

PRIVILEGES AND IMMUNITIES OF THE INTERNATIONAL COURT OF JUSTICE

(Item 28 of the Provisional Agenda for
the Second Part of the First Session)

The General Assembly at its thirty-first bienary meeting held on 13 February 1946 invited the members of the International Court of Justice at their first session to consider the question of the privileges, immunities and facilities which the members of the Court shall enjoy and to inform the Secretary-General of their recommendations.

The Secretary-General submits to the General Assembly the recommendations of the members of the Court for consideration.

REPORT OF THE INTERNATIONAL COURT OF JUSTICE ON THE IMMUNITIES
OF MEMBERS OF THE COURT, THE REGISTRAR, OFFICIALS OF THE
REGISTRY, ASSESSORS, THE AGENTS AND COUNSEL OF PARTIES
AND ALSO OF WITNESSES AND EXPERTS

By a resolution dated 13 February 1946, the General Assembly of the United Nations invited the International Court of Justice to consider at its first session the question of the privileges, immunities and facilities necessary for the exercise of its functions and the fulfilment of its purposes, in the country of its seat and elsewhere.

The Court has accordingly examined the problem in its various aspects during its first session held at the Hague (3 April to 6 May 1946).

In transmitting to the General Assembly the conclusions of this examination, the Court suggests that they should form the subject of a resolution by the Assembly recommending that Members of the United Nations adopt and apply them in their respective countries. This method will achieve the purpose of the Assembly's Resolution and will avoid the delays inherent in the conclusion of an international convention.

As the principal judicial organ of the United Nations, the Court as such, and its Chambers, are already furnished with the guarantees of independence necessary for the collective exercise of their functions, by the provisions of the Charter and of the Statute of the Court. Moreover, the Court's Statute secures individual privileges and immunities to the Members of the Court and to the agents, counsel and advocates of parties.

The relevant provisions of the Statute to which the present resolutions are designed to give full effect are as follows:

Article 19. The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 22. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

Article 42, paragraph 3. The agents, counsel and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

Like the Permanent Court of International Justice, the International Court of Justice, has its seat at The Hague. The Court finds that the question of the privileges, immunities, facilities and prerogatives of the members of the Permanent Court of International Justice and its Registrar, as well as of the higher officials of the Court, was settled in so far as concerns The Netherlands authorities, by an agreement dated 22 May 1928, recorded by means of an exchange of letters between the President of the Permanent Court of International Justice and the Minister for Foreign Affairs of The Netherlands. This settlement was based on the principle that the members of the Court and the Registrar were assimilated in this respect to the Heads of Missions accredited to Her Majesty the Queen of The Netherlands and the higher officials of the Court to diplomatic officials attached to the Legations at The Hague. Exemptions and facilities were also extended to all officials of the Court by a series of communications addressed by the Minister for Foreign Affairs of The Netherlands to the Registrar of the Court.

The Court finds that, in the past, this regime has given satisfaction to the Permanent Court of International Justice, and that these liberal measures fully satisfy the requirements of the Statute;

That The Netherlands Government has declared its readiness to extend the benefits of these measures to the members of the Court and to its officials, as will be seen from the agreement recorded in the exchange of letters dated 26 June 1946 (Annex: Letters from the President of the Court to the Minister for Foreign Affairs, and from the Minister for Foreign Affairs to the President of the Court, with an Appendix.);

That, furthermore, it accords to the agents, counsel and advocates of parties all the safeguards which Article 42, No. 3, of the Court's Statute is designed to secure for them, as will be seen from the agreement above-mentioned dated 26 June 1946;

The Court, accordingly, considers that, in regard to this point, it need only ask the General Assembly to declare the agreements concluded with The Netherlands Government to be satisfactory, since they give full effect to the requirements of Articles 19 and 42, No.3 of the Statute.

Outside the country where the Court normally has its seat, the status of the members of the Court and of its officials and that of the agents, counsel and advocates of parties, necessitates supplementary arrangements, the desirability of which, already recognized in the days of the Permanent Court of International Justice, is now increased by the new provisions in Articles 22 and 42, paragraph 3, of the Statute of the International Court of Justice.

In this connection, the position of members of the Court, the Registrar and the Court's officials, on the one hand, and that of the agents, counsel and advocates of parties, on the other, must be considered separately.

1. As regards the members of the Court, States Members of the United Nations should be recommended to accord diplomatic privileges and immunities to judges in countries where, with the express or tacit consent of the local Government, they may select a place of residence which may be regarded as in connection with their judicial functions.

This provision might run as follows:

"If a judge for the purpose of holding himself permanently at the disposal of the Court intends to reside in some country other than his own and obtains the consent of the Government of that country after communicating his intention to it, he should be accorded diplomatic privileges and immunities during the period of his residence there."

Furthermore, the Court considers that the immunities, privileges, prerogatives and facilities required by judges for the purpose of travelling between the country in which they may be residing, even quite temporarily, and that to which their duties may call them, should also be more clearly defined.

