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THE PRACTICE OF THE UNITED NATIONS, THE SPECIALIZED AGENCIES  
AND THE INTERNATIONAL ATOMIC ENERGY AGENCY CONCERNING THEIR  
STATUS, PRIVILEGES AND IMMUNITIES

Part Two: The organizations. B. Summary of practice  
relating to the status, privileges and immunities of  
the specialized agencies and the International Atomic  
Energy Agency

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CHAPTER I. JURIDICAL PERSONALITY OF THE SPECIALIZED AGENCIES  
AND OF IAEA

1. The Specialized Agencies Convention provides in article II, section 3 that:

"The Specialized Agencies shall possess juridical personality. They shall have the capacity (a) to contract, (b) to acquire and dispose of immovable and movable property, (c) to institute legal proceedings."

2. Article II, section 2 of the IAEA Agreement on Privileges and Immunities contains a similar provision. The constitutional instruments of the specialized agencies and of the IAEA also provide, expressly or by implication, for the grant of the necessary legal capacity to enable the agency concerned to fulfil its purposes.<sup>1/</sup>

1. Contractual capacity

(a) Recognition of the contractual capacity of the specialized agencies and of IAEA

3. The capacity of the specialized agencies and of IAEA to enter into contracts has been fully recognized. No limits have been set in national legislation or by other acts of national authorities upon the acknowledgement given by member and non-member States to the exercise of this capacity.

(b) Choice of law: settlement of disputes and system of arbitration

4. As a general rule, the commercial contracts concluded by specialized agencies are silent on the issue of the choice of law. They do not require the application of a given system of municipal law nor do they expressly exclude the application of such law if this should later prove desirable, for example, for purposes of interpretation. On occasions, however, reference is made to a specific system of municipal law where, for technical reasons, recourse to a body of detailed jurisprudence may be required; examples of contracts in this category have, in particular, included some of those concluded by WHO with building and civil

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<sup>1/</sup> Art. XVI, FAO Constitution; appendix II, IMCO Convention; art. 15, IAEA Statute; art. 7, IBRD Articles of Agreement; art. 47, ICAO Convention; art. 8, IDA Articles of Agreement; art. 6, IFC Articles of Agreement; art. 39, ILO Constitution; art. IX, IMF Articles of Agreement; No. 149 of the ITU Montreux Convention (1965); art. 12, UNESCO Constitution; art. 66, WHO Constitution; and art. 27, WMO Convention.

engineering firms. Reference to a given system of national law may also be made implicitly. Thus the lease contracts entered into by the specialized agencies in different countries have usually been cast in the standard form employed locally, which have presupposed the applicability of national law. A somewhat similar situation has prevailed where an organization has entered into a contrat d'adhésion drawn up by the party providing the service, such as the provision of transport facilities or of insurance coverage.

5. Although considerable variation exists, the majority of contracts entered into by specialized agencies and by IAEA for goods and services provide for the settlement of disputes by arbitration, after recourse to direct negotiation. Most contracts concluded by the ILO in Geneva include a provision whereby all disputes are to be referred to the ILO Administrative Tribunal for decision;<sup>1/</sup> the Tribunal has not in practice been called upon to give any decisions in such cases. The specialized agencies and IAEA have rarely had recourse to court actions in order to enforce their contractual remedies. One case which may be noted, however, is that of International Refugee Organization v. Republic S.S. Corp. et al.,<sup>2/</sup> in which the IRO brought an action against the defendant corporation and its president to recover damages for alleged fraudulent breach of contract and sought enforcement of a writ of foreign attachment against a ship owned by the corporation.

6. Except for cases in which express reference is made to a given system of municipal law, contracts of employment are governed exclusively by international administrative law, including in particular, the terms of the contract itself and of any statutory rules adopted by the organization concerned. Arrangements have been made for the settlement of disputes arising under employment contracts by means of internal appellate machinery. One of the main issues in the case was whether the capacity to institute legal proceedings included capacity to sue in a federal court whose jurisdiction was limited to enumerated parties; it was held that the IRO, as a specialized agency, had capacity to institute proceedings in order to recover damages for breach of contract.

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1/ "The Tribunal shall be competent to hear disputes arising out of contracts to which the International Labour Organisation is a party and which provide for the competence of the Tribunal in any case of dispute with regard to their execution." Article II, paragraph 4, Statute of the Administrative Tribunal of the International Labour Organisation.

2/ United States Court of Appeals, Fourth Circuit, 11 May 1951, Nos. 6202, 6245, 6249, 189 F. 2d 853, on appeal from United States District Court D. Maryland, Cir. No. 4479, 92 F. Supp. 674 and No. 3132, 93 F. Supp. 798.

7. The IBRD, IDA and IFC have developed a distinct body of practice as regards those contractual transactions which constitute their major field of activity. In the case of the IBRD, the position varies according to whether the organization is acting as lender or as borrower and according to the nature of the other party.<sup>3/</sup> The IBRD makes loans either directly to member Governments or with the guarantee of a member country. Loans made to member Governments and guarantee agreements are governed by international law. Loan agreements with a borrower other than a member country cannot be regarded as international agreements. They are, however, insulated from the effect of conflicting domestic law, pursuant to an express provision of the IBRD Loan Regulations. On occasion such as the taking of security for a loan, express reference is made to municipal law in so far as the validity and enforcement of the security are concerned. The IBRD agreements provide for the settlement of loan disputes by international arbitration in accordance with the provisions contained in section 7.03 of Loan Regulations No. 3<sup>4/</sup> and in section 7.04 of Loan Regulations No. 4.<sup>5/</sup> Section 6.03 of the IDA Development Credit Regulations No. 1<sup>6/</sup> provides for the same procedure. The IDA has so far made credits available only to member Governments, under agreements governed by international law.

