such officials of the Organization. This derogation from the clear terms of the Charter would in no way be affected by the common nationality of the international official and the prosecuting authority. The Secretary-General cannot believe that the legal effect of the reservation in question, although indisputable when examined in this light, was consciously intended.

The situation is similar with regard to article VI of the Convention. Experts of your country's nationality would not normally perform their missions for the United Nations on national territory. On the other hand, the inevitable consequence of reserving article VI would be to permit the exercise over nationals of your country, who have performed or are performing official United Nations missions, of jurisdiction in respect of words spoken or written and acts done by them in the course of the performance of their mission. For example, an officer who might be seconded by your government for service abroad as a United Nations Military Observer would technically be subject on his return to inculcation or sanction for some aspects of his activity on behalf of the Organization. This is particularly evident from the fact that one of the provisions reserved states (in section 22 (b) of the Convention):

"This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations."

Papers and documents of the United Nations in his possession could likewise be deprived of their inviolability, while the confidential character of his communications with the United Nations could equally be overridden. In such circumstances the Organization itself could not be said to enjoy in the territory of the Member in question the privileges and immunities necessary for the fulfilment of its purposes, as required by Article 105, paragraph 1 of the Charter.

A comment may also be in order with respect to the effect on a Member Government of its reserving the application of section 18 (b). That clause provides that officials of the United Nations shall "be exempt from taxation on the salaries and emoluments paid to them by the United Nations". Officials of the Organization,

<sup>160</sup> *United Nations Juridical Yearbook 1963*, p. 188.

having been intended by the General Assembly and the Convention to be exempt from national taxation on their official salaries, are already subject to a staff assessment by the United Nations equivalent to national taxation. By resolution 973 (X), therefore, the General Assembly authorized the refund and reimbursement to the staff by the Secretary-General of the amount of any national income taxes to which they might be subjected on the same salary. At the same time, the General Assembly created by that resolution a Tax Equalization Fund and established thereby a procedure for charging against each Member State the total of any amounts which the Organization might thus be obliged to refund to the staff. It should accordingly be understood that the consequence of the reservation in question in so far as it reserves the right to tax nationals of your country on their United Nations salaries, will be to place upon the Organization the administrative burden of reimbursing the income taxes on official salaries while nevertheless increasing your government's annual contributions to the expenses of the Organization by the full amounts so reimbursed.

As article VI does not provide for tax exemption on any stipends paid to experts on missions for the United Nations, there is no tax implication for them in the proposed reservation.

In addition to the reservation stated in the third article of the Law, as examined above, the second article of the Law contains a reservation concerning the capacity of the United Nations under section 1 of the Convention to acquire immovable property. It subjects that capacity to the conditions established in the national Constitution and to any restrictions established in the Law therein provided for. According to the Constitution, the acquisition of real property by international organizations may be authorized only in accordance with conditions and restrictions established by law. The Secretariat of the United Nations has no information as to whether such a law has as yet been adopted.

It is unnecessary to re-emphasize the urgent desire of the United Nations to see an early accession by your country to the Convention on the Privileges and Immunities of the United Nations. The General Assembly itself has repeatedly stated in its resolutions on the subject that, if the United Nations is to achieve its purposes and perform its functions effectively, it is essential that the States Members should unanimously accede to the Convention at the earliest possible moment. The Secretary-General would only wish that the instrument of accession should not be subject to a reservation conflicting with the Charter, so as to avoid the necessity of placing the question before the General Assembly.

394. In a Decree Law adopted by another Member State providing for the internal implementation of the Convention, the application of the Convention to nationals of the State in question was reserved. No such reservation had been contained in the instrument of accession to the General Convention which the State had deposited earlier. Following discussions with the Permanent Representative the Legal Counsel wrote to him as follows:

You note that the preamble in your instrument of accession cited the Decree Law as the act under authority of which the accession was brought about. The difficulty is that this does not constitute a reservation. I believe we can agree that it is universally accepted that a reservation requires a formal declaration — either endorsed on the original of the treaty itself, or spread out in its full effect in a *procès-verbal*, or recorded in express terms in the instrument of accession — which sets out for the full notice of all other interested parties the precise nature and scope of the intended departure by the reserving government from the terms of the Convention. In the present case, however, even if the Secretariat had known of the intention to exclude nationals from the application of the Convention — which it did not — the other States Parties to the Convention never had an opportunity to receive notice of

the restriction. Not only is the text of an instrument of accession not circulated to other States Parties but, as was the case with the Secretariat, all would assume that the reference to the Decree in the preamble merely indicated, according to the usual formula, the governmental authority for the accession, without suggesting in any way the intended reservation. Moreover, as you note in your letter, even within your country the Decree was published in the Official Journal considerably subsequent to the actual accession.

The crux of the difficulty is therefore that no matter how important the Decree may have been for providing the purely internal authority for accession to and implementation of the Convention, it did not affect the terms and conditions of the accession, and no mere mention of the Decree in the instrument of accession would have led to a contrary conclusion. Thus, however much I may be able to agree with your explanation that without the Decree the Convention could not have been made applicable in your State, it nevertheless follows that the Decree could not by itself have altered the terms of the Convention. For neither the date of the Decree nor the possible necessity under the Constitution of some internal disposition to give domestic effect to treaty obligations can serve to overcome that principle of international law and custom under which certain formal procedures must have been followed before an acceding State can be shown to have become a party to a Convention subject to a reservation — that is, under lesser terms than those which bind the other parties. . .

The terms of the Decree Law were accordingly not accepted as constituting a reservation to the Convention.

*Section 46. Entry into force of the General Convention on the date of deposit of the instrument of accession*

395. Section 32 of the General Convention states that:

Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations, and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession.

No special problems have arisen in this connexion.

396. It may be noted that a number of Member States have declared that they considered themselves parties to the Convention, with effect from the date of their independence, by succession to the obligations assumed on their behalf by the State previously responsible for their international relations. Accordingly no instrument of accession was deposited in these cases.

*Section 47. Implementation of the General Convention under national law*

397. Section 34 of the General Convention states:

It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this Convention.

The United Nations has relied on this provision on occasions when Member States have cited national law in explanation of why they were unable to comply with their obligations under the Convention.

*Section 48. Continuation of the General Convention*

398. Section 35 of the General Convention provides:

This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the

United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention.

399. This section was referred to expressly by the International Court of Justice in its Advisory Opinion on "Reparations for injuries suffered in the service of the United Nations", in support of the contention put forward by the United Nations Secretariat that the General Convention creates rights and duties between each of the States Parties and the Organization.<sup>161</sup>

400. In answer to a query raised by a specialized agency in 1963, the Legal Counsel stated that the General Convention and the Specialized Agencies Convention did not contain a denunciation clause because sections 35 and 47 (the equivalent provision of the Specialized Agencies Convention) effectively amounted to a non-denunciation clause. The basic reason for the inclusion of sections 35 and 47 lay in Article 105, paragraph 1, of the Charter, which stated that privileges were "necessary" for the independent exercise of the functions of officials and representatives; if the privileges concerned were indeed "necessary" there could be no question of permitting denunciation. Provision had, in any case, been made in the two Conventions against the occurrence of any abuse.

#### *Section 49. Supplementary agreements*

401. In accordance with section 36 of the General Convention, the Secretary-General has concluded a number of supplementary agreements, referred to in the course of this survey, "adjusting the provisions of (the) Convention" so far as any particular Member or Members are concerned, chiefly in cases where the United Nations has established a permanent office in the country in question or otherwise undertaken any major programme or mission there.

402. For the period up to 1960, agreements concluded by the United Nations relating to its privileges and immunities, whether or not falling within the scope of section 36 of the General Convention, are to be found in the United Nations *Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. 1, and, for the period after 1962, in the successive issues of the *United Nations Juridical Yearbook*. The following agreements concerning United Nations privileges and immunities were concluded in the period between that covered in the *United Nations Legislative Series* and the start of the *United Nations Juridical Yearbook*.

Exchange of letters between United Nations and Mexico regarding arrangements for twenty-seventh session of Economic and Social Council at Mexico City, 3 and 7 April, 1959 (United Nations, *Treaty Series*, vol. 381, p. 123).

Exchange of letters between United Nations and United Arab Republic concerning the settlement of claim between UNEF and the United Arab Republic arising out of traffic accidents, 14 October 1959 and 15 September and 17 October 1960 (United Nations, *Treaty Series*, vol. 388, p. 143).

<sup>161</sup> *I.C.J. Reports 1949*, pp. 174 and 179. Cited in section 6 (a), para. 57, above.

Agreement between United Nations and Austria regarding arrangements for Vienna Conference on Diplomatic Intercourse and Immunities, 27 February 1961 (United Nations, *Treaty Series*, vol. 394, p. 27).

Agreement between United Nations and Ethiopia relating to the establishment of an International Statistical Training Centre, 14 June 1961 (United Nations, *Treaty Series*, vol. 406, p. 81).

Agreement between United Nations and Mexico relating to human rights seminar to be held in Mexico City, 18 August 1961 (United Nations, *Treaty Series*, vol. 404, p. 297).

Agreement between United Nations and Italy regarding arrangements for the United Nations Conference on New Sources of Energy, 23 August 1961 (United Nations, *Treaty Series*, vol. 405, p. 3).

Agreement between United Nations and Ghana relating to the establishment of a Statistical Training Centre, 29 August 1961 (United Nations, *Treaty Series*, vol. 406, p. 117).

Agreement between the United Nations and Congo (Leopoldville) relating to the legal status, privileges and immunities of the United Nations Organization in the Congo, 27 November 1961 (United Nations, *Treaty Series*, vol. 414, p. 229).

403. Reference may also be made to the general survey of the agreements concluded by the United Nations relating to its privileges and immunities contained in the *Repertory of Practice of United Nations Organs*, vol. V, p. 326 *et seq.*, *ibid.*, suppl. No. 1, vol. II, p. 415 *et seq.*, and *ibid.*, suppl. No. 2, vol. III, p. 512 *et seq.*

## **B. Summary of practice relating to the status, privileges and immunities of the specialized agencies and the International Atomic Energy Agency**

### CHAPTER I. — JURIDICAL PERSONALITY OF THE SPECIALIZED AGENCIES AND OF IAEA

1. The Specialized Agencies Convention provides in article II, section 3 that:

The specialized agencies shall possess juridical personality. They shall have the capacity (a) to contract, (b) to acquire and dispose of immovable and movable property, (c) to institute legal proceedings.

2. Article II, section 2 of the IAEA Agreement on Privileges and Immunities contains a similar provision. The constitutional instruments of the specialized agencies and of the IAEA also provide, expressly or by implication, for the grant of the necessary legal capacity to enable the agency concerned to fulfil its purposes.<sup>162</sup>

#### *Section 1. Contractual capacity*

(a) *Recognition of the contractual capacity of the specialized agencies and of IAEA*

3. The capacity of the specialized agencies and of IAEA to enter into contracts has been fully recognized. No

<sup>162</sup> Art. XV, FAO Constitution; appendix II, IMCO Convention; art. 15, IAEA Statute; art. VII, IBRD Articles of Agreement; art. 47, ICAO Convention; art. VIII, IDA Articles of Agreement; art. VI, IFC Articles of Agreement; art. 39, ILO Constitution; art. IX, IMF Articles of Agreement; No. 149 of the ITU Montreux Convention (1965); art. XII, UNESCO Constitution; art. 66, WHO Constitution; and art. 27, WMO Convention.

limits have been set in national legislation or by other acts of national authorities upon the acknowledgement given by member and non-member States to the exercise of this capacity.

(b) *Choice of law: settlement of disputes and system of arbitration*

4. As a general rule, the commercial contracts concluded by specialized agencies are silent on the issue of the choice of law. They do not require the application of a given system of municipal law nor do they expressly exclude the application of such law if this should later prove desirable, for example, for purposes of interpretation. On occasions, however, reference is made to a specific system of municipal law where, for technical reasons, recourse to a body of detailed jurisprudence may be required; examples of contracts in this category have, in particular, included some of those concluded by WHO with building and civil engineering firms. Reference to a given system of national law may also be made implicitly. Thus the lease contracts entered into by the specialized agencies in different countries have usually been cast in the standard form employed locally, which have presupposed the applicability of national law. A somewhat similar situation has prevailed where an organization has entered into a *contrat d'adhésion* drawn up by the party providing the service, such as the provision of transport facilities or of insurance coverage.

5. Although considerable variation exists, the majority of contracts entered into by specialized agencies and by IAEA for goods and services provide for the settlement of disputes by arbitration, after recourse to direct negotiation. Most contracts concluded by the ILO in Geneva include a provision whereby all disputes are to be referred to the ILO Administrative Tribunal for decision;<sup>163</sup> the Tribunal has not in practice been called upon to give any decisions in such cases. The specialized agencies and IAEA have rarely had recourse to court actions in order to enforce their contractual remedies. One case which may be noted, however, is that of *International Refugee Organization v. Republic S.S. Corp. et al.*,<sup>164</sup> in which the IRO brought an action against the defendant corporation and its president to recover damages for alleged fraudulent breach of contract and sought enforcement of a writ of foreign attachment against a ship owned by the corporation.

6. Except for cases in which express reference is made to a given system of municipal law, contracts of employment are governed exclusively by international administrative law, including in particular, the terms of the contract itself and of any statutory rules adopted by the organization concerned. Arrangements have been

made for the settlement of disputes arising under employment contracts by means of internal appellate machinery. One of the main issues in the case was whether the capacity to institute legal proceedings included capacity to sue in a federal court whose jurisdiction was limited to enumerated parties; it was held that the IRO, as a specialized agency, had capacity to institute proceedings in order to recover damages for breach of contract.

7. The IBRD, IDA and IFC have developed a distinct body of practice as regards those contractual transactions which constitute their major field of activity. In the case of the IBRD, the position varies according to whether the organization is acting as lender or as borrower and according to the nature of the other party.<sup>165</sup> The IBRD makes loans either directly to member Governments or with the guarantee of a member country. Loans made to member Governments and guarantee agreements are governed by international law. Loan agreements with a borrower other than a member country cannot be regarded as international agreements. They are, however, insulated from the effect of conflicting domestic law, pursuant to an express provision of the IBRD Loan Regulations. On occasion such as the taking of security for a loan, express reference is made to municipal law in so far as the validity and enforcement of the security are concerned. The IBRD agreements provide for the settlement of loan disputes by international arbitration in accordance with the provisions contained in section 7.03 of Loan Regulations No. 3<sup>166</sup> and in section 7.04 of Loan Regulations No. 4.<sup>167</sup> Section 6.03 of the IDA Development Credit Regulations No. 1<sup>168</sup> provides for the same procedure. The IDA has so far made credits available only to member Governments, under agreements governed by international law.

8. The practice of the IBRD as a borrower depends on the custom in the particular market in which the funds are raised, or bonds are issued, and the character of the lender. While IBRD bonds issued in Canada, the United Kingdom and the United States contain no stipulation of applicable law (although it may be assumed that the law of the relevant market applies), bonds issued in Europe, other than in the United Kingdom, are expressly governed by the law of the particular market. As regards the character of the lender, it may be noted that, while loans made by Switzerland to the IBRD are governed by international law, loans made to the IBRD by institutions

<sup>163</sup> "The Tribunal shall be competent to hear disputes arising out of contracts to which the International Labour Organisation is a party and which provide for the competence of the Tribunal in any case of dispute with regard to their execution." Article II, paragraph 4, Statute of the Administrative Tribunal of the International Labour Organisation.

