ARTICLES 104 AND 105

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ARTICLES 104 AND 105
TEXT OF ARTICLE 104

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

TEXT OF ARTICLE 105

1. The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes.

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

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

INTRODUCTORY NOTE

1. This Supplement maintains the general structure, format and headings used in earlier studies of Articles 104 and 105 in the Repertory and Supplements Nos. 1 to 7.

2. In the general survey, a list of new parties who acceded or succeeded to the 1946 Convention on the Privileges and Immunities of the United Nations (hereinafter the “General Convention”) is presented, as well as a review of the agreements concluded by the United Nations with parties and non-parties to the General Convention. Increasing concern with the safety of international civil servants was also the subject of action by the organs of the United Nations, culminating in the adoption of the Convention on the Safety of United Nations and Associated Personnel by the General Assembly on 9 December 1994.

3. In the analytical summary, practice regarding the privileges and immunities of the Organization, representatives of Member States, Non-Member States maintaining permanent observer missions, observers of non-Member States, officials, experts on mission and members of United Nations peacekeeping operations or observer missions is presented and analysed.

I. GENERAL SURVEY

A. Implementation of Articles 104 and 105

1. By General Convention
Thirteen Member States became parties to the General Convention during the period covered by this Supplement. The accession of one Member State contained reservations to certain provisions of the General Convention (see Annex I below). The total number of parties was 135 by 31 December 1994.

2. BY AGREEMENTS ON PRIVILEGES AND IMMUNITIES

5. In the period under review, the United Nations concluded around two hundred agreements on privileges and immunities with parties and non-parties to the General Convention. Of those agreements, thirty-five were concluded with non-parties, of which four were non-Member States at the time of conclusion. The majority of the agreements were concerned with technical cooperation and assistance, the establishment of United Nations offices, centres or institutions, arrangements for United Nations meetings, sessions, workshops or training courses held outside headquarters and the establishment of United Nations peacekeeping operations or observer missions. A table of the agreements that the United Nations concluded during the period under review appears as Annex II to the present study.

(a) Technical cooperation and assistance

6. The majority of the agreements concerning technical cooperation and assistance referred to, and confirmed, the application of the General Convention.

7. United Nations Programmes and Funds primarily concluded agreements concerning technical cooperation and assistance. These agreements were based on their standard basic assistance agreements.

8. The United Nations Children’s Fund (UNICEF) concluded twenty-one Basic Cooperation Agreements (BCA) during the period under review.1 Until July 1992, UNICEF continued to base its agreements on its 1965 Revised Model Agreement,2 which contained provisions on privileges and immunities in article VII. In July 1992, a new Standard BCA was issued.3 Provisions in the 1992 BCA dealt with the privileges, immunities, rights and facilities of UNICEF, its officials,4 experts on mission,5 persons performing services for UNICEF,6 access facilities,7 locally recruited personnel assigned to hourly rates,8 facilities in respect of communications9 and the waiver of privileges and immunities.10

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1 See Annex II for the list of agreements concluded by UNICEF.
3 E/ICEF/BCA.
4 Article XIII.
5 Article XIV.
6 Article XV.
7 Article XVI.
8 Article XVII.
9 Article XVIII.
10 Article XX.
9. The two BCAs concluded before July 1992, between UNICEF and Belize\textsuperscript{11} and Romania\textsuperscript{12}, departed significantly from the 1965 Revised Model Agreement’s provisions on privileges and immunities. Both agreements detailed the privileges and immunities of the UNICEF office, property, funds and assets, and UNICEF officials, experts on mission, persons performing services for UNICEF and locally recruited personnel assigned to hourly rates.\textsuperscript{13} The BCAs concluded after July 1992 followed the 1992 Standard BCA.

10. The United Nations Development Programme (UNDP) continued to use its Standard Basic Assistance Agreement (SBAA)\textsuperscript{14} in concluding twenty-four agreements with Governments during the period under review. Provisions on privileges and immunities were contained in articles IX and X of the SBAA. A few variations were noted in the agreements concluded between the UNDP and Governments. One variation in the agreement with Cameroon in 1991\textsuperscript{15} was that the provision of article IX did not grant the privileges and immunities described in it to persons “who reside permanently in the country”.\textsuperscript{16} The agreement with Sri Lanka in 1990\textsuperscript{17} was accompanied by an exchange of letters which placed on record the understanding of the Government that the privileges and immunities envisaged in article IX, paragraph 4(a) and paragraph 5, concerning persons performing services, would be applicable to non-governmental organizations and firms performing services on behalf of UNDP only when they were specifically performing such services. It emphasized that such privileges and immunities would not apply to Sri Lankan citizens employed locally by such firms.\textsuperscript{18} The agreement with the Russian Federation contained minor variations in paragraphs 1, 3 and 4 of article IX.\textsuperscript{19}

(b) \textit{By United Nations office agreements}

11. During the period under review, twenty-eight agreements were concluded relating to the establishment of United Nations offices, centres or institutions. The application of the General Convention to these offices, centres and institutions was confirmed in each of the agreements. There were variations in the agreements, which will be discussed below.

12. The three agreements regarding the establishment of the United Nations information centres in Denmark,\textsuperscript{20} Namibia\textsuperscript{21} and Cameroon\textsuperscript{22} that were concluded during the period under review contained similar provisions concerning the Centre and its officials’ privileges and immunities. One variation in the agreement with Cameroon was a specific mention in article III, concerning the status of the centre, that: “The archives, assets and

\textsuperscript{15} \textit{United Nations Juridical Yearbook, 1991}, p. 64.
\textsuperscript{16} Ibid.
\textsuperscript{17} \textit{United Nations Juridical Yearbook, 1990}, pp. 42-43.
\textsuperscript{18} Ibid, p. 43.
\textsuperscript{19} \textit{United Nations Juridical Yearbook, 1993}, p. 162.
\textsuperscript{22} \textit{United Nations Juridical Yearbook, 1994}, pp. 8-10.
properties of the Centre as well as its official correspondence shall be inviolable”.23 In addition, the provisions of this agreement relating to the privileges and immunities of the officials of the centre did not make any distinction between the privileges and immunities granted to internationally and locally recruited personnel.24 The agreements with Denmark and Namibia, on the other hand, did.25

13. Seven agreements establishing United Nations Interim Offices and two agreements establishing United Nations Integrated Offices were concluded.26 The first agreement concluded with Belarus on 15 May 199227 provided the model for the other agreements concluded in 1992 and 1993. However, the agreement with Armenia concluded on 17 September 199228 principally departed from the agreement with Belarus in articles 7 and 12 concerning the privileges and immunities of officials of the office. Whereas the agreement with Belarus accorded all officials of the office the immunities under articles 7 and 12, the agreement with Armenia specified which immunities were for internationally recruited officials only.29 The agreements concluded with Azerbaijan, Kazakhstan, Ukraine, Uzbekistan30 and Georgia31 contained provisions similar to the agreement with Belarus, but included the changes appearing in the agreement with Armenia. However, the two later agreements establishing United Nations Integrated Offices in the Russian Federation32 and Eritrea33 replicated articles 7 and 12 of the agreement with Belarus without those changes.

(c) By UNHCR Cooperation Agreements

14. On 27 June 1989, UNHCR issued a memorandum attaching its Model UNHCR Co-operation Agreement.34 The memorandum stated that the Model might need to be adjusted to specific UNHCR requirements in a given host country in the light of local legal and political systems and was also subject to the agreement of the individual government concerned. Officials were advised that deviations from the Model should be cleared with UNHCR Headquarters in advance of the signature.35 Articles VII to XV of the Model UNHCR Co-operation Agreement dealt with the privileges, immunities, rights and facilities of UNHCR, its officials, locally recruited personnel, experts on mission and persons performing services on behalf of UNHCR.

15. During the period under review, UNHCR established one regional office and ten branch offices in host countries.36 All the agreements were concluded following the

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23 Ibid, paragraph 3 of article III, p. 8.
24 See article V, ibid, pp. 9-10.
32 Ibid, pp. 63-73.
33 Ibid, pp. 86-95.
34 UNHCR/IOM/79/89.
36 See annex II.
issuance of the Model UNHCR Co-operation Agreement. The agreements concluded with South Africa, Saudi Arabia and Pakistan contained major variations to the Model UNHCR Co-operation Agreement. The majority of the agreements, though, replicated the Model, with minor variations. The most common variations in these agreements were failure to include the provision from article VIII, paragraph 7, of the Model that “UNHCR shall enjoy the most favourable legal rate of exchange” and the stipulations in article X, paragraph 2(a) and article XII, paragraph 1(b), that the immunity of UNHCR officials and experts on mission from legal process in respect of words spoken and written and all acts performed by them in their official capacity would “continue even after termination of employment with UNHCR”. Other variations included the non-exemption of Venezuelan citizens from some of the privileges and immunities specified for UNHCR officials – specifically, immunity from military-service obligations - and the “immunity from personal arrest or detention” that the UNHCR Representative, Deputy Representative, the Liaison Officer and officials should enjoy in Poland, which was not provided for in the Model.

(d) By conference agreements

16. In accordance with paragraph 5, Part I, of the General Assembly’s resolution 40/243 of 18 December 1985, which, inter alia, decided that “United Nations bodies may hold sessions away from their established headquarters…”, the United Nations Secretariat issued an administrative instruction on 8 May 1987 providing guidelines to officials responsible for preparing and finalising agreements with Governments hosting United Nations conferences. The guidelines contained model provisions for privileges and immunities to be concluded in the form of an agreement and in the form of an exchange of letters. The Office of Legal Affairs (OLA) was named responsible for the legal clauses in the agreements. No modification might be made to the agreements without the approval of OLA.

17. The United Nations concluded 102 agreements during the period under review for the purposes of making arrangements for the holding of United Nations sessions, meetings,

39 Ibid, pp. 156-160. Article VII provided that Pakistan would apply to UNHCR’s property, funds, assets, officials and experts on mission the relevant provisions of the General Convention “in a manner as favourable as accorded to other United Nations organizations, and as implemented in Pakistan under the Act of 1948”.
43 Articles XI and XII, United Nations Juridical Yearbook, 1992, pp. 34-35, at article IX, para. 1(a) and article XII, para. 1(a).
45 ST/342.
48 See paragraph 13 of ST/342.
seminars, workshops and trainings outside of headquarters. The majority of the agreements were concluded with States that were not parties to the General Convention at the time of their conclusion. The standard approach was to make the General Convention applicable between the parties for the purpose and duration of the conference. Thus, the agreements provided that the General Convention “shall be applicable in respect of the workshop [Session]”.

18. The majority of the agreements were concluded by an exchange of letters and conformed in substance to the model provisions for privileges and immunities. The main variation in the agreements concluded during the period under review concerned immunity from legal process for local personnel provided by the host country for the duration of the conference. In accordance with a long-standing and consistent practice of the Organization, all United Nations invitees and those performing functions for United Nations conferences, including local personnel provided by the host country, were entitled, as a minimum, to immunity from legal process in respect of words spoken or written and acts performed by them in connection with their participation in the conference. Such local personnel were entitled to enjoy this limited functional immunity for the duration and purposes of the conference only. This practice was reflected in the model provisions for agreements concluded in the form of a treaty or by exchange of letters. During the period under review, some agreements did not contain any provision concerning local personnel provided by the host Government for the duration of the conference and some agreements contained variations on the model provisions.

19. Agreements concluded with Colombia and Canada in 1991 and Germany in 1992, did not specifically grant local personnel provided by the government immunity from legal process for the duration of the conference. For example, Colombia undertook to “ensure that local personnel assigned to the United Nations to perform functions in connection with the Session shall be able to do so without let or hindrance and without impediment to the exercise of their functions under the authority of the United Nations”; while the agreement with Canada provided that locally employed personnel would “enjoy all facilities necessary for the independent exercise of their functions in connection with the Symposium”; and the agreement with Germany provided that “all persons performing functions in connection with the Meeting shall enjoy such privileges and immunities, facilities and courtesies as are necessary for the independent exercise of their functions in connection with the Meeting”.

49 See annex II.
51 Ibid.
53 Para. (a) (iii), ST/Al/342, p. 18.
57 Article 5(c), United Nations Juridical Yearbook, 1992, p. 70.
20. In two agreements concluded with Austria – one by an exchange of letters in 1991\textsuperscript{58} and the other in the form of an agreement in 1993\textsuperscript{59} – the variation, highlighted in italics, was: “Local personnel provided by the Government pursuant to this Agreement with the exception of those who are assigned to hourly rates, shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the meeting of the Committee. Such immunity shall, however, not apply in case of an accident caused by vehicle, vessel or aircraft”.

21. An agreement concluded with Mexico in 1991, by an exchange of letters, specifically did not grant immunity from legal process to its nationals employed for the purposes of the Workshop.\textsuperscript{60} This proviso was not contained in other agreements concluded with Mexico during the period under review. In addition, the same agreement contained a variation to model provision (a) (iii),\textsuperscript{61} thereby excluding Mexican nationals from functional immunities in connection with the Workshop.\textsuperscript{62} By 1993, agreements concluded with Mexico no longer included this variation.

(e) Peace-keeping and other mission agreements

22. In paragraph 11 of its resolution 44/49 of 8 December 1989, the General Assembly requested the Secretary-General to prepare a Model Status-of-Forces Agreement (SOFA) for peace-keeping operations between the United Nations and host countries. Further to this request, the Secretary-General prepared a Model SOFA which he annexed to his report of 9 October 1990.\textsuperscript{63} The Model SOFA was intended to serve as a basis for the drafting of individual agreements to be concluded between the United Nations and countries on whose territory peace-keeping operations with troops were deployed pursuant to a mandate from the Security Council. As such it was subject to modifications agreed upon between the parties in each case.\textsuperscript{64} The Model SOFA contained a number of provisions relating to privileges and immunities of the United Nations peace-keeping operation and its members.\textsuperscript{65}

23. During the period under review, seventeen agreements and two protocols were concluded between the United Nations and host countries where peace-keeping or other United Nations missions were deployed.\textsuperscript{66} The Model SOFA was replicated, with minor variations, in the five agreements concluded following its issuance: namely, the agreements with The former Yugoslav Republic of Macedonia\textsuperscript{67} and with Bosnia and

\textsuperscript{59} United Nations Juridical Yearbook, 1993, pp. 57-59.
\textsuperscript{60} Para. (a) (iii), United Nations Juridical Yearbook, 1991, p. 30.
\textsuperscript{61} ST/AI/342, p. 18 (exchange of letters).
\textsuperscript{63} A/45/594.
\textsuperscript{64} A/45/594 of 9 October 1990, at para. 1.
\textsuperscript{65} There are a number of provisions relating to the privileges and immunities of the operation. For example, part III is headed “Application of the Convention”, paragraphs 16 to 17 refer to the facilities for the operation, paragraph 22 refers to the recruitment of local personnel and paragraphs 24-31 are under part VI headed “Status of the members of the United Nations peace-keeping operation”.
\textsuperscript{66} See Annex II.
\textsuperscript{67} United Nations Juridical Yearbook, 1994, pp. 23-34.
Herzegovina concerning the United Nations Protection Force (UNPROFOR);\textsuperscript{68} the agreement with Rwanda concerning the United Nations Assistance Mission for Rwanda (UNAMIR);\textsuperscript{69} the agreement with Mozambique concerning the United Nations Operation in Mozambique (ONUMOZ);\textsuperscript{70} and the agreement with Cambodia concerning the United Nations Transitional Authority in Cambodia (UNTAC).\textsuperscript{71}

3. BY OTHER DECISIONS AND ACTIONS OF UNITED NATIONS ORGANS

24. During the period under review, the safety of international civil servants became an issue of increasing concern due to the increase in the number of United Nations officials arrested and detained, missing or abducted and killed. This development reflected the political and institutional developments during this period, when the Security Council entrusted to the United Nations and to the organizations of the United Nations system an increased number of assignments related to the maintenance of international peace and security.

25. The General Assembly in its resolutions during the period under review\textsuperscript{72} continued to call upon the Secretary-General, as chief administrative officer of the United Nations, to continue personally to act as the focal point in promoting and ensuring observance of the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations by using all such means as were available to him. The Secretary-General and the respective executive heads of the organizations concerned intervened with the competent authorities of Member States regarding cases of arrest, detention, abduction/disappearance or fatalities throughout the period under review.

26. When staff members of the United Nations and the specialized agencies and related organizations were arrested and detained, both legal and humanitarian considerations were taken into account by the Secretary-General or the executive head concerned in seeking access to them. The legal considerations derived from the relevant international instruments on privileges and immunities and related principally to the determination of whether or not a staff member was arrested or detained because of his or her official activities. This determination was made by the Secretary-General following visits made by the relevant organization to the detained or arrested staff members. If it was determined as a result of such visits that the arrest or detention was related to official functions, then immunity was asserted. If not, there was no legal basis for asserting immunity. Where there was no basis for asserting immunity, the Secretary-General or the

\textsuperscript{68} United Nations Juridical Yearbook, 1993, pp. 47-53.
\textsuperscript{69} Ibid, pp. 102-112.
\textsuperscript{70} Ibid, pp. 36-47.
\textsuperscript{71} United Nations Juridical Yearbook, 1992, pp. 52-60. Although the Agreement establishing the United Nations Transition Assistance Group in Namibia was concluded before the Model SOFA was issued, it was very similar to the Model. See United Nations Yearbook, 1989, pp. 14-24.
\textsuperscript{72} A/44/186 of 19 December 1989, A/45/240 of 21 December 1990, A/47/28 of 25 November 1992. At the forty-sixth session of the General Assembly no resolution was approved on the issue of respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations, because by resolution 46/220 of 20 December 1991, on rationalization of work of the Fifth Committee, the Assembly decided to adopt a biennial approach for consideration of matters related to personnel questions.
executive head concerned sought to ensure that any staff member who was arrested and detained was treated fairly, properly charged and promptly brought to trial.  

27. A consolidated list of staff members under arrest and detention or missing at the end of each reporting period with respect to whom the United Nations and the specialized agencies and related organizations were unable to exercise fully their right to protection, was set out in annex I of the Secretary-General’s annual report on the respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations.  

28. During the period from 1 July 1988 to 30 June 1989, the Middle East continued to be an area of prime concern with the highest number of arrests, detentions and abductions of officials. At the same time, a number of staff members previously reported as being under arrest or detention from UNHCR, the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) and the World Food Program (WFP) were released. There were, however, negative developments in respect of some previously reported cases. For example, Lieutenant-Colonel William Richard Higgins, an officer of the United States serving as the chief of a group of military observers assigned to the United Nations Interim Force in Lebanon (UNIFIL), who had been abducted on 17 February 1988, was killed by his captors on 31 July 1989. A locally recruited UNRWA staff member detained in Lebanon by Syrian armed forces since 27 May 1987 died in prison on 17 December 1988. There was no further progress in the case of a staff member of the United Nations Economic Commission for Africa (ECA) who was arrested in Ethiopia on 2 March 1982 and sentenced in March 1987 to life imprisonment, despite the personal intervention of the Secretary-General of the United Nations and several interventions by the administration of ECA.

29. During the reporting period from 1 July 1989 to 30 June 1990, despite efforts undertaken to reverse the current trend, the number of cases of arrest and detention of officials remained very high. The Middle East continued to be the region with the greatest number of cases of arrest, detention or abduction of officials although there were cases in other regions. For example, the FAO reported several incidents in Africa: a staff member in Uganda was killed during an attempted robbery in March 1990; two staff

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75 Ibid. Information for the reporting period from 1 July 1993 to 30 June 1994 was provided in annex III of A/C.5/49/6 of 3 October 1994.
76 A/C.5/44/11, at para. 4.
77 Ibid, at para. 11.
78 A/C.5/44/11, at para. 3. See also S/20758.
79 See A/C.5/43/18, annex I.
81 Ibid and annex II, at para. 3; also see annex II for information submitted by other individual organizations and United Nations subsidiary organs and offices or joint subsidiary organs.
82 Ibid, at para. 4; see also paras. 8-11, annex I and annex II, at paras. 1-2.
members were arrested and detained by national security police in Senegal; a light plane
was shot down above southern Sudan in December 1989, killing a staff member; and a
staff member was arrested and detained in May 1990 by the Somali National Security
Service for no apparent reason.83

30. There were positive developments with regard to some cases during the reporting
period.84 A locally recruited staff member of FAO, who had been detained without trial
by the Syrian Security Services since 29 December 1982, was released from custody on
20 January 1990.85 A staff member of the United Nations Disengagement Observer Force
(UNDOF), detained in the Syrian Arab Republic since 6 October 1985, was released on
16 June 1990.86 Five UNRWA staff members arrested in 1986 and 1987 were released in
the second half of 1989.87

31. However, in a number of previously reported cases there was a lack of progress or
negative developments. For example, a WHO staff member arrested by Ethiopian
Security Services on 8 June 1989 continued to be held in custody without any
explanation.88

32. By resolution 45/240 of 21 December 1990, the General Assembly once again called
upon all Member States to scrupulously respect the privileges and immunities enjoyed by
officials of the United Nations and the specialized agencies and related organizations and
to refrain from any acts that would impede such officials in the performance of their
duties, thereby seriously affecting the proper functioning of the organizations. The
resolution also urged the Secretary-General to give priority to the prompt follow-up of
cases of arrest, detention and other possible matters relating to the security and proper
functioning of officials of the United Nations and the specialized agencies and related
organizations.

33. The reporting period from 1 July 1990 to 30 June 1991 was characterized by complex
political and institutional developments, where the role of the United Nations as a centre
for joint efforts directed at strengthening international peace and security acquired greater
significance. During this period, the United Nations and related organizations were
entrusted by Member States to undertake urgent, unprecedented and important
assignments. Staff members of the United Nations system came to operate increasingly
under difficult and dangerous conditions, making respect for the privileges and
immunities of officials even more important.89

34. During the reporting period, the number of new cases of arrest and detention of
officials remained very high.90 However, there were positive developments in several

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83 Ibid, annex II, paras. 23-27; also see annex II for information submitted by other individual organizations and United
Nations subsidiary organs and offices or joint subsidiary organs.
84 Ibid, at para. 12.
89 A/C.5/46/4, at para. 4.
90 Ibid, at para. 6.
long-standing cases. The staff member of the ECA who had been in detention in Ethiopia since March 1982 was released, as were a number of UNRWA staff members.\(^{91}\) There was a lack of progress in respect of some of the long-standing cases. For example, the United Nations was not successful in obtaining the release of three staff members from UNRWA who had been under detention for more than a decade.\(^{92}\)

35. At the forty-sixth session of the General Assembly no resolution was approved on the issue of respect for the privileges and immunities of United Nations officials and the specialized agencies and related organizations. By resolution 46/220 of 20 December 1991, on rationalization of work of the Fifth Committee, the Assembly decided to adopt a biennial approach for consideration of matters related to personnel questions.