8. The practice of the IBRD as a borrower depends on the custom in the particular market in which the funds are raised, or bonds are issued, and the character of the

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3/ The practice of IBRD is more fully explained in the following works: Broches, International Legal Aspects of the Operations of the World Bank, p. 98; Recueil des Cours, Académie de Droit International, 1959, vol. III, p. 301; Sommers, Broches and Delaume, "Conflict Avoidance in International Loans and Monetary Agreements"; 21, Law and Contemporary Problems, 1956, p. 463; Delaume, "The Proper Law of Contracts Concluded by International Persons: a Restatement and a Forecast"; 56, American Journal of International Law, 1962, p. 63; Nurick, Choice of Law Clauses and International Contracts, Proceedings of the American Society of International Law, 1960, p. 56; and Scott, the Enforceability of Loan Agreements between the World Bank and its Member Countries, 13, American University L.R. 1964, p. 185.

4/ United Nations Treaty Series, vol. 414, p. 268.

5/ Ibid., vol. 400, p. 212.

6/ Ibid., vol. 415, p. 69.



lender. While IBRD bonds issued in Canada, the United Kingdom and the United States contain no stipulation of applicable law (although it may be assumed that the law of the relevant market applies), bonds issued in Europe, other than in the United Kingdom, are expressly governed by the law of the particular market. As regards the character of the lender, it may be noted that, while loans made by Switzerland to the IBRD are governed by international law, loans made to the IBRD by institutions such as the Deutsche Bundesbank, although governed by municipal law, contain no express stipulation of applicable law. Similar remarks apply to jurisdictional problems incidental to loans raised by the IBRD. Thus, while loan agreements between Switzerland and the IBRD provide for the arbitral settlement of possible loan disputes, bonds issued in Europe, other than in the United Kingdom, provide for the submission of loan disputes to the jurisdiction of the local courts. Bonds issued by the IBRD in Canada, the United Kingdom and the United States contain no jurisdictional clauses.<sup>7/</sup>

2. Capacity to acquire and dispose of immovable property

9. The capacity of specialized agencies and of IAEA to acquire and dispose of immovable property has been widely recognized; the organizations concerned have purchased, sold, rented and leased property in a number of States, usually under the terms of a special agreement. Only one case was reported when the acquisition of property was refused; UNESCO stated that, on a basis of national law, Mexico declined to permit a regional basic educational centre (forming an integral part of UNESCO) to purchase premises on Mexican territory.

10. Instances of the acquisition or use of immovable property by a number of agencies are given below.

(i) FAO

11. The FAO has never acquired full title, either freehold or leasehold, to immovable property. Land and buildings for use as headquarters and regional

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<sup>7/</sup> See Delaume, "Jurisdiction of Courts and International Loans, A Study of Lenders' Practice", 6, American Journal of Comparative Law 189 (1957). This matter is more fully discussed in chapter IV of Delaume's forthcoming book on the Legal Aspects of Contemporary International Lending Practice.

offices have generally been made available by Governments under the terms of a special agreement whereby the FAO is required to pay a nominal rent (e.g. in the case of the Headquarters Agreement, \$US1).

(ii) IAEA

12. IAEA has never obtained, or sought to obtain, title to immovable property either in Austria or elsewhere. However it uses such property in Austria for its temporary headquarters, under a Supplemental Agreement to the Headquarters Agreement with the Austrian Government; for its laboratory at Seibersdorf, near Vienna, under a lease contract with Oesterreichische Studiengesellschaft für Atomenergie, a semi-public institution; and for apartments for its staff, under lease contracts with the City of Vienna. In Italy IAEA uses land and a building, placed at its disposal, free of charge, by the Italian Government, for its International Centre for Theoretical Physics.

(iii) ILO

13. The ILO has acquired title to immovable property on two occasions. In 1946 the full ownership of the land and buildings then occupied by the ILO was transferred to it by the League of Nations. The transfer was made in the form usually followed in Switzerland for such transactions and was registered in the Geneva land registry without payment of any registration charges and fees for land registry.<sup>8/</sup> In 1963 the ILO purchased an adjoining piece of land from the Canton of Geneva. This acquisition was also made in the form required by Swiss law and registered; no official fees or charges were paid.<sup>9/</sup>

(iv) ITU

14. The ITU has acquired a "droit de superficie" over the site of its headquarters building.

(v) UNESCO

15. The site of UNESCO headquarters was leased to the Organization, at a symbolic rent, by the French Government. The Organization was also given property outside Paris, to which it acquired full title under French law.

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<sup>8/</sup> ILO Official Bulletin, 1946, No. 1, P. 67.

<sup>9/</sup> Ibid., 1963, No. 2, p. 289.

(vi) UPU

16. Between 1927 and 1963 the building occupied by the UPU was owned by the Organization. In 1963 title was transferred to the Social Security Fund of the UPU. The latter is a foundation established under article 80 et seq., of the Swiss Civil Code and as such has juridical personality enabling it to own property. Under a decision of the Swiss Federal Council of 20 December 1963, the Fund has been granted the same privileges and immunities as are accorded to the UPU itself, in view of the fact that its operations are conducted on behalf of UPU staff.

3. Capacity to acquire and dispose of movable property

(a) Recognition of the capacity of specialized agencies and of IAEA to acquire and dispose of movable property

17. The capacity of the specialized agencies and of IAEA to acquire and dispose of movable property has been widely used, without any serious difficulty arising. The only problem which was reported concerned a specialized agency which was bequeathed a portfolio of shares, in a number of companies of different nationalities; one of the companies concerned refused to enter the organization in its register of shareholders on the ground that the conditions of nationality laid down by its board of directors were not met by the organization.

(b) Licensing and registration of land vehicles, vessels and aircraft

18. The specialized agencies and IAEA have licensed and registered their land vehicles with the appropriate authorities of the State where the vehicle in question was used.