Thus, judges should not only be exempt from restrictions of any kind on leaving the country in which they reside and on entering the country where the

Court is sitting, but should also actively enjoy, while travelling, the privileges and immunities normally accorded to diplomatic agents in such circumstances.

The following provisions appears suitable for recommendation to the States:

"Members of the Court shall be accorded every facility to leave the country where they may happen to be and to enter the country where the Court is sitting, and again to leave it. On journeys in connection with the exercise of their functions, they shall, in all countries through which they may have to pass, enjoy all the privileges, immunities and facilities granted by these countries to diplomatic agents.

"This provision shall also apply to the Registrar of the Court and to his deputy."

The position of officials of the Permanent Court of International Justice was based on Article 7 of the Covenant of the League of Nations which granted officials of the League, when engaged on the business of the League, diplomatic privileges and immunities. A draft convention on the privileges and immunities of the United Nations Organization was prepared during the first session of the General Assembly in London. But as this convention has not yet come into force the following provision might be adopted as regards officials of the Court:

"Officials of the Court shall enjoy in any country where they may be on the business of the Court or in any country through which they may pass on such business, such privileges, immunities and facilities for residence and travel as may be necessary for the independent exercise of their functions. Higher officials shall enjoy the treatment accorded to diplomatic agents of similar rank."

2. As regards the agents, counsel and advocates of parties, the immunities and privileges accorded them by Article 42, paragraph 3, of the Statute, serve a more limited purpose and are consequently more restricted in scope. The mission of these representatives is essentially one of a temporary character.

There are two other classes of persons whose mission presents the same temporary character and to whom the Court considers that the requisite safeguards for the exercise of their functions should be accorded. These are, first, the assessors referred to in Article 30, paragraph 2, of the Statute, and secondly, the witnesses and experts referred to in Articles 50 and 51 of the Statute.

The Netherlands Government has, for its part, declared its readiness to grant to assessors, agents, counsel, advocates, witnesses and experts the fullest measure of independence in the fulfilment of their mission at the usual seat of the Court. It would suffice to recommend that other Members of the United Nations should accord them the requisite guarantees in all countries where they may have to exercise their function in connection with the Court or through which they may pass for this purpose.

The following text would fulfil these requirements;

"Assessors of the Court, as also the agents, counsel and advocates before the Court, shall be accorded in the countries where they may have to fulfil their mission before the Court and on journeys necessitated by this mission, such privileges, immunities and facilities for residence and travel as may be necessary for the independent exercise of their functions.

"Witnesses and experts who may have to proceed to the country where the Court is sitting, shall be accorded the immunities and facilities necessary for the fulfilment of their mission".

Among the Resolutions adopted by the General Assembly of the United Nations on 15 February 1946, Sections 34, and following of the Draft Convention on Privileges and Immunities provide for the delivery of special 'Laissez-passer' by the United Nations. These 'Laissez-passer' would be accepted as official document in any journey undertaken by their holders.

If these provisions are put into effect, the International Court of Justice shall have the same power in so far as concerns its members, the Registrar and the officials of the Court.

COPY

Annex to Memorandum

THE PRESIDENT OF THE COURT TO THE MINISTER
FOR FOREIGN AFFAIRS OF THE NETHERLANDS (LETTER)

The Hague, June 26th, 1946

Monsieur le Ministre,

As your Excellency is aware, the General Assembly of the United Nations, on January 19th, 1946, instructed its Sixth Commission to consider the question of the privileges, immunities and facilities to be granted to the United Nations. In accordance with these instructions, the Sixth Committee prepared a number of draft resolutions. One of these relates to the adoption of a General Convention, containing an Article V, in which the privileges, immunities, exemptions and facilities to be enjoyed as a general rule by the officials of the Organisation are set out.

As regards the International Court of Justice, the Sixth Committee devoted to it a special resolution. After considering the question of the privileges and immunities to be accorded to Members of the Court, to the Registrar and the Court's staff, and to the agents, counsel and advocates of the parties, the resolution recommended that, to ensure that the Court shall enjoy the privileges, immunities and facilities necessary for the exercise of its functions and the fulfilment of its purpose, in the country of its seat and elsewhere, the Court shall make recommendations, to be forwarded to the Secretary-General.

The Assembly's reason for dealing separately with the case of the International Court of Justice and for asking it to formulate proposals was that the Court's Statute, which is annexed to, and forms an integral part of the Charter, provides in Article 19, that, when engaged on the business of the Court, the Members of the Court shall enjoy diplomatic privileges; while Article 42 lays down that the agents, counsel and advocates of the parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties. Another reason was, doubtless, that the Court is an organism whose members, with their small staff, perform duties of a special character and whose requirements

are consequently different from those of the other organs of the United Nations.