<sup>164</sup> United States Court of Appeals, Fourth Circuit, 11 May 1951, Nos. 6202, 6245, 6249, 189 F. 2d 858, on appeal from United States District Court D. Maryland, Cir. No. 4479, 92 F. Supp. 674 and No. 3132, 93 F. Supp. 798.

<sup>165</sup> The practice of IBRD is more fully explained in the following works: Broches, *International Legal Aspects of the Operations of the World Bank*, p. 98; *Recueil des Cours, Académie de Droit International*, 1959, vol. III, p. 301; Sommers, Broches and Delaume, "Conflict Avoidance in International Loans and Monetary Agreements"; 21, *Law and Contemporary Problems*, 1956, p. 463; Delaume, "The Proper Law of Contracts Concluded by International Persons: a Restatement and a Forecast"; 56, *American Journal of International Law*, 1962, p. 63; Nurick, Choice of Law Clauses and International Contracts, *Proceedings of the American Society of International Law*, 1960, p. 56; and Scott, The Enforceability of Loan Agreements between the World Bank and its Member Countries, 13, *American University L.R.* 1964, p. 185.

<sup>166</sup> United Nations, *Treaty Series*, vol. 414, p. 268.

<sup>167</sup> *Ibid.*, vol. 400, p. 212.

<sup>168</sup> *Ibid.*, vol. 415, p. 68.

such as the *Deutsche Bundesbank*, although governed by municipal law, contain no express stipulation of applicable law. Similar remarks apply to jurisdictional problems incidental to loans raised by the IBRD. Thus, while loan agreements between Switzerland and the IBRD provide for the arbitral settlement of possible loan disputes, bonds issued in Europe, other than in the United Kingdom, provide for the submission of loan disputes to the jurisdiction of the local courts. Bonds issued by the IBRD in Canada, the United Kingdom and the United States contain no jurisdictional clauses.<sup>169</sup>

### *Section 2. Capacity to acquire and dispose of immovable property*

9. The capacity of specialized agencies and of IAEA to acquire and dispose of immovable property has been widely recognized; the organizations concerned have purchased, sold, rented and leased property in a number of States, usually under the terms of a special agreement. Only one case was reported when the acquisition of property was refused; UNESCO stated that, on a basis of national law, Mexico declined to permit a regional basic educational centre (forming an integral part of UNESCO) to purchase premises on Mexican territory.

10. Instances of the acquisition or use of immovable property by a number of agencies are given below.

#### (i) *FAO*

11. The FAO has never acquired full title, either freehold or leasehold, to immovable property. Land and buildings for use as headquarters and regional offices have generally been made available by Governments under the terms of a special agreement whereby the FAO is required to pay a nominal rent (e.g. in the case of the Headquarters Agreement, \$US1).

#### (ii) *IAEA*

12. IAEA has never obtained, or sought to obtain, title to immovable property either in Austria or elsewhere. However it uses such property in Austria for its temporary headquarters, under a Supplemental Agreement to the Headquarters Agreement with the Austrian Government; for its laboratory at Seibersdorf, near Vienna, under a lease contract with *Oesterreichische Studiengesellschaft für Atomenergie*, a semi-public institution; and for apartments for its staff, under lease contracts with the City of Vienna. In Italy IAEA uses land and a building, placed at its disposal, free of charge, by the Italian Government, for its International Centre for Theoretical Physics.

#### (iii) *ILO*

13. The ILO has acquired title to immovable property on two occasions. In 1946 the full ownership of the land and buildings then occupied by the ILO was transferred to it by the League of Nations. The transfer was made in the form usually followed in Switzerland for such transactions and was registered in the Geneva land registry

without payment of any registration charges and fees for land registry.<sup>170</sup> In 1963 the ILO purchased an adjoining piece of land from the Canton of Geneva. This acquisition was also made in the form required by Swiss law and registered; no official fees or charges were paid.<sup>171</sup>

#### (iv) *ITU*

14. The ITU has acquired a "*droit de superficie*" over the site of its headquarters building.

#### (v) *UNESCO*

15. The site of UNESCO headquarters was leased to the Organization, at a symbolic rent, by the French Government. The Organization was also given property outside Paris, to which it acquired full title under French law.

#### (vi) *UPU*

16. Between 1927 and 1963 the building occupied by the UPU was owned by the Organization. In 1963 title was transferred to the Social Security Fund of the UPU. The latter is a foundation established under article 80 *et seq.*, of the Swiss Civil Code and as such has juridical personality enabling it to own property. Under a decision of the Swiss Federal Council of 20 December 1963, the Fund has been granted the same privileges and immunities as are accorded to the UPU itself, in view of the fact that its operations are conducted on behalf of UPU staff.

### *Section 3. Capacity to acquire and dispose of movable property*

#### (a) *Recognition of the capacity of the specialized agencies and of IAEA to acquire and dispose of movable property*

17. The capacity of the specialized agencies and of IAEA to acquire and dispose of movable property has been widely used, without any serious difficulty arising. The only problem which was reported concerned a specialized agency which was bequeathed a portfolio of shares, in a number of companies of different nationalities; one of the companies concerned refused to enter the organization in its register of shareholders on the ground that the conditions of nationality laid down by its board of directors were not met by the organization.

#### (b) *Licensing and registration of land vehicles, vessels and aircraft*

18. The specialized agencies and IAEA have licensed and registered their land vehicles with the appropriate authorities of the State where the vehicle in question was used.

19. It appears that only FAO has owned or chartered vessels or aircraft. It has happened on occasion that, by courtesy of the licensing country, a vessel was permitted to fly the United Nations flag or an aircraft to display the United Nations emblem. Applications for registration have usually been filed with the competent national

<sup>169</sup> See Delaume, "Jurisdiction of Courts and International Loans, A Study of Lenders Practice", 6, *American Journal of Comparative Law* 189 (1957). This matter is more fully discussed in chapter IV of Delaume's forthcoming book on the *Legal Aspects of Contemporary International Lending Practice*.

<sup>170</sup> ILO *Official Bulletin*, 1946, vol. XXIX, No. 1, p. 67.

<sup>171</sup> *Ibid.*, 1963, vol. XLVI, No. 2, p. 289.

authorities by or on behalf of FAO. There have been cases, however, where ownership has had to be transferred temporarily to the Government or to an appropriate agency of the country concerned before the aircraft or vessel could be registered or operated, particularly where registration was limited under national law to aircraft or vessels owned by nationals or by corporations with no (or only minority) foreign capital participation.

*Section 4. Legal proceedings brought by and against the specialized agencies and IAEA*

20. The capacity of each of the specialized agencies and of IAEA to institute legal proceedings before national tribunals has been generally assumed. Few of the organizations concerned have in fact found it necessary to institute such proceedings.<sup>172</sup> UNESCO reported that it had brought a successful action before the United States District Court for the District of Columbia against the seller (who was also the manufacturer) of a multitape machine which proved defective. The IBRD and IMF together instituted a proceeding before the Federal Communications Commission, an administrative regulatory agency of the United States Government, regarding the standard of treatment to be accorded to the official communications of those two organizations.<sup>173</sup>

21. As regards the steps taken to avoid or mitigate possible claims of a private law nature, it may be noted that in the various technical assistance agreements the participating specialized agencies are granted the protection of various "hold harmless" clauses.<sup>174</sup> Such clauses do not usually cover cases of gross negligence or of wilful misconduct. In the case of IAEA, the Agency has either disclaimed liability (such disclaimer being effective only in relation to the other party) or has tried to obtain a "hold harmless" undertaking, so as to cover it against third party liability in respect of nuclear risks.

22. In *Schaffner v. International Refugee Organization*<sup>175</sup> the plaintiff sought to bring an action for damages alleged to have arisen out of the negligent operation of a motor vehicle used by IRO. The Court dismissed the action, however, on grounds of the organization's immunity from suit.

*Section 5. International claims brought by and against the specialized agencies and IAEA*

23. Although the specialized agencies and IAEA possess the capacity to bring claims in respect of a breach of international law against other subjects of international law, only UNESCO has formally presented such a claim. Since the case involved the injury of a staff member when in a vehicle operated by a United Nations subsidiary

<sup>172</sup> See, however, *International Refugee Organization v. Republic S.S. Corp. et al*, referred to in section 1, para. 5, above.

<sup>173</sup> See section 18, para. 95, below.

<sup>174</sup> The text of several "hold harmless" clauses, applicable to specialized agencies engaged in United Nations technical assistance programmes, is contained in *Summary of practice relating to the status, privileges and immunities of the United Nations*, section 4 (c), paras. 45-48, above.

<sup>175</sup> United States Court of Appeal, Allied High Commission for Germany, 3 August 1951, Civil Case No. 11, Opinion No. 665.

organ, however, the latter eventually pursued the matter vis-à-vis the State concerned. Only one agency has itself received a claim, made by a State acting on behalf of one of its citizens.

*Section 6. Treaty-making capacity*

(a) *Treaty-making capacity of the specialized agencies and of IAEA*

24. The specialized agencies and IAEA have entered into a large number of treaties with both Member and non-member States, either bilaterally or jointly (e.g. in the case of United Nations technical assistance agreements).<sup>176</sup> Such treaties have fallen broadly into two categories, those relating to the establishment of headquarters and other offices and the holding of conferences or meetings on the one hand, and those relating to the provision of technical assistance or the operation of direct programmes on the other.

(b) *Registration, or filing and recording, of agreements on the status, privileges and immunities of the specialized agencies and of IAEA*

25. Although there is some variation in the practice of the various agencies, the majority of agreements entered into relating to the status, privileges and immunities of specialized agencies and of IAEA have been registered, or filed and recorded, with the United Nations Secretariat.

26. It may be noted that instruments of acceptance of the IAEA Agreement on Privileges and Immunities are deposited with the Director-General of that agency and then registered with the United Nations Secretariat.

CHAPTER II. — PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES AND OF IAEA IN RELATION TO THEIR PROPERTY, FUNDS AND ASSETS

*Section 7. Immunity of the specialized agencies and of IAEA from legal process*

27. As stated in section 4 of the Specialized Agencies Convention :

The specialized agencies, their property and assets, wherever located and by whomsoever held shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

28. The majority of specialized agencies stated that their immunity from legal process had been fully recognized by the competent national authorities.<sup>177</sup> On occasions an official, acting on behalf of an agency, has been asked to appear in order to give evidence before a national court. Where in such instances the agency concerned had considered that it could not accede to the request it had asserted its immunity from legal process, including that of its officials, through the foreign ministry of the State.

<sup>176</sup> See also section 45, paras. 186 and 187, below.

<sup>177</sup> See e.g. the case of *Schaffner v. International Refugee Organization*, referred to in section 4, para. 221, above.

29. One agency reported two instances in which difficulty with respect to its immunity had been encountered. In one a technical assistance expert employed by the agency was involved in a car accident while on official duty, resulting in the death of a local government official who was a passenger in the car. The widow of the deceased attempted to bring an action in the local courts against both the agency and the expert. While court proceedings were halted at an early stage and the immunity from arrest of the agency official recognized, the Government was reluctant to recognize the provisions of the "hold harmless" clause contained in the relevant technical assistance agreement and intimated that it would pursue the widow's claim for compensation. The agency, however, in consultation with the United Nations, refused to recognize the claim and did not pay damages. The second case involved a local employee of the agency who was engaged in a Special Fund project. After his appointment had been terminated by the agency, he brought an action in the local courts for the termination benefits due under national law against a Government institute which was being established in the country in question under a Special Fund project. Notwithstanding the intervention of the Government, the court refused to recognize the immunity of the agency in respect of labour claims and issued a judgement which resulted in the sequestration of monies from a Special Fund imprest account held by the agency in order to satisfy the judgement. In all other instances in which actions have been brought arising out of employment contracts, however, the courts have upheld the immunity of the organization concerned, unless the latter should agree to waive its immunity from legal process in respect of the proceedings.<sup>178</sup>

30. The IBRD, IDA and IFC do not enjoy general immunity from suit. Under the pertinent agreements<sup>179</sup> their immunity is limited to actions brought by Member States or by persons acting for or deriving claims from such States. There have been no cases in which this immunity has not been recognized. Actions by other persons may be brought only in a court of competent jurisdiction in the territory of a Member State in which IBRD, IDA or IFC, as the case may be, has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. It may be noted that in the case of *Frank B. Redicker v. Warfield et al.*<sup>180</sup> suit was brought against the IBRD by an individual plaintiff who sought to obtain damages of approximately \$625,000 for alleged interference with the plaintiff's contractual relationships. The IBRD denied the charges contained in the complaint

<sup>178</sup> See e.g. *Vicelli v. International Refugee Organization*, 20 July 1951, Tribunal of Trieste, reported in 36 *Rivista di Diritto Internazionale*, 1953, p. 470.

<sup>179</sup> See for the IBRD, Articles of Agreement, article VII, section 3, and Specialized Agencies Convention, Annex VI, para. 1; for IDA, Articles of Agreement, article VIII, section 3, and Specialized Agencies Convention, Annex XIV, para. 1; and for IFC, Articles of Agreement, article VI, section 3 and Specialized Agencies Convention, Annex XIII, paras. 1 and 3.

<sup>180</sup> U.S. District Court, Southern District of New York, Civil No. 61-210.

and the action was discontinued, with prejudice, in 1954.

31. The words "every form of legal process" have been broadly interpreted to include all forms of legal process, whether or not exercised by a specifically judicial body.

*Section 8. Waiver of the immunity from legal process of the specialized agencies and of IAEA*<sup>181</sup>

32. The specialized agencies and IAEA reported that the immunity from legal process of their respective organizations had never on any occasion been formally waived. Relatively few agencies have in fact been the subject of a claim, however, so as to cause the agency concerned to decide whether or not its immunity should be waived. No specialized agency has entered into a bilateral or other agreement whereby it is obliged to waive its immunity in the event of a dispute arising as to the interpretation of the agreement. They have, however, entered into agreements in which they agreed to arbitrate any disputes which arose.

33. As noted in section 7, paragraph 30, above, IBRD, IDA and IFC do not enjoy general immunity from suit. Paragraph 3 of the IFC Annex to the Specialized Agencies Convention states:

The Corporation in its discretion may waive any of the privileges and immunities conferred under Article VI of its Articles of Agreement to such extent and upon such conditions as it may determine.

34. The immunity from "any measure of execution", contained at the end of section 4 of the Specialized Agencies Convention, has been strictly adhered to. The ILO in particular has always taken the view that no execution is possible on the salary of officials still held by the ILO, on the ground that this would constitute a "measure of execution" on ILO assets. Accordingly, in the event that an official assigns his salary to a third party in guarantee of a loan, the guarantee is unenforceable before national courts.

35. In 1963 the United Nations Office of Legal Affairs advised<sup>182</sup> the Special Fund regarding

... the question of who should have the right to waive the privileges and immunities of a specialized agency which has been retained by another specialized agency to assist the latter in the execution of a project.

Article XI of the standard Agreement between the Special Fund and FAO and other specialized agencies acting as executing agency was intended to apply only to cases where the sub-contractor concerned is a firm or organization other than a specialized agency. Where the sub-contractor is another specialized agency, article XI would not apply and would therefore not provide a basis for the executing agency to waive the immunities of the second specialized agency.