19. It appears that only FAO has owned or chartered vessels or aircraft. It has happened on occasion that, by courtesy of the licensing country, a vessel was permitted to fly the United Nations flag or an aircraft to display the United Nations emblem. Applications for registration have usually been filed with the competent national authorities by or on behalf of FAO. There have been cases, however, where ownership has had to be transferred temporarily to the Government or to an appropriate agency of the country concerned before the aircraft or vessel could be registered or operated, particularly where registration was limited under national law to aircraft or vessels owned by nationals or by corporations with no (or only minority) foreign capital participation.

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4. Legal proceedings brought by and against the specialized agencies and IAEA

20. The capacity of each of the specialized agencies and of IAEA to institute legal proceedings before national tribunals has been generally assumed. Few of the organizations concerned have in fact found it necessary to institute such proceedings.<sup>1/</sup> UNESCO reported that it had brought a successful action before the United States District Court for the District of Columbia against the seller (who was also the manufacturer) of a multitape machine which proved defective. The IBRD and IMF together instituted a proceeding before the Federal Communications Commission, an administrative regulatory agency of the United States Government, regarding the standard of treatment to be accorded to the official communications of those two organizations.<sup>2/</sup>

21. As regards the steps taken to avoid or mitigate possible claims of a private law nature, it may be noted that in the various technical assistance agreements the participating specialized agencies are granted the protection of various "hold harmless" clauses.<sup>3/</sup> Such clauses do not usually cover cases of gross negligence or of wilful misconduct. In the case of IAEA, the Agency has either disclaimed liability (such disclaimer being effective only in relation to the other party) or has tried to obtain a "hold harmless" undertaking, so as to cover it against third party liability in respect of nuclear risks.

22. In Schaffner v. International Refugee Organization<sup>4/</sup> the plaintiff sought to bring an action for damages alleged to have arisen out of the negligent operation of a motor vehicle used by IRO. The Court dismissed the action, however, on grounds of the organization's immunity from suit.

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<sup>1/</sup> See, however, International Refugee Organization v. Republic S.S. Corp. et al, referred to in section 1 above.

<sup>2/</sup> See section 18 below.

<sup>3/</sup> The text of several "hold harmless" clauses, applicable to specialized agencies engaged in United Nations technical assistance programmes, is contained in section 4 (c) of Summary of Practice Relating to the Status, Privileges and Immunities of the United Nations, A/CN.4/L.118/Add.1.

<sup>4/</sup> United States Court of Appeal, Allied High Commission for Germany, 3 August 1951, Civil Case No. 11, Opinion No. 665.

5. International claims brought by and against the specialized agencies and IAEA

23. Although the specialized agencies and IAEA possess the capacity to bring claims in respect of a breach of international law against other subjects of international law, only UNESCO has formally presented such a claim. Since the case involved the injury of a staff member when in a vehicle operated by a United Nations subsidiary organ, however, the latter eventually pursued the matter vis-à-vis the State concerned. Only one agency has itself received a claim, made by a State acting on behalf of one of its citizens.

6. Treaty-making capacity

(a) Treaty-making capacity of the specialized agencies and of IAEA

24. The specialized agencies and IAEA have entered into a large number of treaties with both Member and non-member States, either bilaterally or jointly (e.g. in the case of United Nations technical assistance agreements).<sup>1/</sup> Such treaties have fallen broadly into two categories, those relating to the establishment of headquarters and other offices and the holding of conferences or meetings on the one hand, and those relating to the provision of technical assistance or the operation of direct programmes on the other.

(b) Registration, or filing and recording, of agreements on the status, privileges and immunities of the specialized agencies and of IAEA

25. Although there is some variation in the practice of the various agencies, the majority of agreements entered into relating to the status, privileges and immunities of the specialized agencies and of IAEA have been registered, or filed and recorded, with the United Nations Secretariat.

26. It may be noted that instruments of acceptance of the IAEA Agreement on Privileges and Immunities are deposited with the Director-General of that agency and then registered with the United Nations Secretariat.

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<sup>1/</sup> See also section 45 below.

CHAPTER II. PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES  
AND OF IAEA IN RELATION TO THEIR PROPERTY, FUNDS AND ASSETS

7. Immunity of the specialized agencies and of IAEA from legal process

27. As stated in Section 4 of the Specialized Agencies Convention.

"The specialized agencies, their property and assets, wherever located and by whomsoever held shall enjoy immunity from every form of legal process except in so far as in any particular case they have expressly waived their immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution."

28. The majority of specialized agencies stated that their immunity from legal process had been fully recognized by the competent national authorities.<sup>1/</sup> On occasions an official, acting on behalf of an agency, has been asked to appear in order to give evidence before a national court. Where in such instances the agency concerned had considered that it could not accede to the request it had asserted its immunity from legal process, including that of its officials, through the foreign ministry of the State.

29. One agency reported two instances in which difficulty with respect to its immunity had been encountered. In one a technical assistance expert employed by the agency was involved in a car accident while on official duty, resulting in the death of a local government official who was a passenger in the car. The widow of the deceased attempted to bring an action in the local courts against both the agency and the expert. While court proceedings were halted at an early stage and the immunity from arrest of the agency official recognized, the Government was reluctant to recognize the provisions of the "hold harmless" clause contained in the relevant technical assistance agreement and intimated that it would pursue the widow's claim for compensation. The agency, however, in consultation with the United Nations, refused to recognize the claim and did not pay damages. The second case involved a local employee of the agency who was engaged in a Special Fund project. After his appointment had been terminated by the agency, he brought an action in the local courts for the termination benefits due under national law against a Government institute which was being established in the country in

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<sup>1/</sup> See e.g. the case of Schaffner v. International Refugee Organization, referred to in Section 4 above.