36. The reporting period 1 July 1991 to 30 June 1992 was again marked by complex developments. During the period, as never before, the community of States addressed its hopes to the United Nations as an organization established under the Charter to maintain international peace and security and to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character. The United Nations system was asked to undertake peace-keeping and humanitarian missions, often in areas of military confrontation. As a consequence, staff members were increasingly asked to serve in areas where the security situation was unstable. Questions relating to respect for the privileges and immunities of officials of the organizations of the United Nations system assumed even greater importance.\(^{93}\) Despite the number of new cases of arrest and detention of officials being lower than in previous years,\(^{94}\) by the end of the reporting period there had been eleven fatalities amongst staff members belonging to different organizations.\(^{95}\)

37. There were positive developments during the reporting period with the release of staff members in two long-standing cases. The two staff members from UNRWA who had been detained in the Syrian Arab Republic since March 1982 and December 1988 were released in December 1991 and April 1991 respectively.\(^{96}\) However, there was a lack of progress in respect of other long-standing cases.\(^{97}\)

38. At its forty-seventh session, the General Assembly adopted resolution 47/28 of 25 November 1992 in which it took note with grave concern of the report submitted by the Secretary-General. It strongly deplored the unprecedented, and still increasing, number of fatalities that had occurred among United Nations personnel, including those engaged in peace-keeping operations, and strongly affirmed that disregard for the privileges and immunities of officials had always constituted one of the main obstacles to the implementation of the missions and programmes assigned to the organizations of the

\(^{91}\) Ibid, at para. 9.
\(^{92}\) Ibid, at para. 10.
\(^{93}\) A/C.5/47/14, at para. 4.
\(^{94}\) Ibid, at para. 9.
\(^{95}\) Ibid, at paras. 6-7; see also annex II for information submitted by other individual organizations and United Nations subsidiary organs and offices or joint subsidiary organs.
\(^{96}\) Ibid, at para. 11.
\(^{97}\) Ibid, at para. 12.
United Nations system by Member States. It reminded host countries of their responsibility for the safety of peace-keeping and all United Nations personnel on their territory. It also requested the Secretary-General to take all necessary measures to ensure the safety of United Nations personnel, as well as those engaged in peace-keeping and humanitarian operations, and to continue to submit, on behalf of the Administrative Committee on Coordination, reports concerning respect for the privileges and immunities of officials of the United Nations and specialized agencies and related organizations.

39. The General Assembly also decided that, despite its previous resolution providing that personnel questions should be considered on a biennial basis, \(^{98}\) the Secretary-General should be requested to submit to its forty-eighth session updated information on the situation of United Nations staff members with special regard to violations of privileges and immunities, taking into account its resolutions 45/240 of 21 December 1990 and 47/28 of 25 November 1992.

40. The Secretary-General stated in his note of September 1993 on respect for the privileges and immunities of officials of the United Nations and the specialized agencies and related organizations for the reporting period from 1 July 1992 to 30 June 1993, \(^{99}\) that developments in the previous year had pushed the acceptable safety threshold for personnel of the United Nations system to a level inconceivable in the past. Throughout the reporting period, from 1 July 1992 to 30 June 1993, staff members had been attacked, injured, kidnapped, abused and harassed in the performance of their duties. The emblem of the Organization no longer provided staff with safe passage and an unwritten guarantee of protection, and staff were often at risk simply by virtue of their employment with organizations of the United Nations system. \(^{100}\) To illustrate that development, since 1 July 1992, there had been nineteen fatalities among staff members belonging to different organizations, bringing the number of fatalities since the beginning of 1992 to thirty. \(^{101}\) As at 30 June 1993, there were forty-five officials under detention or missing, including twenty-eight staff members of UNRWA who were arrested during the reporting period. \(^{102}\)

41. In his last annual report during the period under review, the Secretary-General noted that developments during the reporting period from 1 July 1993 to 30 June 1994 clearly demonstrated that international civil servants continued to be exposed to a degree of risk that would have been unacceptable in the past. Staff members were regularly exposed to violence and intimidation to a degree which undermined efforts to guarantee even minimum security. Throughout the reporting period, staff members were attacked and at times killed, injured, kidnapped, abused or harassed. \(^{103}\) The Secretary-General

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\(^{100}\) Ibid, at paras. 5-6. See also annex II for details regarding some of those incidents. This was partly attributed to use by the Security Council of its enforcement powers under Chapter VII of the United Nations Charter which led to the establishment of United Nations operations which were not based on consent and cooperation of the parties concerned, in particular, the United Nations Operation in Somalia II (UNOSOM II).

\(^{101}\) Ibid, at para. 6.

\(^{102}\) Ibid, annex I.

\(^{103}\) A/C.5/49/6, at para. 5 and annex III for information submitted by United Nations Programmes, Funds, Offices and Missions, Specialized Agencies and Related Organizations.
highlighted that, of the forty-two staff killed since 1 January 1992 (excluding those killed in Rwanda, since information on them was not available at the time of reporting), not a single case had been resolved and no one had been arrested or brought to justice in respect of those fatalities.\footnote{104}{Ibid, at para. 6.}

42. During the reporting period, fifty-seven staff members belonging to different organizations of the United Nations system had lost their lives.\footnote{105}{It was initially reported in A/C.5/49/6, at para. 6, that eighteen staff members had lost their lives during this period. This was before staff members in Rwanda were accounted for. A/C.5/49/6/Add.1 of 1 November 1994, reported that preliminary information received from a number of agencies regarding national staff in Rwanda indicated that thirty-nine were reportedly killed during the events of April 1994. See also annex II for the list of staff members who lost their lives in the reporting period.} As at 30 June 1994, fifty-two officials were under detention or missing, including forty-two staff members of UNRWA.\footnote{106}{See A/C.5/49/6, annex I.} In his concluding observations, the Secretary-General emphasized the critical importance of a new convention dealing with the safety and security of United Nations and associated personnel, which was being discussed by the Sixth (Legal) Committee of the General Assembly.\footnote{107}{Ibid, at para. 16.}

(a) \textit{Convention on the Safety of United Nations and Associated Personnel}

43. On 31 March 1993, the President of the Security Council issued a statement\footnote{108}{S/25493 of 31 March 1993.} on behalf of Security Council Members in the context of its examination of the Secretary-General’s report “An Agenda for Peace”,\footnote{109}{A/47/277-S/24111.} which had identified the problem of the safety of United Nations forces and personnel deployed in conditions of strife in connection with a Security Council mandate.\footnote{110}{Ibid, at paras. 66-68.} Through this statement, the Members of the Security Council demanded that States and other parties to various conflicts act promptly to deter, prosecute and punish all those responsible for attacks and other acts of violence against United Nations forces and personnel. The Council requested the Secretary-General to report on existing arrangements for their protection, taking into account, \textit{inter alia}, relevant multilateral instruments and status of forces agreements concluded between the United Nations and host countries, and to make recommendations for enhancing the safety and security of United Nations forces and personnel.\footnote{111}{S/25493 of 31 March 1993, at p. 2.}

44. In response to the Security Council’s request, the Secretary-General in his report dated 27 August 1993 outlined the various international legal instruments under which United Nations personnel and forces were protected.\footnote{112}{S/48/349-S/26358.} The Secretary-General proposed that, in the long term, “a new international instrument could be elaborated in order to codify and further develop international law relating to the security and safety of United Nations personnel and forces deployed in strife situations.”\footnote{113}{S/48/349-S/26358.}

45. At New Zealand’s request,114 the General Assembly considered the Secretary-General’s proposal to elaborate a new international legal instrument to codify and develop further international law relating to United Nations personnel security. The Assembly’s Sixth (Legal) Committee established a Working Group to examine the issue, including proposals by New Zealand115 and Ukraine116 outlining a framework of a draft convention on responsibility for attacks on United Nations personnel.

46. In his oral report to the Committee on 15 November 1993, the Chairman of the Working Group stated that the Group had considered several possibilities for meeting the new challenges and agreed with the Secretary-General’s proposal that a new binding legal instrument be elaborated.117

47. On 9 December 1993, the General Assembly, on the recommendation of the Sixth Committee, adopted resolution 48/37, without a vote, establishing an “Ad Hoc Committee open to all Member States to elaborate an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel”.118 Under paragraph 2, the Ad Hoc Committee was asked to prepare the text of a draft convention, taking into account any suggestions from States, as well as comments and suggestions that the Secretary-General may wish to provide on the subject.

48. Pursuant to resolution 48/37 of 9 December 1993, the Ad Hoc Committee held two sessions in 1994 (New York, 28 March-8 April and 1-12 August).119 The Committee had before it a March note by the Secretary-General,120 containing his comments and suggestions on the safety and security of United Nations personnel, the elaboration of an international convention on the subject and responsibility for attacks on United Nations and associated personnel.

49. The Ad Hoc Committee drew up a revised negotiating text. However, the Chairman of the Committee noted that certain important differences remained and, in accordance with paragraph 5 of General Assembly resolution 48/37 of 9 December 1993, recommended that the Assembly re-establish a working group under the Sixth Committee to continue consideration of the text and proposals relating to it.121

50. The Sixth Committee re-established the Working Group on 26 September, which reviewed the text from 3 to 14 October 1994. The Chairman of the Working Group, on 8

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113 Ibid, at para. 34.
114 A/48/144.
117 See YUN 1993, p. 1145.
118 A/48/37, operative paragraph 1.
119 A/49/22.
120 A/AC.242/1.
November, introduced in the Sixth Committee the report of the Working Group containing the text of a draft convention.\textsuperscript{122} On 9 December 1994, the General Assembly, by resolution 49/59, adopted the Convention on the Safety of United Nations and Associated Personnel and opened it for signature in New York from 15 December 1994 until 31 December 1995. As at 31 December 1994, there were fifteen signatories to the Convention.\textsuperscript{123}

\textit{(i) General Overview of the Convention on the Safety of United Nations and Associated Personnel}

51. The \textit{Preamble} to the Convention recalls the increasing number of attacks on United Nations and associated personnel. It stresses the inadequacy of the measures then in force and the urgent need to adopt appropriate and effective supplementary measures.

52. Article 1 contains certain definitions necessary to an understanding of the Convention. It defines “United Nations personnel” as persons directly engaged by the United Nations or its specialized agencies. “Associated personnel” means persons assigned by a Government or by an intergovernmental or non-governmental organization under an agreement with the Secretary-General of the United Nations to carry out activities in support of the fulfillment of the mandate of a United Nations operation. The term “United Nations operation” means an operation established by the competent organ of the United Nations and conducted under United Nations authority and control. This covers operations for the purpose of maintaining or restoring international peace and security, and those involving “an exceptional risk to the safety of the personnel”.

53. Article 1 also defines the notions of “host State”, meaning States in whose territory an operation is conducted, and “transit States”, i.e. States in whose territory United Nations and associated personnel or their equipment are in transit or temporarily present in connection with a United Nations operation.

54. Article 2 defines the actual scope of application of the Convention – those situations in which the Convention is or is not applicable. In particular, it specifies that the Convention shall not apply to operations “authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies”.

55. Article 3 stipulates that personnel and means of transport involved in a United Nations operation shall bear distinctive identification.

56. Article 4 calls for the conclusion of an agreement on the status of each operation, including provisions on privileges and immunities for military and police components of the operation.

\textsuperscript{122} A/C.6/49/L.4.
\textsuperscript{123} See YUN 1994, at pp. 1288-1293 for text of the resolution and the adopted Convention.
57. Article 5 requires transit States to facilitate the unimpeded transit of United Nations and associated personnel and their equipment to and from the host State.

58. Article 6 obliges United Nations and associated personnel to respect the laws and regulations of the host State and the transit State, without prejudice to such privileges and immunities as they may enjoy.

59. Articles 7 and 8 define the obligations incumbent upon States hosting an operation. Article 7 requires them to guarantee the inviolability of personnel, premises and equipment assigned to an operation. Article 8 lays down the duty to release United Nations personnel captured or detained. It further provides that, pending their release, such personnel must be treated in accordance with the principles and spirit of the Geneva Conventions of 1949.

60. Article 9 lists a series of acts regarded as breaches of the Convention, including the murder and kidnapping of personnel. It prohibits not only the Commission of such offences but also any attempts to commit them and participation as an accomplice. Those offences must be regarded by the States Parties as a crime under their own national law.

61. Article 10 obliges each State Party to take such measures as may be necessary to establish its jurisdiction over the crimes set out in Article 9.

62. Articles 11, 12, 13 and 16 provide for measures, under criminal law, for the prevention of offences, the exchange of information, the prosecution or extradition of offenders and lay down the principle of mutual assistance in criminal matters.

63. Articles 14 and 15 stipulate the applicability of the aut judicare aut dedere principle to the Convention. Article 14 requires the State Party in whose territory an offence has been committed to prosecute the alleged offender without delay. Article 15 imposes the obligation to extradite alleged offenders who have not been prosecuted under Article 14.

64. Article 17 defines the fair treatment to be guaranteed to alleged offenders against Article 9. Article 18 makes notification of the outcome of proceedings instituted in response to violations of Article 9 mandatory.

65. Article 19, inviting States to disseminate the Convention as widely as possible, is intended to serve a general preventive purpose.

66. Article 20 contains a number of saving clauses. In particular, it stipulates that nothing in the Convention shall affect: the applicability of international humanitarian law and human rights standards; the rights of States regarding the entry of persons into their territories; the obligation of United Nations personnel to act in accordance with the terms of the mandate of a United Nations operation; the right of States that voluntarily contribute personnel to withdraw them from an operation, and the entitlement to

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124 This principle obliges States to prosecute or extradite alleged offenders.
appropriate compensation payable in the event of death, disability, injury or illness attributable to service during a United Nations operation.

67. Article 21 stipulates that the Convention shall not be so construed as to derogate from the right to act in self-defence.

68. Article 22 invites States to submit any dispute concerning the interpretation or application of the Convention to negotiation or arbitration.

69. Article 23 provides for review meetings, at the request of one or more States Parties, to study problems relating to the implementation of the Convention.

70. Articles 24-27 deal with the signature, ratification, accession and entry into force of the Convention. Article 28 provides for a denunciation procedure and Article 29 settles the question of authenticity of texts.
II. ANALYTICAL SUMMARY OF PRACTICE

A. Article 104

71. The Office of Legal Affairs advised the UNDP that it had the capacity to acquire real property in a Member State pursuant to Article 104 of the United Nations Charter and article 1, section 1(b), of the General Convention.\(^{125}\) The Office recalled that Article 104 of the Charter provides 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 fulfillment of its purposes”. The UNDP was a subsidiary body of the United Nations, charged by the General Assembly to provide “systematic and sustained assistance in fields essential to the integrated technical, economic and social development of the less developed countries” and authorized, to this end, to establish field offices under the charge of a Resident Representative exercising authority over the programme activities in the country in receipt of assistance. Furthermore, article I, section 1(b), of the General Convention, provides that the Organization shall possess juridical personality and shall have the capacity to acquire and dispose of immovable and movable property. This being so, the Resident Representative in the country concerned had the authority to conclude contractual arrangements to acquire real property there on behalf of the UNDP.\(^{126}\)

B. Article 105 (1)

1. PRIVILEGES AND IMMUNITIES OF THE ORGANIZATION

72. Paragraph 1 of Article 105 grants the United Nations, as an Organization, such privileges and immunities within the territory of Member States as are necessary for the fulfillment of its purposes. In practice, during the period under review, while all the agreements concluded between the United Nations and host Governments referred to the general application of the General Convention, the majority of the agreements specifically referred to some of the privileges and immunities which applied. Additionally, the United Nations Legal Counsel and the Office of Legal Affairs rendered opinions which provided assistance in determining the proper application of Article 105.

(a) Property, funds and assets

73. In a note to the Permanent Representative of a Member State, the Legal Counsel referred to the matter of the blocking of the UNICEF bank account by a bank in the Member State. Following an accident involving a UNICEF-operated vehicle and in which one person lost their life, the High Court of the Member State ordered, on 27 July 1992, that “the amount of...be withdrawn from the account of UNICEF with the Commercial Bank of [Member State]”. The account was subsequently blocked for the amount in


\(^{126}\) Ibid.
question. The Legal Counsel pointed out that the actions taken with respect to the UNICEF account were in direct violation of the host country’s international obligations under the General Convention. According to section 2 of the General Convention, funds and assets of the United Nations, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process. Furthermore, section 3 stipulates that they “shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action”. The Legal Counsel stated he trusted that the Government of the Member State would ensure that the order blocking the account was vacated.127

74. The Office of Legal Affairs, in a memorandum to the Executive Director of UNICEF, gave advice in a situation where an Industrial Court in a Member State had refused to grant UNICEF immunity in a case brought by a former UNICEF employee and had entered a judgment in that person’s favour.128 The Ministry of External Affairs of the Member State agreed with the United Nations’ position that UNICEF should neither submit to the jurisdiction of the Court nor contest the merits of the case, absent a waiver of immunity. However, the Ministry suggested that UNICEF engage counsel to plead immunity on appeal in any procedure to review the decision and bring to the attention of the Court the certificate prepared by the Ministry affirming UNICEF’s immunity. The Office of Legal Affairs disagreed with the Ministry’s advice and advised that the representative of UNICEF in the Member State should inform the Ministry at the highest possible level that the United Nations Secretariat was confident that the Government intended to honour its commitments to the United Nations and UNICEF contained both in the Agreement it entered into with UNICEF in 1978 and in the General Convention, specifically sections 2 and 3 regarding the immunity of the United Nations, its property and assets. “The Minister should be requested to take whatever measures are necessary to ensure implementation of the above-mentioned treaty obligations…It is for the Ministry of External Affairs to communicate with other branches of the Government, including the judiciary, with regard to the Government’s international legal obligations, not the United Nations”129

75. The Office of Legal Affairs also addressed the issue of the United Nations’ ability to waive its immunity in article II, section 2, of the General Convention.

76. In a memorandum to UNHCR,130 on whether the Organization’s immunities could be waived in advance by a lease agreement on a property UNCHR was interested in, the Office of Legal Affairs recalled that, under article II, section 2, of the General Convention, the immunity of the United Nations from any form of legal process is said to hold “except insofar as in any particular case, it has expressly waived its immunity”. The Office noted that this phrase in the General Convention had been interpreted restrictively: “(a) the power to waive is vested only in the Secretary-General and such power has not been delegated; and (b) the waiver may only be made at the time a court is considering a

129 Ibid, para. 5, p. 320.
particular case and the Secretary-General determines that waiver of immunity is desirable in the interests of justice. Such waiver is not possible in advance by agreement, because this would be tantamount to a waiver *in futuro*. The Office of Legal Affairs therefore advised UNHCR that the immunities of the Organization under Articles 104 and 105 of the Charter and the General Convention could not be waived in advance by a lease agreement.  

77. In a letter to a judge of the host State court, the Office of Legal Affairs referred to the Notice of Motion for Default Judgement dated 26 July 1993, with attachments, addressed to the United Nations and certain senior officers of the Organization with respect to a claim submitted against them. The Office of Legal Affairs advised the judge that the United Nations itself and its officials were immune from legal process under section 2 and section 18(a) of the General Convention. The United Nations maintained its immunity and the immunity of the officials in question in the case and returned to the court the said Notice of Motion for Default Judgement. The Office of Legal Affairs further noted that pursuant to article III, section 9(a), of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, service of legal process within the Headquarters district may only take place with the consent of the Secretary-General. Such consent had not been given in the present case. The Office of Legal Affairs also referred to an earlier letter from the Legal Counsel to the judge on this matter, in which he had stated that the complainant should have adjudicated his claim through the appeal process available within the United Nations.  

78. In an advice to the Department of Peacekeeping Operations concerning a legal action initiated against the United Nations Truce Supervision Organization (UNTSO) by an individual contractor employed under a special service agreement (SSA), who alleged UNTSO had not complied with local Israel labour laws, the Office of Legal Affairs advised that the United Nations and its officials were immune from legal process in accordance with section 2 and section 18 of the General Convention. The legal action taken against UNTSO in an Israeli Court could not be taken unless the Secretary-General waived the immunity for this purpose, which he had not. On the question of the applicability of local national laws to SSA contractors, the Office of Legal Affairs noted that since the United Nations is accorded privileges and immunities necessary to discharge its functions, such privileges and immunities extend also to the ability to set conditions for service of independent contractors. “Furthermore, by entering into such agreements with the United Nations, individual contractors agree to those terms and conditions and are therefore stopped from invoking local labour laws which would be otherwise applicable to matters explicitly covered in SSAs”. The Office of Legal Affairs also pointed out that paragraph 8 of the SSA provided a procedure for settlement of disputes between the parties. The contractor was contractually bound to follow that
procedure, rather than seeking resolution of his claims against the Organization through an Israeli court.137

79. In a facsimile to the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, the Office of Legal Affairs advised that the legal basis for not explicitly accepting in United Nations contracts a reference to national law as the proper law in the settlement of disputes stemmed from the immunity of the United Nations from every form of legal process under section 2 of the General Convention. Section 29(a) of the General Convention further provides that the United Nations shall nevertheless make provisions for appropriate modes of settlement of disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party. Pursuant to this obligation, the United Nations as “a matter of policy, and absent any practical alternative to judicial proceedings…offers arbitration to its contractors, normally under the auspices of the International Chamber of Commerce or the American Arbitration Association”138. Since the General Assembly adopted resolution 31/98, on 15 December 1976, it had been the consistent policy of the Organization to propose the UNCITRAL arbitration rules for insertion into contractual instruments to govern arbitration of claims with contractors. “Under article 33(1) of the UNCITRAL rules, in the absence of an agreed choice of law by the parties, the arbitral tribunal is to apply ‘the law determined by the conflict of laws rules which it considers applicable’.”139 The Organization had consistently refused to include a choice of law clause in its contracts “because agreement on such a choice is often difficult to achieve and even where this is possible, the choice of the applicable law could be construed as a waiver of the immunity of the United Nations from the jurisdiction of the courts, since national laws regulate, inter alia, arbitral proceedings and provide for interim measures and regulate execution of awards, in addition to making provisions for the substantive rules”.140

80. In a memorandum to the Office of General Services in relation to the question of commercial rent tax imposed by the City of New York on rents paid by the Travel Service to the United Nations for the office space that was provided to it by the Organization, the Office of Legal Affairs advised that, in its view, the commercial rent tax assessment was valid and applicable to the Travel Service.141 The Office based its view on the fact that the assessment of tax was imposed not on the United Nations property per se, which would have been in contravention of section 7 of the General Convention, but on the rent paid by the Travel Service - an independent contractor - to the United Nations for the use of its premises. Contractors with the United Nations were not exempt from the payment of the tax.142

(i) Exemption from taxation and customs duties

139 Ibid.
140 Ibid.
142 Ibid, p. 357.
81. During the period under review, the question of whether a tax was direct within the meaning of article II, section 7, or indirect within the meaning of article II, section 8, of the General Convention, came under increasing attention. The Office of Legal Affairs continued to take the position that it had taken during the period covered by the previous supplement, namely, that direct taxes within the meaning of section 7(a) of the General Convention are those which constitute a direct burden on the United Nations. The nature and effect of the tax were accordingly the primary considerations in determining whether the tax was direct or indirect. Where a Member State attempted to impose a tax upon the United Nations which prima facie would appear to fall within the meaning of section 7(a) of the General Convention, it was for the Member State to show that the tax in question was in the nature of a charge for a public utility service in order for the exemption not to apply.