We are of the opinion that any waiver of the privileges and immunities of a specialized agency serving as a sub-contractor should be effected by the specialized agency itself. Under section 22 of the Convention on the Privileges and Immunities of the Specialized Agencies, the right and the duty to waive the immunity of

<sup>181</sup> See also the memoranda cited in *Summary of practice relating to the status, privileges and immunities of the United Nations*, sections 8 (a) and (b), paras. 82-84 and 87, above.

<sup>182</sup> *United Nations Juridical Yearbook* 1963, p. 179.

an official rests with "each specialized agency", and the mere fact that the specialized agency concerned happens to be acting in the capacity of a sub-contractor in regard to a particular project cannot vary the terms of the Convention. A problem, however, would arise where the country recipient of Special Fund assistance is not a party to the Convention and is bound to apply its terms solely on the basis of article VIII, paragraph 2, of the standard Special Fund Agreement with governments. As you know, this provision requires that the Government apply the Convention "to each specialized agency acting as an Executing Agency"; where the specialized agency concerned is acting as a sub-contractor, it would not meet the literal requirement of the provision in question. However, this problem could be solved by a clause in the Plan of Operation stipulating that any specialized agency retained by the executing agency to assist it in the project shall be entitled to the privileges and immunities of a specialized agency acting as an executing agency as envisaged in paragraph 2 of article VIII of the Agreement between the Special Fund and the Government. In this way, a specialized agency would not be treated less favourably when acting as a sub-contractor than it would when filling the role of an executing agency.

*Section 9. Inviolability of the premises of the specialized agencies and of IAEA and the exercise of control by the specialized agencies and by IAEA over their premises*

36. The inviolability of the premises of the specialized agencies, which is referred to in the opening sentence of section 5 of the Specialized Agencies Convention, has been well recognized and instances of non-observance have been extremely rare. It may be noted that several agreements with host States permit the entry of local police or other authorities solely upon the request of the Agency concerned. WHO reported that, following claims made under national labour law by the locally recruited staff of one of its regional offices, various measures had been taken by the national authorities, including violation of the Organization's premises; at the time of the preparation of the present study the matters involved were the subject of discussions with the Government of the State concerned. An employee of the "UNESCO Staff Service" in the premises of UNESCO conducted local police into the basement of the building in order to arrest a subordinate member of the staff. Following a protest by UNESCO regarding this violation of its premises and the arrest, the host Government issued a directive to the responsible police unit to ensure that no repetition occurred. UNESCO issued an administrative instruction to all members of UNESCO staff, including security staff, to the employees of the Staff Service and to employees of the bank and travel agency having offices in the building, informing them that disciplinary measures would be taken against any employee at UNESCO Headquarters who did not observe the instructions already given or who otherwise acted in a matter permitting a violation of the pertinent provisions of the Headquarters Agreement to occur.

37. The right of the specialized agencies and of IAEA to exercise control over their premises has not been contested. Several agencies have issued rules and instructions regarding such matters as traffic and parking regulations, the operation of commissary facilities, the operation of a visitors service, the sale of official publications and the like.

*Section 10. Immunity of the property and assets of the specialized agencies and of IAEA from search and from any other form of interference*

38. Besides referring to the inviolability of premises, section 5 of the Specialized Agencies Convention provides that:

The property and assets of the specialized agencies, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

39. No body of practice appears to have emerged regarding the interpretation of these words. The specialized agencies and IAEA reported that the immunity in question has been observed without difficulty.<sup>183</sup>

*Section 11. Name and emblem of the specialized agencies and of IAEA: United Nations flag*

40. Relatively few legal problems appear to have arisen in connexion with the use by the specialized agencies and IAEA of their own name and distinctive emblem. The specialized agencies and IAEA have flown the United Nations flag, in accordance with the United Nations flag code, outside their offices and other installations. The WHO has its own flag.

41. The FAO reported that one Government delayed the take-off of an aircraft which the Organization had chartered and which was officially authorized to bear the United Nations insignia, in pursuance of a law requiring planes carrying United Nations insignia to obtain prior approval before landing on the territory of the country in question. After detention for forty-eight hours the aircraft was allowed to proceed, following diplomatic intervention by the agency.

42. A number of specialized agencies, and the IAEA, have applied to the United International Bureaux for the Protection of Intellectual Property in order to register their name and other insignia, so that they may receive the appropriate protection provided under article 6 *ter* of the Paris Convention for the Protection of Industrial Property, as revised at Lisbon in 1958 and which came into force on 4 January 1958. As a result of this action the name and insignia of the agencies in question have been protected in several countries. In addition a number of countries have adopted (usually as a result of prior requests) national enactments protecting the name and insignia of United Nations bodies.

*Section 12. Inviolability of archives and documents*

43. As stated in section 6 of the Specialized Agencies Convention,

The archives of the specialized agencies, and in general all documents belonging to them or held by them, shall be inviolable wherever located.

44. Few occasions were mentioned when States had sought to take action or otherwise deny the inviolability

<sup>183</sup> See, however, the case reported by FAO in section 11, para. 41, below, in which a Government delayed the take-off of a plane carrying United Nations insignia.

of archives and documents. The FAO stated that on one occasion documents carried by an official were seized by customs authorities who took cognizance of, and commented on, their contents. The Government concerned subsequently apologized for the incident. Secondly, WHO stated that in 1958 an WHO official had assisted officials of the Ministry of Health of a Member State in the selection of candidates for an official post. An offer of employment was sent to one candidate but was almost immediately rescinded by the local authorities. The person who failed to get the job thereupon instituted proceedings against the Ministry of Health, which led to the WHO official being subpoenaed to testify as a witness against the Ministry. The request for the official to appear was rejected by WHO, on the grounds, *inter alia*, that the appearance of the official would of necessity require the production of the official files of the Organization.

### Section 13. Immunity from currency controls

45. The relevant provisions of the Specialized Agencies Convention are as follows:

7. Without being restricted by financial controls, regulations or moratoria of any kind:

(a) The specialized agencies may hold funds, gold or currency of any kind and operate accounts in any currency;

(b) The specialized agencies may freely transfer their funds, gold or currency from one country to another or within any country and convert any currency held by them into any other currency.

8. Each specialized agency shall, in exercising its rights under section 7 above, pay due regard to any representations made by the Government of any State party to this Convention in so far as it is considered that effect can be given to such representations without detriment to the interests of the agency.<sup>184</sup>

46. The privileges contained in the above-mentioned sections have not been expressly denied. It appears to be accepted as self-evident that the organizations concerned would be unable to discharge their responsibilities in all parts of the world if they were unable to hold and transfer their funds freely. Nevertheless a number of specialized agencies reported that they had encountered considerable difficulties by reason of the payments in currencies which were not easily convertible; in most cases, however, these difficulties were resolved or lessened following discussions with the State or States concerned.

47. Particular arrangements which have been entered into, or cases which have arisen, include the following:

#### (i) IAEA

Article IX, section 23, of the IAEA Headquarters Agreement provides as follows:

(a) Without being subject to any financial controls, regulations or moratoria of any kind, the IAEA may freely:

(i) Purchase any currencies through authorized channels and hold and dispose of them;

(ii) Operate accounts in any currency;

(iii) Purchase through authorized channels, hold and dispose of funds, securities and gold;

(iv) Transfer its funds, securities, gold and currencies to or from the Republic of Austria, to or from any other country, or within the Republic of Austria; and

(v) Raise funds through the exercise of its borrowing power or in any other manner which it deems desirable, except that with respect to the raising of funds within the Republic of Austria, the IAEA shall obtain the concurrence of the Government.

(b) The Government shall assist the IAEA to obtain the most favourable conditions as regards exchange rates, banking commissions in exchange transactions and the like.

(c) The IAEA shall, in exercising its rights under this section, pay due regard to any representations made by the Government in so far as effect can be given to such representations without prejudicing the interests of the IAEA.

48. IAEA has also concluded a supplemental agreement with Austria regarding currency exchange. Under this agreement Schilling funds acquired by IAEA through the sale of freely convertible currency may be transferred into any currency, whereas the transfer of Schilling funds of other origin into other currencies is subject to the limitations generally applicable to transfers into such currencies under the pertinent Austrian regulations.

#### (ii) IFC

49. Paragraph 2 of the IFC Annex to the Specialized Agencies Convention states that Section 7, paragraph (b) shall apply to the Corporation, subject to Article III, Section 5, of its Articles of Agreement. The latter provision is as follows:

Funds received by or payable to the Corporation in respect of an investment of the Corporation made in any member's territories pursuant to Section 1 of this Article shall not be free, solely by reason of any provision of this Agreement, from generally applicable foreign exchange restrictions, regulations and controls in force in the territories of that member.

#### (iii) ILO

50. Besides the general problem of currencies with limited convertibility, the ILO reported a number of other difficulties which had occurred. In 1950 a member State prohibited the opening of a bank account in the name of the ILO pending the grant of legal status, under national law, to the ILO office in the country in question. In 1951 another member State prevented the ILO from paying part of the salary of the ILO's national correspondent there with the proceeds in dollars or Swiss francs of the sale of ILO publications in the State concerned; a similar instance occurred in 1960 in respect of another member State. In 1954 a member State indicated that it could not grant the ILO the right to transfer funds freely as the matter was not dependent on the country concerned but on the then occupying powers. No difficulty arose in practice in this instance, however. In 1957 the same member State informed the ILO that, in its opinion, the relevant provisions of the Specialized Agencies Convention were to be interpreted as meaning that its currency (which in general was freely convertible) could be exchanged without limit so far as other freely convertible currencies were concerned but that currencies with limited convertibility could only be exchanged for such of the currency of the member State in question as

<sup>184</sup> See the opinion cited in *Summary of practice relating to the status, privileges and immunities of the United Nations*, section 13, para. 138, above, referring to the interpretation of these provisions.

had limited convertibility; this interpretation was accepted by the ILO.

(iv) *IMCO*

51. IMCO stated that the central bank of the host State had on one occasion ruled that the Organization could not deal in a particular money market in that State as a means of converting one currency into another.

(v) *WHO*

52. In the host Agreement entered into between Egypt and WHO by means of an exchange of notes, dated 25 March 1951, it was agreed that, while the Organization might "hold gold and, through normal channels, receive and transfer it to and from Egypt", it might not transfer from Egypt more gold than it had brought it. Since the WHO does not hold any of its financial assets in the form of gold, this provision has not been applied.

*Section 14. Direct taxes*<sup>185</sup>

53. Section 9 of the Specialized Agencies Convention provides that:

The specialized agencies, their assets, income and other property shall be:

(a) Exempt from all direct taxes; it is understood, however, that the specialized agencies will not claim exemption from taxes which are, in fact, no more than charges for public utility services.

54. The specialized agencies reported that they had not experienced any serious difficulty in the interpretation of this provision. Although on occasions States have attempted to levy direct taxes, such attempts have been discontinued following the submission of an explanatory memorandum or other communication by the agency concerned. It may be noted that agencies in Switzerland are exempt, *inter alia*, from stamp duty on contracts and from *impôt anticipé*, *impôt sur les coupons* and *droit d'émission* on securities.

55. Under section 19 (a) of its Headquarters Agreement FAO has been specifically exempted, *inter alia*, from the tax on movable property, land income tax, capital levy and local surtaxes. Under section 22 (a) of the IAEA Headquarters Agreement, IAEA is declared exempt from all forms of national taxation. In practice, IAEA has only claimed exemption from indirect taxes if the exemption concerned was administratively feasible.

56. The specialized agencies pay "charges for public utility services", as envisaged in the Convention, except where the cost of those services has been voluntarily assumed by a host country. The FAO reported that the question of the rate of charges for public utilities had arisen in connexion with the telephone services provided at its Headquarters.<sup>186</sup> Initially the Organization had been required to pay the same telephone rates as private subscribers, despite the fact that under article VI, section 11, of its Headquarters Agreement it was to be afforded the same treatment as that accorded to other Governments, including the diplomatic missions of such

Governments, in respect of communications. After lengthy discussions with the telephone company and the intervention of the Italian Government, it has been established that the telephone rates chargeable to the Organization should be equivalent to those charged to Ministries of the Italian Government pursuant to article V, section 10 (a) of the Headquarters Agreement, which relates to the provision of public services. The Italian authorities have, however, insisted on the payment of turnover tax with respect to public services such as telephone, electricity, gas and water, on the ground that the tax was also paid in respect of those services by diplomatic missions in Rome.

57. IAEA sought to obtain exemption from the Vienna airport service charge, but was informed that this did not constitute a tax but a charge levied by the company operating the airport for the use of the airport facilities. IAEA did not therefore take any further steps in the matter.

*Section 15. Customs duties*

(a) *Imports and exports by the specialized agencies and by IAEA "for their official use"*

58. Under section 9 (b) of the Specialized Agencies Convention, specialized agencies are declared

Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the specialized agencies for their official use; . . .

59. The majority of specialized agencies reported that problems have rarely arisen in determining whether or not a given article was being imported or exported "for their official use". Where difficulties have occurred they have usually been resolved by contacting the appropriate officials. In the case of imports into Switzerland, a special form has been established by the Swiss authorities on which persons specifically authorized by the various organizations having offices there may certify that a particular import is for official use.

60. Several organizations indicated some of the more particular problems which had presented themselves over the question of whether particular imports were for official use. The IMCO stated that it had encountered difficulty in importing wines, spirits and tobacco for purposes of official hospitality, since the customs authorities of the host State had denied that such articles could be for official use. After representations by the organization, however, this ruling had been amended. The ILO reported that in 1952 and 1955 a member State claimed that articles sent to the ILO branch office there for the purposes of an exhibition were subject to customs duty, on the grounds that importation of articles for the purposes of display at an exhibition could not be considered importation for official use. In 1961 another member State detained a package of documents sent from another member State, with which the detaining State no longer maintained diplomatic relations, but finally agreed to release them once it had been shown that the documents concerned were being imported by the ILO for official purposes.

61. UNESCO stated that when, in 1961, it had wished to import certain kitchen equipment for use in its head-

<sup>185</sup> See also section 17, paras. 67-74, below as regards excise duties and taxes on sales.

<sup>186</sup> See section 18, paras. 75-97, below, regarding Government treatment in respect of communications.

quarters the customs authorities of the host State had declared that the articles concerned could not be imported duty free since their use was not connected with the purposes of a cultural organization. The organization contested this ruling, pointing out that similar equipment had been imported duty-free when the headquarters building had been constructed and that the maintenance of kitchen facilities, for the benefit of representatives and officials, contributed to the efficacy of the work of the organization. The Ministry of Foreign Affairs of the host State stated, however, that, in its opinion, article 15 of the Headquarters Agreement (which corresponds to section 9 of the Specialized Agencies Convention) did not entitle the organization to determine of its own accord that all articles it wished to import were automatically to be considered as being for official use; the determination of this question was to be made by the organization and the host State acting together. Owing to its pressing need of the equipment UNESCO paid the customs duties, together with the storage fees which had accrued, but informed the Ministry that it maintained its interpretation and that it reserved its rights in the matter, including that of proceeding under article 29 of the Headquarters Agreement, which provides for the arbitration of disputes. Following a demand from its auditors for an explanation of what had occurred the organization again approached the Ministry of Foreign Affairs, which stated that, after a fresh examination of the case, it had decided to authorize the admission of the material concerned as a special exception. Duties and taxes subsequently levied by the French customs authorities have been reimbursed to the organization.