question under a Special Fund project. Notwithstanding the intervention of the Government, the court refused to recognize the immunity of the agency in respect of labour claims and issued a judgement which resulted in the sequestration of monies from a Special Fund imprest account held by the agency in order to satisfy the judgement. In all other instances in which actions have been brought arising out of employment contracts, however, the courts have upheld the immunity of the organization concerned, unless the latter should agree to waive its immunity from legal process in respect of the proceedings.<sup>2/</sup>

30. The IBRD, IDA and IFC do not enjoy general immunity from suit. Under the pertinent agreements<sup>3/</sup> their immunity is limited to actions brought by Member States or by persons acting for or deriving claims from such States. There have been no cases in which this immunity has not been recognized. Actions by other persons may be brought only in a court of competent jurisdiction in the territory of a Member State in which IBRD, IDA or IFC, as the case may be, has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. It may be noted that in the case of Frank B. Redicker v. Warfield et al.<sup>4/</sup> suit was brought against the IBRD by an individual plaintiff who sought to obtain damages of approximately \$625,000 for alleged interference with the plaintiff's contractual relationships. The IBRD denied the charges contained in the complaint and the action was discontinued, with prejudice, in 1954.

31. The words "every form of legal process" have been broadly interpreted to include all forms of legal process, whether or not exercised by a specifically judicial body.

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<sup>2/</sup> See e.g. Viecelli v. International Refugee Organization, 20 July 1951, Tribunal of Trieste, reported in 36 Rivista di Diritto Internazionale, 1953, p. 470.

<sup>3/</sup> See for the IBRD, Articles of Agreement, Article VII, Section 3, and Specialized Agencies Convention, Annex VI, para. 1; for IDA, Articles of Agreement, Article VIII, Section 3, and Specialized Agencies Convention, Annex XIV, para. 1; and for IFC, Articles of Agreement, Article VI, Section 3 and Specialized Agencies Convention, Annex XIII, para. 1 and 3.

<sup>4/</sup> U.S. District Court, Southern District of New York, Civil No. 61-210.

8. Waiver of the immunity from legal process of the specialized agencies and of IAEA <sup>1/</sup>

32. The specialized agencies and IAEA reported that the immunity from legal process of their respective organizations had never on any occasion been formally waived. Relatively few agencies have in fact been the subject of a claim, however, so as to cause the agency concerned to decide whether or not its immunity should be waived. No specialized agency has entered into a bilateral or other agreement whereby it is obliged to waive its immunity in the event of a dispute arising as to the interpretation of the agreement. They have, however, entered into agreements in which they agreed to arbitrate any disputes which arose.

33. As noted in Section 7 above, IBRD, IDA and IFC do not enjoy general immunity from suit. Paragraph 3 of the IFC Annex to the Specialized Agencies Convention states:

"The Corporation in its discretion may waive any of the privileges and immunities conferred under Article VI of its Articles of Agreement to such extent and upon such conditions as it may determine."

34. The immunity from "any measure of execution", contained at the end of Section 4 of the Specialized Agencies Convention, has been strictly adhered to. The ILO in particular has always taken the view that no execution is possible on the salary of officials still held by the ILO, on the ground that this would constitute a "measure of execution" on ILO assets. Accordingly, in the event that an official assigns his salary to a third party in guarantee of a loan, the guarantee is unenforceable before national courts.

35. In 1963 the United Nations Office of Legal Affairs advised<sup>2/</sup> the Special Fund regarding

"... the question of who should have the right to waive the privileges and immunities of a specialized agency which has been retained by another specialized agency to assist the latter in the execution of a project.

"Article XI of the standard Agreement between the Special Fund and FAO and other specialized agencies acting as executing agency was intended to apply only to cases where the sub-contractor concerned is a firm or organization other

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<sup>1/</sup> See also the memoranda cited in section 8 (a) and (b) Summary of Practice relating to the Status, Privileges and Immunities of the United Nations, A/CN.4/L.118/Add.1.

<sup>2/</sup> United Nations Juridical Yearbook 1963, p. 179.



than a specialized agency. Where the sub-contractor is another specialized agency, article XI would not apply and would therefore not provide a basis for the executing agency to waive the immunities of the second specialized agency.

"We are of the opinion that any waiver of the privileges and immunities of a specialized agency serving as a sub-contractor should be effected by the specialized agency itself. Under section 22 of the Convention on the Privileges and Immunities of the Specialized Agencies, the right and the duty to waive the immunity of an official rests with 'each specialized agency', and the mere fact that the specialized agency concerned happens to be acting in the capacity of a sub-contractor in regard to a particular project cannot vary the terms of the Convention. A problem however, would arise where the country recipient of Special Fund assistance is not a party to the Convention and is bound to apply its terms solely on the basis of article VIII, paragraph 2, of the standard Special Fund Agreement with Governments. As you know, this provision requires that the Government apply the Convention 'to each specialized agency acting as an Executing Agency'; where the specialized agency concerned is acting as a sub-contractor, it would not meet the literal requirement of the provision in question. However, this problem could be solved by a clause in the Plan of Operation stipulating that any specialized agency retained by the executing agency to assist it in the project shall be entitled to the privileges and immunities of a specialized agency acting as an executing agency as envisaged in paragraph 2 of article VIII of the Agreement between the Special Fund and the Government. In this way, a specialized agency would not be treated less favourably when acting as a sub-contractor than it would when filling the role of an executing agency".