82. The Office of Legal Affairs thus advised, in a memorandum to the United Nations Institute for Training and Research (UNITAR), that the UNITAR building in New York was exempt from direct taxes pursuant to section 7 of the General Convention. The State of New York had taken the position that State sales and use tax was payable by the owner of real property on the payroll costs of third-party property management firms. The firm in question provided maintenance and repair services to UNITAR in relation to its building. Section 7 provides that the Organization is exempt from direct taxes on its ‘assets’. As the United Nations was the holder of title to the UNITAR property, the Office of Legal Affairs advised the section applied. The United Nations as the purchaser of services from the management firm was therefore exempt from the tax in issue.

83. As regards value-added tax on circulation or ‘road taxes’, the Office of Legal Affairs advised UNDP, that the United Nations had taken a consistent position that such a tax, in so far as it was directly imposed upon the Organization, was within the meaning of section 7 of the General Convention and that the United Nations should therefore be exempted from it.

84. In a note verbale to the Permanent Mission of a Member State concerning the State’s Social Security legislation, the Office of Legal Affairs drew the attention of the Permanent Mission to the inapplicability to the United Nations of the provisions of that legislation which would have required it to make payment contributions to injury and pension schemes with respect to its staff members working in the State. The Office of Legal Affairs cited section 7(a) of the General Convention, which exempts the United Nations, its assets, income and other property from all direct taxes. Mandatory employment injury contributions and contributions under the State’s National Pension scheme were considered by the United Nations to be a form of direct tax on the United Nations and therefore contrary to the General Convention.

143 See Repertory, Supplement No. 7, vol VII, under this Article, paras 26-29.
85. During the period under review, the Office of Legal Affairs provided several legal opinions interpreting the term “public utility service” contained in article II, section 7(a), of the General Convention.

86. In a memorandum to the Office of General Services in 1989 concerning difficulties the United Nations peacekeeping operation had experienced in persuading the State authorities to grant it exemption from, or reimbursement of, the wharfage charges levied on United Nations consignments arriving through a port of that State, the Office of Legal Affairs confirmed that, as far as the meaning of the expression “public utility service” was concerned, the legal position of the United Nations was set out in studies prepared by the Secretariat in 1967 on relations between States and intergovernmental organizations\(^{148}\) and in United Nations document A/CN.4/L.383/Add.1 of 24 May 1985,\(^ {149}\) namely:

“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….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”.

Therefore, the United Nations’ approach was to pay only those charges which related to actual services rendered and which could be specifically identified, described and itemized. The arguments used by the State’s authorities in describing the wharfage charges as specific port dues levied to cover the general running expenses of the port therefore did not bring that charge within the meaning of a charge for public utility services as described above and as provided for in the General Convention. The Office of Legal Affairs advised that the claim for exemption from wharfage charges should be maintained and that a full refund should be requested for payments already made.\(^ {150}\)

87. Similarly, in 1990 the Office of Legal Affairs advised, in a memorandum to the Investment Management Service, that certain taxes imposed on the United Nations Joint Staff Pension Fund in a Member State did not represent “charges for public services”. Rather, the taxes, which were turnover taxes, stamp duty taxes and other taxes related to the securities activity of the fund, should be considered as direct taxes pursuant to section 7(a), since their incidence fell directly on the Organization.\(^ {151}\) The term “public utility services” had a restrictive connotation, being applicable to particular supplies or services rendered (principally gas, electricity, water and transport) which could be specifically identified, described or calculated.\(^ {152}\)


\(^{150}\) Ibid.


\(^{152}\) Ibid, p. 293. See also, *United Nations Juridical Yearbook*, 1992, p. 475, for a similar reference by the Office of Legal Affairs to UNDP in relation to forty-six buses purchased by the UNDP.
88. The Secretary-General referred once more to the study prepared in 1967 by the Secretariat on the practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency, in a letter to the Minister of Foreign Affairs and International Cooperation of a Member State affirming that landing and parking fees levied on the United Nations in connection with the use of airport facilities by UNOSOM II were to be considered direct taxes from which the United Nations was exempt pursuant to section 7(a) of the General Convention. The position taken in the 1967 study was that landing and parking fees were imposed for the mere fact of stopping or calling at an airport. This being so, they would not be charges for public utility services. Whether associated charges were charges for public utility services would depend on whether those charges were for services actually rendered, which could be specifically identified, described and itemized. The Secretary-General wrote he trusted that the State would exempt UNOSOM II from landing and parking fees and from charges for associated services which did not constitute charges for public utility services. In order to reach a final settlement of pending claims, the Secretary-General would examine the charges presented with a view to determining which of them constituted charges for public utility services.

89. In a memorandum to the Department of Peacekeeping Operations, the Office of Legal Affairs advised that a 15% royalty payment claimed by authorities in a Member State against the total price of a contract between the United Nations and an airline constituted a direct tax within the meaning of section 7(a) of the General Convention. The royalty fee was to be assessed against the actual contract price and not against the fuel, handling, landing or parking charges, which would constitute charges for public utility services. Accordingly, the United Nations contract with the airline was automatically exempt from such a fee.

90. During the period under review, the Office of Legal Affairs twice advised on restrictive measures by host States regarding the sale of official United Nations vehicles within the meaning of article II, section 7(b) of the General Convention. In a memorandum to the UNDP in 1990 concerning the sale of used UNDP vehicles in a Member State, where the Government of the State had prevented the UNDP office from disposing of its used vehicles through competitive bidding as provided for in the Financial Regulations and Rules of UNDP, the Office of Legal Affairs advised that section 7(b) of the General Convention makes it clear that the sale of United Nations imported articles requires the agreement of the Government of the host country. At the same time, in any agreement that the UNDP might conclude with the Government of a Member State, the sale of UNDP used vehicles must take into consideration the provisions of UNDP’s Financial Regulations and Rules. As such, every effort should be made to persuade the authorities of the State that, while the UNDP respected the obligation to agree with the Government on conditions for the resale of imported

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156 Ibid, p. 454.
vehicles, for its part the Government must give proper consideration to the Financial Regulations and Rules which called for competitive bidding.\(^{157}\)

91. The Office of Legal Affairs advised in a memorandum to a Resident Representative of the UNDP in 1992\(^{158}\) that, pursuant to the proviso contained in section 7(b) of the General Convention, the Government of the host State was entitled to set out conditions under which official vehicles could be sold in the country. However, the United Nations had consistently maintained the view that the right of the host country to restrain the selling of property of the United Nations must not be misused. The Office of Legal Affairs accordingly advised UNDP to clarify with the Government the modalities of the proposed restrictive measure and to report to Headquarters for further examination and advice if the modalities appeared to constitute arbitrary and unreasonable restrictions.\(^{159}\)

92. The Office of Legal Affairs advised, in a memorandum to the Acting Chief, Sales Section, Department of Conference Services, that the Acting Chief could not request an exemption from a new tax that was to be levied by a Member State on goods and services (GST), including imported goods and services such as United Nations publications. Since the tax fell on the purchaser of the publications and not on the United Nations itself, no claim for exemption or refund could be made on the basis of sections 7(a) and 8 of the General Convention. Although the United Nations was exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications, the Office of Legal Affairs advised that the term “restrictions” in section 7(c) had not been interpreted in practice as a form of control by way of government censorship or licensing. It would not be legally correct to consider tax charges levied at a national level as a restriction within the meaning of section 7(c). The Office of Legal Affairs advised that it might nevertheless be possible to persuade the Member State to treat United Nations publications as being akin to educational services and so grant them the exemption accorded to such services under local law.\(^{160}\)

93. During the period under review, the Office of Legal Affairs advised several times on whether UNICEF’s Greeting Card Operation could be considered “publications” within the meaning of article II, section 7(c), of the General Convention.

94. In 1989, the Office of Legal Affairs advised UNICEF, in accordance with section 7(b) and (c) of the General Convention, that Governments in countries where UNICEF greeting cards were sold have generally recognized that it would be inappropriate, as a matter of principle as well as law, for a Member State to impose customs duties on Greeting Card Operation projects which are internationally determined and financed by contributions from Governments and from private sources.\(^{161}\)

95. In a memorandum to the Director, Greeting Card Operation, UNICEF, the Office of Legal Affairs advised in 1992 that tax-free materials imported as part of the UNICEF


\(^{159}\) Ibid, p. 476.


Greeting Card Operation could be considered “publications” within the meaning of section 7(c) of the General Convention such that their sale would not be subject to an agreement with the host country.\footnote{162} Alternatively, the sale of those materials and the use of their proceeds for the fund-raising activities of UNICEF could be considered an “official use” of those materials within the meaning of section 7(b) of the General Convention, such that their sale once more would not be dependent on any prior agreement with the host State pursuant to the second sentence of section 7(b) on the terms and conditions of their sale. In addition, the Basic Cooperation Agreement between UNICEF and Governments included an express provision exempting articles designed for sale in UNICEF Greeting Card Operation from taxes, customs duties and any import restrictions. Article XVII provided: “Any materials imported or exported by UNICEF or by national bodies duly authorized by UNICEF to act on its behalf, in connection with the established purposes and objectives of the UNICEF Greeting Card Operation, shall be exempt from all customs duties, prohibitions and restrictions, and the sale of such materials for the benefit of UNICEF shall be exempt from all national and local taxes”.\footnote{163}

96. The Office of Legal Affairs advised several times, during the period under review, as to whether the purchase was “important” within the meaning of article II, section 8, of the General Convention.

97. On the question of what falls within the meaning of “important” purchases in section 8 of the General Convention, which obligates Members “whenever possible” to remit or return the amount of duty or tax, the Office of Legal Affairs advised that purchases were to be regarded as “important” when “(a) the amount of tax and the proportion that amount bears to the total purchase price is sufficient to consider the tax as an undue burden upon the Organization, or (b) the purchases occur on a recurring basis”.\footnote{164} Based on that interpretation, the Office of Legal Affairs advised the UNDP that its purchase of forty-six buses was to be considered as “important”. Accordingly, UNDP was entitled to seek the remission of any tax on the purchase which might be levied.\footnote{165}

98. On the other hand, in a memorandum to the Department of Public Information concerning the sales tax exemption in a State, the Office of Legal Affairs advised that the procedure set forth by the Government of the State in question specifying that the exemption was not available in respect of purchases from retailers did not violate its obligations under section 8 of the General Convention.\footnote{166} United Nations institutions in the State, when making important purchases from retailers, could claim a tax exemption from the governmental authorities. However, if the authorities decided that tax exemption

\footnote{162}United Nations Juridical Yearbook, 1991, pp. 325-326.\footnote{163} Ibid, p. 326; see also United Nations Juridical Yearbook, 1990, pp. 290-291, in relation to an advice by the Office of Legal Affairs concerning a Member State who had refused, since 1987, to grant the National Committee for UNICEF the exemption from or refund of the VAT the latter used to enjoy on the sale of UNICEF cards and related materials in that country. The Office advised such action was in contravention of article II, sections 7 and 8, of the General Convention. Therefore UNICEF may request the Government concerned for an exemption from or refund of VAT on the sales of the greeting cards and related UNICEF products; and United Nations Juridical Yearbook, 1990, pp. 293-294.\footnote{164} United Nations Juridical Yearbook, 1994, pp. 451-452.\footnote{165} United Nations Juridical Yearbook, 1992, pp. 474-475.\footnote{166} United Nations Juridical Yearbook, 1989, p. 352.
was not possible, which apparently was the case, there was no legal remedy to avoid the taxation in question.\textsuperscript{167}

99. During the period under review, the Legal Counsel and the Office of Legal Affairs interpreted the purchase of aviation gas or petrol as “important purchases” within the meaning of article II, section 8, of the General Convention.

100. In a letter to the Permanent Representative of a Member State, referring to the question of the exemption from or reimbursement of taxes relating to the purchase of aviation gas by the United Nations peacekeeping operation for the official use of a Cessna aircraft, the Legal Counsel advised that the taxes paid on aviation gas by the peacekeeping operation would normally be considered as indirect taxes such that they would fall within the meaning of section 8 of the General Convention.\textsuperscript{168} However, the purchase of aviation gas constituted an “important purchase” for the official use of the Organization as the use of aircraft was a normal operational necessity for the peacekeeping operation. The Legal Counsel did not accept the argument by the State that the exemption from or reimbursement of these taxes could not be granted because of conflicting laws or regulations of the State. He pointed out that, by virtue of section 34 of the General Convention, the Government of the State had undertaken to be “in a position under its own law to give effect to the terms of this Convention”. Therefore, in the event of a conflict between domestic law and the General Convention, the Convention prevailed.\textsuperscript{169}

101. The Office of Legal Affairs advised, in a memorandum to the Director of the Office of Administrative Management, UNICEF, that the United Nations regarded taxes levied on purchases of petrol as an indirect tax within the meaning of section 8 of the General Convention.\textsuperscript{170} According to a supplementary study on relations between States and international organizations prepared by the United Nations Secretariat in 1985, “a petrol tax forming part of the price to be paid is to be considered as falling under the terms of article II, section 8, of the [General] Convention” providing for the remission or refund of the amount of tax imposed on “important purchases for official use” by the United Nations.\textsuperscript{171} The amounts involved in a recurring purchase of petrol normally qualify as “important”. The study concluded that the United Nations was in principle exempted from excise duty on petrol required for its operations in the territories of Member States. Such an exemption should be applicable to UNICEF as an integral organ of the Organization. A similar approach was laid down in the new Standard Basic Cooperation Agreement between UNICEF and Governments. Article VII, paragraph 6, expressly stipulated that “no direct taxes, value-added tax, fees, tolls or duties shall be levied on the supplies, equipment and other materials intended for programs of cooperation in accordance with the master plan of operations. In respect of supplies and equipment purchased locally for programmes of cooperation, the Government shall, in accordance with section 8 of the Convention, make appropriate administrative

\textsuperscript{167} Ibid.
\textsuperscript{169} Ibid.
\textsuperscript{171} A/CN.4/L.383 and Add.1-3, para. 44.
arrangements for the remission or return of any excise duty or tax payable as part of the price”. 172

102. In a similar advice to the UNDP, the Office of Legal Affairs advised UNDP to request the Government of the State in question to review its decision no longer to exempt UNDP from value-added tax on the purchase of gasoline. The United Nations regarded value-added taxes and sales tax in general as indirect taxes within the meaning of section 8 of the General Convention. As such UNDP was entitled to a remission or return, rather than exemption, of the amount of duty or tax when purchasing gasoline (such a purchase being an important purchase within the meaning of section 8). 173

103. The Office of Legal Affairs advised, in a memorandum to the Purchase and Transportation Unit, that the federal vaccine compensation tax imposed by the United States - an excise tax levied on the manufacturer of vaccines but passed on to the customer upon sale and individually shown in the sales invoice – was an excise tax which was subject to the provisions of section 8 of the General Convention. Accordingly, the Purchase and Transportation Unit should seek to implement section 8 either by use of an appropriately drafted federal excise tax exemption certificate or by appropriate representations to the United States. 174

104. In relation to a request for advice as to whether the United Nations should be accorded exemption from an excise tax on the sale of chemicals which deplete the ozone layer imposed by a domestic law, the Office of Legal Affairs advised the Chief of the Office of General Services that the Organization “in the exercise of its discretion and judgement should not claim exemption from the excise duty in question”. 175 The Office of Legal Affairs noted the consistent position of the Organization for determining whether a purchase constituted an ‘important purchase’ within the meaning of section 8 of the General Convention, and advised that, although the tax imposed on the price of the chemical - Freon #12 - amounted to nearly half of the actual product price, seeking remission or return of the tax would be unwarranted. The purpose of The 1998 Montreal Protocol on Substances that Deplete the Ozone Layer was to ensure the control of the production and use of ozone-depleting chemicals (ODCs) by the parties to the Protocol and taxation of the manufacture and consumption of ODCs was a means to bring about the desired objective. A request by the United Nations seeking an exemption would be anomalous in as much as the Organization, which, through the Convention and Protocol, had sought reduction in the use of ODCs, would be attempting to exempt itself from a control measure imposed to secure just a reduction. 176

176 Ibid.
During the period under review, UNHCR issued a memorandum attaching its Model UNHCR Co-operation Agreement. Article VIII, paragraph 7, provided that “UNHCR shall enjoy the most favourable legal rate of exchange”. Of the eleven agreements concluded between UNHCR and host countries, five either had variations on this provision or did not contain it at all.

The Model status-of-forces agreement (SOFA) for peace-keeping operations provided in part V, section 23, that the Government “undertakes to make available to the United Nations peace-keeping operation, against reimbursement in mutually acceptable currency, [local] currency required for the use of the United Nations peace-keeping operation, including the pay of its members, at the rate of exchange most favourable to the United Nations peace-keeping operation”. Of the seventeen SOFAs establishing observer or peace-keeping missions during the period under review, only five contained this provision. Two SOFAs contained variations. The agreement with Namibia concerning the status of the United Nations Transition Assistance Group (UNTAG) (concluded before the Model was issued) contained a proviso that the pay of its members would be at the “rate of exchange most favourable to UNTAG that is officially recognized by the Government”, while the agreement with South Africa concerning the United Nations Observer Mission and its Personnel in South Africa (UNOMSA) provided that “UNOMSA may freely exchange foreign currency through any South African authorized dealer in exchange at the market rate of exchange, for its use in South Africa including the remuneration of its personnel”.

The Office of Legal Affairs, in a memorandum to the Legal Adviser of UNRWA, advised that the demand of a Member State that UNRWA pouches be submitted to its domestic security personnel 24 hours in advance of intended departure from that State would be in contravention of article III, section 10, of the General Convention and article 27, paragraph 2, of the 1961 Vienna Convention on Diplomatic Relations. According to section 10 of the General Convention, the Organization has the right to dispatch and receive its correspondence in bags, which shall have the same immunities and privileges as diplomatic bags. Article 27, paragraph 2, of the Vienna Convention on Diplomatic Relations.

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Relations provides for the inviolability of official correspondence while paragraph 3 unequivocally stipulates that the diplomatic bag shall not be opened or detained.  

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

(v) **Police protection of United Nations premises**

108. The Office of Legal Affairs advised, in a memorandum to the Legal Counsel of the United Nations University, against the United Nations University providing security for its premises by way of a commercial arrangement with a security protection company, rather than employing security personnel as staff members.  

The advice was based on policy rather than legal considerations: security personnel of a commercial company would not enjoy the functional immunity that members of the United Nations security service do as United Nations officials; and there would be no assurance that security personnel obtained through a commercial agency would meet the highest standards of integrity, competence or efficiency required under the Charter of the United Nations of all staff members.

109. During the period under review, the agreements concluded by the United Nations establishing interim or integrated offices in host States included a section on the security and protection of the office. The seven agreements establishing United Nations interim offices in Belarus, Armenia, Azerbaijan, Kazakhstan, Ukraine, Uzbekistan and Georgia, and the two agreements establishing integrated offices in the Russian Federation and Eritrea provided that the appropriate government authorities “shall exercise due diligence to ensure the security and protection of the Office, and to ensure that the tranquility of the Office is not disturbed by the unauthorized entry of persons or groups of persons from outside or by disturbances in its immediate vicinity.” UNICEF’s Model BCA had the same provision in Article X, paragraph 3.

110. Similarly, the agreement establishing the headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, provided in Article VII:

“The competent authorities shall exercise due diligence to ensure the security and protection of the Tribunal and to ensure that the tranquility of the Tribunal is not disturbed by the intrusion of persons or groups of persons from outside the premises of the Tribunal or by disturbances in their immediate vicinity.”

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185 Ibid.
187 E/ICEF/BCA, July 1992, p. 10. Agreements concluded after the revised BCA contained this provision. See Annex II.
and shall provide to the premises of the Tribunal the appropriate protection as may be required.

“2. If so requested by the President or the Registrar of the Tribunal, the competent authorities shall provide adequate police force necessary for the preservation of law and order on the premises of the Tribunal or in the immediate vicinity thereof, and for the removal or persons therefrom”. 188

In addition, Article XXV provided:

“The competent authorities shall take effective and adequate action which may be required to ensure the appropriate security, safety and protection of persons referred to in this Agreement, indispensable for the proper functioning of the Tribunal, free from interference of any kind”. 189

111. Agreements establishing United Nations Information Centres in Denmark, Namibia and Cameroon provided for the security and protection of not only the centre but also its staff: “The Government shall exercise due diligence to ensure the security and protection of the premises of the Centre and its staff”. 190

112. Similarly, the agreements establishing UNHCR’s regional office in Venezuela for Northern South America and the Caribbean and branch offices in Poland, the Russian Federation, Romania, Bulgaria, Pakistan, Slovakia and Albania provided that “[t]he Government shall take necessary measures, when required, to ensure the security and protection of the premises of the UNHCR office and its personnel”. 191

113. The agreement between UNDP and Denmark relating to the headquarters of the Inter-Agency Procurement Services Unit (IAPSU) in Copenhagen contained two sections on the security and protection of the unit, in Article III, section 8(a) and (b). Section 8(a) provided: “The appropriate Danish authorities shall exercise due diligence to ensure that the tranquility of the headquarters is not disturbed by any person or groups of persons from attempting unauthorized entry into or creating disturbances in the immediate vicinity of the headquarters seat”. Section 8 (b) provided: “If so requested by the Director of IAPSU, Copenhagen, the appropriate Danish authorities shall provide necessary assistance for the preservation of law and order in the headquarters and for the removal therefrom of persons as requested by the Director of IAPSU, Copenhagen”. 192

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

During the period under review, the agreements concluded by the United Nations establishing interim offices, information centres and UNHCR offices in host States specifically mentioned immunity from censorship of United Nations materials. For example, the agreements establishing United Nations interim offices in Belarus, Armenia, Azerbaijan, Kazakhstan, the Ukraine, Uzbekistan and Georgia provided in Article 14, section 2, that

“[N]o official correspondence or other communication of the United Nations shall be subject to censorship. Such immunity shall extend to printed matter, photographic and electronic data communications and other forms of communications as may be agreed upon between the Parties…”\textsuperscript{193}

This provision was replicated in article XVIII, section 2, of UNICEF’s Model BCA.