(b) *Imposition of "customs duties . . . prohibitions and restrictions"*

62. Customs duties, prohibitions and restrictions have not been imposed on any goods imported or exported by the specialized agencies or by IAEA, except to the extent noted in sub-section (a) above. The question of the refund of customs duties therefore arises comparatively rarely, normally only in the case where duty has been paid by an importer from whom the organization has then bought the goods. To avoid the administrative problems involved in obtaining a refund in such cases the specialized agencies have usually sought to import goods in their own name. Where this has not been possible, suitable proof has been supplied to the importer to enable him to obtain a refund; efforts to obtain a refund in such circumstances have not always been successful however.

(c) *Sales of articles imported by the specialized agencies and by IAEA*

63. Section 9 (b) of the Specialized Agencies Convention further provides that articles imported for official use, free from customs duties and other restrictions, "will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country".

64. The majority of specialized agencies have entered into appropriate arrangements with the authorities of the State concerned. In Switzerland the *Règlement*

*douanier* of 23 April 1952 applies, under which articles imported by agencies may be sold free of customs duty only after five years. IAEA has entered into a standing arrangement with Austria allowing the customs-free disposal of goods two years after their importation. In the case where agencies maintain staff commissaries with customs privileges<sup>187</sup> detailed agreements have been made with the competent host authorities, in some cases including such matters as ceilings on the annual tax-free imports allowed in respect of individual staff members and restrictions on the benefits permitted to local employees.

*Section 16. Publications*

65. Section 9 (c) of the Specialized Agencies Convention grants the specialized agencies exemption from duties, prohibitions and restrictions on imports and exports of their publications. The term "publications" has been interpreted to cover films, records, radio transcription discs and recording tapes, as well as books, periodicals and other printed material published by the organization concerned. In general no restrictions have been imposed on the import or export of such articles, although occasionally completion of a customs clearance certificate or the obtaining of a licence has been required. Whilst specialized agencies have complied with routine procedures to enable their publications to be cleared through customs, they have protested against the imposition of any system of licensing which appeared to go beyond this.

66. The ILO reported various occasions on which its privileges in respect of publications had been called in question or had otherwise given rise to discussion. In 1953 a member State granted exemption from customs and sales taxes on "official supplies", including books sent to the ILO national correspondent, but claimed such taxes on items sent to third parties. In 1960 another member State levied customs duties on ILO publications addressed directly to one of its nationals. In 1959 a third member State claimed that the ILO should deposit with the customs authorities the value of books and publications imported for sale through the ILO sales agents; exemption from this requirement was finally obtained, however. As regards import controls more generally, two member States stated in 1955 that all imports into their respective countries had to take place through the state import monopoly and could not be imported and sold directly through the ILO Branch Office there. The ILO agreed to use such official channels.

*Section 17. Excise duties and taxes on sales; important purchases*

(a) *Excise duties and taxes on sales forming part of the price to be paid*

67. Section 10 of the Specialized Agencies Convention provides that:

<sup>187</sup> FAO and IAEA maintain such commissaries under the terms of their respective headquarters agreements; see art. XIII, section 27 (j) (ii), FAO Headquarters Agreement and art. XV, section 38 (j) (iii) IAEA Headquarters Agreement. UNESCO also operates a similar service for the members of its staff.

While the specialized agencies will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the specialized agencies are making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, States parties to this Convention will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of the duty or tax.

68. The terms "excise duties and . . . taxes" have been interpreted in a broad sense. In Switzerland, where practice has been most developed, all articles imported for official use are exempt, not only from customs duties, but also from turnover taxes (*impôt sur les chiffres d'affaires*) and statistical charges, which are normally levied at the frontier.

69. In addition to the exemptions granted to FAO under section 20 (a) of its Headquarters Agreement,<sup>188</sup> section 20 (b) provides as follows:

Regarding indirect taxes, levies and duties on operations and transactions, FAO shall enjoy the same exemptions and facilities as are granted to Italian governmental administrations. In particular, but without limitation by reason of this enumeration, FAO shall be exempt from the registration tax (*imposta di registro*); the general receipts tax (*imposta generale sull'entrata*) on wholesale purchases, on contractual services and on tenders for contractual supplies (*prestazioni d'opera, appalti*), on leases of lands and buildings; from the mortgage tax; and from the consumption taxes on electric power for lighting, on gas for lighting and heating, and on building materials.

70. While FAO is exempt under this provision from payment of turnover tax (IGE),<sup>189</sup> the organization has found that, in the case of purchases made or services procured in Italy, its suppliers are required to pay IGE. After FAO had placed a large printing order with an Italian firm it argued that it was not receiving the true benefit of exemption from the tax since the tax fell on its supplier and was incorporated in the invoice payable by the organization. The organization has continued to seek the exemption of its suppliers from this tax through the Ministry of Foreign Affairs.

#### (b) Important purchases

71. The question of what constitutes an important purchase for the purpose of the section has not received a standard and uniform interpretation. In Switzerland it has been agreed that, for a purchase to count as important, the cost must amount to at least 100 Swiss francs. Similarly, in the Republic of the Congo (Brazzaville) the amount involved may not be less than CFA 10,000 (approximately \$41). In an exchange of letters regarding the interpretation of the host agreement between WHO and Denmark, the expression "minor purchases" was defined as meaning those costing less than 200 Danish Kroner (approximately \$28); purchases over that figure are accordingly classified as important, within the meaning of section 10 of the Convention. In the case of IAEA, the Headquarters Supplemental Agreement on Turnover

Taxes provides that no refund will be made on turnover tax paid on minor purchases; minor purchases are defined as being those totalling less than AS 20,000 (approximately \$800). For running accounts the final balance at the end of each six months accounting period is considered the total sum paid.

72. It may be noted that the UNESCO Headquarters Agreement does not contain the condition that purchases be "important"; accordingly, the organization is exempt from indirect tax in France irrespective of the importance of the purchase.

#### (c) Remission or return of taxes paid

73. In the case of Switzerland administrative arrangements have been made to enable the organizations operating there to obtain reimbursement. The organization concerned pays the duties and taxes concerned to its supplier and then claims reimbursement, on the basis of appropriate statements and receipts, from the Swiss federal authorities, at regular intervals. A similar scheme operates in the United Kingdom in respect of payments of purchase tax made by IMCO.

74. In France, on the other hand, the supplier is permitted to deduct indirect taxes on sales at the time of purchase, upon written declaration by UNESCO that it is the purchaser; this arrangement, which has been defined in an exchange of letters between UNESCO and the host State, has worked satisfactorily.<sup>190</sup>

### CHAPTER III. — PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES AND OF IAEA IN RESPECT OF COMMUNICATION FACILITIES

#### Section 18. Treatment equal to that accorded to Governments in respect of mails, telegrams and other communications

75. Article IV, section 11, of the Specialized Agencies Convention declares that:

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.

76. With one major exception, the standard of treatment accorded to specialized agencies under section 11 has been fully afforded.<sup>191</sup> The exception exists in the case of telecommunication privileges since, under the various

<sup>190</sup> While the taxes in question are considered "indirect taxes" within the French fiscal system, see the discussion in *Summary of practice relating to the status, privileges and immunities of the United Nations*, section 14 (especially paragraphs 145 and 146) above, regarding the interpretation of the terms "direct" and "indirect taxes" for the purposes of the General Convention; the same considerations apply with regard to the interpretation of the Specialized Agencies Convention.

<sup>191</sup> See section 14, para. 56, above regarding the payment of turnover tax by FAO on telephone charges.

<sup>188</sup> See section 14, para. 55, above.

<sup>189</sup> Except as regards turnover tax on public utilities; see section 14, para. 56, above.

International Telecommunication Conventions, priorities, rates and taxes equal to those afforded to Governments have not been given to all of the specialized agencies.

77. The International Telecommunication Convention of Atlantic City, 1947, which was adopted at approximately the same time as the Specialized Agencies Convention was adopted by the General Assembly, provided that priority should be given to United Nations telegrams and telephone calls, but did not provide it for those of the specialized agencies.<sup>192</sup> In view of the fact that the Atlantic City Convention did not provide governmental treatment for communications of the specialized agencies, at its second session in January 1948, the Administrative Council of ITU adopted a resolution recommending to the Secretary-General of the United Nations, as well as to ITU member States, that the Specialized Agencies Convention should be interpreted in the light of the Atlantic City Convention. There followed a series of exchanges between the Secretaries-General of ITU and the United Nations.<sup>193</sup> By a letter dated 30 August 1948, the Secretary-General of the United Nations informed the Secretary-General of ITU that the Specialized Agencies Convention 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 section 11 to those agencies. The Secretary-General of the United Nations also pointed out that, prior to its adoption by the General Assembly, the draft text of the Specialized Agencies Convention had been communicated to the International Telecommunications Conference at Atlantic City and that the competent authorities of ITU had been invited to be represented at the meeting of the Sub-Committee of the Sixth Committee which drew up this Convention in order to participate in its work.

78. On 7 January 1949, the Secretary-General of ITU, by a letter to the Secretary-General of the United Nations, stated that, at its third session in September-October 1948, the Administrative Council of ITU had adopted a resolution requesting him to ask if the United Nations would contemplate modifying the terms of section 11; in lieu of this, the Secretary-General of the United Nations was asked to consider suspending the provision until the matter could be considered by the next conference of ITU, to be held in Buenos Aires in 1952. In his reply, the Secretary-General of the United Nations stated that the Specialized Agencies Convention had already come into effect for some member States in respect of a number of agencies. He also informed ITU that there were no provisions in the Convention for the suspension of any of its clauses and that, as regards revision, this would be possible only if, in accordance with section 48, one-third of the States Parties requested the Secretary-General to call a conference for this purpose.

<sup>192</sup> For the text of the pertinent provisions (article 36 and Annex 2) of the Atlantic City Convention, see *Summary of practice relating to the status, privileges and immunities of the United Nations*, section 18, para. 220, above.

<sup>193</sup> See *Official Records of the General Assembly, Fourth Session, Sixth Committee*, annex, pp. 26-28.

79. At its fourth session, held from 15 August to 30 October 1949, the Administrative Council of ITU adopted resolution No. 142, in which it decided:

1. To request the Secretary-General to keep up to date the list of the subsidiary organs of the United Nations and to forward to the Members and Associated Members of the Union a copy of this list and to advise them of any modifications therein;

2. To request the Secretary-General to bring the terms of the above-mentioned opinion to the attention of the Members and Associate Members of the Union with the recommendation that, subject to any decisions reached by the appropriate authorities on the question of conflict of obligations, such Members and Associate Members shall, either by appropriate reservations to article IV, section 11, of the Convention on Privileges and Immunities of Specialized Agencies or by any other appropriate means, limit to the Heads of the subsidiary organs of the United Nations the Government telecommunication privileges provided for in the Atlantic City Convention;

3. To request the Secretary-General to suggest to the Members and Associate Members of the Union who are Members of the United Nations to place this matter on the agenda of the forthcoming General Assembly of the United Nations with a view to proposing that the United Nations consider the calling of a special Conference for the purpose of abrogating article IV, section 11, of the Convention on Privileges and Immunities of Specialized Agencies;

4. To request the Secretary-General to recall to the Administrations present at the Paris Telegraph and Telephone Conference, 1949, the recommendation of the Conference that such Administrations recommend to their respective Governments that their representatives at the United Nations support the proposal of the Union that article IV, section 11, be abrogated;

5. To request the Secretary-General to place this question on the agenda of the last session of the Administrative Council before the Plenipotentiary Conference, Buenos Aires, 1952, in the event that this question has not been resolved to the satisfaction of the Union before that date.

80. In his report dated 7 September 1949, on the privileges and immunities of the United Nations,<sup>194</sup> the Secretary-General of the United Nations referred to the discrepancy between the two Conventions. He summarized the correspondence between the Secretary-General of ITU and himself but did not offer any recommendation of his own. At the 211th meeting of the Sixth Committee on 29 November 1949, the Assistant Secretary-General in charge of the Legal Department presented the report and pointed to the divergent provisions in the ITU Convention of 1947 and those in the Specialized Agencies Convention. He said that, "it was for the Committee to decide what action to take on the report of the Secretary-General". No member of the Committee, however, adverted to the question. The Committee merely adopted a draft resolution proposed by the representative of Argentina to "take note of the Secretary-General's report".<sup>195</sup>

81. In accord with the decisions of the Administrative Council of ITU, the United Kingdom made the following declaration in a letter addressed to the Secretary-General

<sup>194</sup> *Official Records of the General Assembly, Fourth Session, Sixth Committee, Annex to summary records of meetings*, agenda item 54, document A/940 and Add.1 and 2.

<sup>195</sup> *Ibid.*, 211th meeting.

of the United Nations by which it transmitted its instrument of accession to the Specialized Agencies Convention (but not in the instrument of accession itself):

I have to invite your attention to the fact that it is not possible for any Government fully to comply with the requirements of section 11 of that Convention in so far as it requires the specialized agency to enjoy in the territory of a State party to the Convention treatment not less favourable than that accorded by the Government of that State to any other Government in the matter of priorities and rates on telecommunications, unless and until all other Governments collaborate in according this treatment to the Agency in question. It is understood that this matter is being discussed in the International Telecommunications Union.

82. This declaration of the United Kingdom, which was received by the Secretary-General on 16 August 1949, was repeated, in essence, in connexion with the subsequent notifications made by the United Kingdom making the Convention applicable to additional specialized agencies, on 17 December 1954 and 4 November 1959.

83. The example set by the United Kingdom was followed by the Federal Republic of Germany, Gabon and New Zealand, on their respective accessions to the Convention on 10 October 1957, 9 September 1958 and 25 November 1960, respectively. Three other countries made declarations substantially to the same effect subsequent to their accessions, namely, Pakistan on 15 September 1961, 13 March 1962 and 17 July 1962; Norway on 20 September 1951, and Ivory Coast on 28 December 1961. In addition, Australia and the Malagasy Republic sent to the Secretary-General on 20 November and 27 August 1962, respectively, instruments of accession to the Convention containing reservations to section 11. Because of these (and other) reservations, the instruments of accession were not accepted for definitive deposit. On 3 January 1966, the Malagasy Republic withdrew its reservations but retained a declaration that it would not be able to comply fully with the provisions of article IV, section 11, of the Convention; its instrument of accession was thereupon accepted.

84. Whilst eight States Parties to the Specialized Agencies Conventions had therefore made declarations regarding the application of article IV, section 11, as of 1 April 1966, fifty-one States Parties had acceded to the Convention without making such a declaration. It would appear that even in the case where States Parties have not made a declaration, specialized agencies have not in practice usually received the same treatment in respect of their telecommunications as those States have accorded to other Governments.

85. When, after protracted consideration at successive meetings, ITU decided to make the Specialized Agencies Convention applicable to itself in accordance with section 37 of the Convention, it approved and transmitted to the Secretary-General the final text of an annex to the Convention in respect of ITU in which it renounced for itself the telecommunication privileges provided under the Convention. The text of the ITU annex, which was received on 18 January 1951, is as follows:

The standard clauses shall apply without modification, except that the International Telecommunication Union shall not claim for itself the enjoyment of privileged treatment with regard to

the "Facilities in respect of communications" provided in article IV, section 11.