9. Inviolability of the premises of the specialized agencies and of IAEA and the exercise of control by the specialized agencies and by IAEA over their premises

36. The inviolability of the premises of the specialized agencies, which is referred to in the opening sentence of Section 5 of the Specialized Agencies Convention, has been well recognized and instances of non-observance have been extremely rare. It may be noted that several agreements with host States permit the entry of local police or other authorities solely upon the request of the Agency concerned. WHO reported that, following claims made under national labour law by the locally recruited staff of one of its regional offices, various measures had been taken by the national authorities, including violation of the Organization's premises; at the time of the preparation of the present study the matters involved were the subject of discussions with the Government of the State concerned. An employee of the "UNESCO Staff Service" in the premises of UNESCO conducted local police into the basement of the building in order to arrest a subordinate member of the staff. Following a protest by UNESCO regarding this violation of its premises

and the arrest, the host Government issued a directive to the responsible police unit to ensure that no repetition occurred. UNESCO issued an administrative instruction to all members of UNESCO staff, including security staff, to the employees of the Staff Service and to employees of the bank and travel agency having offices in the building, informing them that disciplinary measures would be taken against any employee at UNESCO Headquarters who did not observe the instructions already given or who otherwise acted in a manner permitting a violation of the pertinent provisions of the Headquarters Agreement to occur.

37. The right of the Specialized Agencies and of IAEA to exercise control over their premises has not been contested. Several agencies have issued rules and instructions regarding such matters as traffic and parking regulations, the operation of cormistary facilities, the operation of a visitors service, the sale of official publications and the like.

10. Immunity of the property and assets of the specialized agencies and of IAEA from search and from any other form of interference

38. Besides referring to the inviolability of premises, Section 5 of the Specialized Agencies Convention provides that,

"The property and assets of the specialized agencies, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action."

39. No body of practice appears to have emerged regarding the interpretation of these words. The specialized agencies and IAEA, reported that the immunity in question has been observed without difficulty.<sup>1/</sup>

11. Name and emblem of the specialized agencies and of IAEA: United Nations flag

40. Relatively few legal problems appear to have arisen in connexion with the use by the specialized agencies and IAEA of their own name and distinctive emblem. The specialized agencies and IAEA have flown the United Nations flag, in accordance with the United Nations flag code, outside their offices and other installations. The WHO has its own flag.

<sup>1/</sup> See, however, the case reported by FAO in Section 11 below, in which a Government delayed the take-off of a plane carrying United Nations insignia.

41. The FAO reported that one Government delayed the take-off of an aircraft which the Organization had chartered and which was officially authorized to bear the United Nations insignia, in pursuance of a law requiring planes carrying United Nations insignia to obtain prior approval before landing on the territory of the country in question. After detention for forty-eight hours the aircraft was allowed to proceed, following diplomatic intervention by the agency.

42. A number of specialized agencies, and the IAEA, have applied to the United International Bureaux for the Protection of Intellectual Property in order to register their name and other insignia, so that they may receive the appropriate protection provided under Article 6 ter of the Convention of Paris for the Protection of Industrial Property, as revised at Lisbon in 1958 and which came into force on 4 January 1958. As a result of this action the name and insignia of the agencies in question have been protected in several countries. In addition a number of countries have adopted (usually as a result of prior requests) national enactments protecting the name and insignia of United Nations bodies.

## 12. Inviolability of archives and documents

43. As stated in Section 6 of the Specialized Agencies Convention,

"The archives of the specialized agencies, and in general all documents belonging to them or held by them, shall be inviolable wherever located."

44. Few occasions were mentioned when States had sought to take action or otherwise deny the inviolability of archives and documents. The FAO stated that on one occasion documents carried by an official were seized by customs authorities who took cognizance of, and commented on, their contents. The Government concerned subsequently apologized for the incident. Secondly, the WHO stated that in 1958 an WHO official had assisted officials of the Ministry of Health of a Member State in the selection of candidates for an official post. An offer of employment was sent to one candidate but was almost immediately rescinded by the local authorities. The person who failed to get the job thereupon instituted proceedings against the Ministry of Health, which led to the WHO official being subpoenaed to testify as a witness against the Ministry. The request for the official to appear was rejected by WHO, on the grounds inter alia, that the appearance of the official would of necessity require the production of the official files of the Organization.

13. Immunity from currency controls

45. The relevant provisions of the Specialized Agencies Convention are as follows:

"7. Without being restricted by financial controls, regulations or moratoria of any kind:

(a) The specialized agencies may hold funds, gold or currency of any kind and operate accounts in any currency;

(b) The specialized agencies may freely transfer their funds, gold or currency from one country to another or within any country and convert any currency held by them into any other currency.

"8. Each specialized agency shall, in exercising its rights under section 7 above, pay due regard to any representations made by the Government of any State party to this Convention in so far as it is considered that effect can be given to such representations without detriment to the interests of the agency." 1/

46. The privileges contained in the above-mentioned Sections have not been expressly denied. It appears to be accepted as self-evident that the organizations concerned would be unable to discharge their responsibilities in all parts of the world if they were unable to hold and transfer their funds freely. Nevertheless a number of specialized agencies reported that they had encountered considerable difficulties by reason of the payments in currencies which were not easily convertible; in most cases, however, these difficulties were resolved or lessened following discussions with the State or States concerned.

47. Particular arrangements which have been entered into, or cases which have arisen, include the following:

(i) IAEA

Article IX, Section 23, of the IAEA Headquarters Agreement provides as follows:

"(a) Without being subject to any financial controls, regulations or moratoria of any kind, the IAEA may freely:

(i) Purchase any currencies through authorized channels and hold and dispose of them;

(ii) Operate accounts in any currency;

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1/ See the opinion cited in Section 13, Summary of Practice relating to the Status, Privileges and Immunities of the United Nations, A/CN.4/L.118/Add.1, which refers to the interpretation of these provisions.

- (iii) Purchase through authorized channels, hold and dispose of funds, securities and gold;
- (iv) Transfer its funds, securities, gold and currencies to or from the Republic of Austria, to or from any other country, or within the Republic of Austria; and
- (v) Raise funds through the exercise of its borrowing power or in any other manner which it deems desirable, except that with respect to the raising of funds within the Republic of Austria, the IAEA shall obtain the concurrence of the Government.