Similarly, the agreement between the UNDP and Denmark relating to the headquarters of the Inter-agency Procurement Services Unit (IAPSU) in Copenhagen provided in article V, section 2, that

“[t]he Government shall secure the inviolability of the official correspondence of IAPSU, Copenhagen, and shall not apply any censorship to such correspondence. Such inviolability shall extend, without limitation by reason of this enumeration, to publication, still and moving pictures, films and sound recording dispatched to or by IAPSU, Copenhagen”\textsuperscript{194}

The Model UNHCR Co-operation Agreement\textsuperscript{195} provided for immunity from censorship of United Nations publications in article IX, paragraph 2:

“The Government shall…not apply any censorship to its communications and correspondence. Such inviolability, without limitation by reason of this enumeration, shall extend to publications, photographs, slides, films and sound recordings”\textsuperscript{196}

The majority of agreements establishing UNHCR offices contained this provision.

(b) \textit{Facilities in respect of communications}


\textsuperscript{194} \textit{United Nations Juridical Yearbook}, 1989, p. 58.

\textsuperscript{195} UNHCR/IOM/79/89 of 27 June 1989.

During the period under review, the Office of Legal Affairs advised the chief of the UNDP Field Security Section on the legal basis of the authority of the United Nations to establish and operate telecommunications facilities on the territory of a State. The Office noted that the General Convention does not contain anything entitling the United Nations to install communications facilities without the approval of a Government. That authority comes from the International Telecommunication Convention and the Agreement between the United Nations and the International Telecommunication Union (ITU). Under article XVI of the Agreement, ITU “recognizes that it is important that the United Nations shall benefit by the same rights as the members of the Union for operating telecommunications services”. As far as ITU was concerned, the United Nations had the rights of a member Administration, including, as to radio, that of registering frequencies. However, the United Nations could only operate as an Administration on the territory of a given State by virtue of an arrangement reached with its Government. In seeking an arrangement with a particular Government, the United Nations usually emphasized various factors and sometimes made reference to Article 105, paragraph 1, of the Charter of the United Nations providing that the Organisation shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes. The United Nations also frequently brought to the attention of the Government that, in order to exercise its functions efficiently, it should have direct point-to-point contacts with its duty stations, which could not be effectively done through ordinary communication channels. In a number of cases, the United Nations had stressed the importance of radio communication facilities for ensuring the security and safety of its personnel and had asked Governments to give quick and favourable consideration to a request to install communications facilities for those purposes.

(c) **Immunity from legal process of persons appearing as witnesses before United Nations organs**

(d) **Right of transit and freedom of access to the United Nations headquarters district or conference area**

C. Article 105(2)

1. **Privileges and immunities of representatives of members**

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

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

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198 Ibid.
120. During the period covered by Supplement No. 7, the United States imposed travel restrictions on the staff of certain Missions to the United Nations and their dependants.\(^{199}\) During the period under review, the United States continued to impose those restrictions, imposed travel restrictions on staff of other Missions to the United Nations and their dependants and lifted the travel restrictions on others. There was also a compulsory reduction in the number of staff at the Libyan Mission pursuant to Security Council resolution 748 (1992) of 31 March 1992.\(^{200}\)

121. The Committee on Relations with the Host Country (hereinafter “the Committee”) continued its deliberations on the travel regulations issued by the host country in respect of the personnel of certain Missions, in pursuance of General Assembly resolutions 44/38 of 4 December 1989, 45/46 of 28 November 1990 and 46/60 of 9 December 1991, which urged the host country to continue to bear in mind its obligations to facilitate the functioning of the United Nations and the Missions accredited to it.

122. At the 147th meeting of the Committee on 10 October 1990, Iraq informed the Committee that the United States had imposed, effective 21 September 1990, restrictions on travel undertaken by Iraqi Mission personnel outside a 25-mile radius of Columbus Circle in New York City requiring the use of common carriers or rental automobiles or public overnight accommodation. A travel authorization form had to be submitted to the United States Mission a full two days prior to the date of departure.\(^{201}\)

123. By a note verbale of 7 May 1990, the United States advised the Polish Mission that members of the Mission and their dependants “will enjoy unrestricted travel within the United States” effective immediately.\(^{202}\)

124. During 1991 and 1992 the travel restrictions were lifted on the following: the official personnel assigned to the Mongolian Mission and their dependants, as of 11 March 1991;\(^{203}\) officials of the Government of Nicaragua not permanently accredited to the Nicaraguan Mission, as of 8 March 1991;\(^{204}\) the staff of the Bulgarian Mission and their dependants, effective 1 August 1991;\(^{205}\) the staff of the Albanian Mission and their dependants, effective 13 November 1991;\(^{206}\) and the members of the Belarus and Ukraine Missions, as of 24 April 1992.\(^{207}\) In addition, it was confirmed that there were no travel restrictions in force in respect of members of the Permanent Missions of Armenia, Azerbaijan, Estonia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, Uzbekistan\(^{208}\) and Georgia.\(^{209}\) All restrictions on travel to closed areas in the United States which applied to Russian Federation Mission personnel with the rank of

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200 Paragraph 6(a).
201 A/45/26, at para. 28.
202 A/45/26, at para. 20.
203 A/46/26, at para. 18.
204 Ibid.
206 Ibid, at para. 23.
207 A/47/26, at para. 17.
208 Ibid.
Ambassador, Minister and Counsellor and their dependants were lifted, effective 13 July 1992. Other personnel from the Russian Federation Mission were still required to submit travel notifications to the United States Mission. The United States also lifted the numerical ceilings imposed on staff levels of the Permanent Missions of Belarus, the Russian Federation and Ukraine.

The General Assembly reflected this development in paragraph 4 of its resolution 47/35 of 25 November 1992, by welcoming the “recent lifting of travel controls by the host country with regard to certain missions…and urges the host country to continue to abide by its obligations to the United Nations and the missions accredited to it”.

During the period under review, Libya referred the problems faced by the Mission to the Committee. In addition to the travel restrictions imposed by the host country in 1988, concerns were raised relating to the issuance of entry visas to officials to enable them to attend United Nations meetings, difficulties in obtaining multiple entry visas for members of the Mission, a ceiling on the Libyan Mission’s liquid assets and a reduction of Mission personnel. In relation to the last of these issues, Libya informed the Committee at its 155th meeting on 22 April 1992, that the United States had reduced the Libyan Mission personnel in New York by twenty-five per cent. The United States replied that Security Council resolution 748 (1992) of 31 March 1992, paragraph 6, required all States to reduce significantly the number and the level of the staff at Libyan diplomatic Missions and consular posts throughout the world. In compliance with that resolution, the United States Mission had requested the Libyan Mission to reduce the size of its mission by three persons by 25 April 1992.

The Committee also considered the complaints expressed by Iraq during the period under review. Iraq raised problems that arose from the withdrawal of multiple entry visas for Iraqi Mission personnel and the freezing of the Mission’s bank accounts to the Chairman of the Committee on 11 September 1990.

At the 147th meeting of the Committee on 10 October 1990, Iraq stated that the United States authorities had refused to allow a special Iraqi aircraft bearing the Iraqi Foreign Minister and the members of the Iraqi delegation to the forty-fifth session of the General Assembly to land in New York. Subsequently, Iraq decided not to participate in the work of the General Assembly at the ministerial level. The United States stated that, when informed of the Foreign Minister’s plans, the United States had suggested that the Foreign Minister travel by commercial means to New York. The Headquarters Agreement provided that the United States shall not impose any impediment on travel to or from the Headquarters district, but did not oblige the United States to allow special
flights. Ninety foreign ministers had travelled by commercial flights to the current session of the General Assembly. Therefore, the decision by the United States did not restrict the Iraqi Foreign Minister’s participation in the deliberations of the General Assembly.216

129. At the 149th meeting of the Committee on 26 March 1991, Iraq referred to the problems faced by its Mission and, in particular, to those resulting from the freezing of the Mission’s assets, which had occurred pursuant to Security Council resolutions 661 (1990) of 6 August 1990 and 670 (1990) of 25 September 1990.217 The United States informed the Committee that the United States Mission had recently delivered a note to the Iraqi Mission clarifying the key items mentioned by Iraq and expressed the view that the matter had been resolved.218 However, at the 151st meeting of the Committee on 8 July 1991, Iraq observed that the Mission continued to encounter a number of problems as a result of the freezing of the Mission’s assets. The Iraqi Mission had sent a note verbale to the United States Mission requesting that the funds necessary for the administrative and similar expenses relating to the functioning of the Mission be unfrozen. Those funds would not be used for the purpose covered by the Security Council resolutions.219 The United States responded that a checking account had been licensed for the Iraqi Mission to permit it to carry out its official functions within the United States. The checking account was not frozen. Replenishments to the account were to be from funds brought in from outside the United States. The United States regarded this requirement as reasonable and consistent with its obligations under paragraph 4 of Security Council resolution 661 (1990) of 6 August 1990 and paragraph 9 of Security Council resolution 670 (1990) of 25 September 1990, which required States to freeze Iraqi assets.220 Iraq continued to protest the freezing of the Mission’s bank accounts throughout the rest of the period under review.221

130. The Office of Legal Affairs, in a memorandum to the Chief of Protocol, advised on whether it would be legally proper “for a Permanent Representative to the United Nations or even a government official, such as the Minister for Foreign Affairs, to bestow a diplomatic rank on an individual who is not a citizen of that country”.222 The General Convention does not directly address the question of the nationality of the members of the staff of a Mission. However, it does specify, in article IV, section 15, that the provisions on the privileges and immunities of representatives of members “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 a representative”.

131. The Office of Legal Affairs noted that the 1961 Vienna Convention on Diplomatic Relations provides, in article 7, that the sending State may, with certain limitations, freely appoint the members of the staff of the Mission. Article 8, paragraph 1,

216 A/45/26, at paras. 27 and 30.
217 A/46/26, at para. 25.
219 Ibid, at para. 27.
220 Ibid, at para. 28.
221 Ibid, at para. 29 and A/47/26, at para. 20.
stipulates that “members of the diplomatic staff of the mission should, in principle, be of the same nationality as the sending State”. Article 8, paragraph 2, provides that “members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time”. In addition, article 8, paragraph 8, specifies that the receiving State “may reserve the same right”, i.e., the right to express its consent, with regard to nationals of a third State who are not also nationals of the sending State.223

132. The Office of Legal Affairs also referred to article 73 of the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character, which was not then in force, which embodied almost analogous principles and rules on the question of composition of missions and nationality of diplomatic staff accredited to international organizations. In light of those observations, the Office advised it was “legally permissible for Member States to appoint members of diplomatic staff of their missions accredited to the United Nations, both nationals of the host State and/or those of the third State. However, in the former case, i.e., nationals or permanent residents of the host State, the consent of such State would seem to be a necessary prerequisite for such an appointment”.224

133. The Office of Legal Affairs then addressed the Chief of Protocol’s second query, namely, whether it would be correct for the United Nations to grant diplomatic United Nations grounds passes to members of missions who in his/her view did not have a diplomatic background or diplomatic passports. The Office advised “it cannot be said that the bearer of a diplomatic passport is automatically entitled to diplomatic status; nor can it be said that the holder of a normal passport cannot be entitled to such status. In addition, neither the [General Convention] nor the 1947 Headquarters Agreement provides for precise characteristics of a diplomatic agent accredited to the United Nations”. The Office advised that United Nations diplomatic grounds passes should be issued only to members of the permanent mission’s staff “who genuinely fulfil diplomatic functions and tasks, and are not involved in the administration and technical servicing of the mission”.225

134. At the 161st meeting of the Committee on 15 October 1993, the Russian Federation drew the Committee’s attention to the security measures that had recently been taken by the United Nations Secretariat due to the bomb explosion at the World Trade Center in February 1993226 concerning access to United Nations premises. It was noted that some of those measures hampered the work of Missions accredited to the Organization. Access to the United Nations garage by members of Missions had been impeded. Vehicles of diplomats had been inspected. The closure of large sections of the garage and the prohibition of parking on the premises by Mission personnel created substantial difficulties for Missions located far from the United Nations. Cyprus and

223 Ibid, at p. 403.
224 Ibid, at p. 404.
225 Ibid, at p. 405.
226 On Friday 26, 1993, a bomb exploded in the underground garage of One World Trade Center. Six people were killed and more than 1,000 were injured.
Costa Rica also noted their concerns on this matter.\textsuperscript{227} The United Nations said that measures taken by the Secretariat had been prompted by the recent events in New York and that the Secretariat’s decision to limit parking in the United Nations garage had inconvenienced all Missions. The New York City Police Department had been asked to assist the United Nations with a security survey of the United Nations Headquarters complex, the results of which would allow the Secretariat to make some modifications in the control of the garage area. The United States suggested that the concerns and observations of the members of the Committee be made known to the United Nations Secretariat directly.\textsuperscript{228}

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

135. In a memorandum to the United Nations Office in Vienna, the Office of Legal Affairs advised on the question of the closure of the embassy and Permanent Mission of a Member State in Vienna.\textsuperscript{229} The Office of Legal Affairs advised that there had been no case of the closure of a Permanent Mission at the request of the host country in New York and none of the existing legal instruments - the General Convention, the 1967 United Nations Industrial Development Organization (UNIDO) Headquarters Agreement or the 1961 Vienna Convention on Diplomatic Relations – regulated in detail the procedures to be followed in the case of a closure of a mission on the initiative of the host country. Nor was the matter regulated in the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character, which was not then in force.

136. In the circumstances, the Office of Legal Affairs advised that the provisions of the 1967 UNIDO Headquarters Agreement concerning the procedure to be followed if Austria requested the departure from its territory of a representative of a Member State should be applied \textit{mutatis mutandis}. The procedure required the prior approval of the Federal Minister for Foreign Affairs of the Host State, which could only be given after consultation with the Government of the Member State concerned. The Office of Legal Affairs therefore advised that the appropriate procedure would be for the United Nations Office in Vienna to inform the Government of the Member State concerned through the established channels of the intended action against its Mission in Vienna. At the same time, the Government of the Host State should also be advised that appropriate consultation should take place with the Government of the Member State concerned.\textsuperscript{230}

137. The United States informed the Committee at its 159\textsuperscript{th} meeting on 27 January 1993, that it had requested five diplomats from three Permanent Missions to depart the United States in 1992, because, after an extended warning period, the debts of their respective missions remained unsatisfied. Two of the diplomats concerned had departed

\textsuperscript{227} A/48/26, at paras. 29-31 and 33.
\textsuperscript{228} Ibid, para. 32.
\textsuperscript{229} United Nations Juridical Yearbook, 1993, pp. 405-406.
\textsuperscript{230} Ibid, at p. 406.
and the remaining three were expected to leave shortly. The United States had consulted with the United Nations on this matter.\textsuperscript{231}

(d) \textit{Privileges and immunities}

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

(ii) \textit{Personal inviolability and immunity from arrest}

138. At the 148\textsuperscript{th} meeting of the Committee on 14 November 1990, Cuba informed the Committee of hostile demonstrations which, it said, had been held regularly for the past eleven months in front of its Mission. During those demonstrations, there had been repeated incidents of verbal abuse and physical aggression against members of the Mission and their families in a pattern of harassment and intimidation. Cuba had repeatedly reported such acts to the host country and the latter had promised to contain them in the future. Cuba had also brought the issue to the attention of the Secretary-General. The United States expressed concern over the incidents and assured the Committee that its authorities were working closely to deter any illegal action by demonstrators and that it would not tolerate unlawful demonstrations.\textsuperscript{232}

139. During its meetings in 1991, the Committee considered Cuba’s allegation that the weekly demonstrations held in front of its Mission, which had resulted in instances of provocative acts against members of the Mission, were essentially a camouflage for a policy of intimidation of members of the Mission and their families. Cuba and the United States disagreed over whether the host country’s efforts to deal with the demonstrations were adequate.\textsuperscript{233} Such disagreement continued throughout 1992.\textsuperscript{234}

140. In 1993, the Committee was informed of several incidents against Mission personnel, including the robbery on 13 November of a Chinese delegate to the General Assembly’s forty-seventh session,\textsuperscript{235} the 1992 attack on the Iranian Mission where a member of the Mission had been taken hostage\textsuperscript{236} and a case of car-jacking involving an official of the German Mission.\textsuperscript{237} The United States Mission and the New York City Commission for the United Nations, the Consular Corps and International Business co-hosted a seminar on “Survival in New York” which took place at United Nations Headquarters on 13 May 1993. It addressed, among other matters, issues of the security of missions and the personal safety of diplomats.\textsuperscript{238}

141. The Committee continued its consideration of Cuba’s allegation that demonstrations held regularly in the proximity of its Mission constituted a deliberate

\textsuperscript{231} A/48/26, at para. 37. See also section on financial indebtedness of Permanent Missions and their personnel below.
\textsuperscript{232} A/45/26, at paras. 67-68.
\textsuperscript{233} A/46/26, at paras. 10-17.
\textsuperscript{234} A/47/26, at paras. 53-54.
\textsuperscript{235} A/48/26, paras. 10-12.
\textsuperscript{236} Ibid, at para. 14. The member was freed by United States authorities.
\textsuperscript{237} Ibid, at para. 17.
\textsuperscript{238} Ibid, at paras. 15 & 18.
campaign of harassment against Mission personnel. Cuba alleged that hostile behaviour was also directed at the children of Mission personnel and the level of such demonstrations was increasingly threatening. In response, the United States said that, after listening to Cuba’s complaints and viewing a videotape of a “typical demonstration” prepared by the Cuban Mission, there was no evidence of any correlation or campaign of harassment. When crimes were committed in the presence of police, arrests were made. As such, on 4 October 1993, three demonstrators were arrested for disorderly conduct during an anti-Castro demonstration.239

142. The Russian Federation drew the Committee’s attention to his Mission’s concerns regarding the security of the Russian Mission housing complex in Riverdale, New York. The children in the housing complex were being subjected to harassment by other children in the neighbourhood which had turned into fights and confrontation.240

143. At the 166th meeting of the Committee on 9 September 1994, Cuba informed the Committee of an incident which occurred at midday on 30 August 1994. According to Cuba, demonstrators unsuccessfully attempted to storm the Mission and subsequently chained and padlocked the Mission entrance, preventing the entry and exit of persons to and from the premises of the Mission. Several diplomatic officials of the Mission investigating the demonstration were attacked by the demonstrators and, while attempting to defend themselves, four officials were arrested, handcuffed and then placed in police vehicles and cells together with demonstrators who had also been arrested by New York police officers.241

144. The United States disagreed with Cuba’s account of the incident on 30 August 1994. Reports from the New York City Police Department, corroborated by a videotape of the altercation, showed the scuffle which ensued between demonstrators, Mission personnel and the police. The four members of the Cuban Mission who were apprehended were released by the New York City Police Department once the United States authorities had become aware of the situation and verified their diplomatic status.242

145. Cuba also informed the Committee of a further incident on 5 September 1994, when Cuban officials were insulted and threatened as they left the building. A bottle was hurled at the Head of the Cuban Interests Section in Washington as he entered the Mission premises. A diplomat of the Cuban Mission was also threatened with physical violence. This had all taken place in the presence of New York City Police Department officers, who had tried to prevent the Cuban officials from leaving the Mission premises, stating their safety was at risk, rather than ordering the perpetrators to disperse.243

(iii) Immunity from legal process

146. At the 149th meeting of the Committee on 26 March 1991, a representative of a Permanent Mission informed the Committee that she had been issued with two traffic violation tickets at the same time for alleged moving violations and had subsequently received a Court summons.\(^{244}\)

147. The United States, with reference to its note verbale circulated on 1 February 1989 to Permanent Missions, observer offices and the Secretariat of the “proper procedures to be followed regarding citations for motor vehicle infractions”, stated that the valid issue of traffic citations was not an infringement of diplomatic privileges and immunities and that prompt payment was expected of all fines associated with such citations. The failure of diplomats to comply with traffic laws and regulations of the host country was inconsistent with article 41 of the 1961 Vienna Convention on Diplomatic Relations, which provided for the duty of all persons enjoying privileges and immunities to respect the laws and regulations of the receiving State. Therefore, the issuance of a valid traffic citation could not be considered an infringement of diplomatic privileges and immunities. However, the United States said that members of the diplomatic community, who enjoyed immunity from legal process, would not be required to appear in judicial proceedings or to submit personally to local civil or administrative jurisdiction. Nevertheless, immunity from jurisdiction did not imply that the United States was obliged to continue to grant the privilege of operating a motor vehicle to those who abused that privilege.\(^{245}\)

148. The Legal Counsel suggested that the complaint of the representative of a Permanent Mission be discussed with the Office of Legal Affairs of the Secretariat.\(^{246}\) There was no further reporting of this issue during the rest of the period under review.

(iv) **Currency or exchange facilities**

(v) **Legal status of premises**

149. During the period under review, the problem of financial indebtedness of Permanent Missions and representatives came under increased attention in a way that directly affected the legal status of premises.

150. The United States informed the Committee at its 155th meeting on 22 April 1992 that a United States court had rejected the argument of the Government of the United States regarding the inviolability of premises of a Permanent Mission. The court had issued a decision permitting United States marshals to evict a Mission from its premises for non-payment of rent. If the decision were affirmed on appeal, it would have negative consequences for the entire diplomatic community.\(^{247}\)

\(^{244}\) A/46/26, at para. 62.

\(^{245}\) Ibid, at para. 63.