86. The position of the specialized agencies in regard to their telecommunication privileges was the subject of consultations between them and the United Nations. During these consultations emphasis was laid on the recognition of the governmental status of the specialized agencies accorded by the General Assembly under section 11 of the Specialized Agencies Convention. The Secretary-General of ITU reserved his position on the question. For the Buenos Aires Conference of ITU, held from 3 October to 22 December 1952, the executive heads of the specialized agencies agreed to a statement which was then transmitted by the Secretary-General of the United Nations to ITU, with the request that it be brought to the attention of the members of ITU at the Conference. This statement pointed out the reasons why arrangements to facilitate the conduct of governmental and United Nations official business should also be applied in respect of such business carried on through the specialized agencies and proposed that the definition of government telegrams and telephone calls should include those originated by the executive heads of the specialized agencies. In respect of facilities and rates, the statement drew attention to the problem of special rates granted in respect of government telegrams and to the anomaly involved in having governments pay higher rates for telegrams chargeable to specialized agencies budgets than are paid by them for telegrams chargeable directly to their individual budgets or the United Nations budget. This statement of the Secretary-General of the United Nations was reported at a joint meeting of the Administrative Committee on Co-ordination and the Advisory Committee on Administrative and Budgetary Questions on 10 October 1952. The Advisory Committee took note of the statement and agreed that it was in conformity with the General Assembly's decision that no distinction should be made between the status of the United Nations in this field and that of the specialized agencies, as shown by the virtual identity of the relevant provisions in the two Conventions on Privileges and Immunities.

87. The Buenos Aires Convention, however, adopted by the Conference on 22 December 1952, provides as follows:

*Article 37. — Priority of Government Telegrams and Telephone Calls*

Subject to the provisions of articles 36 and 46, 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 possible, over other telephone calls.

[NOTE: Article 36 provides for "absolute priority" of telecommunications concerning safety of life; while Article 56 provides for "absolute priority" for distress calls and messages.]

88. Annex 3 of the Convention defined "Government telegrams and Government telephone calls" as including those originating from

the Secretary-General of the United Nations, the Heads of the principal organs and the Heads of the subsidiary organs of the United Nations.

89. In resolution No. 26, adopted by the Conference, it was suggested that specialized agencies traffic should, in an emergency, be carried over the United Nations point-to-point network. In a further Resolution, No. 27, the Conference resolved

... that if a specialized agency wishing to obtain special privileges for its telecommunications informs the Administrative Council, justifying the particular cases in which special treatment is necessary, the Administrative Council;

(a) Shall inform Members and Associate Members of the Union of the requests which, in their opinion, should be accepted;

(b) Shall take a final decision on these requests, bearing in mind the opinion of the majority of Members and Associate Members.

90. A further resolution, No. 28, read as follows:

The Plenipotentiary Conference of the International Telecommunication Union, Buenos Aires,

*Considering,*

1. The seeming conflict between the definition of Government Telegrams and Government Telephone Calls contained in Annex 2 of the International Telecommunication Convention, Atlantic City, 1947, and the provisions of article IV, section 11 of the Convention on the Privileges and Immunities of the Specialized Agencies;

2. That the International Telegraph and Telephone Conference, Paris, 1949, recommended to the Administrative Council that the Secretary-General of the Union be instructed to communicate to the Secretary-General of the United Nations the proposal that the United Nations should consider the revision of article IV, section 11 of the Convention on the Privileges and Immunities of the Specialized Agencies;

3. That as a result of this recommendation, the proposal was put on the Agenda of the Fourth Session of the General Assembly of the United Nations, and that the Sixth Committee of that Assembly merely took note of the situation;

4. That the Plenipotentiary Conference of Buenos Aires has decided not to include, in Annex 3 of the Buenos Aires Convention, the Heads of the specialized agencies among the authorities entitled to send government telegrams or to request government telephone calls;

*Recognizing* that it is desirable that the United Nations be asked to reconsider this problem;

*Instructs* the Secretary-General of the Union to request the Secretary-General of the United Nations to place before the Eighth Session of the General Assembly of the United Nations the opinion of this Conference that article IV, section 11 of the Convention on the Privileges and Immunities of the Specialized Agencies should be revised in view of the decision taken.

91. Resolution No. 28 of ITU, quoted above, was transmitted by the Secretary-General of ITU, by letter of 26 March 1953, to the Secretary-General of the United Nations, with the request that the latter "place before the eighth session of the General Assembly of the United Nations the opinion of the Plenipotentiary Council that section 11 of the Convention on the Privileges and Immunities of Specialized Agencies should be revised". The decision of the ITU Conference was accordingly reported to the General Assembly at its eighth session, in the form of a paragraph in the Annual Report of the Secretary-General on the work of the Organization.<sup>196</sup> In his report, the Secretary-General

stated that, in communicating the opinion of ITU to the General Assembly, he would call attention to the fact that the Administrative Committee on Co-ordination, at its sixteenth session, had arranged for consultations to take place between officials of specialized agencies and officials of ITU, which it was hoped might open the way to some practical solution of the problem. In the deliberations of the General Assembly, however, no allusion was made to this possibility.

92. The Buenos Aires Convention of 1952 was subsequently superseded by the International Telecommunication Convention of Geneva, 1959. In this Convention priority of government telegrams and telephone calls was provided for in article 39, which is substantially the same as article 37 of the Buenos Aires Convention. The definition in annex 3 of the term "government telegrams and government telephone calls" includes telegrams and telephone calls originating with "the Secretary-General of the United Nations; Heads of the principal organs of the United Nations". In resolution No. 31, adopted at the Geneva Conference, the Union confirmed its earlier decision not to include in annex 3 the heads of the specialized agencies among the authorities entitled to send government telegrams or to request government telephone calls and again expressed the hope that the United Nations would reconsider the problem and make the necessary amendment to section 11. Thus, except in certain extreme cases (e.g. urgent epidemiological telegrams of WHO, under article 62 of the Telegraph Regulations, or where strikes prevented the dispatch of ordinary cables so that the procedure envisaged in resolution 27 of the Buenos Aires Convention might be applied) the specialized agencies have not enjoyed the privilege of priority for their telecommunications, nor the advantage of government rates. The possibility, moreover, that the traffic of the specialized agency might be carried over the United Nations point-to-point network has not proved of practical assistance when emergencies have arisen.

93. In view of these considerations, and the fact that the amount of priority traffic was unlikely to be heavy, the specialized agencies requested the International Telecommunications Conference which met at Montreux in September and October 1965 to permit the heads of the various specialized agencies and their duly authorized representatives to originate telegrams and telephone calls on the same terms of priority as Governments. The Conference declined to do so, however, and instructed the ITU Administrative Council to take the necessary steps to seek an amendment to section 11 of the Specialized Agencies Convention.

94. The facilities to be accorded to the communications of the IBRD, IDA, IFC and IMF are set forth in their respective Articles of Agreement in closely similar terms. Article VII, section 7, of the Articles of Agreement of the IBRD, for example, provides that:

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.

95. Since all States becoming members are obliged to accept these provisions, which form part of the constitu-

<sup>196</sup> *Official Records of the General Assembly, Eighth Session, Supplement No. 1, document A/2404, p. 111.*

tions of the agencies in question, the latter have enjoyed the privilege of government treatment in respect of their telecommunications. In 1949, however, the United States cable companies sought to revise their tariff charges so as to require IBRD and IMF to pay at normal commercial rates; previously IBRD and IMF had paid the same rates as applied to the messages of the representatives of foreign Governments sent from the United States to their own countries. The IBRD and IMF thereupon filed a joint complaint before the United States Federal Communications Commission,<sup>197</sup> alleging that the revised tariffs were in breach of the relevant provisions of their respective Articles of Agreement.

96. The Commission agreed that, under the terms of the Articles of Agreement and the United States Bretton Woods Act (59 Stat. 512), the United States was under an obligation to accord to international telegrams of IBRD and IMF the same treatment as regards rates as it afforded to other Governments which were members of the two organizations. The basic question which arose for decision, therefore, was whether the "treatment" referred to in the Articles of Agreement was confined to matters such as priorities and freedom from censorship, as the cable companies contended, or also related to the question of rates. The Executive Directors of IBRD and IMF had previously given a unanimous ruling that the term "treatment" should be interpreted in the wider sense. The Commission held that, under the Articles of Agreement, an interpretation so given by the Executive Directors was final. It rejected an assertion made on behalf of the cable companies that the interpretation was *ultra vires* because the question arose solely between the companies and IBRD and IMF, and did not arise as between member States, or between the member State and the organizations. The Commission distinguished the position as provided for under the International Telecommunication Convention signed at Atlantic City in 1947 and the Telegraph Regulations annexed thereto, pointing out that the latter instruments, though they did not allow, did not specifically prohibit, the granting of equal treatment. No indication had been given, moreover, of any intention to abrogate the communications privileges otherwise enjoyed by IBRD and IMF. The government treatment of the telecommunications of IBRD, IMF, and the other agencies whose constitutions contain the same provisions, has not subsequently been challenged.

97. Lastly, it may be noted that, in article IV, section 10, of the IAEA Agreement on Privileges and Immunities, communication facilities are only given on the same terms as those enjoyed by Governments to the extent to which 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 VI, section 13, of the IAEA host

Agreement with Austria and in article 10 of the UNESCO host Agreement with France.

*Section 19. Use of codes and dispatch of correspondence by courier or in bags*

98. Section 12 of the Specialized Agencies Convention provides as follows:

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 dispatch and receive correspondence by courier or in sealed bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

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.<sup>198</sup>

99. The majority of specialized agencies do not use codes or dispatch correspondence by courier or in sealed bags. Those that do so stated that they had not experienced any serious difficulties in securing appropriate recognition of their rights in this regard.

100. No security arrangements have been entered into in pursuance of this section. Several instances were reported when States had censored or attempted to censor official correspondence and other communications; these cases were relatively rare, however, and the practice had apparently been discontinued after the agency concerned had protested.

*Section 20. Postal services provided by the specialized agencies and by IAEA*

101. None of the specialized agencies, nor IAEA, have provided postal services in the same way as the United Nations. In the agreements entered into in 1946 and 1948 between Switzerland and the ILO and WHO, however, provision is made for the issue of special stamps (*timbres de service*) by the Swiss federal authorities for those organizations, within the limits authorized by the Conventions of UPU. Stamps have also been issued for the other specialized agencies having their headquarters in Switzerland.

*Section 21. Radio communications of the specialized agencies and of IAEA*

102. None of the specialized agencies, nor IAEA, have operated an independent radio system in the same way as the United Nations. As mentioned in section 18 above, messages originating from the specialized agencies have in special circumstances been carried on the United Nations point-to-point network.

<sup>197</sup> *In the matter of International Bank for Reconstruction and Development and International Monetary Fund v. All America Cables and Radio Inc., and Other Cable Companies*, Federal Communications Commission, 23 March 1953. The case is fully discussed in Gold, *The Fund Agreement in the Courts*, at pp. 20-27 and pp. 55-59.

<sup>198</sup> It may be noted that the corresponding provision, section 10, of the Convention on the Privileges and Immunities of the United Nations, does not contain a paragraph regarding the adoption of security precautions, while the prohibition of censorship is included in section 9.

## CHAPTER IV. — PRIVILEGES AND IMMUNITIES OF OFFICIALS

*Section 22. Categories of officials to which the provisions of articles VI and VIII apply*

103. Section 18 of article VI of the Specialized Agencies Convention states:

Each specialized agency will specify the categories of officials to which the provisions of this article and of article VIII shall apply. It shall communicate them to the Governments of all States parties to this Convention in respect of that agency and to the Secretary-General of the United Nations. The names of the officials included in these categories shall from time to time be made known to the above-mentioned Governments.

104. Section 17 of the IAEA Agreement on Privileges and Immunities contains a similar provision whereby IAEA undertakes to inform States parties to the Agreement of the names of IAEA officials to whom articles VI and IX of the Agreement apply.

105. In applying section 18 the specialized agencies have followed the same criteria as are contained in resolution 76 (I) of the United Nations General Assembly whereby the privileges and immunities concerned are granted to all officials "with the exception of those who are recruited locally and are assigned to hourly rates". In some cases this has been confirmed by a resolution of the General Conference of the agency. Officials employed by the specialized agencies under the title of "technical assistance experts" have accordingly been entitled to the privileges and immunities set out in articles VI and VIII. Several agencies reported that difficulties had arisen, however, in respect of these officials whose title caused them to be confused by States with "experts on mission". Following explanatory memoranda from the organization and from the United Nations, the necessary privileges and immunities have normally been granted.

106. Under an exchange of notes between Austria and IAEA it was agreed that the term "members of the staff" of IAEA, as envisaged in the host Agreement, should be considered to include officials of the United Nations and of the specialized agencies attached on a continuing basis to the staff of IAEA. Thus, FAO officials employed in the FAO-IAEA Joint Division of Agriculture, and the liaison officers of other United Nations organizations stationed at IAEA headquarters, enjoy the same status in Austria as IAEA staff members.

107. The lists of officials to whom the provisions of articles VI and VIII of the Specialized Agencies Convention apply (or, in the case of IAEA, of articles VI and IX of the IAEA Agreement on Privileges and Immunities) are normally prepared and sent to the various States Parties on an annual basis. Though some variation exists in the details given, mention is usually made of the name of each official, his function, nationality, and current duty station. In addition special lists are prepared and communicated to the host State; such lists are kept up to date throughout the year by periodical additions and deletions, according to the movements of staff. In some instances special lists are prepared according to nationality and sent to the Government concerned.

*Section 23. Immunity of officials in respect of official acts*

108. Section 19 of the Specialized Agencies Convention provides that officials of the specialized agencies shall:

(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity.

109. The specialized agencies have considered that the adjudication of whether or not an official was acting on official business in any given case has rested with them. They have not had recourse to specific systems of national law in making such a determination. The specialized agencies have maintained that, while it would not be desirable for them to claim immunity in circumstances where such a claim would not be justified, nevertheless it was essential to the independent conduct of their operations that they should be given a prior opportunity to claim immunity, if appropriate, where the person concerned was, in their opinion, acting in the exercise of his official duties.

110. The specialized agencies reported that relatively few cases had occurred in which the immunity of officials from legal process had not been recognized; the majority of incidents involving violation of the immunity in respect of official acts had taken place away from the headquarters of the various organizations.

111. As regards the extent of the immunity afforded, it may be noted that in a case which arose in 1965, a member State contended that the immunity from legal process granted under section 19 (a) did not extend to immunity from compliance with a summons addressed to two officials of a specialized agency, to appear as a witness in criminal proceedings brought against a third party. The specialized agency concerned declared that it was unable to accept the restrictive interpretation of section 19 (a) which this opinion implied; in its view the immunity from legal process enjoyed by officials extended not only to all forms of legal process relating directly or indirectly to acts performed by them, but also to their giving any information relating to the business of the organization. This applied irrespective of whether the proceedings were brought against an official himself or a third party. The specialized agency had no doubt that the evidence required from the two officials in the case in question related to the official information of the organization or to the performance of their official duties, and that they accordingly enjoyed immunity from legal process until their immunity had been waived by the organization. Having regard to the second sentence of section 22 of the Specialized Agencies Convention,<sup>199</sup> the Director-General of the organization decided, after examining the circumstances of the case, to waive the immunity by which the two officials were covered.