"(b) The Government shall assist the IAEA to obtain the most favourable conditions as regards exchange rates, banking commissions in exchange transactions and the like.

"(c) The IAEA shall, in exercising its rights under this section, pay due regard to any representations made by the Government in so far as effect can be given to such representations without prejudicing the interests of the IAEA."

48. IAEA has also concluded a supplemental agreement with Austria regarding currency exchange. Under this agreement Schilling funds acquired by IAEA through the sale of freely convertible currencies may be transferred into any currency, whereas the transfer of Schilling funds of other origin into other currencies are subject to the limitations generally applicable to transfers into such currencies under the pertinent Austrian regulations.

(ii) IFC

49. Paragraph 2 of the IFC Annex to the Specialized Agencies Convention states that Section 7, paragraph (b) shall apply to the Corporation, subject to Article III, Section 5, of its Articles of Agreement. The latter provision is as follows:

"Funds received by or payable to the Corporation in respect of an investment of the Corporation made in any member's territories pursuant to Section 1 of this Article shall not be free, solely by reason of any provision of this Agreement, from generally applicable foreign exchange restrictions, regulations and controls in force in the territories of that member."

(iii) ILO

50. Besides the general problem of currencies with limited convertibility, the ILO reported a number of other difficulties which had occurred. In 1950 a Member State prohibited the opening of a bank account in the name of the ILO pending the grant

of legal status, under national law, to the ILO office in the country in question. In 1951 another Member State prevented the ILO from paying part of the salary of the ILO's national correspondent there with the proceeds in dollars or Swiss francs of the sale of ILO publications in the State concerned; a similar instance occurred in 1960 in respect to another Member State. In 1954 a Member State indicated that it could not grant the ILO the right to transfer funds freely as the matter was not dependent on the country concerned but on the then occupying powers. No difficulty arose in practice in this instance, however. In 1957 the same Member State informed the ILO that, in its opinion, the relevant provisions of the Specialized Agencies Convention were to be interpreted as meaning that its currency (which in general was freely convertible) could be exchanged without limit so far as other freely convertible currencies were concerned but that currencies with limited convertibility could only be exchanged for such of the currency of the Member State in question as had limited convertibility; this interpretation was accepted by the ILO.

(iv) IMCO

51. IMCO stated that the central bank of the host State had on one occasion ruled that the Organization could not deal in a particular money market in that State as a means of converting one currency into another.

(v) WHO

52. In the Host Agreement entered into between Egypt and WHO by means of an exchange of notes, dated 25 March 1951, it was agreed that, while the Organization might "hold gold and, through normal channels, receive and transfer it to and from Egypt", it might not transfer from Egypt more gold than it had brought it. Since the WHO does not hold any of its financial assets in the form of gold, this provision has not been applied.

54. Direct taxes<sup>1/</sup>

55. Section 9 of the Specialized Agencies Convention provides that:

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<sup>1/</sup> See also Section 17 below as regards excise duties and taxes on sales.

"The specialized agencies, their assets, income and other property shall be:

(a) Exempt from all direct taxes; it is understood, however, that the Specialized Agencies will not claim exemption from taxes which are, in fact, no more than charges for public utility services."

54. The specialized agencies reported that they had not experienced any serious difficulty in the interpretation of this provision. Although on occasions States have attempted to levy direct taxes, such attempts have been discontinued following the submission of an explanatory memorandum or other communication by the agency concerned. It may be noted that agencies in Switzerland are exempt, inter alia, from stamp duty on contracts and from impôt anticipé, impôt sur les coupons and droit d'émission on securities.

55. Under Section 19 (a) of its Headquarters Agreement FAO has been specifically exempted, inter alia, from the tax on movable property, land income tax, capital levy and local surtaxes. Under Section 22 (a) of the IAEA Headquarters Agreement, IAEA is declared exempt from all forms of national taxation. In practice, IAEA has only claimed exemption from indirect taxes if the exemption concerned was administratively feasible.

56. The specialized agencies pay "charges for public utility services", as envisaged in the Convention, except where the cost of those services has been voluntarily assumed by a host country. The FAO reported that the question of the rate of charges for public utilities had arisen in connexion with the telephone services provided at its Headquarters.<sup>2/</sup> Initially the Organization had been required to pay the same telephone rates as private subscribers, despite the fact that under Article VI, Section 11, of its Headquarters Agreement it was to be afforded the same treatment as that accorded to other Governments, including the diplomatic missions of such Governments, in respect of communications. After lengthy discussions with the telephone company and the intervention of the Italian Government, it has been established that the telephone rates chargeable to the Organization should be equivalent to those charged to Ministries of the Italian Government pursuant to Article 7, Section 10 (a) of the Headquarters Agreement, which relates to the provision of public services. The Italian authorities have, however, insisted on the payment of turnover tax with respect to public services such as telephone, electricity, gas and water, on the ground that the tax was also paid in respect of those services by diplomatic missions in Rome.

2/ See Section 18 below, regarding Government treatment in respect of communications.

57. IAEA sought to obtain exemption from the Vienna Airport Service Charge, but was informed that this did not constitute a tax but a charge levied by the company operating the Airport for the use of the airport facilities. IAEA did not therefore take any further steps in the matter.

15. Customs duties

(a) Imports and exports by the specialized agencies and by IAEA "for their official use"

58. Under Section 9 (b) of the Specialized Agencies Convention, specialized agencies are declared

"Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the specialized agencies for their official use; ...".

59. The majority of specialized agencies reported that problems have rarely arisen in determining whether or not a given article was being imported or exported "for their official use". Where difficulties have occurred they have usually been resolved by contacting the appropriate officials. In the case of imports into Switzerland, a special form has been established by the Swiss authorities on which persons specifically authorized by the various organizations having offices there may certify that a particular import is for official use.