\(^{246}\) Ibid, at para. 64.

\(^{247}\) A/47/26, at para. 34.
151. The Legal Counsel stated at the same meeting that the problem of indebtedness risked putting into jeopardy some of the traditional privileges and immunities enjoyed by diplomats, in particular, the inviolability of the premises of Missions accredited to the United Nations. He appealed to the parties concerned in the specific case mentioned to take the necessary steps in all forums, including national courts, to safeguard the important principles of diplomatic immunity and inviolability, of which the inviolability of the premises of Missions was an important part, while at the same time removing the grounds for allegations of abuse of those rights. He strongly appealed to Missions to be mindful that they were expected to pay their debts in full and to ensure that diplomatic privileges and immunities were not used to avoid paying debts.248

152. The Legal Counsel, in a letter to the Counsellor of a Permanent Mission dated 14 July 1992, addressed the legality of a move to evict the Mission from its premises as a result of the Mission’s indebtedness.249 The Legal Counsel observed that, pursuant to paragraph 2 of Article 105 of the Charter of the United Nations, “representatives of the Members of the United Nations….shall…enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization”. These provisions were developed and specified in the General Convention, specifically in article IV, section 11(a), (b) and (g), and in the 1947 Headquarters Agreement, in article V, section 15. Article IV, section 11(g), of the General Convention, provides that representatives of Members shall, while exercising their functions, enjoy “such other privileges, immunities and facilities…as diplomatic envoys enjoy…” Article V, section 15 of the Headquarters Agreement provides that resident representatives of the United Nations shall be entitled in the territory of the United States to the same privileges and immunities as it accords to diplomatic envoys accredited to it. In accordance with paragraph 1 of article 22 of the 1961 Vienna Convention on Diplomatic Relations, which codifies the privileges and immunities of diplomatic envoys, “the premises of the mission shall be inviolable”. Paragraph 3 of the same article further requires that “the premises of the mission, their furnishings and other property therein…shall be immune from search, requisition, attachment or execution”.250

153. The Legal Counsel further noted that the duty of the host country to respect the inviolability of Missions accredited to the United Nations was also affirmed in a statement made by the then Legal Counsel of the United Nations at the 92nd meeting of the Committee which described both the origin and the scope of the privileges and immunities of the then Permanent Observer Mission of a Member State to the United Nations. In particular, he had observed that, if inviolability “is to have any meaning, it necessarily extends to the premises of the Mission and the residences of its diplomatic staff.”251 The current Legal Counsel further observed that “inviolability of mission premises is one of the most fundamental norms of the law of diplomatic relations and any disregard of it could have the most serious repercussions”.252

248 Ibid, para. 35.
250 Ibid, p. 492.
251 Ibid.
252 Ibid.
154. During the period under review, the problem of financial indebtedness of Permanent Missions and their personnel was considered at length by the Committee.

155. At the 149th meeting of the Committee on 26 March 1991, the Committee focused on various aspects of the problem of financial indebtedness. The United States observed that one of the most vexing problems facing Missions to the United Nations and many staff members of Missions was the problem of what to do when, for various reasons, funds for the payment of rents, salaries and other expenses were not received by Missions from the home Government.\(^\text{253}\)

156. At the 150th meeting of the Committee on 30 April 1991, the Chair informed the Committee that an open-ended Working Group would be established to deal with the problem of financial indebtedness. The Working Group decided to consider short-term as well as long-term measures, in addition to immediate practical steps of an urgent character for missions in distress. Among matters to be discussed by the Working Group would be the question of health insurance programmes for mission personnel, since medical expenses represented a great source of financial indebtedness.\(^\text{254}\)

157. At its 151st meeting, on 8 July 1991, the Committee adopted by consensus the proposed text of a letter drafted by the Working Group on the matter addressed to the Secretary-General of the United Nations. The letter, forwarded to the Secretary-General the same day, drew his attention to the growing tendency of indebtedness among a number of Permanent Missions to the United Nations which warranted immediate and concrete action for urgent assistance. It informed the Secretary-General that the main issue discussed by the Committee was the general role of the United Nations in responding to the problem of indebtedness, raising many “legal, administrative and humanitarian questions”. The letter expressed the hope that relevant United Nations Secretariat offices and departments would provide assistance in the matter.\(^\text{255}\)

158. In a letter dated 24 July 1991 to the Chairman of the Committee (in response to the 8 July letter), the Secretary-General expressed the view that, in order to find workable solutions to those problems, certain legal and practical difficulties would have to be overcome with the active assistance of all concerned, including the competent authorities of the host country. The interested offices and departments of the United Nations Secretariat were examining possible solutions to the problems of indebtedness.\(^\text{256}\) The Chair of the Working Group informed the Committee that the Legal Counsel, on 2 October 1991, had requested the major United Nations duty stations to provide information on how the problem of indebtedness was handled in those locations and had addressed a similar request to the observer for the European Economic Community on

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\(^{253}\) A/46/26, at para. 39.

\(^{254}\) Ibid, at para. 44.

\(^{255}\) Ibid, at paras. 49-50; see also annex I for the complete text of the Chair’s letter.

\(^{256}\) Ibid, see annex II for text of the Secretary-General’s letter.
how cases of indebtedness were handled in Brussels. The Committee commended the
efforts undertaken by the Secretary-General and the Legal Counsel on the matter.257

159. At its 153rd meeting, on 15 November 1991, the Committee approved, inter alia, a
recommendation stressing the importance of the work of its Working Group concerning
problems of financial indebtedness.258

160. In 1992 the problem of indebtedness was seen by the host country as a priority
issue. It was noted at the Committee’s 155th meeting on 22 April 1992 that, when a
diplomat or a diplomatic mission failed to pay debts, that reflected poorly on the entire
United Nations community. In the view of the United States, a failure to satisfy debts
could give rise to the expulsion of members of a mission on the grounds of abuse of
residence. Diplomats at two Permanent Missions had been advised that they would be
directed to leave the United States if their debts were not satisfied.259 This led to a
discussion on the eviction of a Mission from its premises for non-payment of rent.260

161. At its 158th meeting on 27 October 1992, the Committee approved a
recommendation reminding missions and their personnel of their financial obligations,
while expressing strong support for the continued efforts of the Working Group on
Indebtedness to find a solution to the problem.261

162. The General Assembly noted in resolution 47/35, adopted on 25 November 1992,
“the establishment by the Committee of the working group to consider problems of
financial indebtedness and stresse[d] the importance of efforts undertaken in this
regard”.262

163. At its 161st meeting on 15 October 1993, the United States reported that the
chronic indebtedness of missions and individuals had risen to more than $5 million and
remained a very serious problem for the host country. Of that figure, $4 million
represented indebtedness of missions themselves: $100,000 was owed by individual
mission members; and $1.2 million was owed by members of missions or Secretariat
officials who had departed the United States over the past two years, leaving their
personal debts unpaid.263 It had become difficult to persuade creditors not to seek relief in
the civil court system and, although the United States continued to intervene on behalf of
missions and individuals with diplomatic privileges and immunities, it also had an
obligation to protect the interests of its citizens and creditors who were unable to obtain
legal relief. It was noted that, when a diplomat, a diplomatic mission or a staff member of
the Secretariat failed to pay debts, this reflected poorly on the entire United Nations
community. During the year, the Working Group on Indebtedness continued its efforts to

257 Ibid, at paras. 57-58.
258 Ibid, at para. 76(g).
259 A/47/26 at para. 34. See also section (c) above.
260 Ibid, at paras. 34-35. See also section (d)(v) below.
261 Ibid, at para. 55(e).
262 Paragraph 4.
263 A/48/26 of 12 November 1993, at para. 44.
solve the problem.  

164. At its 162nd meeting on 9 November 1993, the Committee approved a recommendation stressing the importance and urgency of its Working Group’s efforts concerning financial indebtedness and reminded permanent missions, their personnel and Secretariat personnel of their obligations.

165. The General Assembly, in its resolution 48/35 of 9 December 1993, voiced its concern “that the amount of financial indebtedness resulting from non-compliance with contractual obligations of certain missions accredited to the United Nations has increased to alarming proportions, reminds all permanent missions to the United Nations, their personnel and Secretariat personnel of their responsibilities to meet such obligations, and expresses the hope that the efforts undertaken by the Committee, in consultation with all concerned, will lead to a solution of this problem”.

166. At the 165th meeting of the Committee on 17 June 1994, the United States reported that financial indebtedness of missions and individuals had risen to $5.3 million as at 1 June 1994. Forty-one per cent of this sum was owed to banks and other financial institutions. As a result of the poor payment record of some members of the United Nations diplomatic community, one prominent bank had decided against making any further loans to missions or diplomats and it was becoming more difficult for diplomats to obtain private leases in New York. Switzerland also reported that the problem of financial indebtedness of diplomatic personnel in Geneva had developed to such a degree that it harmed the image of diplomatic personnel and the United Nations itself.

167. As an essential element of the indebtedness problem lay in the costs associated with health and dental care, the Working Group on Indebtedness was requested to look into the question of acquiring health and dental insurance for diplomats. On 14 September 1994, the Working Group convened an open-ended meeting with prospective providers of health and dental services for the diplomatic community, during which various proposals were offered for decision by missions. The Committee was informed that missions had been advised to make their own choice and to contact the providers directly.

168. At its 168th meeting, on 10 November 1994, the Committee approved a recommendation stressing the importance and urgency of its Working Group’s efforts concerning financial indebtedness and reminded Permanent Missions, their personnel and Secretariat personnel of their obligations. It further noted that the issue could require a system-wide response, as it also arose in other host cities to the United Nations, and it recommended that the Secretary-General prepare a report on the problem for review by the Committee in 1995.

264 Ibid.
265 Ibid, at para. 58(e).
267 Ibid, at para. 32.
268 Ibid, at paras. 33-34, 38 and 70-72.
269 Ibid, at para. 73(e).

170. During the period under review, the United States Mission issued a note verbale dated 1 February 1989, which advised Permanent Missions, observer offices and the Secretariat of “proper procedures to be followed regarding citations for motor vehicle infractions”. According to the note, the United States Mission, as of 15 February 1989, would no longer intervene with local jurisdictions to request dismissal of valid moving violations and all other non-parking citations. The prompt payment of all fines associated with such citations was expected. The note further stated that “the privilege to drive in the United States may be suspended or revoked when accumulation of citations indicates that an individual is a dangerous driver”. The Legal Counsel informed the Committee that the Secretariat had also received a note verbale dated 1 February 1989 from the United States Mission on this issue. In response, the Secretariat had on 13 March 1989 transmitted to the United States Mission a note verbale which in particular stated that the requirement of the payment of fines and the punitive sanction or threat of punitive sanction of suspension or revocation of licence were measures tantamount to an exercise of jurisdiction by the host country. Such a requirement was at variance with article 31 of the 1961 Vienna Convention on Diplomatic Relations, as well as with the intent of both the General Convention and the Headquarters Agreement. The Secretariat had therefore formally reserved its position with regard to the procedures set out in the note of 1 February 1989.

171. The United States subsequently clarified that the subject of its note verbale of 1 February 1989 had been moving violations. Moving traffic violations and dangerous driving practices were inconsistent with the provisions of article 41, paragraph 1, of the Vienna Convention on Diplomatic Relations, providing for the duty of all persons enjoying privileges and immunities to respect the laws and regulations of the receiving State. Therefore, the issuance of a valid traffic citation should not be considered an infringement of diplomatic privileges and immunities. While the United States Mission would no longer intervene for the dismissal of each citation, diplomatic personnel would not be required to appear in court in person to respond to such citations.

172. On 16 June 1989, New York City officials presented a talk on “[m]atters related to use of motor vehicles, including parking problems”. Among various aspects of the use of motor vehicles, particular reference was made to the parking problems in the City of New York.

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270 A/44/26, at para. 31.
271 A/44/26, at para. 37.
173. At the 149th meeting of the Committee on 26 March 1991, a representative of a Permanent Mission informed the Committee that she had been issued with two traffic violation tickets at the same time for alleged moving violations and had subsequently received a Court summons. The Legal Counsel reminded the Committee that the United Nations Secretariat had formally reserved its position with regard to the procedures set out in the United States Mission’s note verbale circulated on 1 February 1989.274

174. In October 1989, the Secretariat issued a circular note to United Nations Missions that parking decals listing more than one vehicle per delegate would be issued in order to allow the delegate to use his/her replacement car on an ad hoc basis when the one bearing the “D” plates could not be used. The note provided information for delegates on how to effect the changes.275

175. At the 163rd meeting of the Committee on 7 December 1993, at the request of the Russian Federation and France, the Committee focused its deliberations on press reports in New York about a new parking programme for the diplomatic community which included, inter alia, non-renewal of parking privileges and diplomatic licence plates for violators of parking regulations.276 In that regard, several States complained about the lack of parking space allotted to their missions and about other vehicles’ use of the areas reserved for diplomatic parking. It was noted that the legal implications of proposed changes should be disclosed to Missions prior to their adoption.277 Mali and the Russian Federation expressed concern about repeated thefts of their Mission’s vehicles. The Russian Federation also stated that its vehicles were being fined for not having inspection stickers which, according to the host country’s Mission, were not needed for diplomatic cars.278 Switzerland, while acknowledging the right of New York authorities to implement enforcement measures, raised concern over a proposed distinction between diplomatic and consular licence plates.279

176. In response, the United States noted that the measures in question were only proposals, which would be reviewed in consultation with the Committee and regretted the inaccurate media coverage in that regard. It requested delegations to address their concerns in writing to the United States Mission or to call the Mission when parking problems required immediate action.280

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

177. At the 145th meeting of the Committee on 30 April 1990, the observer of the Permanent Observer Mission of the Palestinian Liberation Organization to the United

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274 A/46/26, at para. 64. See also section (iii), immunity from legal process, above.
275 A/45/26, at para. 46.
276 A/49/26, at paras. 40-62.
277 Ibid, at para. 42.
278 Ibid, at para. 55.
279 Ibid, at para. 50.
280 Ibid, at paras. 41, 45, 51 & 62.
Nations in New York brought to the Committee’s attention a problem that had arisen in connection with the issuance of visas for the members of the Palestinian delegation to the eighteenth special session of the General Assembly. Although most members of the delegation had been granted visas, a delay had occurred with regard to two persons, one of whom had never received a visa. The United States said that there had been bilateral contacts with regard to the visa that had not been issued, but took note of the comments made by the observer of Palestine and promised to investigate the matter further. The matter was not raised again during the rest of the period under review.

3. Privileges and immunities of officials of the Organization

(a) Categories of officials

178. The Office of Legal Affairs was requested to advise as to the status of members of the United Nations Volunteers, in particular, whether they are considered as “officials” or as “experts on mission” for the purposes of the privileges and immunities of the United Nations. The Office of Legal Affairs advised that United Nations Volunteers enjoyed the same privileges and immunities as those enjoyed by a United Nations official in the country of service.

179. The United Nations Volunteers programme was established by the General Assembly in its resolution 2659 (XXV) of 7 December 1970, as an additional source for providing technical assistance to developing countries in the form of middle-level expertise under volunteer conditions of service. While volunteers are not strictly speaking staff members, they are assigned by the United Nations to assist in the carrying out of United Nations-assisted projects or programmes in developing countries. The volunteers have substantially the same terms of service as technical assistance experts, who are regarded as officials of the United Nations. Under the Standard Basic Assistance Agreement (SBAA) usually concluded between UNDP and a Government receiving UNDP assistance (which includes the services of United Nations Volunteers), the Government agrees to grant these persons the same privileges and immunities as are accorded to officials of the United Nations. Paragraph 4(a) of article IX of the SBAA provides that the “Government shall grant all persons, other than Government nationals employed locally, performing services on behalf of the UNDP,...the same privileges and immunities as officials of the United Nations,...under section 18” of the General Convention. Therefore, in the country of service, the individual volunteer enjoys the same privileges and immunities as those enjoyed by a United Nations official.
(b) Privileges and immunities

(i) General provisions

(ii) Qualification or extension of specific privileges and immunities

180. The Secretary-General, in a note to the Permanent Representative of a Member State, raised with the Permanent Representative the additional criteria which had been introduced by the United States authorities with respect to the issuance of G-4 visas to the immediate family of staff members holding G-4 visa status. Those additional criteria, which would have to be met by the close relatives in question in order to be eligible for G-4 visa status, were in contravention of section 18(d) of the General Convention, which provides that officials of the United Nations shall “be immune, together with their spouses and relatives dependant on them, from immigration restrictions and alien registration”. The Secretary-General requested renewed and urgent consideration of the matter by the competent authorities with a view to reinstating the policy which prevailed prior to the changes.

i. Immunity from legal process

181. In response to an inquiry by UNICEF as to whether it should waive immunity in the case of a UNICEF staff member to enable her to testify before a commission of inquiry appointed by national authorities to investigate an incident in which she was one of the victims, the Office of Legal Affairs advised that UNICEF should not waive immunity and therefore the staff member in question should not testify before the commission of inquiry. The staff member was, at the time of the incident, travelling on official business of the Organization and thus was immune from legal process in accordance with section 18(a) of the General Convention. The Secretary-General had the right and duty under section 20 of the General Convention to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and when it could be waived without prejudice to the interests of the Organization. The Office of Legal Affairs nevertheless advised that, taking into account all relevant circumstances of the particular incident, the official’s immunity should not be waived. At the same time, the Office of Legal Affairs was of the view that the commission of inquiry had been entrusted with the important task, among other things, of considering and recommending measures to adopt to prevent the recurrence of such incidents. Therefore UNICEF should cooperate with the commission and provide it, to the extent possible, with information that could facilitate its work.

182. The Office of Legal Affairs, in a letter to a judge of the host State court, referred to a Notice of Motion for Default Judgment addressed to the United Nations and certain current or former senior officers of the Organization with respect to a claim submitted against them and advised that United Nations officials were immune from legal process under section 18(a) of the General Convention and that the Organization was maintaining

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the immunity of the officials in question. The Notices would, therefore, be returned to the court.291

183. In a memorandum to the Travel Unit, Transportation Section, the Office of Legal Affairs advised that the detention and questioning at Kennedy Airport in New York of United Nations staff members on official United Nations business was in contravention of section 18(a) of the General Convention. Certain restrictions had been imposed by the United States on air transportation to Lebanon. Those restrictions prohibited air transportation between the United States and Lebanon and the sale in the United States by any airline or its agent of tickets for passenger air transportation with a stop in Lebanon. The in-house United Nations travel agency had arranged for official travel by United Nations officials to Lebanon by issuing tickets to Amman or Damascus with a ticket change in Europe to Beirut. The agency also issued tickets to staff members of the Organization for a Paris-Damascus flight with a stop in Beirut. Staff members on such flights had, at times, been detained at Kennedy Airport and questioned by United States authorities. Pursuant to section 18(a) of the General Convention, United Nations staff members are immune from legal process for acts performed in their official capacity. Therefore, the Office of Legal Affairs advised that those staff should not be detained or questioned by the United States authorities, unless such immunity had been expressly waived by the Secretary-General.292

ii. Exemption from national income taxation

184. During the period under review, the Secretary-General reported that a number of States continued to impose taxes on the salaries of locally recruited officials.293 Section 18(b) of the General Convention provides that officials of the Organization shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations. The Secretary-General recalled that the rationale for this provision is to assure equality of treatment for all staff members, irrespective of their nationality, and to guarantee that funds contributed by Members of the Organization to its budget are not diverted to individual States by means of revenue-raising measures such as an income tax.294

185. In his report to the forty-fourth session of the General Assembly,295 the Secretary-General noted that Egypt had enacted legislation whereby staff members of international organizations who were Egyptian nationals were required to obtain, for a considerable fee, work permits. The United Nations stated that such a fee amounted to a direct tax on the emoluments of staff members of international organizations and as such was contrary to section 18(b) of the General Convention and section 19(b) of the Convention on the Privileges and Immunities of the Specialized Agencies. The Egyptian authorities were...
requested to bring the legislation into conformity with the two Conventions.\textsuperscript{296} Egypt had not complied with this request by the end of the period under review.