112. The WHO has prepared a circular for use by its regional offices, giving them instructions on how to handle cases where legal proceedings are initiated against a staff member. Under this instruction all officials who

<sup>199</sup> See section 31, paras. 141-144, below relating to the waiver of the privileges and immunities of officials, where further information is also given regarding the furnishing of evidence by officials.

are made the subject of legal proceedings in any form, whether as the result of a criminal prosecution, civil suit or a subpoena as a witness, are required to report the fact immediately. Where the official concerned enjoys diplomatic privileges and immunities, no legal proceedings can be commenced unless WHO has waived the immunity. In the case of officials to whom section 19 of the Specialized Agencies Convention applies, each case must be reviewed by the organization in order to determine the official or private character of the act. The decision reached is then to be communicated in writing to the Ministry of Foreign Affairs, which, in turn, is required to notify the judicial authorities of the State concerned. In the event of a difference of opinion between the State and the organization regarding the latter's findings, recourse should, if necessary, be had to international arbitration. The payment of fines for minor traffic offences and the like are excluded from this procedure. The duration of the immunity of staff members in respect of their official acts is deemed to extend beyond the period of their employment.<sup>200</sup>

*Section 24. Exemption from taxation of salaries and emoluments*

113. Under section 19 (b) of the Specialized Agencies Convention officials of the specialized agencies:

Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations.

114. The instrument of accession to the Convention tendered for deposit by Canada was accompanied by the following reservation:

Exemption from liability for any taxes or duties imposed by any law in Canada should not extend to a Canadian citizen residing or ordinarily resident in Canada.

The Administrative Committee on Co-ordination requested the Secretary-General in 1966 to pursue the matter with the Canadian Government.<sup>201</sup>

115. The IAEA Agreement on Privileges and Immunities contains the same provision in section 18 (a) (ii). Two States, the Republic of Korea and Pakistan, have made reservations regarding the application of this clause to their nationals; the Federal Republic of Germany reserved the right to tax its nationals in so far as this right had not been renounced by double taxation treaties.

116. The immunity in question has been generally observed with no major differences emerging in the treatment accorded to United Nations officials on the one hand and to specialized agency officials on the other.<sup>202</sup> States which have not ratified the Specialized Agencies

Convention or which have not signed bilateral agreements with the various agencies, have applied their national law. In view of the fact, however, that in most countries liability to taxation is linked with residence or domicile, officials stationed outside their home country have often enjoyed a *de facto* exemption in respect of their salaries and emoluments, even though the State concerned has not agreed to grant exemption.

117. Where income tax has been levied the organization concerned has normally reimbursed the staff member accordingly, to avoid placing otherwise comparable staff members in an unequal position. The administrative procedures regarding such reimbursements have been strictly interpreted; the specialized agencies have accepted an obligation to make reimbursement only where the terms of appointment of the official so provide. The ILO regulates the matter as follows:

(a) In the case of ILO national correspondents and the staff of ILO branch offices, who are normally of local nationality, their emoluments are fixed in such a manner as to include an amount covering the payment of taxes;

(b) As regards other staff members, provided their contracts expressly declare that the salaries are tax exempt, taxes paid on ILO income are reimbursed as follows:

(i) In the case of an official employed during the entire taxation year, the amount of reimbursement does not exceed the minimum tax payable by that official on such income alone, account being taken of all exemptions and deductions to which the official is entitled by the relevant laws and regulations of the country concerned, but no account being taken of any income received from sources other than the organization or of any higher rate of tax which may be levied by reason of such other income;

(ii) In the case of an official employed for less than the entire taxation year the amount of reimbursement is, if he received no income from sources other than the organization, the minimum tax payable in terms of (i) above; if he received such other income, the amount of reimbursement is whichever is the lesser of:

a proportion, corresponding to the ratio of the period of his employment to the full taxation year, of the minimum tax payable in terms of (i) above; or

a proportion of the total tax;

a proportion of the total tax paid by the official determined by the formula;

$$\frac{\text{ILO income subject to tax} \times \text{total tax}}{\text{total income subject to tax}}$$

(iii) An official who, by reason of the subsequent exclusion from his total taxable income of salaries and emoluments received from the organization, recovers any income tax previously paid by him, is required to refund to the organization such portion of the amount recovered as had been previously reimbursed or advanced to him by the organization;

(iv) Officials are responsible for complying with any income tax laws applicable to them: penalties, interest

<sup>200</sup> See *Summary of practice relating to the status, privileges and immunities of the United Nations*, section 23 (f), paras. 272 and 273, above.

<sup>201</sup> On the question of reservations to the Specialized Agencies Convention see generally section 46, paras. 188-191, below.

<sup>202</sup> See, in particular as regards the position in the United States and Switzerland, *Summary of practice relating to the status, privileges and immunities of the United Nations*, section 24, paras. 282-288, above.

or other charges resulting from non-compliance with such laws are not reimbursable by the organization.

118. As regards contributions to social security schemes, in the case of agencies having their headquarters in France or Switzerland, staff having the nationality of the host State are obliged to participate in national social security schemes unless they can show that the organization provides them with equivalent protection; full participation in the United Nations Joint Staff Pension Fund is so regarded. In the case of IAEA the matter is regulated by two supplementary agreements to the host Agreement; broadly speaking, Austrian nationals who are full participants in the United Nations Pension Fund are excluded from the state pension scheme and, as regards health insurance, are given a choice between remaining in the state system or joining a contractual insurance scheme approved by IAEA.

#### *Section 25. Immunity from national service obligations*

119. Whereas section 18 (c) of the Convention on the Privileges and Immunities of the United Nations provides solely that United Nations officials are "immune from national service obligations", more elaborate arrangements are made in section 20 of the Specialized Agencies Convention, which states as follows:

The officials of the specialized agencies shall be exempt from national service obligations, provided that, in relation to the States of which they are nationals, such exemption shall be confined to officials of the specialized agencies whose names have, by reason of their duties, been placed upon a list compiled by the executive head of the specialized agency and approved by the State concerned.

Should other officials of specialized agencies be called up for national service, the State concerned shall, at the request of the specialized agency concerned, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work.

120. The majority of specialized agencies have not attempted to compile the list referred to in the opening paragraph; very few officials appear to have been actually called up for military service. The only clear practice which has emerged relates to Swiss nationals, where the position is as stated in section 25, paragraphs 302 and 303, of the *Summary of practice relating to the status, privileges and immunities of the Nations*. Total exemption from military service is granted to a small number of Swiss officials; the special tax payable in such cases is not reimbursable by the specialized agencies.

121. In accordance with article XIII, section 27 (g) of the Headquarters Agreement, the Italian Government has granted temporary deferments of military service to Italian staff members of FAO, at the request of the organization.

#### *Section 26. Immunity from immigration restrictions and alien registration*

122. Under section 19 (c) of the Specialized Agencies Convention officials are declared

... immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration.

123. The specialized agencies reported that this provision had been generally well observed; it was pointed out that in several countries immunity from alien registration was given automatically to holders of United Nations *laissez-passer* and their dependents.

124. The IAEA stated that, although no system of alien registration or immigration restrictions exists in Austria, the lessee or lessor of premises is obliged to register with the local police station on taking up residence in Austria, or on changing residence; this requirement applies to all persons living in Austria and is not restricted to non-Austrian nationals. The IAEA concurred in the view of the Austrian Government that such police registration does not constitute alien registration within the meaning of section 38 (f) of the host Agreement.

#### *Section 27. Exchange facilities*

125. Section 19 (d) of the Specialized Agencies Convention provides that officials shall

Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions.

126. The majority of specialized agencies reported that no special problems had arisen in the application of this provision. The ILO stated, however, that officials employed at its headquarters and living in France were required to transfer 50 per cent of their salaries through the French clearing office at the official rate of exchange. This was accepted by the organization on the ground that the officials had elected for their own convenience to live in France.

127. UNESCO reported that it often occurs that officials or experts stationed away from headquarters cannot transfer their funds upon termination of service, or upon transfer or return to headquarters, without it having been established that members of diplomatic missions in the State in question were not subject to any such restriction.

#### *Section 28. Repatriation facilities in time of international crisis*

128. The provision in section 19 (e) of the Specialized Agencies Convention that officials should

Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic missions.

has rarely, if ever, been applied. No specialized agency has entered into standing arrangements with any member State regarding repatriation. The only occasions of repatriation which were mentioned were the repatriation of all but a skeleton staff of the WHO office at Alexandria in October 1956, and of the dependents of various agency officials in the Congo, where evacuation was arranged through ONUC.

#### *Section 29. Importation of furniture and effects*

129. Section 19 (f) of the Specialized Agencies Convention provides that officials

Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

The experience of the specialized agencies in this regard has been closely similar to that of the United Nations.<sup>203</sup> Apparently only the United Kingdom does not include a car amongst the "effects" which an official may import duty-free, although several other countries subject the importation of cars to the terms of a "temporary admission" procedure. The period of time after entry of an official allowed for importation varies from approximately six to eighteen months, according to the customs regulations of the country concerned and the facts of the particular case.

*Section 30. Diplomatic privileges and immunities of the Executive Head and other senior officials of the specialized agencies and of IAEA*

130. Section 21 of the Specialized Agencies Convention provides that:

In addition to the immunities and privileges specified in sections 19 and 20, the executive head of each specialized agency, including any official acting on his behalf during his absence from duty, shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

131. The specialized agencies reported that the diplomatic privileges and immunities referred to in section 21 had been fully accorded without difficulty. A number of specialized agencies also stated that certain additional officials had been granted diplomatic privileges and immunities. The position in respect of these organizations is summarized below.

(i) *FAO*

132. In the FAO Annex to the Specialized Agencies Convention the provisions of section 21 are extended to the Deputy Director-General of the organization. At the thirteenth session of the FAO Conference, held in December 1965, it was decided to extend this provision to cover Assistant Directors-General also. In addition, in section 29 of the FAO Headquarters Agreement it is provided that:

(iii) The Deputy Director-General, Special Assistants to the Director-General, Regional Representatives, senior members of the Office of the Director-General, Directors and Deputy Directors of Divisions and such additional senior officers as may be designated by the Director-General on the grounds of the responsibilities of their positions in FAO, shall be accorded privileges and immunities, exemptions and facilities not less than those accorded to members of the diplomatic corps.

In the Agreements relating to the establishment of FAO regional offices provision is made for the FAO staff concerned to receive various diplomatic privileges, ranging, according to the rank of official, from full diplomatic privileges and immunities in the case of officials holding Directors' posts, to extended customs privileges in the case of lesser officials.

<sup>203</sup> In particular as regards practice in Switzerland, see *Summary of practice relating to the status, privileges and immunities of the United Nations*, section 29, paras. 323 and 324, above.

(ii) *IAEA*

133. Section 20 of the IAEA Agreement on Privileges and Immunities, which corresponds to section 21 of the Specialized Agencies Convention, extends to "Deputy Director-General or official of equivalent rank of the Agency" as well as to the Director-General himself. The United Kingdom made a specific reservation to section 20 as regards its application by that country with respect to its nationals.

134. By virtue of section 39 of the Headquarters Agreement, all IAEA staff of the rank of Senior Officer (P.5) or above, other than those who are Austrian nationals, enjoy diplomatic privileges. The Austrian commentary to the Agreement states that the rank of Senior Officer corresponds to that of Counsellor of Legation in the diplomatic service. The Italian Government has accorded diplomatic status to the Director of the International Centre for Theoretical Physics at Trieste.

(iii) *IBRD, IDA, IFC, IMF*

135. The above-mentioned organizations stated that some of their officials, in particular some resident representatives, had been granted diplomatic privileges as a matter of courtesy.

(iv) *ICAO*

136. Under paragraph 1 of the ICAO Annex to the Specialized Agencies Convention, the provisions of section 21 are also accorded to the President of the Council of the organization. The host agreement concluded with Egypt in 1953 provides that the President of the ICAO Council, the Secretary-General, the Assistant Secretaries-General, and the Director and Deputy Directors of the Middle East Office, and their spouses and minor children, are accorded "the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law and usage". Section 11 of the agreement entered into with Mexico on 20 December 1956 contains a similar provision, with the omission of the words "to diplomatic envoys". In an exchange of notes of the same date it was stated that "... it should be made clear that section 11 is to be construed as meaning that, while equality of status with diplomatic envoys is not necessarily implied thereby" the prerogatives in question "shall be similar to those ordinarily accorded to diplomatic envoys in accordance with international law and usage".

(v) *ILO*

137. Under paragraph 2 of the ILO Annex to the Specialized Agencies Convention the provisions of section 21 are extended to all Deputy and Assistant Directors-General of the organization.

(vi) *IMCO*

138. Paragraph 1 of the IMCO Annex to the Specialized Agencies Convention provides as follows:

The privileges and immunities, exemptions and facilities referred to in Article VI, Section 21 of the standard clauses, shall be accorded to the Secretary-General of the Organization and to the Secretary of the Maritime Safety Committee, provided that the provisions of this paragraph shall not require the Member in whose territory the Organization has its Headquarters to apply

Article VI, Section 21 of the standard clauses to any person who is its national.

(vii) *UNESCO*

139. Under paragraph 2 of the UNESCO Annex to the Specialized Agencies Convention the benefits of section 21 are given to the Deputy Director-General. Under article 19 and annex B of the Headquarters Agreement, diplomatic privileges and immunities are effectively extended to officials of the rank of Senior Officer (P.5) or above; officials of French nationality may not plead such immunity, however, in cases brought before French tribunals arising out of non-official acts.

(viii) *WHO*

140. Under paragraph 4 of the WHO Annex, the provisions of section 21 of the Specialized Agencies Convention are extended to Deputy and Assistant Directors-General and to Regional Directors. In certain regional offices officials of a Director's status, such as Deputy Regional Directors, enjoy diplomatic privileges under the pertinent host agreement. The organization also claims diplomatic privileges for its Representatives, in those countries to which such Representatives are assigned, under the provisions of article V, paragraph 2, of the WHO Basic Agreement. This provision states as follows:

Staff of the Organization, including advisers engaged by it as members of the staff assigned to carry out the purposes of this Agreement, shall be deemed to be officials within the meaning of the above Convention. This Convention shall also apply to any WHO representative appointed to . . . who shall be afforded the treatment provided for under Section 21 of the said Convention.

*Section 31. Waiver of the privileges and immunities of officials*<sup>204</sup>

141. Section 22 of the Specialized Agencies Convention provides that:

Privileges and immunities are granted to officials in the interests of the specialized agencies only and not for the personal benefit of the individuals themselves. Each specialized agency shall have the right and the duty to waive the immunity of any official in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the specialized agency.

142. The specialized agencies reported that they had received few or no requests to waive the immunity of any of their officials. Most of such requests as had been received related to private matters (e.g., traffic accidents), in which the official had been involved without any question of official responsibility; accordingly, after determination by the agency of the private nature of the case, the requests received had been granted.

143. Only one agency stated that it had received a request for waiver of immunity in respect of an act performed by an official during the course of his official duties. A private pharmaceutical concern wished to learn the name of the person who had made a particular statement in an agency publication regarding the use of a certain product. The agency concerned declined to make the information available on the ground that the

statement referred to represented the collectivity of views expressed by a technical discussion group and that the request impliedly involved a request for waiver of immunity for the purposes of bringing a legal action against the speaker, in violation of the provisions of the Convention and of the Constitution of the agency granting immunity in respect of statements expressed in the course of official meetings.