60. Several organizations indicated some of the more particular problems which had presented themselves over the question of whether particular imports were for official use. The IMCO stated that it had encountered difficulty in importing wines, spirits and tobacco for purposes of official hospitality, since the customs authorities of the host State had denied that such articles could be for official use. After representations by the Organization, however, this ruling had been amended. The ILO reported that in 1952 and 1955 a Member State claimed that articles sent to the ILO branch office there for the purposes of an exhibition were subject to customs duty, on the grounds that importation of articles for the purposes of display at an exhibition could not be considered importation for official use. In 1961 another Member State detained a package of documents sent from another Member State, with which the detaining State no longer maintained diplomatic relations, but finally agreed to release them once it had been shown that the documents concerned were being imported by the ILO for official purposes.



61. UNESCO stated that when, in 1961, it had wished to import certain kitchen equipment for use in its headquarters the customs authorities of the Host State had declared that the articles concerned could not be imported duty free since their use was not connected with the purposes of a cultural organization. The Organization contested this ruling, pointing out that similar equipment had been imported duty-free when the headquarters building had been constructed and that the maintenance of kitchen facilities, for the benefit of representatives and officials, contributed to the efficacy of the work of the Organization. The Ministry of Foreign Affairs of the Host State stated, however, that, in its opinion, Article 15 of the Headquarters Agreement (which corresponds to Section 9 of the Specialized Agencies Convention) did not entitle the Organization to determine of its own accord that all articles it wished to import were automatically to be considered as being for official use; the determination of this question was to be made by the Organization and the Host State acting together. Owing to its pressing need of the equipment UNESCO paid the customs duties, together with the storage fees which had accrued, but informed the Ministry that it maintained its interpretation and that it reserved its rights in the matter, including that of proceeding under Article 29 of the Headquarters Agreement, which provides for the arbitration of disputes. Following a demand from its auditors for an explanation of what had occurred the Organization again approached the Ministry of Foreign Affairs, which stated that, after a fresh examination of the case, it had decided to authorize the admission of the material concerned as a special exception. Duties and taxes subsequently levied by the French customs authorities have been reimbursed to the Organization.

(b) Imposition of "customs duties ... prohibitions and restrictions"

62. Customs duties, prohibitions and restrictions have not been imposed on any goods imported or exported by the specialized agencies or by IAEA, except to the extent noted in sub-section (a) above. The question of the refund of customs duties therefore arises comparatively rarely, normally only in the case where duty has been paid by an importer from whom the organization has then bought the goods. To avoid the administrative problems involved in obtaining a refund in such cases the specialized agencies have usually sought to import goods in their own name. Where this has not been possible, suitable proof has been supplied to the importer to enable him to obtain a refund; efforts to obtain a refund in such circumstances have not always been successful however.

(c) Sales of articles imported by the specialized agencies and by IAEA

63. Section 9 (b) of the Specialized Agencies Convention further provides that articles imported for official use, free from customs duties and other restrictions, "will not be sold in the country into which they were imported except under conditions agreed to with the Government of that country".

64. The majority of specialized agencies have entered into appropriate arrangements with the authorities of the State concerned. In Switzerland the Règlement Douanier of 23 April 1952 applies, under which articles imported by agencies may be sold free of customs duty only after five years. IAEA has entered into a standing arrangement with Austria allowing the customs-free disposal of goods two years after their importation. In the case where agencies maintain staff commissaries with customs privileges<sup>1/</sup> detailed agreements have been made with the competent host authorities, in some cases including such matters as ceilings on the annual tax-free imports allowed in respect of individual staff members and restrictions on the benefits permitted to local employees.

16. Publications

65. Section 9 (c) of the Specialized Agencies Convention grants the specialized agencies exemption from duties, prohibitions and restrictions on imports and exports of their publications. The term "publications" has been interpreted to cover films, records, radio transcription discs and recording tapes, as well as books, periodicals and other printed material published by the organization concerned. In general no restrictions have been imposed on the import or export of such articles, although occasionally completion of a customs clearance certificate or the obtaining of a licence has been required. Whilst specialized agencies have complied with routine procedures to enable their publications to be cleared through customs, they have protested against the imposition of any system of licensing which appeared to go beyond this.

66. The ILO reported various occasions on which its privileges in respect of publications had been called in question or had otherwise given rise to discussion.

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<sup>1/</sup> FAO and IAEA maintain such commissaries under the terms of their respective headquarters agreements; see Art. XIII, Section 27 (j) (ii), FAO Headquarters Agreement and Art. XV, Section 38 (j) (iii) IAEA Headquarters Agreement. UNESCO also operates a similar service for the members of its staff. /...

In 1953 a Member State granted exemption from customs and sales taxes on "official supplies", including books sent to the ILO national correspondent, but claimed such taxes on items sent to third parties. In 1960 another Member State levied customs duties on ILO publications addressed directly to one of its nationals. In 1959 a third Member State claimed that the ILO should deposit with the customs authorities the value of books and publications imported for sale through the ILO sales agents; exemption from this requirement was finally obtained, however. As regards import controls more generally, two Member States stated in 1955 that all imports into their respective countries had to take place through the state import monopoly and could not be imported and sold directly through the ILO Branch Office there. The ILO agreed to use such official channels.

17. Excise duties and taxes on sales: important purchases

(a) Excise duties and taxes on sales forming part of the price to be paid

67. Section 10 of the Specialized Agencies Convention provides that:

"While the specialized agencies will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the specialized agencies are making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, States parties to this Convention will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of the duty or tax."

68. The terms "excise duties and ... taxes" have been interpreted in a broad sense. In Switzerland, where practice has been most developed, all articles imported for official use are exempt, not only from customs duties, but also from turnover taxes (impôt sur les chiffres d'affaires) and statistical charges, which are normally levied at the frontier.