186. In 1988, the tax authorities of the Republic and Canton of Geneva, Switzerland, decided to apply a global-rate system (taux-global) to the taxable earnings of staff members of the United Nations and the specialized agencies in Geneva holding short-term contracts, thus taking into account the exempted income earned by such officials in determining the rate of tax on earnings derived from other sources. The decision appeared to be based on non-recognition of that category of employees as officials in the United Nations common system. The Secretary-General took action in respect of this issue by sending a letter to the President of the Swiss Confederation referring in particular to the right of the organizations freely to determine the categories of their personnel whom they considered to be officials. In May 1989, the Head of the Federal Department for Foreign Affairs informed the Secretary-General that the Federal Council had requested the State Council of the Republic and Canton of Geneva to desist from applying the global-rate system to the taxable income of officials holding short-term contracts and that the Geneva Council of State had acceded to this request.\textsuperscript{297}

187. In his report to the forty-fifth session of the General Assembly,\textsuperscript{298} the Secretary-General reported that Zimbabwe continued to levy taxes on salaries paid by the United Nations to locally recruited staff members and that such actions could not be considered as being in conformity with the provisions of section 18(b) of the General Convention. Numerous demarches with the Zimbabwean Mission to the United Nations had been made on this issue.\textsuperscript{299} In his report to the forty-sixth session of the General Assembly,\textsuperscript{300} the Secretary-General reported that Zimbabwe had decided to discontinue the taxation of locally recruited United Nations staff.\textsuperscript{301}

188. In his report to the forty-sixth session of the General Assembly\textsuperscript{302}, the Secretary-General reported that in 1990 the Hungarian authorities had introduced a policy envisaging that locally recruited Hungarian nationals, in particular those recruited by the UNHCR branch office in Budapest, should pay taxes on the salaries and emoluments paid to them by the United Nations.\textsuperscript{303} The United Nations informed the Hungarian authorities that their policy could not be reconciled with section 18(b) of the General Convention to which Hungary had been a party since 30 July 1956. The United Nations expressed the hope that the policy would be reviewed by the competent authorities with a view to reconciling Hungary’s internal domestic legislation and practice with its international obligations.\textsuperscript{304} In his report to the forty-seventh session of the General Assembly,\textsuperscript{305} the Secretary-General reported that the competent Hungarian authorities had decided that

\textsuperscript{296} Ibid, at para. 18.
\textsuperscript{297} Ibid, at para. 19.
\textsuperscript{299} Ibid, at para. 21.
\textsuperscript{300} A/C.5/46/4 of 1 October 1991.
\textsuperscript{301} Ibid, at para. 16.
\textsuperscript{302} A/C.5/46/4 of 1 October 1991.
\textsuperscript{303} Ibid, at para. 15.
\textsuperscript{304} Ibid.
\textsuperscript{305} A/C.5/47/14 of 15 October 1992.
Hungarian nationals recruited by the UNHCR branch office at Budapest would be granted an exemption from taxation on the salaries and emoluments paid to them by UNHCR. It was also decided that the exemption would be granted retroactively to those Hungarian nationals whose employment with the office had started earlier than 1 July 1992.\(^\text{306}\)

189. In his report to the forty-seventh session of the General Assembly,\(^\text{307}\) the Secretary-General reported that on 14 June 1992, a note verbale was received from the Sudanese Mission to the United Nations stating that Sudan’s Ministry of Finance and Economic Planning had decided, in accordance with the provisions of the General Convention, to exempt all Sudanese working with the United Nations, the specialized agencies and United Nations affiliated bodies “from payment of the national contribution payable by Sudanese expatriates”.\(^\text{308}\) Sudan had enacted legislation in September 1981 imposing income tax on Sudanese nationals working abroad, including those working for the United Nations and the specialized agencies. In a note verbale dated 8 March 1982, the United Nations had drawn the attention of Sudan to section 18(b) of the General Convention and had appealed to the Government to take the necessary measures to exempt local staff members of Sudanese nationality, whether internationally or locally recruited, from income tax and to make a refund to any staff member from whom such tax had already been collected. No response was received from the Sudanese authorities to that note verbale. The United Nations made the same appeal to Sudan on 11 July 1991, as the Sudanese authorities had continued to levy income taxes on United Nations staff members, in particular those working for the UNDP, when they applied for renewal of their national passports.\(^\text{309}\)

190. The Secretary-General, in his report to the forty-eighth session of the General Assembly, reported that a note verbale dated 1 February 1993 from the Permanent Observer Mission of Switzerland informed the United Nations Office in Geneva that the authorities of the Canton of Vaud, based on the decision of 9 August 1978 of the Swiss Federal Council which declared the application of the “taux global” incompatible with the host country agreements concluded by Switzerland with several international organizations, including the United Nations, had decided to no longer apply the “taux global” to officials of international organizations residing in the territory of that Canton.\(^\text{310}\)

191. During the period under review, the Legal Counsel rendered a number of opinions on the exemption of officials from taxation.\(^\text{311}\) In a note to the Permanent Representative of a Member State, he also clarified the application of section 18(b) of the General Convention to pensions paid to retired United Nations officials.\(^\text{312}\) In this respect, he

\(^{306}\) Ibid, at para. 22.
\(^{308}\) Ibid, at para. 23.
\(^{310}\) A/C.5/48/5, at para. 9.
referred to a study prepared by the Secretariat in 1985 on section 18(b) and the taxation of retirement benefits paid to United Nations personnel. 313

192. In a letter to the Revenue Service in a Member State concerning the status of United Nations Volunteers, 314 the Office of Legal Affairs noted that, United Nations Volunteers, not being staff members, were not covered by the General Convention. At the same time, it was noted that they enjoyed substantially the same terms of service as technical assistance experts, who are regarded as officials of the United Nations for the purposes of the General Convention. It was also noted that, under the SBAA, they are regarded as officials of the United Nations in the country in which they serve. That being so, and in view of the nature of their employment (including their limited allowances), 315 it was hoped that it would be possible for the revenue service of the Member State to regard their allowances as tax-exempt. 316

iii. **Immunity from national service obligations**

193. During the period under review, the agreement concluded between UNHCR and Venezuela creating a Regional Office for Northern South America and the Caribbean in 1993 did not provide for immunity of Venezuelan citizens from military-service obligations or other obligatory service. Pursuant to paragraph 2(c) and paragraph 3 of Article XI, UNHCR officials were accorded immunity from any military-service obligation or other obligatory service, except for officials who were Venezuelan citizens. Venezuelan citizens were only accorded immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity and an exemption from taxation on their salary and other remuneration received from UNHCR. 317

194. The Office of Legal Affairs, in a memorandum to the Department of Administration and Management on immunity from national service obligations, advised that, since a particular Member State had lodged a formal reservation with respect to section 18(c) when depositing its instrument of accession to the General Convention, that Member State was under no legal obligation either to cancel or to defer any national service obligation incumbent upon a United Nations official. The reservation in question stated that section 18(c) would not apply with respect to nationals of the State concerned and aliens admitted for permanent residence. There was therefore no legal ground to oppose the proposed conscription of a staff member for reserve duty. 318

iv. **Exchange facilities**

v. **Exemption from customs duties**

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315 United Nations Volunteers do not receive a salary, only living expenses and certain related benefits.
(iii) Cases in which full diplomatic privileges and immunities are extended to certain categories of officials of the Organization

195. The Legal Counsel advised, in a memorandum to the Office of General Services, that under section 19 of the General Convention United Nations officials at the level of Under-Secretary-General and Assistant Secretary-General enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law. He noted that, in addition, most of the headquarters agreements of the regional commissions contain provisions envisaging that officials of those commissions starting from a certain level enjoy the privileges and immunities accorded to diplomats. Thus, the 1979 Agreement relating to the headquarters of the United Nations Economic and Social Commission for Western Asia (ESCWA) provided, in paragraph 3 of article 7, that officials of the Commission at the P-4 level and above, regardless of their nationality, shall enjoy during their residence in the State in question and their service with the Commission the facilities, privileges and immunities granted by the Government of that State to diplomats of comparable rank of the diplomatic mission. At the same time, the Legal Counsel noted that the 1979 Headquarters Agreement of ESCWA also provided that the immunity of officials of the Commission and its experts from seizure of their personal and official effects and baggage did not apply in cases of *in flagrante delicto*.

196. The Statutes creating the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) accorded privileges and immunities to the judges, the Prosecutor and his or her staff and the Registrar and his or her staff in articles 30 and article 29, respectively. The judges, the Prosecutor and the Registrar enjoyed the privileges and immunities, exemptions and facilities accorded to diplomatic envoys. The staff of the Prosecutor and of the Registrar enjoyed the privileges and immunities accorded to officials of the United Nations under articles V and VII of the General Convention.

197. The Agreement with the Government of the Netherlands concerning the headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, conferred privileges and immunities on the judges, the Prosecutor, the Registrar and various other persons affiliated with the Tribunal.

198. The judges, the Prosecutor and the Registrar, together with members of their families forming part of their household, who did not have Dutch nationality or

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320 Ibid, p. 481.
323 ICTY Statute, article 30, para. 2; ICTR Statute, article 29, para. 2.
324 Ibid, para. 3.
326 See also paras. 254-266 for a summary of the privileges and immunities in the Agreement.
permanent residence status in the Netherlands, were granted the privileges and immunities, exemptions and facilities accorded to diplomatic agents.327

199. The 1995 Agreement between the United Nations and the Government of the United Republic of Tanzania concerning the headquarters of the International Criminal Tribunal for Rwanda328 also addressed the privileges and immunities of the judges, the Prosecutor, the Registrar and members of their families forming part of their household in article XIV. Such persons, apart from those who are Tanzanian nationals, enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents.329

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

200. The General Survey section outlined variations in agreements concluded with host Governments of United Nations conferences regarding immunity from legal process accorded to local personnel provided by the Government to perform functions for those conferences.330

201. The Legal Counsel sent a number of notes verbales to Permanent Representatives of Member States during the period under review concerning the issue of taxation of salaries of nationals and residents of the State in question employed as United Nations officials.331

202. Immunity from national service obligations continued to be an issue of concern during the period under review.332

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

203. In a letter to UNHCR, the Office of the Legal Counsel set out the practice of the United Nations with respect to the right and duty to waive the immunity of any official vested in the Secretary-General.333 UNHCR inquired about general guidelines in order to regularize UNHCR practice in cases where UNHCR staff members were requested to testify before national judicial bodies.

204. The Office of the Legal Counsel advised that the practice in this respect had developed in such a way that the United Nations agencies, in response to requests for their staff to testify in national judicial bodies, normally reported those requests, with their recommendations, to the Legal Counsel. The Office of the Legal Counsel would then examine the merits of any specific case and authorize, on behalf of the Secretary-General, the waiver of immunity if it would not be prejudicial to the interests of the

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327 Article XIV, p. 16.
329 Ibid, p.75.
330 See paras. 18-21.
331 See section (ii) ii. above, paras. 189-192, on exemption from national income taxation.
332 See section (ii) iii. above, paras. 193-194, on immunity from national service obligations.
United Nations. The Office of the Legal Counsel further noted that section 18(a) of the General Convention provides immunity only for words spoken or written or acts performed by officials in their official capacity. Accordingly, requests for them to testify in cases of a private nature did not necessitate a waiver of immunity. If there were doubts as to whether certain acts were performed by staff members in their official or unofficial capacity, such cases should be referred to the Office of the Legal Counsel for determination. Further, high-ranking officials of the Organization at the Under-Secretary General and Assistant Secretary-General levels were entitled to diplomatic privileges and immunities pursuant to section 19 of the General Convention. Therefore, in respect of such officials, a waiver of immunity would be necessary for any court proceedings, including those of a private nature.

205. The Office of the Legal Counsel reminded UNHCR of the long-standing policy of the Organization in relation to invitations to Secretariat officials to give testimony before national parliamentary committees or congressional hearings. In this connection, the Office attached a circular memorandum of the Secretary-General dated 8 August 1991 which stated, inter alia, “it has not been the practice for Secretariat officials to provide formal testimony in such forums, except on the rarest occasions and on matters of a purely technical nature. If Secretariat officials feel it necessary to give such testimony, the authorization of the Secretary-General must first be obtained…at the same time…officials may need to provide information to members of national governmental bodies on specific issues. This should be achieved by briefings, as and when appropriate, on an informal basis.”

206. UNDP requested a waiver of immunity in connection with a motor vehicle accident involving a United Nations volunteer while he was driving a government-owned vehicle from work to his home. The Office of Legal Affairs advised that no question of a waiver of immunity would arise unless and until it was first determined that the volunteer enjoyed immunity in respect of the acts in question. In this connection, it was noted that United Nations Volunteers were accorded the privileges and immunities of officials of the United Nations in the country where they were assigned. However, before raising the question of waiver of immunity, it would be necessary to determine whether the volunteer was acting, when the accident occurred, in an official capacity. Under section 20 of the General Convention, privileges and immunities of United Nations officials were essentially linked to official acts they perform on behalf of the Organization and as such were functional. As a general rule, travel between home and office was not in itself considered to be an official act within the meaning of section 18 of the General Convention. Officials who committed traffic violations in transit between their home and the office and vice versa were not considered to be performing an official

334 Ibid.
335 Ibid, at p. 414.
336 Ibid.
338 United Nations Juridical Yearbook, 1992, pp. 482-483. See also section (b)(ii) i. above, immunity from legal process, above, for more examples of requests for waivers during the period under review.
act for which they could assert immunity from legal process. However, there might be an exception to that general rule in the light of the particular circumstances of a given case. To determine whether the volunteer was driving home from work in an official capacity, the Office of Legal Affairs would need to be informed of all the circumstances of the particular case. Only if it was determined that he was acting in an official capacity when the accident occurred could there be any immunity and only then would the question of waiver of immunity arise.

(c) United Nations laissez-passer and travel facilities

207. The official and private travel of United Nations staff members in the United States continued to be the subject of discussions between the United Nations and the United States as a result of legislation (the so-called Roth Amendment) passed in the United States Congress in 1985, which placed restrictions on travel beyond a 25-mile radius of Columbus Circle, New York City, for international organization officials of certain nationalities. Staff members of the selected nationalities who wished to travel beyond that area were required to submit a written notification of all non-official travel in the United States, specifically recreational travel, and deliver it to the Host Country Section of the United States Mission to the United Nations at least two full working days in advance of travel. During the period under review, the travel regulations were revoked in whole or in part for some nationalities and extended to other nationalities. The existing arrangements for official travel in the United States of United Nations staff members, outlined in information circular ST/IC/86/4 dated 14 January 1986, remained unchanged during the period under review.

208. Officials were kept informed of developments through information circulars. The Secretary-General maintained the Organization’s position of principle, previously stated in information circular ST/IC/85/76 of 20 December 1985, that, under the given circumstances, compliance by individual staff members with such conditions could not be considered to prejudice the legal position of the United Nations.

209. By a note verbale dated 19 January 1989, the Secretary-General was informed by the United States Mission that all employees of the United Nations assigned to New York City (including persons temporarily assigned) who were nationals of China and their dependants wishing to travel beyond a 25-mile radius of Columbus Circle would be required to submit written notification for all non-official travel in the United States by

342 See ibid, para. 87.
344 See ST/IC/89/10, at para. 4;
any means of transportation at least two full working days in advance of travel, effective 26 January 1989.\textsuperscript{345}

210. By note verbale dated 21 September 1990, the Secretary-General was informed by the United States Mission that, effective immediately, “all employees of the United Nations assigned to New York City (including persons temporarily assigned) who are nationals of Iraq, including members of their families and personal staffs who are nationals of Iraq, will be restricted to travel within a 25-mile radius of Columbus Circle in New York City. When the persons subject to these restrictions believe they have a justifiable basis to travel beyond these designated limits, a travel authorization form must be submitted to the United States Mission...a full two days prior to the date of departure”.\textsuperscript{346} Another note verbale, dated 16 January 1991, stated that the measures had been further tightened by restricting the travel of Iraqi nationals to within the five boroughs of New York City.\textsuperscript{347} The Secretary-General reiterated his previously expressed protest against the regulations on the ground that they constituted restrictive measures and discriminated among members of the Secretariat solely on the basis of their nationality and were therefore in violation of, and detrimental to, the fundamental principles of the international civil service, as envisaged in the Charter of the United Nations.\textsuperscript{348}

211. During the period under review, the travel regulations were revoked for staff members and their dependants of the following nationalities: Poland,\textsuperscript{349} Czechoslovakia,\textsuperscript{350} Hungary,\textsuperscript{351} Bulgaria,\textsuperscript{352} Albania,\textsuperscript{353} Belarus, Ukraine, Armenia, Azerbaijan, Estonia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, Uzbekistan,\textsuperscript{354} Georgia,\textsuperscript{355} Afghanistan\textsuperscript{356} and Romania.\textsuperscript{357}

212. By a note verbale dated 23 December 1991, the United States Mission informed the Secretary-General that, effective immediately, Vietnamese staff members of the United Nations, including members of their families and personal staff who were nationals of Viet Nam, would enjoy unrestricted travel in the United States. However, these nationals would still be required to notify the Department of State of any intended non-official travel, specifically recreational travel, by submitting to the United States Mission a travel notification form at least two full working days in advance of the

\textsuperscript{345} See ST/IC/89/10 of 1 February 1989 and A/44/26 of 10 January 1990, at paras. 10-24, for discussion by the Committee on the extension of the travel regulations to the staff members of the United Nations who were Chinese nationals. See also, A/C.5/44/11 of 2 November 1989, at para. 15 and ST/IC/1990/16 of 16 February 1990, for changes in procedural requirements.

\textsuperscript{346} ST/IC/1990/67 of 11 October 1990, annex I.

\textsuperscript{347} ST/IC/1991/3 of 16 January 1991


\textsuperscript{350} By note verbale dated 19 October 1990, ST/IC/1990/74 of 7 November 1990. See also A/C.5/47/14, at para. 15.


contemplated travel.\textsuperscript{358} In his reply, the Secretary-General welcomed the host country’s decision, noting that the requirement to submit a travel notification form was still of a restrictive character.\textsuperscript{359}

213. By a note verbale dated 24 April 1992, the United States Mission informed the Secretary-General that Russian Federation personnel at the United Nations Secretariat were no longer required to use the Office of the Foreign Missions travel services but were still required to submit requests for private recreational travel.\textsuperscript{360} In another note verbale from the United States Mission dated 7 August 1992, the Secretary-General was informed that Russian Federation personnel and their dependants would no longer be required to request approval for private recreational travel, but would need to submit to the United States Mission, two full working days in advance of the planned departure, a revised streamlined travel notification form. The note stipulated that private recreational travel for which timely notification had been given would not be subject to denial by the Department of State. However, in cases where notification had not been provided on a timely basis, travel might be undertaken only after the Department of State granted a time exception and approval had been received by the traveller.\textsuperscript{361} The Secretary-General welcomed the decision by the United States but noted that the requirement was of a restrictive character and expressed hope that all remaining travel restrictions would be removed by the host country as soon as possible.\textsuperscript{362}

214. The Office of Legal Affairs, in a letter to the Director of Personnel of the European Organization for the Safety of Air Navigation, provided information concerning the United Nations laissez-passer - the legal provisions governing its issuance, the categories of officials entitled to it, special provisions which might exist in that respect for non-staff members and whether there was any standard agreement with Member States recognizing the validity of the United Nations laissez-passer as a valid travel document.\textsuperscript{363} It was noted that the issuance of United Nations laissez-passer is governed by article VII of the General Convention and article VIII of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (hereinafter “the Specialized Agencies Convention”). Under section 24 of the General Convention, United Nations laissez-passer may only be issued to officials of the United Nations.\textsuperscript{364} Comparable officials of specialized agencies are also entitled to a United Nations laissez-passer, under section 28 of the General Convention, if the agreements for the relationship made under Article 63 of the Charter of the United Nations so provide. Similar facilities are accorded to experts and other persons pursuant to section 26 of the General Convention and section 29 of the Specialized Agencies Convention. Though not entitled to hold a United Nations laissez-passer, they have a certificate that they are travelling on United Nations business or on business of the specialized agency.\textsuperscript{365}

\textsuperscript{359} Ibid. See also A/C.5/47/14, at paras. 18 and 21.
\textsuperscript{362} Ibid. See also A/C.5/47/14, at paras. 20-21.
\textsuperscript{363} United Nations Juridical Yearbook, 1993, pp. 410-411.
\textsuperscript{364} Defined by the General Assembly in its resolution 76 (I) of December 1946 to mean all regular staff members of the Organization, with the exception of those who are recruited locally and are assigned to hourly rates.
215. Section 24 of the General Convention and section 27 of the Specialized Agencies Convention provide in similar terms that United Nations laissez-passer shall be recognized and accepted as valid travel documents by the authorities of the Member States. No additional agreement between the United Nations and a Member State for the recognition of a United Nations laissez-passer as a valid travel document is therefore necessary.\textsuperscript{366}

216. The Office of Legal Affairs advised the United Nations Institute for Training and Research (UNITAR) that consultants, fellows and experts appointed by the Executive Director under contracts appointing them as an experts on mission might be\textsuperscript{367} given a United Nations certificate in accordance with section 26 of the General Convention if they were required to travel.

217. In response to a query by the United Nations Office in Geneva in relation to the intended issuance of certificates to the military personnel of a State participating in multinational demining missions in accordance with section 26 of the General Convention, the Office of Legal Affairs advised that, as the military personnel had the legal status of “experts on mission” as defined in section 22 of the General Convention, they “are among the categories of personnel eligible to be issued United Nations certificates…[I]t is our opinion that the [State’s] military personnel may accordingly be granted certificates for travelling on official United Nations business”.\textsuperscript{368}

218. Similarly, the Office of Legal Affairs advised in a memorandum to the Assistant Special Representative of the Secretary-General for Western Sahara that, since the observers participating in the Identification Commission in the United Nations Mission for the Referendum in Western Sahara (MINURSO) would be accorded the status of experts on mission, the observers could be issued, under section 26 of the General Convention, with a United Nations certificate if they were to travel on United Nations business.\textsuperscript{369}

219. The Office of Legal Affairs advised UNHCR that, since the status of the air crew and support personnel provided by the Government of a Member State to the UNHCR airlift for Rwandan refugees was that of experts on mission for the United Nations within the meaning of section 22 of the General Convention, such personnel should be issued a United Nations travel certification pursuant to section 26 of the General Convention.\textsuperscript{370}

220. In a memorandum to the Travel Unit, Transportation Section, the Office of Legal Affairs advised that certain restrictions imposed by the United States on air transportation to Lebanon were, in so far as they applied to official travel of United Nations officials, contrary to section 25 of the General Convention and Article 105 of the United Nations

\textsuperscript{366} Ibid, at p. 411.
\textsuperscript{367} United Nations Juridical Yearbook, 1990, pp. 305-306 at p. 306. See also para. 243 for a summary of the advice given in respect of privileges and immunities for consultants, fellows and experts appointed by UNITAR.
\textsuperscript{368} United Nations Juridical Yearbook, 1990, p. 351.
\textsuperscript{369} United Nations Juridical Yearbook, 1993, pp. 401-402. See also para. 248 for more information on this advice.
Charter. Section 25 of the General Convention provides that staff members holding United Nations laissez-passer and travelling on official business shall be “granted facilities for speedy travel”. Article 105 of the United Nations Charter provides that the Organization should not be impeded in the fulfillment of its purposes and its officials should not be impeded in the independent exercise of their functions. The imposed restrictions consisted of prohibiting the air transportation between the United States and Lebanon and the sale in the United States by any airline or its agent of tickets for passenger air transportation with a stop in Lebanon. The prohibition covered the taking of reservations, including reservations taken at a location outside the United States if the reservation communication originated in the United States. The Office of Legal Affairs advised that the effect of the directives was “to impose certain impediments to official travel of United Nations staff members and the performance of official business of the Organization. Such impediments are not consistent with the letter and spirit of the Charter of the United Nations, the Headquarters Agreement and the General Convention, or the operative functions of the Organization”. The Office advised that it would be appropriate to request an exemption from the application of the restrictions to the United Nations in-house travel agency.

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

221. On 6 January 1989, the Permanent Representative of Romania to the United Nations handed to the United Nations Legal Counsel an aide-mémoire in respect of Mr. Dumitru Mazilu, a Romanian national, who was a Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. Romania stated that Mr. Mazilu had in 1987 become gravely ill and that he had been placed on the retired list on grounds of ill-health. Romania expressed the view that “the problem of the application of the General Convention [did] not arise in this case”, as the General Convention “does not equate rapporteurs, whose activities are only occasional, with experts on mission for the United Nations” and that “even if rapporteurs are given some of the status of experts, they can enjoy only functional immunities and privileges”. Romania stated that it was opposed to a request for an advisory opinion from the International Court of Justice (hereinafter the Court) of any kind in this case.