144. Where proceedings have been instituted against third persons and officials have been requested to appear as witnesses,<sup>205</sup> agencies have generally preferred to allow the official to make a written deposition rather than to extend the waiver of immunity to appearance in court, in particular where the official was required to give evidence regarding actions performed by him in an official capacity. The practice has varied, however, according to the duties performed by the official, the need to ensure that the interests of the organization would not be adversely affected, the nature of the case being tried and the obligation to co-operate with the local authorities to facilitate the proper administration of justice.

*Section 32. Co-operation with the authorities of Member States to facilitate the proper administration of justice*

145. Section 23 of the Specialized Agencies Convention requires that:

Each specialized agency shall co-operate at all times with the appropriate authorities of member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connexion with the privileges, immunities and facilities mentioned in this article.

146. The specialized agencies and IAEA have taken the necessary steps to comply with this provision. When complaints have been received from local police authorities (chiefly as regards traffic offences) the matter in question has been drawn to the attention of the official or officials concerned and, if necessary, disciplinary measures have been taken against them. The organizations have also sought through administrative action to ensure that officials pay their recognized debts. A more difficult case has been when the authorities of a member State have sought to direct that payment of monies owed to a supplier should be paid to another party, e.g., to the State revenue authorities, or to a private party under a court judgement. Whilst maintaining its own immunity from jurisdiction, the organizations concerned have tried to ensure that the object of such requests was in fact obtained.

CHAPTER V. — PRIVILEGES AND IMMUNITIES OF EXPERTS ON MISSIONS FOR THE SPECIALIZED AGENCIES AND IAEA AND OF PERSONS HAVING OFFICIAL BUSINESS WITH THE SPECIALIZED AGENCIES AND IAEA

*Section 33. Persons falling within the category of experts on missions for the specialized agencies and IAEA*

147. Under article VI of the Convention on the Privileges and Immunities of the United Nations certain immunities,

<sup>204</sup> See also section 8, paras. 32-35, above.

<sup>205</sup> See also section 23, para. 111, above.

broadly similar to those accorded to officials, are granted to "Experts... performing missions for the United Nations". The Specialized Agencies Convention does not contain an equivalent article; the only reference to "experts" in the text of the Convention is in article VIII, section 29, whereby States Parties are asked to grant travel facilities to "experts and other persons" who are travelling "on the business of a specialized agency". However, the provisions of article VI of the United Nations Convention are contained in the annexes to the Specialized Agencies Convention in respect of FAO, ICAO, the ILO, IMCO, UNESCO and WHO.

148. The designation "expert" has been relatively infrequently used. One agency summarized its practice, which may be taken as representative, as being to include in this category "generally speaking, all persons appointed in an advisory or consultative capacity to the organization or to a Government for temporary periods, and who are not considered as staff members". In the case of IAEA the range of persons to be considered as experts receives some definition from the terms of article VII, section 23, of the IAEA Agreement on Privileges and Immunities. This states that the privileges and immunities enumerated in the article are to be accorded to

Experts (other than officials coming within the scope of Article VI) serving on committees of the Agency or performing missions for the Agency, including missions as inspectors under Article XII of the Statute of the Agency and as project examiners under Article XI thereof.

In practice, staff members, and not experts within the meaning of this section, have been designated as IAEA inspectors.

*Section 34. Privileges and immunities of experts on missions for the specialized agencies and IAEA*

149. The relevant provisions of the various annexes and of article VII of the IAEA Agreement on Privileges and Immunities are almost identical; with minor variations the experts in question are given immunity from arrest and from seizure of their personal baggage; immunity from legal process in respect of acts done by them in performance of their official duties; inviolability for papers and documents; and diplomatic facilities in respect of currency and exchange restrictions. In so far as these privileges and immunities are similar to some of those accorded to officials under article VI of the Convention, the practice of the specialized agencies in respect to the latter may be considered equally applicable. No major differences of interpretation appear to have developed in the case of these common privileges and immunities, as applied to officials on the one hand and to experts on the other.

*Section 35. Privileges and immunities of persons having official business with the specialized agencies and IAEA*

150. Besides officials, experts on missions, and the representatives of member States, persons having official business with a specialized agency or with the IAEA may also enjoy privileges and immunities. Persons falling

within this category include those invited to give evidence before specialized agency bodies or to supply information to such bodies, radio and press representatives, and participants in seminars and similar meetings organized by specialized agencies.

151. A number of agreements make provision for such persons; some of the main examples are listed below. Article V, section 27, of the ICAO Headquarters Agreement states:

The Government of Canada shall permit and facilitate the entry into Canada of:

(a) Representatives of the press, or of radio, film or other information agencies who have been accredited to the Organization after consultation with the Government of Canada.

Article IX, section 27, of the Agreement between Egypt and ICAO provides that the Egyptian Government shall take "all measures required to facilitate the entry into, residence in, and departure from Egypt of all persons having official business with the Organization".

152. Under article X, section 23, of the FAO Headquarters Agreement "persons invited to the headquarters seat by FAO on official business" and whose names are communicated to the host Government by the Director-General, are granted transit facilities by the Italian Government, which also undertakes to afford them any necessary protection in transit. Furthermore, under article XIV of the same Agreement, the same privileges and immunities as are granted to experts on missions are granted to "representatives of official organizations or bodies invited by FAO".<sup>206</sup>

153. In the case of UNESCO, article 9 of the Headquarters Agreement provides that the French authorities will permit persons having official business at UNESCO headquarters to enter and remain in France, without charge for a visa. Persons falling in this category include:

(e) *Les membres du conseil de direction et les fonctionnaires des organisations non gouvernementales admises par l'Organisation au bénéfice d'arrangements consultatifs et dont les bureaux sont établis au siège.*

(g) *Toutes personnes invitées, pour affaires officielles, par la Conférence générale, le Conseil exécutif ou le Directeur général de l'Organisation,*

as well as press and similar public information representatives and representatives of non-governmental organizations in consultative status, other than those referred to in clause (e) above. These persons may not be required to leave France except in the event of an abuse of privileges in respect of activities falling outside their official functions or business, nor may any act be taken against them which might cause them to leave France without the consent of the French Foreign Minister, acting in consultation with the Director-General of UNESCO. Article 14 of the Agreements between Switzerland and the ILO, WHO and WMO provides for liberty of access and residence of all persons, irrespective of nationality, invited by those organizations.

<sup>206</sup> See also art. X, section 20, of the Agreement between FAO and Chile; art. VIII, section 19, of the Agreement between FAO and Egypt; and art. XII, section 23, of the Agreement between FAO and Thailand.

154. In accordance with article XVI of the IAEA Headquarters Agreement, the representatives of organizations with which IAEA has established official relations in accordance with its Statute, or which are invited by the IAEA Board of Governors or General Conference for purposes of official business, are granted the same privileges and immunities, including those of transit and residence, as experts or members of IAEA missions.

155. The specialized agencies reported that relatively few difficulties had arisen in this connexion. On occasion, agencies have intervened with the competent authorities, however, in order to speed up the granting of visas so as to enable the persons concerned to perform their official functions.

#### CHAPTER VI. — UNITED NATIONS LAISSEZ-PASSER AND FACILITIES FOR TRAVEL

##### *Section 36. Issue of United Nations laissez-passer and their recognition by States as valid travel documents*

156. Article VIII, section 26, of the Specialized Agencies Convention provides that:

Officials of the specialized agencies shall be entitled to use the United Nations *laissez-passer* in conformity with administrative arrangements to be concluded between the Secretary-General of the United Nations and the competent authorities of the specialized agencies, to which agencies special powers to issue *laissez-passer* may be delegated. The Secretary-General of the United Nations shall notify each State party to this Convention of each administrative arrangement so concluded.

Section 27 continues:

States parties to this Convention shall recognize and accept the United Nations *laissez-passer* issued to officials of the specialized agencies as valid travel documents.

157. Agreements have been concluded with each of the specialized agencies<sup>207</sup> and with IAEA<sup>208</sup> regarding the issue of United Nations *laissez-passer* by the United Nations, following an official request by a specialized agency or by IAEA that one be issued in respect of a particular staff member. The only body, other than the United Nations itself, which has issued *laissez-passer* has been the ILO, in pursuance of an agreement entered into between the two organizations in 1950;<sup>209</sup> section 26 expressly refers to the delegation to specialized agencies of the power to issue United Nations *laissez-passer*. The conditions under which the ILO issues its *laissez-passer* are closely analogous to those observed by the United Nations. The Directors-General and certain other senior staff of the specialized agencies and the IAEA, like the Secretary-General and senior officials of the United Nations, receive red-backed *laissez-passer*.

158. Although States have recognized the *laissez-passer* as a valid travel document, in a number of countries the authorities have also demanded production of a national

passport before permitting entry. One agency has protested against this practice, especially since, in the cases in question, the *laissez-passer* which were presented contained an entry visa. It may also be noted that, since a number of States, particularly in Europe, have concluded agreements permitting the entry of each other's nationals without a visa, production of the *laissez-passer* is often less helpful than a national passport. In general, the specialized agencies considered that the *laissez-passer* was most useful in instances where, owing to strained or otherwise distant relations between the two countries concerned, production of a national passport alone was likely to result in delays or difficulties, but that, where this was not the case, use of the national passport was frequently more convenient.

##### *Section 37. Freedom of movement of personnel; inapplicability of persona non grata doctrine*

159. Although the specialized agencies and IAEA have had less occasion than the United Nations to assert the right of their officials and others (e.g., experts on mission) to be granted freedom of movement by all member States, cases have arisen in which it has been necessary for them to do so. In 1961, and again in 1963, following protests by the specialized agency concerned, the Secretary-General of the United Nations protested to the Government of a Member State which had refused to allow certain specialized agency and United Nations officials to enter the country on grounds of their nationality.<sup>210</sup>

160. The *persona non grata* doctrine is inapplicable to the officials of a specialized agency or of the IAEA since they, no less than United Nations personnel, must serve as independent and impartial international officials, and not as diplomats accredited to a particular Government. Section 25 of the Specialized Agencies Convention states that:

Officials within the meaning of section 18, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity.

The section continues:

In the case, however, of abuse of privileges of residence committed by any such person in activities in that country outside his official functions, he may be required to leave by the Government of that country provided that:

2 (I) . . . persons who are entitled to diplomatic immunity under section 21, shall not be required to leave the country otherwise than in accordance with the diplomatic procedure applicable to diplomatic envoys accredited to that country.

(II) In the case of an official to whom section 21 is not applicable, no order to leave the country shall be issued other than with the approval of the Foreign Minister of the country in question, and such approval shall be given only after consultation with the executive head of the specialized agency concerned; and, if expulsion proceedings are taken against an official, the executive head of the specialized agency shall have the right to appear in such proceedings on behalf of the person against whom they are instituted.

<sup>207</sup> For an example of the standard agreement, see *Summary of practice relating to the status, privileges and immunities of the United Nations*, section 42, para. 384, above.

<sup>208</sup> United Nations, *Treaty Series*, vol. 281, p. 369.

<sup>209</sup> *Ibid.*, vol. 68, p. 213.

<sup>210</sup> See *Summary of practice relating to the status, privileges and immunities of the United Nations*, section 37, paras. 366 and 367, above.

161. Two specialized agencies reported that occasions had arisen when expulsion proceedings had been taken against members of their staff—in each instance technical assistance or advisory staff—in violation of section 25. One of the agencies stated that in the majority of cases the action had been taken on extraneous political grounds and was without any justification. Except where there was a manifestly improper motivation, the agency had contented itself with asking the staff member concerned to make a protest and thereafter reassigned him to another post. The other agency declared that two of its officials had been expelled as a result of action taken by the police authorities of the State concerned, without consulting the Ministry of Foreign Affairs or the agency. After the agency had protested, the decision to expel the officials had been rescinded.

*Section 38. Issue of visas for holders of United Nations laissez-passers*

162. Section 28 of the Specialized Agencies Convention states that:

Applications for visas, where required, from officials of specialized agencies holding United Nations *laissez-passers*, when accompanied by a certificate that they are travelling on the business of a specialized agency, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

163. The specialized agencies reported that, though this provision had been generally observed, the term “as speedily as possible” had been subject to a wide interpretation and often varied according to the nationality of the holder of the *laissez-passers*. One agency stated that the second sentence had not been observed.

164. Usually the necessary visas are issued without charge. On the other hand a number of countries impose a charge on visas being sought on national passports for duty travel, notwithstanding the fact that the holders of such passports possess a certificate indicating that they are travelling on official business. Lastly, the renewal of the validity of passports is subject to taxes in practically all countries (exemption is granted in certain cases, however, e.g., the Netherlands and the United Kingdom).

*Section 39. Certificates issued by the specialized agencies and by IAEA*

165. Section 29 of the Specialized Agencies Convention provides that:

Similar facilities to those specified in section 28 shall be accorded to experts and other persons who, though not the holders of United Nations *laissez-passers*, have a certificate that they are travelling on the business of a specialized agency.

166. The persons who have held a certificate stating that they were travelling on official business have usually been consultants or others engaged on a mission or contract of relatively short duration and who were not staff members of the organization.<sup>211</sup> Different opinions were expressed as to the effectiveness of these documents; whereas some agencies considered that adequate recogni-

tion had been given to them, others considered them of only limited help in difficult cases.

167. Besides these certificates the specialized agencies have also issued “family certificates” to the dependents of staff members, usually those stationed away from headquarters, so as to enable them to show their connexion with the organization when travelling separately from the staff member. These family certificates have been similar in form to those used by the United Nations.

168. Lastly, it may be noted that the ILO has issued special identity cards to its national correspondents for use in their countries, in addition to the *laissez-passers* used for international travel. As the name suggests, these identity cards are primarily designed to provide proof that the holder is an official representative of the ILO, and not to assist travel as such.

*Section 40. Diplomatic facilities for the executive heads and other senior officials of the specialized agencies and of IAEA whilst travelling on official business*

169. Section 30 of the Specialized Agencies Convention provides that:

The executive heads, assistant executive heads, heads of departments and other officials of a rank not lower than head of department of the specialized agencies, travelling on United Nations *laissez-passers* on the business of the specialized agencies, shall be granted the same facilities for travel as are accorded to officials of comparable rank in diplomatic missions.

170. No special problems have arisen over the interpretation and application of this section. One specialized agency referred to the production of the national passport, together with the *laissez-passers*, as being contrary to the spirit of this provision in the case of officials entitled to the benefits of section 30.

## CHAPTER VII. — SETTLEMENT OF DISPUTES

### *Section 41. Settlement of disputes*

171. Section 31 of the Specialized Agencies Convention states that:

Each specialized agency shall make provision for appropriate modes of settlement of:

(a) Disputes arising out of contracts or other disputes of private character to which the specialized agency is a party;

(b) Disputes involving any official of a specialized agency who by reason of his official position enjoys immunity if immunity has not been waived in accordance with the provisions of section 22.

172. In order to provide an appropriate mode of settlement of disputes arising out of their commercial contracts the majority of specialized agencies have made provision for recourse to arbitration.<sup>212</sup> Relatively few serious disputes have arisen, however, and most even of these have been settled by means of negotiations between the parties.

<sup>212</sup> See section 1, para. 5, above. The practice in respect of IBRD, IDA and IFC differs in a number of important respects in the case of the non-commercial contracts with which those agencies are chiefly concerned; see section 1, paras. 7 and 8, above and section 43, para. 180, below.

<sup>211</sup> See section 33, paras. 147-149, above.