In any case, as regards Netherlands territory, negotiations have taken place between representatives of the Netherlands Foreign Ministry and representatives of the Court, with a view to giving effect in the most satisfactory way possible to the above-mentioned Assembly Resolution. In accordance with the excellent relations that have always existed between international judicial bodies and the Government of the Netherlands, these conversations led to an agreement on the general principles that should govern the matter.

These principles are set out in the Annex to the present note. In communicating this document to Your Excellency, I have the honour to ask you to confirm that its content is in accordance with the agreement reached.

I would add the following: In the Report in which the Court forwards its recommendations on privileges and immunities, the Secretary-General is requested to ask the General Assembly to declare the agreement reached between the Netherlands Government and the Court to be satisfactory. Special mention is made of the traditional liberality of the Netherlands in this matter.

On the other hand, I trust that you will agree with me that the question of precedence, formerly dealt with in Paragraph IV of the General Principles annex to the letters exchanged on May 22nd, 1928, between the President of the Permanent Court of International Justice and the Netherlands Minister for Foreign Affairs, remains outside the present Agreement. I should be grateful if you would confirm your agreement on this point.

I have etc.

(signed) J. G. Guerrero
President of the International
Court of Justice

Annex.

ANNEX

1. As concerns the privileges, immunities, facilities and prerogatives within the territory of The Netherlands, of members and staff of the International Court of Justice, of other than Dutch nationality:

(a) The Members of the Court will, in a general way, be accorded the same treatment as Heads of Diplomatic Missions accredited to Her Majesty the Queen of The Netherlands.

As regards the privileges, immunities and facilities above-mentioned, this provision applies also to the Registrar of the Court and to the Deputy Registrar when acting for the Registrar.

(b) The Deputy Registrar of the Court will, in a general way, be accorded the same treatment as Counsellors attached to Diplomatic Missions at The Hague.

The Higher officials of the Court - First Secretaries and Secretaries - will, in a general way be accorded the same treatment as Secretaries attached to Diplomatic Missions at The Hague.

(c) The other officials of the Court will be treated as officials of comparable rank attached to Diplomatic Missions at The Hague.

2. Members of the Court, the Registrar and Higher Officials of the Court who are of Netherlands nationality, are not answerable to the local jurisdiction for acts performed by them in their official capacity and within the limits of their duties.

Netherlands nationals of whatever rank are exempt from direct taxation on the salaries allotted to them from the Court's Budget.

3. The wives and unmarried children of Members of the Court, the Registrar and the higher officials of the Court, when of non-Netherlands nationality shall receive the same treatment as the head of the family, if they live with him and are without profession. The household of the family (governesses, private secretaries, servants, etc.) occupy the same position as is accorded in each case to the domestic staff of diplomatic persons of comparable rank.

4. Privileges and immunities are granted in the interests of the Administration of International Justice and not in the personal interest of the beneficiary.

As concerns officials of the Registry, the Registrar, with the President's approval, may withdraw their immunities, with due regard to the principle laid down in the previous paragraph. In the case of the Registrar, this duty shall rest with the Court.

5. The assessors of the Court and the agents, counsel and advocates of the Parties, shall be accorded such privileges, immunities and facilities for residence and travel as may be required for the independent exercise of their functions.

Witnesses and experts shall be accorded the immunities and facilities necessary for the fulfilment of their mission.

COPY

THE MINISTER FOR FOREIGN AFFAIRS OF THE
NETHERLANDS TO THE PRESIDENT OF THE COURT (LETTER)

The Hague, June 26th, 1946.

Monsieur le President,

I have the honour to acknowledge receipt of your Excellency's letter of June 26th, in which you draw my attention to the Resolution of the 6th Committee of the United Nations General Assembly, concerning privileges and immunities to be granted to the International Court of Justice.

I was much pleased to note that Your Excellency was good enough to mention that the conversations that took place between representatives of the Court and representatives of my Ministry were marked by a continuance of the excellent relations that prevail by tradition between international judicial organisations and Her Majesty's Government, and I hasten to assure Your Excellency that Her Majesty's Government also has a happy recollection of the relations that existed between it and the Permanent Court of International Justice.

In accordance with Your Excellency's request, I wish to confirm that the Annex attached to your above-mentioned letter fully corresponds to the Agreement reached during the conversations and exactly reproduces the Netherlands Government views on the subject.

I note with much satisfaction that in the Report in which the Court forwards its Recommendations concerning privileges and immunities - requesting the Secretary-General of the United Nations to beg the General Assembly to declare the Agreement reached between the Netherlands Government and the Court entirely satisfactory - special mention is made of the liberal traditions of the Netherlands in this matter.

With reference to the last paragraph of Your Excellency's letter above-mentioned, I beg to confirm that it is understood that the question of precedence formerly dealt with in paragraph IV of the General Principles attached to the exchange of letters between the President of the Permanent Court of International Justice and the Foreign Minister of the Netherlands, dated May 22nd, 1928, remains outside the present Agreement.

I have, etc.

(signed) J. H. van Rooyen

Minister for Foreign Affairs

B.L.A. 6 Sept. 46