222. Mr. Dumitru Mazilu had been elected on 13 March 1984 to serve as a member of the Sub-Commission, a subsidiary organ of the Commission on Human Rights, for a three-year term due to expire on 31 December 1986. By its resolution 1985/12 of 29 August 1985, the Sub-Commission requested Mr. Mazilu to “prepare a report on human rights and youth analyzing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly, the right to life, education and work”

372 Ibid, at p. 413.
and requested the Secretary-General to provide him with all necessary assistance for the completion of his task. \(^{374}\)

223. The thirty-ninth session of the Sub-Commission, at which Mr. Mazilu’s report was to be presented, was not convened in 1986 as originally scheduled but was postponed until 1987. The three-year mandate of its members – originally due to expire on 31 December 1986 – was extended by Economic and Social Council decision 1987/102 for an additional year. When the session of the Sub-Commission opened in Geneva on 10 August 1987 no report had been received by Mr. Mazilu, nor was he present. The Permanent Mission of Romania informed the United Nations Office at Geneva that Mr. Mazilu had suffered a heart-attack and was still in hospital. Thus, the Sub-Commission adopted decision 1987/112 on 4 September 1987, whereby it deferred consideration of the item under which Mr. Mazilu’s report would have been discussed until its fortieth session scheduled for 1988. Notwithstanding the scheduled expiration on 31 December 1987 of Mr. Mazilu’s term as a member of the Sub-Commission, the latter included a reference to a report to be submitted by him, identified by name, under the agenda item “Prevention of discrimination and protection of children”, and entered the report, under the title “Human rights and youth” in the “List of studies and reports under preparation by members of the Sub-Commission in accordance with the existing legislative authority”. \(^{375}\)

224. In January 1988, following attempts by the Centre for Human Rights of the United Nations Secretariat in Geneva to contact Mr. Mazilu to provide him with assistance in the preparation of his report, including arranging a visit to Geneva, Mr. Mazilu informed the Secretary-General that he had been twice in hospital in 1987 and that he had been forced to retire, as of 1 December 1987, from his various governmental posts. He also stated that he was willing to travel to Geneva for consultations, but that the Romanian authorities had refused him a travel permit. \(^{376}\)

225. On 31 December 1987 the terms of all members of the Sub-Commission, including Mr. Mazilu, expired. On 29 February 1988 the Commission, upon nomination of their respective Governments, elected new members of the Sub-Commission, including a new Romanian national member. All the rapporteurs and special rapporteurs of the Sub-Commission were invited to attend its fortieth session (8 August – 2 September 1988), but Mr. Mazilu again did not appear and could not be located. On 15 August 1988, the Sub-Commission adopted decision 1988/102, whereby it requested the Secretary-General

“to establish contact with the Government of Romania and to bring to the Government’s attention the Sub-Commission’s urgent need to establish personal contact with its Special Rapporteur Mr. Dumitru Mazilu and to convey the request that the Government assist in locating Mr. Mazilu and facilitate a visit to him by a

\(^{374}\) Ibid, para. 10.
\(^{375}\) Ibid, paras. 11-12.
\(^{376}\) Ibid, paras. 13-14.
member of the Sub-Commission and the secretariat to help him in the completion of his study on human rights and youth if he so wished”. 377

226. The Under-Secretary-General for Human Rights informed the Sub-Commission on 17 August 1988 that, in contacts between the Secretary-General’s Office and the Chargé d’affaires of the Romanian Permanent Mission to the United Nations in New York, he had been told that any intervention by the United Nations Secretariat and any form of investigation in Bucharest would be considered an interference in Romania’s internal affairs. On 1 September 1988, the Sub-Commission adopted resolution 1988/37 by which, inter alia, it requested the Secretary-General to approach once more the Government of Romania and invoke the applicability of the General Convention. It further requested him, in the event that the Government of Romania did not concur on the applicability of the provisions of that Convention in that case, to bring the difference between the United Nations and Romania immediately to the attention of the Commission in 1989. It also requested the Commission, in that event, to urge the Economic and Social Council to request from the International Court of Justice an advisory opinion on the applicability of the General Convention to the case. 378

227. Pursuant to resolution 1988/37 of 1 September 1988, the Secretary-General, on 26 October 1988, addressed a note verbale to the Permanent Representative of Romania to the United Nations in New York, in which he invoked the General Convention in respect of Mr. Mazilu and requested the Romanian Government to accord Mr. Mazilu the necessary facilities in order to enable him to complete his assigned task. On 6 January 1989 the Permanent Representative of Romania handed to the Legal Counsel of the United Nations an aide-mémoire in which was set forth the Romanian Government’s position concerning Mr. Mazilu. The aide-mémoire stated, inter alia, that it was opposed to a request for an advisory opinion from the International Court of Justice of any kind in this case. 379

228. At the forty-fifth session of the Commission on Human Rights in 1989, the Secretary-General presented a note pursuant to paragraph 2 of resolution 1988/37 of 1 September 1988 of the Sub-Commission, to which was attached his note verbale to the Romanian Government of 26 October 1988, and the Romanian aide-mémoire of 6 January 1989. The Commission adopted on 6 March 1989 its resolution 1989/37, recommending that the United Nations Economic and Social Council request an advisory opinion from the Court on the applicability of the relevant provisions of the General Convention to Mr. Dumitru Mazilu. 380

229. On 24 May 1989, the Economic and Social Council adopted resolution 1989/75, which concluded that a difference had arisen between the United Nations and Romania as to the applicability of the General Convention to Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission and requested, on a priority basis, an advisory

377 Ibid, para. 18.
378 Ibid, paras. 18-21.
379 Ibid, paras. 22-23.
380 Ibid, para. 25.
opinion from the Court on the legal question of the applicability of article VI, section 22, of the General Convention in the case of Mr. Dumitru Mazilu as Special Rapporteur of the Sub-Commission.381

230. A report on Human Rights and Youth prepared by Mr. Mazilu was circulated as a document of the Sub-Commission bearing the date 10 July 1989; the text of this report had been transmitted by Mr. Mazilu to the Centre for Human Rights through various channels. On 8 August 1989, the Sub-Commission decided, in accordance with its practice, to invite Mr. Mazilu to participate in the meetings at which his report was to be considered. No reply was received to the invitation extended. By a note verbale dated 15 August 1989 from the Permanent Mission of Romania to the United Nations Office in Geneva, the Permanent Mission referred to “the so-called report” by Mr. Mazilu and indicated, inter alia, that since becoming ill in 1987, Mr. Mazilu did not “possess the intellectual capacity necessary for making an objective, responsible and unbiased analysis that could serve as the substance of a report consistent with the requirements of the United Nations”. On 1 September 1989, the Sub-Commission adopted resolution 1989/45 entitled “The report on human rights and youth prepared by Mr. Dumitru Mazilu” by which, noting that Mr. Mazilu’s report had been prepared in difficult circumstances and that the relevant information collected by the Secretary-General appeared not to have been delivered to him, it invited him to present the report in person to the Sub-Commission at its next session, and also requested the Secretary-General to continue providing Mr. Mazilu with all the assistance he might need in updating his report, including consultations with the Centre for Human Rights.382

231. According to the written statement submitted to the Court by the Secretary-General,

“[i]t should…be noted that while the Court has been asked about the applicability of Section 22 of the Convention in the case of Mr. Mazilu, it has not been asked about the consequences of that applicability, that is about what privileges and immunities Mr. Mazilu might enjoy as a result of his status and whether or not these had been violated.”383

During the oral proceedings, the representative of the Secretary-General, when replying to a question put by a Member of the Court, observed that:

“it is suggestive of the Council’s intention in adopting the resolution to note that, having referred to a ‘difference’, it then did not attempt to have that difference as a whole resolved by the question it addressed to the Court. Rather…the Council merely addressed a preliminary legal question to the Court, which appears designed to clarify at most the general status of Mr. Mazilu in respect of the

381 Ibid.
383 Ibid, at para. 27.
Convention, without resolving the entire issue that evidently separates the United Nations and the Government”. 384

232. On 15 December 1989, the Court delivered its advisory opinion in response to the request of the United Nations Economic and Social Council concerning the applicability of section 22 of the General Convention, in the case of Mr. Mazilu. 385

233. The Court considered what was meant by the term “experts on missions” for the purposes of section 22 of the General Convention. 386 The General Convention does not define “experts on mission” nor indicate what is a “mission”. The Court found that the purpose of section 22 was nevertheless clearly to enable the United Nations to entrust missions to persons who do not have the status of an official of the Organization and to guarantee them such privileges and immunities as are necessary for the independent exercise of their functions. The experts thus appointed or elected may or may not be remunerated, may or may not have a contract and may be given a task requiring work over a lengthy period or a short time. The essence of the matter lay not in their administrative position but in the nature of their mission. 387 The Court noted that the practice of the United Nations showed that such experts had been entrusted with various missions, including, inter alia, mediation, preparing studies, conducting investigations or finding and establishing facts and participating in peace-keeping forces. In addition, many committees, commissions or similar bodies whose members serve, not as representatives of States, but in a personal capacity, have been set up within the Organization. 388 The Court concluded that the practice of the United Nations shows that the persons so appointed, and in particular the members of those committees and commissions, have been regarded as experts on mission within the meaning of section 22. 389

234. The Court then considered the meaning of the phrase “during the period of their missions” in section 22. The question arose in this connection as to whether experts on mission were covered by section 22 “only during missions requiring travel or whether they were also covered when there was no such travel or apart from such travel”. 390 The Court considered that section 22, in its reference to experts performing missions for the United Nations, uses the word “mission” in a general sense “of the tasks entrusted to a person, whether or not those tasks involve travel”. 391 According to the Court, the intent of section 22 was to ensure the independence of such experts in the interest of the Organization by according them the privileges and immunities necessary for the purpose.

384 Ibid.
387 Ibid, para. 47.
388 For example, the International Law Commission, the Advisory Committee on Administrative and Budgetary Questions, the International Civil Service Commission, the Human Rights Committee established for the implementation of the International Covenant on Civil and Political Rights and various other committees of the same nature, such as the Committee on the Elimination of All Forms of Discrimination Against Women.
389 Ibid, para. 48.
390 Ibid, para. 49.
391 Ibid, para. 50.
The Court concluded that section 22 “is applicable to every expert on mission, whether or not he travels”. 392

235. The Court next considered whether the privileges and immunities provided for in section 22 could be invoked against the State of which an expert is a national or on the territory of which he or she resides. 393 The Court found that the privileges and immunities set out in Article VI of the General Convention – like those conferred on officials of the Organization in Article V of the General Convention - were conferred with the view to ensuring the independence of experts in the interests of the Organization. This independence must be respected by all States including their State of nationality and of residence. The Court noted that some States Parties to the General Convention had entered reservations to certain provisions of Article VI as regards their nationals or persons habitually resident on their territory. The Court stated that the fact that the States concerned felt it necessary to make such reservations confirmed the conclusion that “in the absence of such reservations, experts on missions enjoy the privileges and immunities provided for under the Convention in their relations with the States of which they are nationals or on the territory of which they reside”. 394

236. The Court concluded that section 22 of the General Convention:

“is applicable to persons (other than United Nations officials) to whom a mission has been entrusted by the Organization and who are therefore entitled to enjoy the privileges and immunities provided for in this Section with a view to the independent exercise of their functions. During the whole period of such missions, experts enjoy these functional privileges and immunities whether or not they travel. They may be invoked as against the State of nationality or of residence unless a reservation to section 22 of the General Convention has been validly made by that State”. 395

237. The Court then considered the situation of special rapporteurs of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. 396 The Court noted in this respect that rapporteurs formed a category of persons whom the United Nations and the specialized agencies found necessary to engage for the implementation of increasingly varied functions, and was thus one of importance for the whole of the United Nations system. The Court observed that the Economic and Social Council had expressly recalled in its resolution 1983/32 of 27 May 1983 that members of the Sub-Commission were elected by the Commission as experts in their individual capacity. The Court therefore found that, since their status was neither that of a representative of a Member State nor that of a United Nations official, and since they performed independently for the United Nations the functions contemplated in its remit,

392 Ibid.
393 Ibid, para. 51.
394 Ibid.
395 Ibid, para. 52.
396 Ibid, para. 53.
the members of the Sub-Commission must be regarded as experts on mission within the meaning of section 22.397

238. The Court further noted that, in accordance with the practice followed by many United Nations bodies, the Sub-Commission had from time to time appointed rapporteurs or special rapporteurs with the task of studying specified subjects. It also noted that, while those rapporteurs or special rapporteurs were normally selected from among members of the Sub-Commission, there had been cases in which special rapporteurs had been appointed from outside the Sub-Commission or had completed their report only after their membership of the Sub-Commission had expired. The Court concluded that since their status was neither that of a representative of a Member State nor that of a United Nations official, and since they performed independently on behalf of the United Nations, they must be regarded as experts on mission within the meaning of section 22, even in the event that they were not, or were no longer, members of the Sub-Commission.398

239. The Court then gave its opinion on the question of the applicability of section 22 in the case of Mr. Mazilu. The Court observed that Mr. Mazilu had, from 13 March 1984 to 29 August 1985, the status of a member of the Sub-Commission; that from 29 August 1985 to 31 December 1987, he was both a member and a rapporteur of the Sub-Commission. The Court took note of the decisions or resolutions adopted by the Sub-Commission to retain Mr. Mazilu as a special rapporteur following the expiration of his status as a member of the Sub-Commission on 31 December 1987399 and concluded that, although since the last-mentioned date he was no longer a member of the Sub-Commission, he remained a special rapporteur. The Court found that

“[a]t no time… has he ceased to have the status of an expert on mission within the meaning of Section 22, or ceased to be entitled to enjoy for the exercise of his functions the privileges and immunities provided for therein”.400

240. The Court found that Mr. Mazilu continued to have the status of special rapporteur, and as a consequence had to be regarded as an expert on mission within the meaning of section 22 of the General Convention. Thus the section was therefore applicable in his case.401

241. The Economic and Social Council adopted resolution 1990/43 on 25 May 1990, expressing its appreciation to the Court for having given the unanimous opinion on 15 December 1989 that section 22 of the General Convention was applicable in the case of Mr. Mazilu. The Council welcomed the Court’s opinion to the “effect that rapporteurs and special rapporteurs of the Sub-Commission must be regarded as experts on mission within the meaning of article VI, section 22, of the Convention”.

397 Ibid, para. 54.
398 Ibid, para. 55.
400 Ibid, para. 57.
401 Ibid, para. 60.
242. Following the issuance of the Court’s advisory opinion in the case of Mr. Mazilu, the Office of Legal Affairs advised the Secretary of the United Nations Joint Staff Pension Board on the legal status of the Pension Board members who represented the governing bodies of the Fund’s member organization and who at the same time were representatives of Member States of the United Nations in New York. The Office of Legal Affairs advised that, in accordance with the regulations of the Pension Board, members were elected or appointed in their personal capacities, rather than as the representatives of Member States. The Office of Legal Affairs recalled in this connection that the International Court of Justice, in its opinion in the Mazilu case, had noted that many such bodies had been set up within the United Nations and had concluded that the members of those bodies had been regarded as experts on mission within the meaning of the General Convention. The Office of Legal Affairs considered this conclusion to apply to the members of the Pension Board. It went on to recall the Court’s conclusion that experts on mission enjoy the privileges and immunities provided for under the General Convention during the whole of their mission, whether or not they travel. It accordingly concluded that members of the Pension Board

“[w]hile performing functions on the Pension Board within the host country…continue to enjoy the diplomatic immunities laid down in article IV of the Convention in addition to those to which they are entitled as experts on missions for the United Nations. In all other countries, while performing functions in connection with the Pension Board, such members enjoy the privileges and immunities granted to experts on missions under article VI of the Convention”.402

243. The Office of Legal Affairs was requested by the United Nations Institute for Training and Research (UNITAR) to examine article VI of the statute of UNITAR with a view to amending paragraph 2 in order to permit consultants, fellows and experts appointed by the Executive Director for the purpose of contributing to the analysis and planning of the Institute’s activities or for special assignments in connection with its program of training and research to be granted certain privileges and immunities of the United Nations, especially while travelling on official business.403 Rather than amend its statute, the Office of Legal Affairs advised UNITAR to insert in its contracts with consultants, fellows and experts engaged under article VI, paragraph 2, of its statute, a clause similar to that appearing in Special Service Agreements used by the United Nations when employing individual contractors. These Agreements specifically provide that the individual contractor is not an “official” or “staff member” of the United Nations, but that he or she may be given the status of “expert on mission”.

244. The Office of Legal Affairs advised, in a memorandum to the Director of the Field Operations Division, Office of General Services, on the privileges and immunities enjoyed by United Nations Guards when travelling within Iraq as well as to and from Iraq. Neither the Memorandum of Understanding of 18 April 1991 nor the Memorandum of Understanding of 24 November 1991, pursuant to which the United Nations Guards were stationed in the Member State, made specific references to the legal status of the

Guards. The Office advised that United Nations Guards have Special Service Agreements with the United Nations and therefore should be considered as experts on mission within the meaning of section 22 of the General Convention. Iraq was a party to the General Convention. The Guards should therefore be accorded, *inter alia*, immunity from personal arrest or detention, from seizure of their personal baggage, inviolability for all papers and documents and the same immunities and facilities in respect of their baggage as are accorded to diplomatic envoys. The Office advised that while the continued presence of the United Nations Guards in Iraq depended on the arrangements to be worked out with the authorities of Iraq, the scope of their privileges and immunities would continue to be determined by the provisions of the General Convention so long as the United Nations continued its humanitarian activities in that country.  

245. The Legal Counsel, in an aide-mémoire, responded to a question by a Permanent Representative of a Member State to the United Nations as to whether salaries and emoluments of experts on mission employed by the United Nations specialized agencies were exempt from national taxation, in particular United Nations Industrial Development Organization (UNIDO) experts and UNDP volunteers. The Legal Counsel advised that the legal status of experts on mission for the United Nations is governed by sections 22, 23 and 26 of the General Convention. The Specialized Agencies Convention does not contain in its standard clauses provisions corresponding to article VI of the General Convention. However each specialized agency contains the standard clauses in annexes which constitute an integral part of the Specialized Agencies Convention. For example, the privileges and immunities of UNIDO experts on mission are defined in annex XVII to the Specialized Agencies Convention. The annexes include provisions relating, *inter alia*, to “experts on mission” which generally correspond to those of sections 22 and 23 of the General Convention. As such, experts on mission enjoy no tax exemption in any form on their official emoluments and salaries, no immunity from national service obligations, no immunity from immigration restrictions and requirements and no rights to duty-free imports. The Legal Counsel noted that the privileges and immunities, rights and facilities that are granted to experts on mission are strictly designed to protect the interests of the organization concerned in preventing any coercion or threat thereof in respect of the performance by the experts of their missions. This reflected the conclusion in the Legal Counsel’s written statement submitted on behalf of the Secretary-General to the Court, on 28 July 1989, in connection with the request for an advisory opinion of the Court concerning the applicability of section 22 of the General Convention in the case of Mr. Mazilu. As for the UNDP volunteers, their legal status entitled them to the same privileges and immunities as officials, not experts on mission, of the United Nations or the specialized agency concerned.  

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407 Ibid. A similar conclusion was reached in an earlier study prepared by the United Nations Secretariat for the International Law Commission in 1967 on the practice of the United Nations, the specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities. The study concluded that “in article VI no immunity is granted from national taxation” (emphasis added).
408 Ibid, p. 487.
246. The Legal Counsel noted, in a memorandum to the Office of General Services, that experts on mission are accorded wider privileges and immunities which are quasi-diplomatic in nature owing to the specific character of their functions. Unlike United Nations officials, experts on missions enjoy, in addition to such privileges as inviolability for all papers and documents, immunity from seizure of their personal baggage in accordance with section 22 of the General Convention. The Court in its advisory opinion dated 15 December 1989 on the applicability of section 22 of the General Convention stated that the purpose of section 22 is to enable the United Nations to entrust missions to persons who do not have the status of an official of the Organization, and to guarantee them such privileges and immunities as are necessary for the independent exercise of their functions.

247. The Office of Legal Affairs, in a memorandum to the United Nations Office in Geneva, advised that the Organization could enter into a contractual relationship with a Member State’s military personnel participating in a multinational demining mission by means of the proposed standard “special service agreement of an individual contractor” which would give the personnel the status of “experts on mission” in accordance with section 22 of the General Convention. This conclusion was suggested by the fact that the Government of the State hosting the mission had indicated that they would consider the demining personnel as “experts”, as defined in the General Convention. The authorities of the State from whose armed services the members of the mission were drawn had in effect agreed to detach the military personnel and place them at the disposal of the Office of the Coordinator for Afghanistan for a specific period of time. The personnel were therefore free agents who could contract directly with the Organization. The Office advised the Coordinator should confirm that these detached personnel would serve in their personal capacity and not as representatives of their Government during their period of service in the demining operation before the Organization entered into a special service agreement with them. If so, this could be spelled out in the special service agreement as a condition of service.

248. In a memorandum to the Assistant Special Representative of the Secretary-General for Western Sahara, the Office of Legal Affairs advised that observers participating in the identification/registration of voters (hereinafter “the Identification Commission”), in the framework of the United Nations Mission for the Referendum in Western Sahara (MINURSO), would be performing official functions for the United Nations within the meaning of article VI of the General Convention and thus would be provided quasi-diplomatic status as United Nations experts on mission. In this capacity, the observers could be issued, under article VII, section 26, of the General Convention, a United Nations certificate if they were to travel on United Nations business.

249. In a facsimile to UNHCR, the Office of Legal Affairs advised that the status which seemed appropriate to accord to the air crew and support personnel provided by a

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410 Ibid.
Member State to the UNHCR airlift for Rwandan refugees was of “experts on mission” for the United Nations within the meaning of section 22 of the General Convention.413

250. In a memorandum to UNICEF, the Office of Legal Affairs advised that UNICEF Goodwill Ambassadors were not considered staff members of the United Nations but “experts on mission” within the meaning of sections 22, 23 and section 26 of the General Convention. UNICEF Goodwill Ambassadors were therefore entitled to the privileges and immunities accorded within those sections of the General Convention when performing functions in their official capacity.414


251. The Statutes creating the International Criminal Tribunal for the Former Yugoslavia (ICTY)415 and the International Criminal Tribunal for Rwanda (ICTR)416 addressed the status, privileges and immunities of members and those affiliated with the Tribunals in article 30 and article 29, respectively.