173. One organization referred to two cases of a private nature in which it has been engaged. In one of these, the father of a staff member injured himself by falling down the staircase after visiting his son's office. A local lawyer advised that, assuming national law to apply, it was doubtful if the organization was liable to pay damages; the organization therefore declined to pay the sum demanded by the injured man. Eventually the parties agreed that the dispute should be submitted to arbitration and determined according to local law. The arbitrator found in favour of the injured man and awarded damages against the organization of just over a third of the original demand; the organization was also ordered to pay the costs of the arbitration. The second case involved a dispute between the organization and the contractor who had undertaken the construction of the headquarters building. The organization requested two government ministers of the host country to recommend two senior national officials who could examine the contractor's claim. Having examined the matter, the two officials dismissed three of the nine counts on the basis of which the claim was made and concluded that a sum, equal to approximately 14 per cent of that originally claimed, was due to the contractor. The Director-General of the organization accepted their conclusions and offered the contractor the sum which the officials considered should be paid, in accordance with market conditions. The contractor eventually accepted this sum, plus accrued interest.

174. As regards disputes involving officials, since very few, if any, requests for waiver have been refused, no formal procedure of settlement has been established.

*Section 42. Settlement of disputes regarding alleged abuses of privileges*

175. Section 24 of the Specialized Agencies Convention provides as follows:

If any State party to this Convention considers that there has been an abuse of a privilege or immunity conferred by this Convention, consultations shall be held between that State and the specialized agency concerned to determine whether any such abuse has occurred and, if so, to attempt to ensure that no repetition occurs. If such consultations fail to achieve a result satisfactory to the State and the specialized agency concerned, the question whether an abuse of a privilege or immunity has occurred shall be submitted to the International Court of Justice in accordance with section 32. If the International Court of Justice finds that such an abuse has occurred, the State party to this Convention affected by such abuse shall have the right, after notification to the specialized agency in question, to withhold from the specialized agency concerned the benefits of the privilege or immunity so abused.

176. The specialized agencies reported that no cases had arisen under this section and that, so far as they knew, recourse to it had not been seriously considered, either by an agency or by a State. One agency expressed the view that the reference to the International Court of Justice of the question whether or not an abuse of privilege had occurred was an unduly complicated means of dealing with possible abuses; it was suggested that recourse to arbitration might be more suitable. No similar provision exists in the Convention on the Privileges and Immunities of the United Nations.

177. The instruments of accession tendered for deposit by the Governments of Czechoslovakia, Byelorussian SSR, Ukrainian SSR and USSR were accompanied by reservations to the effect that these Governments did not consider themselves bound by sections 24 and 32, concerning the compulsory jurisdiction of the International Court of Justice.

*Section 43. Reference to the International Court of Justice of differences arising out of the interpretation of the Specialized Agencies Convention*

178. Section 32 of the Specialized Agencies Convention provides as follows:

All differences arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between one of the specialized agencies on the one hand, and a member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court and the relevant provisions of the agreements concluded between the United Nations and the specialized agency concerned. The opinion given by the Court shall be accepted as decisive by the parties.

179. The specialized agencies stated that they had no practice with regard to this section. They had not given consideration to applying section 32 in any particular case. It may be noted that several headquarters agreements provide for the settlement of disputes regarding points of interpretation by means of arbitration if negotiations do not lead to a settlement.

180. In the case of IBRD, IDA, IFC and IMF, a provision in their respective annexes to the Specialized Agencies Convention states that section 32 shall only apply to differences "arising out of the interpretation or application of privileges and immunities" which are derived from the Convention, "and are not included in those which (the organization) can claim under its Articles of Agreement or otherwise". The interpretation of the Articles of Agreement of these organizations can be made only by their respective Executive Directors, under conditions determined in the articles themselves.

181. As noted in section 42, paragraph 177, above, the instruments of accession tendered for deposit by the Governments of Czechoslovakia, Byelorussian SSR, Ukrainian SSR and USSR were accompanied by reservations regarding section 32 of the Specialized Agencies Convention.

CHAPTER VIII. — ANNEXES AND FINAL PROVISIONS

*Section 44. Annexes to the Specialized Agencies Convention*

182. Article X of the Specialized Agencies Convention makes provision for the modification of the standard clauses of the Convention in relation to each specialized agency by means of separate annexes. The particular modifications introduced have been referred to in the appropriate sections of this survey.

183. Sections 33-38 and section 40 of article X state as follows:

## Section 33

In their application to each specialized agency, the standard clauses shall operate subject to any modifications set forth in the final (or revised) text of the annex relating to that agency, as provided in sections 36 and 38.

## Section 34

The provisions of the Convention in relation to any specialized agency must be interpreted in the light of the functions with which that agency is entrusted by its constitutional instrument.

## Section 35

Draft annexes 1 to 9 are recommended to the specialized agencies named therein. In the case of any specialized agency not mentioned by name in section 1, the Secretary-General of the United Nations shall transmit to the agency a draft annex recommended by the Economic and Social Council.

## Section 36

The final text of each annex shall be that approved by the specialized agency in question in accordance with its constitutional procedure. A copy of the annex as approved by each specialized agency shall be transmitted by the agency in question to the Secretary-General of the United Nations and shall thereupon replace the draft referred to in section 35.

## Section 37

The present Convention becomes applicable to each specialized agency when it has transmitted to the Secretary-General of the United Nations the final text of the relevant annex and has informed him that it accepts the standard clauses, as modified by this annex, and undertakes to give effect to sections 8, 18, 22, 23, 24, 31, 32, 42 and 45 (subject to any modification of section 32 which may be found necessary in order to make the final text of the annex consonant with the constitutional instrument of the agency) and any provisions of the annex placing obligations on the agency. The Secretary-General shall communicate to all Members of the United Nations and to other States members of the specialized agencies certified copies of all annexes transmitted to him under this section and of revised annexes transmitted under section 38.

## Section 38

If, after the transmission of a final annex under section 36, any specialized agency approves any amendments thereto in accordance with its constitutional procedure, a revised annex shall be transmitted by it to the Secretary-General of the United Nations.

## Section 40

It is understood that the standard clauses, as modified by the final text of an annex sent by a specialized agency to the Secretary-General of the United Nations under section 36 (or any revised annex sent under section 38), will be consistent with the provisions of the constitutional instrument then in force of the agency in question, and that if any amendment to that instrument is necessary for the purpose of making the constitutional instrument so consistent, such amendment will have been brought into force in accordance with the constitutional procedure of that agency before the final (or revised) annex is transmitted.

The Convention shall not itself operate so as to abrogate, or derogate from, any provisions of the constitutional instrument of any specialized agency, or any rights or obligations which the agency may otherwise have, acquire, or assume.

184. The annexes which have been concluded under these provisions fall into three groups.

(i) *Annexes relating to ITU, UPU and WMO*

These annexes provide that the standard clauses shall apply without modification except that, in the case of ITU, that agency,

... shall not claim for itself the enjoyment of privileged treatment with regard to the "Facilities in respect of communications" provided in Article IV, Section 11.<sup>213</sup>

(ii) *Annexes relating to FAO, ICAO, ILO, IMCO, UNESCO and WHO*

With some variation, these annexes provide that article V and article VII, section 25, paragraphs 1 and 2 (I), shall extend to various members of the governing bodies of the above-mentioned agencies,<sup>214</sup> that the privileges and immunities referred to in section 21 shall also be accorded to certain senior officials of the agency;<sup>215</sup> and that experts (other than officials coming within the scope of article VI) shall receive the privileges and immunities listed in the particular annex.<sup>216</sup>

The annexes relating to FAO and WHO have been revised; it was stated that no problems had arisen in this connexion.

(iii) *Annexes relating to IBRD, IDA, IFC and IMF*

These annexes provide that:

(1) Section 32 shall only apply to differences arising out of the interpretation or application of privileges and immunities derived solely from the Convention and which are not included in the privileges and immunities that these agencies can claim under their Articles of Agreement or otherwise;<sup>217</sup>

(2) that the provisions of the Convention, or of the annexes, shall not affect in any way the Articles of Agreement of these agencies or impair or limit any rights conferred under those articles, or under any national enactment of a member State, or otherwise;

(3) that, in the case of IBRD, IDA and IFC, action may be brought against them in certain specified circumstances;<sup>218</sup>

(4) that, in the case of IFC, section 7, paragraph (b), of the standard clauses shall apply, subject to article III, section 5, of its Articles of Agreement,<sup>219</sup> and that the corporation in its discretion may waive any of the privileges and immunities conferred under article VI of its Articles of Agreement to such extent and upon such conditions as it may determine.<sup>220</sup>

*Section 45. Supplemental agreements*

185. Section 39 of the Specialized Agencies Convention provides as follows:

The provisions of this Convention shall in no way limit or prejudice the privileges and immunities which have been, or may hereafter be, accorded by any State to any specialized agency by reason of the location in the territory of that State of its head-

<sup>213</sup> See section 18, para. 85, above.

<sup>214</sup> In the case of WHO these provisions also apply to the representatives of associate members. No such provision is contained in the ICAO annex.

<sup>215</sup> See section 30, paras. 132-140, above.

<sup>216</sup> See section 33, paras. 147-149, above.

<sup>217</sup> See section 43, paras. 178 and 179.

<sup>218</sup> See section 7, para. 30, above.

<sup>219</sup> See section 13, para. 49, above.

<sup>220</sup> See section 8, para. 33, above.

quarters or regional offices. This Convention shall not be deemed to prevent the conclusion between any State party thereto and any specialized agency of supplemental agreements adjusting the provisions of this Convention or extending or curtailing the privileges and immunities thereby granted.

186. As envisaged in that section, the specialized agencies have concluded a number of supplemental agreements with States, adjusting, extending or curtailing the privileges and immunities granted under the Convention.

187. For the period up to 1960, the majority of agreements concluded by the specialized agencies and by IAEA relating to their privileges and immunities are to be found in the United Nations *Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations*, vol. II. When in 1962 it was decided that a *United Nations Juridical Yearbook* should be published, the specialized agencies and IAEA were invited to submit relevant material, including agreements relating to their privileges and immunities, for publication in the *Yearbook*. Accordingly, agreements relating to the privileges and immunities of the specialized agencies and of IAEA are to be found, expressly or by reference, in successive issues of the *Yearbook* beginning in 1962. Besides a large number of standard agreements, the following agreements concerning the status, privileges and immunities of the specialized agencies and of IAEA were concluded in the period between that covered in the *Legislative Series* and the start of the *Juridical Yearbook*, and were registered, or filed and recorded, with the United Nations Secretariat:

Agreement for the establishment of a Latin-American Forest Research and Training Institute in Venezuela under the auspices of the FAO. Approved by the Conference of the FAO at its tenth session, 18 November 1959, United Nations, *Treaty Series*, vol. 390, p. 227.

Agreement between IAEA, the Government of Monaco and the Oceanographic Institute concerning research on the effects of radioactivity in the sea. 8 and 10 March 1961. United Nations, *Treaty Series*, vol. 396, p. 255.

Agreement between UNESCO and Thailand regarding the Asia Regional Office of UNESCO. 25 August and 6 September 1961. United Nations, *Treaty Series*, vol. 410, p. 125.

*Section 46. Accession to the Specialized Agencies Convention by Member States of the United Nations and by Member States of the specialized agencies*

188. Sections 41 to 45 of article XI of the Specialized Agencies Convention provide as follows:

Section 41

Accession to this Convention by a Member of the United Nations and (subject to section 42) by any State member of a specialized agency shall be effected by deposit with the Secretary-General of the United Nations of an instrument of accession which shall take effect on the date of its deposit.

Section 42

Each specialized agency concerned shall communicate the text of this Convention together with the relevant annexes to those of

its members which are not Members of the United Nations and shall invite them to accede thereto in respect of that agency by depositing an instrument of accession to this Convention in respect thereof either with the Secretary-General of the United Nations or with the executive head of the specialized agency.

Section 43

Each State party to this Convention shall indicate in its instrument of accession the specialized agency or agencies in respect of which it undertakes to apply the provisions of this Convention. Each State party to this Convention may by a subsequent written notification to the Secretary-General of the United Nations undertake to apply the provisions of this Convention to one or more further specialized agencies. This notification shall take effect on the date of its receipt by the Secretary-General.

Section 44

This Convention shall enter into force for each State party to this Convention in respect of a specialized agency when it has become applicable to that agency in accordance with section 37 and the State party has undertaken to apply the provisions of the Convention to that agency in accordance with section 43.

Section 45

The Secretary-General of the United Nations shall inform all Members of the United Nations, as well as all members of the specialized agencies, and executive heads of the specialized agencies, of the deposit of each instrument of accession received under section 41 and of subsequent notifications received under section 43. The executive head of a specialized agency shall inform the Secretary-General of the United Nations and the members of the agency concerned of the deposit of any instrument of accession deposited with him under section 42.

189. As of 15 May 1967, sixty-two States were Parties to the Convention in respect of one or more of the specialized agencies. Eight States made declarations regarding the application of section 11.<sup>221</sup> The instruments of accession tendered for deposit by four States were accompanied by reservations regarding the application of sections 24 and 32.<sup>222</sup> It is the position of the specialized agencies that no reservation may be accepted which varies the application of specific immunities, other procedures being provided for agreed variations in the annexes to the Convention.

190. No serious difficulties have arisen in the application of article XI of the Specialized Agencies Convention. It may be noted that a number of States which are either not parties to the Convention or have not extended its application to all agencies, have nevertheless agreed, usually under a bilateral agreement, to apply the provisions of the Conventions to agencies operating in their territory. These agreements have mostly dealt with the provision of technical assistance,<sup>223</sup> but have also related to the establishment of field or regional offices and to the

<sup>221</sup> See section 18, para. 83, above.

<sup>222</sup> See section 42, para. 177 and section 43, para. 181, above. In addition, the instrument of accession tendered for deposit by Canada was accompanied by a reservation regarding the application of section 19 (b) of the Specialized Agencies Convention; see section 24, para. 114, above.

<sup>223</sup> Article V of the revised standard Agreement for technical assistance provides as follows:

"1. The Government, in so far as it is not already bound to do so, shall apply to the Organizations, their property,

(Continued on next page.)

holding of conferences in the territory of the State concerned.

191. The IAEA Agreement on Privileges and Immunities, which is open to all member States of the Agency, had twenty-six States Parties as on 1 February 1966. It may be noted that article XV of the Statute of IAEA contains an obligation on member States to grant the

necessary legal capacity, privileges and immunities to the agency, as defined in a separate agreement or agreements. Member States are therefore already bound by the terms of the Statute, even if they do not submit an instrument of acceptance to the Agreement on Privileges and Immunities, to accord to the agency the legal capacity, privileges and immunities it requires in order to fulfil its functions.

*(Continued).*

funds and assets, and to their officials, including technical assistance experts,

“(a) in respect of the United Nations, the Convention on the Privileges and Immunities of the United Nations;

“(b) in respect of the specialized agencies, the Convention on the Privileges and Immunities of the Specialized Agencies; and

“(c) in respect of the International Atomic Energy Agency,

the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.

“2. The Government shall take all practical measures to facilitate the activities of the Organizations under this Agreement and to assist experts and other officials of the Organizations in obtaining such services and facilities as may be required to carry on these activities. When carrying out their responsibilities under this Agreement, the Organizations, their experts and other officials shall have the benefit of the most favourable legal rate of conversion of currency.”