252. Article 30 of the Statute of the ICTY provides:

   “1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal, the judges, the Prosecutor and his staff, and the Registrar and his staff.

   “2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

“3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

“4. Other persons, including the accused, required at the seat of the International Tribunal shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal”.

253. Article 29 of the Statute of the ICTR replicated article 30 of the Statute of the ICTY.417

254. In the 1994 Agreement between the United Nations and the Government of the Netherlands concerning the headquarters of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991418 (hereinafter “the ICTY Headquarters Agreement”), articles XIV to XX provided for the privileges and immunities of the judges, the Prosecutor and the Registrar,419 officials,420 persons recruited locally and assigned to hourly rates,421 persons performing missions for the Tribunal,422 witnesses and experts appearing before the Tribunal,423 counsel424 and the suspect or accused.425

255. The privileges and immunities of the same categories of persons affiliated with the ICTR were set out in articles XIV to XX of the 1995 Agreement between the United Nations and the Government of the United Republic of Tanzania concerning the Headquarters of the International Criminal Tribunal for Rwanda426 (hereinafter “the ICTR Headquarters Agreement”).

256. Article XIV of the ICTY Headquarters Agreement provided that the judges, the Prosecutor and the Registrar shall, together with members of their families forming part of their household and who do not have Netherlands nationality or permanent residence status in the Netherlands, enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents.

“They shall, inter alia, enjoy:

“1. (a) Personal inviolability, including immunity from arrest or detention;

“(b) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;

417 The only difference was the addition of ‘or her’ before ‘staff’ in paragraph 1.
419 Ibid, p. 16, article XIV.
420 Ibid, p. 17, article XV.
421 Ibid, p. 18, article XVI.
422 Ibid, p. 18, article XVII.
423 Ibid, p. 19, article XVIII.
424 Ibid, p. 19, article XIX.
425 Ibid, p. 19, article XX.
“(c) Inviolability for all papers and documents;
“(d) Exemption from immigration restrictions, alien registration or national service obligations;
“(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 agents.
“…

“3. Privileges and immunities are accorded to the Judges, the Prosecutor and the Registrar in the interest of the Tribunal and not for the personal benefit of individuals themselves. The right and duty to waive the immunity in any case where it can be waived without prejudice to the purpose for which it is accorded shall lie, as concerns the Judges, with the Tribunal in accordance with its rules; as concerns the Prosecutor and the Registrar, with the Secretary-General in consultation with the President”. 427

257. The equivalent provisions in the ICTR Headquarters Agreement appear in article XIV428. The article is in the same terms, save that those of the judges, the Prosecutor, the Registrar and members of their families forming part of their household who are permanent residents of Tanzania enjoy such privileges and immunities.

258. Article XV of the ICTY Headquarters Agreement provided that officials of the ICTY shall, regardless of their nationality, be accorded the privileges and immunities as provided for in articles V and VII of the General Convention. 429 The provisions of Article XV430 of the ICTR Headquarters Agreement concerning the staff of the Tribunal are identical. (The “staff of the Tribunal” and “officials of the Tribunal” are defined in equivalent terms in the respective Agreements).

259. Article XVI of the ICTY Headquarters Agreement provided that personnel recruited by the ICTY locally and assigned to hourly rates shall, inter alia, be

“accorded immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity for the Tribunal. Such immunity shall continue to be accorded after termination of employment with the Tribunal”. 431

427 Supra n. 418, p. 17.
428 Supra n. 426, p. 75.
429 Supra n. 418, p. 17-18.
430 Supra n. 426, pp. 76-77.
431 Supra n. 418, p. 18.
260. Article XVII of the ICTY Headquarters Agreement provided that persons performing missions for the ICTY

“shall enjoy the privileges, immunities and facilities under articles VI and VII of the General Convention, which are necessary for the independent exercise of their duties for the Tribunal”.

The President of the Tribunal could waive such immunity in any case where it would not prejudice the administration of justice by the Tribunal.\textsuperscript{432}

261. The terms of articles XVI and XVII\textsuperscript{433} of the ICTR Headquarters Agreement are identical to articles XVI and XVII of the ICTY Headquarters Agreement.

262. Article XVIII of the ICTY Headquarters Agreement granted witnesses and experts appearing before the Tribunal immunity from legal process in respect of acts or convictions prior to their entry into the Netherlands. Such immunity would cease when the witness or expert had stayed in the Netherlands for a period of fifteen consecutive days from the date when his or her presence was no longer required by the Tribunal or the Prosecutor, or having left the Netherlands, had returned, unless such return was on another summons or request of the Tribunal or the Prosecutor.\textsuperscript{434}

263. The terms of article XVIII\textsuperscript{435} of the ICTR Headquarters Agreement are substantively the same as article XVIII of the ICTY Headquarters Agreement, save that there is no equivalent provision stating that the immunity of witnesses and experts from outside the Netherlands is without prejudice to the obligation of the host country to comply with a request for its assistance, or orders issues by, the Tribunal pursuant to article 29 of the ICTY Statute regarding States’ duties to provide cooperation and judicial assistance (article 28 of the ICTR Statute).

264. Article XIX of the ICTY Headquarters Agreement provided that counsel of a suspect or an accused shall be accorded:

“2. (a) Exemption from immigration restrictions;

“(b) Inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;

“(c) Immunity from criminal and civil jurisdiction in respect of words spoken or written and acts performed by them in their official capacity as counsel. Such immunity shall continue to be accorded to them after termination of their functions as a counsel of a suspect or accused.

\textsuperscript{432} Supra n. 418, p. 18.
\textsuperscript{433} Supra n. 426, p. 77.
\textsuperscript{434} Supra n. 418, p. 19.
\textsuperscript{435} Supra n. 426, pp. 77-78.
“…

“The right and duty to waive the immunity referred to in paragraph 2 above in any particular case where it can be waived without prejudice to the administration of justice by the Tribunal and the purpose for which it is granted, shall lie with the Secretary-General” 436

265. Paragraphs 2 and 4 of article XIX437 of the ICTR Headquarters Agreement are the same as paragraphs 2 and 4 of article XIX of the ICTY Headquarters Agreement, save that paragraph 2 (c) provided for immunity from administrative jurisdiction, in addition to criminal and civil jurisdiction, in respect of words spoken or written and acts performed by counsel in his or her official capacity.

266. Article XX of the ICTY Headquarters Agreement provided that the Netherlands shall not exercise its criminal jurisdiction over persons present in its territory, who were to be or were transferred as a suspect or an accused to the Tribunal. Such immunity would

“cease when the person, having been acquitted or otherwise released by the Tribunal and having had for a period of fifteen consecutive days from the date of his or her release an opportunity of leaving, has nevertheless remained in the territory of the host country, or having left it, has returned” 438

267. The immunity granted in favour of a suspect or accused against the exercise of Tanzania’s criminal jurisdiction in article XX439 of the ICTR Headquarters Agreement is in the same terms as article XX of the ICTY Headquarters Agreement.

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

268. During the period under review, an unprecedented number of peace-keeping and observer missions were deployed. As a result, seventeen agreements and two protocols were concluded between the United Nations and host countries regulating the status of those missions.440 The Secretariat, upon request by the General Assembly,441 prepared a Model SOFA which was annexed to document A/45/594 of 9 October 1990. The Model was intended to serve as a basis for the drafting of individual agreements to be concluded between the United Nations and countries on whose territory peace-keeping operations

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436 Supra n. 418, p. 19.
437 Supra n. 426, p. 78.
438 Supra n. 418, p. 20.
439 Supra n. 426, p. 78.
440 See Annex II.
441 A/44/49 of 8 December 1989, para. 11.
were deployed. In addition, the Office of Legal Affairs provided a number of opinions concerning peace-keeping operations and observer missions during the period under review. Some of those opinions have already been described in other relevant sections.

269. In a memorandum to the Field Operations Division, the Office of Legal Affairs commented on the draft agreement on the status of the United Nations Operation in Mozambique (ONUMOZ) proposing, inter alia, that internationally contracted personnel provided by civilian contractors in the context of United Nations peacekeeping operations be accorded, as is the case of “persons performing services” under the UNDP Standard Basic Assistance Agreement (SBAA), such privileges and immunities accorded to United Nations officials. The Office of Legal Affairs conducted a substantive review of existing international agreements, documents and issues related to the proposal which it set out in its advice.

270. Specifically, the Office of Legal Affairs advised that the General Convention, while providing specifically for the legal status of representatives of Member States, officials of the Organization and experts performing missions for the Organization, does not obligate States Parties to grant any other category of personnel, such as internationally contracted personnel provided by civilian contractors, any privileges and immunities. Therefore, any privileges and immunities which the United Nations would consider granting to civilian contractors or any other category of personnel not provided for in the General Convention would have to be subject to the agreement of the State concerned and expressly provided for in a bilateral international agreement.

271. The Office of Legal Affairs then reviewed UNDP’s SBAA and UNICEF’s Basic Cooperation Agreement (BCA). Article IX (5) of the SBAA defines “persons performing services” as “operational experts, volunteers, consultants, and juridical as well as natural persons and their employees. It includes governmental or non-governmental organizations or firms which UNDP may retain, whether as an executing agency or otherwise, to execute or to assist in the execution of UNDP assistance to a project, and their employees”. The practice of Member States illustrated that a restrictive approach had been adopted to the broad definition of “persons performing services” and to the scope of their privileges and immunities as provided for in the SBAA. This restrictive approach was reflected in the recently adopted model BCA. In that agreement, the definition was limited to individual contractors and the privileges and immunities of such persons were limited to immunity from legal process and to repatriation facilities in times of international crisis.

272. In the report of the Secretary-General dated 18 September 1990 to the Special Committee on Peacekeeping Operations on the use of civilian personnel in peacekeeping

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442 See paras. 22-23 for commentary on the Model SOFA and its implementation during the period under review.
443 See paras. 78, 86, 89, 100, 217-218, 247-248.
445 Ibid, at p. 397.
446 Ibid.
447 A/45/502. The report was submitted pursuant to the General Assembly’s resolution 44/49 of 8 December 1989 which requested the Secretary-General to undertake a study to identify those tasks and services which could be
operations, the Secretary-General, while acknowledging the value and increasing use of
civilian contractors, did not contemplate granting to them any privileges and immunities,
as he did in the case of civilian contractors provided by Governments. The latter assumed
the status of experts on mission in terms of article VI of the General Convention.448

273. The Office of Legal Affairs then advised on liability provisions (the “hold
harmless” clause) in relation to civilian personnel. The rationale behind the “hold
harmless” clause was to preserve the jurisdictional immunity of the United Nations and
the need to ensure that the contractor, notwithstanding its contractual relationship with
the Organization, would be held liable for acts or omissions committed in the
performance of its services under the contract. Granting contractors privileges and
immunities was therefore unrelated to the question of liability for loss or damage that
they may cause. A “hold harmless” clause was included in the UNDP SBAA and
UNICEF BCA, where the Government agreed to indemnify and hold UNDP or UNICEF
harmless against all claims arising from or attributable to acts of the respective
organizations or their employees in relation to their activities in the country concerned. A
“hold harmless” clause was also included in the “General Conditions” attached to
contracts concluded between the United Nations and corporate or institutional
contractors. This was consistent with the provisions of paragraph 23 of administrative
instruction ST/AI/327 of 23 January 1985 on institutional or corporate contractors. The
granting of privileges and immunities to personnel provided by civilian contractors would
not exempt the contractors from the obligation to hold the United Nations harmless
against any claims. In the case of civilian contractors engaged in the context of the United
Nations Protection Force (UNPROFOR) in the former Yugoslavia, the Office of Legal
Affairs noted that the provisions of the agreement between the United Nations and the
contractor in question reflected the prevailing practice. Accordingly, under the provisions
of that agreement, the contractor had the status of an independent contractor and its
employees were not considered officials of the United Nations, but rather employees of
the contractor.449

274. Based on the substantive review of the existing international agreements,
documents and issues regarding internationally contracted personnel provided by civilian
contractors in the context of United Nations peacekeeping operations, the Office of Legal
Affairs advised it would have no objection to introducing in SOFAs, on an ad hoc basis,
provisions to the effect that internationally contracted personnel should be entitled to
enjoy privileges and immunities along the lines of those approved in the UNICEF BCA,
namely, immunity from legal process and entitlement to repatriation in times of
international crises. This would of course be subject to the consent of the States with
which SOFAs were negotiated.450 In conclusion, the Office suggested that the Field
Operations Division should examine the introduction of such provisions in consultation
with the Special Committee on Peace-Keeping Operations, the Office of Human

448 United Nations Juridical Yearbook, 1993, p. 398. The Secretary-General’s report was subsequently endorsed by the
449 Ibid, at pp. 398-399.
450 Ibid, at p. 399.
Resources Management and other offices competent to review the implications of the proposal.\textsuperscript{451}

275. In a memorandum to the Under-Secretary-General for Peacekeeping Operations, the Office of Legal Affairs advised on issues related to visa requirements imposed by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) on members of the United Nations Protection Force (UNPROFOR).\textsuperscript{452} The Federal Republic of Yugoslavia (Serbia and Montenegro) sought to impose on members of UNPROFOR a requirement for entry visas for both individuals with United Nations laissez-passer and individuals with national passports of countries which required entry visas for nationals from the Federal Republic of Yugoslavia (Serbia and Montenegro). The visa requirements would not, however, apply to UNPROFOR convoys transiting through the Federal Republic of Yugoslavia (Serbia and Montenegro), except for the leader of such convoys. Therefore, large movements of military personnel of UNPROFOR transiting through the State concerned would not be affected by the new visa requirements. This was important since the provisions of the draft agreement with the Federal Republic of Yugoslavia (Serbia and Montenegro) on the status of UNPROFOR, under which members of the Force were exempted from visa regulations, were precisely intended to ensure that large movements of personnel could proceed without any impediment to the area of operation. The Office of Legal Affairs advised that as a general rule, the position of the United Nations in respect of visa requirements was to consider the mere visa requirement as unobjectionable so long as it was a formality which did not entail an impediment to the speedy travel and movement of United Nations personnel. This position was based on sections 25 and 26 of the General Convention. Therefore, if visa applications for UNPROFOR personnel were dealt with “as speedily as possible”, the Government would not be acting at variance with its obligations under sections 25 and 26 of the General Convention. It pointed out that the procedure relating to the issuance of the visas should not result in any restrictions which would impede the travel and movement of UNPROFOR members.\textsuperscript{453}

276. In a memorandum to the Department of Peacekeeping Operations, the Office of Legal Affairs advised that “members of the military component of the United Nations Peacekeeping Force in Cyprus were entitled to the exemption from registration fees and road tax in accordance with the provisions of article 26 of the Agreement concluded by exchange of letters dated 21 March 1964 between the United Nations and the Government of Cyprus on the status of UNFICYP”.\textsuperscript{454} Members of the military component of UNFICYP, with the exception of the Force Commander and Chief of Staff, were required to pay registration fees and road tax for their cars, while members of the civilian component were not. Article 26 of the Agreement provided that the members of the Force “shall be exempt from all other fees, and charges”. Members of the Force were defined as meaning “any person, belonging to the military service of a State, who is serving under the Commander of the United Nations Force and to any civilian placed

\textsuperscript{451} Ibid, at p. 400.
\textsuperscript{452} United Nations Juridical Yearbook, 1993, pp. 409-410.
\textsuperscript{453} Ibid, at p. 410.
\textsuperscript{454} United Nations Juridical Yearbook, 1994, p. 455.
under the Commander by the State to which such civilians belongs”. Therefore, the Office of Legal Affairs advised, no distinction should apply between members of the civilian and military components of UNFICYP, as far as the exemption provided in article 26 of the Agreement was concerned.455

8. **Privileges and Immunities of Operational and Executive Personnel**

D. **Article 105(3)**

ANNEX I

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

<table>
<thead>
<tr>
<th>State</th>
<th>Accession/Succession</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>9 August 1990 (a)</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>13 May 1991 (a)</td>
</tr>
<tr>
<td>Estonia</td>
<td>21 October 1991 (a)</td>
</tr>
<tr>
<td>Republic of Korea</td>
<td>9 April 1992 (a)456</td>
</tr>
<tr>
<td>Slovenia</td>
<td>6 July 1992 (s)457</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>13 August 1992 (a)</td>
</tr>
<tr>
<td>Bahrain</td>
<td>17 September 1992 (a)</td>
</tr>
<tr>
<td>Croatia</td>
<td>12 October 1992 (s)458</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>22 February 1993 (s)459</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>25 March 1993</td>
</tr>
</tbody>
</table>

455 Ibid.
456 The Republic of Korea made the following reservation: “[The Government of the Republic of Korea declares] that the provision of paragraph (c) of section 18 of article V shall not apply with respect to Korean nationals”.
457 Slovenia was admitted as a Member by General Assembly resolution A/RES/46/236 of 22 May 1992 following the dissolution of the Socialist Federal Republic of Yugoslavia.
458 Croatia was admitted as a Member by General Assembly resolution A/RES/46/238 of 22 May 1992 following the dissolution of the Socialist Federal Republic of Yugoslavia.
459 Czechoslovakia acceded to the Convention on 7 September 1955 with a reservation to section 30 of the Convention. The reservation was subsequently withdrawn by a notification received on 26 April 1991. The Czech Republic was admitted as a Member on 19 January 1993.
Slovakia

The former Yugoslav Republic of Macedonia

Bosnia and Herzegovina

28 May 1993 (s)\textsuperscript{460}

18 August 1993 (s)\textsuperscript{461}

1 September 1993 (s)\textsuperscript{462}

\textsuperscript{460} Ibid. Slovakia was admitted as a Member on 19 January 1993.

\textsuperscript{461} By resolution A/RES/47/225 of 8 April 1993, the General Assembly decided to admit as a Member the State being provisionally referred to for all purposes within the United Nations as “The former Yugoslav Republic of Macedonia” pending settlement of the difference that had arisen over its name.

\textsuperscript{462} Bosnia and Herzegovina was admitted as a Member by General Assembly resolution A/RES/46/237 of 22 May 1992 following the dissolution of the Socialist Federal Republic of Yugoslavia.
Annex II: Table of agreements concluded by the United Nations during the period under review that contained provisions on privileges and immunities

<table>
<thead>
<tr>
<th>Technical cooperation and assistance</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(a) UNICEF</strong></td>
<td></td>
</tr>
<tr>
<td>1994.</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td></td>
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</tbody>
</table>

(b) UNDP

<table>
<thead>
<tr>
<th>1989.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreement between the United Nations Development</td>
</tr>
<tr>
<td>Agreement</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Description</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>(c) UNHCR offices Agreement between the United Nations (Offices of the United Nations High Commissioner for Refugees) and the Government of Nicaragua. Signed at Managua on 1 November 1990.</td>
</tr>
<tr>
<td>Cooperation Agreement between the United Nations (United Nations High Commissioner for Refugees) and the Government of the Republic of Venezuela* relating to the establishment in Caracas of the Regional Office for Northern South America and the Caribbean. Signed at Caracas on 5 December 1990.</td>
</tr>
<tr>
<td>---</td>
</tr>
</tbody>
</table>


(e) Integrated offices


(f) Institutions


<table>
<thead>
<tr>
<th>UN sessions, meetings, seminars, workshops or trainings</th>
<th>Description</th>
</tr>
</thead>
</table>


Exchange of letters constituting an agreement between the United Nations and the Government of Vanuatu* concerning the arrangements for the Asia Pacific Regional Seminar in Observance of the Thirtieth Anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, to be organized by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples at Port Vila, Vanuatu, from 9 to 11 May 1990. New York, 27 April 1990.


Exchange of letters constituting an agreement between the
<p>| Exchange of letters constituting an agreement between the United Nations and the Government of Nepal concerning a Regional Meeting on Confidence-building Measures in the Asia-Pacific Region [to be held at Kathmandu from 24 to 26 January |</p>
<table>
<thead>
<tr>
<th>Year</th>
<th>Exchange of letters constituting an agreement between the United Nations and a specific government concerning a particular event or agreement.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Exchange of letters constituting an agreement between the United Nations and the Austrian Federal Government concerning the thirty-fourth session of the Committee on the Peaceful Uses of Outer Space, to be held at Graz, Austria, from 27 May to 7 June 1991. New York, 3 April and 23 May 1991.</td>
</tr>
<tr>
<td></td>
<td>Agreement between the United Nations and the Government of <strong>Note:</strong> The text is truncated and not fully transcribed.</td>
</tr>
<tr>
<td>Agreement</td>
<td>Date/Location</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Agreement</td>
<td>Details</td>
</tr>
<tr>
<td>-----------</td>
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</tr>
<tr>
<td>Exchange of letters constituting an agreement between the United Nations and the Government of Turkey concerning arrangements regarding the Seventh Conference on Urban and</td>
<td></td>
</tr>
</tbody>
</table>


Exchange of letters constituting an agreement between the United Nations and the Government of the Czech and Slovak...
<table>
<thead>
<tr>
<th>Agreement/Exchange of Letters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exchange of letters constituting an agreement between the United Nations and the Government of Nepal concerning the Regional Meeting on National Security and Building of Confidence among Nations in the Asia-Pacific Region, to be held</td>
</tr>
<tr>
<td>Date Range</td>
</tr>
<tr>
<td>------------------</td>
</tr>
<tr>
<td>Agreement</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>United Nations and the Government of Israel on the arrangements regarding the Seminar on Safety of Young and Novice Drivers, and the session of the Working Party on Road Traffic Safety, of the Economic Commission for Europe, to be held at Tel Aviv from 10 to 12 and 13 to 15 October 1993, respectively. Geneva, 8 and 11 October 1993.</td>
</tr>
<tr>
<td>Exchange of letters constituting an agreement between the United Nations Environment Programme and the Government of Thailand concerning the arrangements for the Third Meeting of the Conference of the Parties to the Vienna Convention for the Protection of the Ozone Layer and the Fifth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer, as well as their preparatory meetings to be held at Bangkok from 15 to 24 November 1993. Nairobi and Bangkok, 10 September and 3 November 1993.</td>
</tr>
<tr>
<td>Agreement between the United Nations and the Government of</td>
</tr>
</tbody>
</table>


Exchange of letters constituting an agreement between the United Nations and the Government of Cyprus concerning arrangements for the meeting of experts on human settlements

<table>
<thead>
<tr>
<th>4 Peace-keeping and other missions</th>
</tr>
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<tbody>
<tr>
<td>---</td>
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</tbody>
</table>

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

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