69. In addition to the exemptions granted to FAO under Section 19 (a) of its Headquarters Agreement<sup>1/</sup>, Section 19 (b) provides as follows:

"Regarding indirect taxes, levies and duties on operations and transactions, FAO shall enjoy the same exemptions and facilities as are granted to Italian governmental administrations. In particular, but without limitation by reason of this enumeration, FAO shall be exempt from the registration tax (imposta di registro); the general receipts tax (imposta generale sull'entrata)

<sup>1/</sup> See Section 14 above.

on wholesale purchases, on contractual services and on tenders for contractual supplies (prestazioni d' opera, appalti), on lease of lands and buildings; from the mortgage tax; and from the consumption taxes on electric power for lighting, on gas for lighting and heating, and on building materials."

70. While FAO is exempt under this provision from payment of turnover tax (IGE)<sup>2/</sup>, the Organization has found that, in the case of purchases made or services procured in Italy, its suppliers are required to pay IGE. After FAO had placed a large printing order with an Italian firm it argued that it was not receiving the true benefit of exemption from the tax since the tax fell on its supplier and was incorporated in the invoice payable by the Organization. The Organization has continued to seek the exemption of its suppliers from this tax through the Ministry of Foreign Affairs.

(b) Important purchases

71. The question of what constitutes an important purchase for the purpose of the section has not received a standard and uniform interpretation. In Switzerland it has been agreed that, for a purchase to count as important, the cost must amount to at least 100 Swiss francs. Similarly, in the Republic of the Congo (Brazzaville), the amount involved may not be less than CFA 10,000 (approximately \$41). In an exchange of letters regarding the interpretation of the host agreement between WHO and Denmark, the expression "minor purchases" was defined as meaning those costing less than 200 Danish Kroner (approximately \$28); purchases over that figure are accordingly classified as important, within the meaning of section 10 of the Convention. In the case of IAEA, the Headquarters Supplemental Agreement on Turnover Tax provides that no refund will be made on turnover tax paid on minor purchases; minor purchases are defined as being those totalling less than AS 20,000 (approximately \$800). For running accounts the final balance at the end of each six months accounting period is considered the total sum paid.

72. It may be noted that the UNESCO Headquarters Agreement does not contain the condition that purchases be "important"; accordingly, the Organization is exempt from indirect tax in France irrespective of the importance of the purchase.

(c) Remission or return of taxes paid

73. In the case of Switzerland administrative arrangements have been made to enable the organizations operating there to obtain reimbursement. The organization

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2/ Except as regards turnover tax on public utilities; see section 14 above.

concerned pays the duties and taxes concerned to its supplier and then claims reimbursement, on a basis of appropriate statements and receipts, from the Swiss federal authorities, at regular intervals. A similar scheme operates in the United Kingdom in respect of payments of purchase tax made by IMCO.

74. In France, on the other hand, the supplier is permitted to deduct indirect taxes on sales at the time of purchase, upon written declaration by UNESCO that it is the purchaser; this arrangement, which has been defined in an exchange of letters between UNESCO and the Host State, has worked satisfactorily.<sup>3/</sup>

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<sup>3/</sup> While the taxes in question are considered "indirect taxes" within the French fiscal system, see the discussion in section 14 (especially at paragraphs 81 and 82), Summary of Practice relating to the Status, Privileges and Immunities of the United Nations, A/CN.4/L.118/Add.1, regarding the interpretation of the terms "direct" and "indirect taxes" for the purposes of the General Convention; the same considerations apply with regard to the interpretation of the Specialized Agencies Convention.

CHAPTER III. PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES AND  
OF IAEA IN RESPECT OF COMMUNICATION FACILITIES

18. Treatment equal to that accorded to Governments in respect of mails, telegrams and communications

75. Article IV, section 11, of the Specialized Agencies Convention declares that:

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

76. With one major exception, the standard of treatment accorded to specialized agencies under section 11 has been fully afforded.<sup>1/</sup> The exception exists in the case of telecommunication privileges since, under the various International Telecommunication Conventions, priorities, rates and taxes equal to those afforded to Governments have not been given to all of the specialized agencies.

77. The International Telecommunication Convention of Atlantic City, 1947, which was adopted at approximately the same time as the Specialized Agencies Convention was adopted by the General Assembly, provided that priority should be given to United Nations telegrams and telephone calls, but did not provide it for those of the specialized agencies.<sup>2/</sup> In view of the fact that the Atlantic City Convention did not provide governmental treatment for communications of the specialized agencies, at its second session in January 1948, the Administrative Council of the ITU adopted a resolution recommending to the Secretary-General of the United Nations, as well as to ITU Member States, that the Specialized Agencies Convention should be interpreted in the light of the Atlantic City Convention. There followed a series of exchanges between the Secretaries General of ITU and the United Nations.<sup>3/</sup>

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<sup>1/</sup> See section 14 above regarding the payment of turnover tax by FAO on telephone charges.

<sup>2/</sup> For the text of the pertinent provisions (Article 36 and annex 2) of the Atlantic City Convention, see section 18 of the Summary of Practice Relating to the Status, Privileges and Immunities of the United Nations, A/CN.4/L.118/Add.1

<sup>3/</sup> See Official Records of the General Assembly, Fourth Session, Sixth Committee, annex pp. 26-28.

By a letter dated 30 August 1948, the Secretary-General of the United Nations informed the Secretary-General of the ITU that the Specialized Agencies Convention had become applicable to ICAO and WHO and expressed the opinion that States parties to the Convention would have the duty to apply the provisions of section 11 to those agencies. The Secretary-General of the United Nations also pointed out that, prior to its adoption by the General Assembly, the draft text of the Specialized Agencies Convention had been communicated to the International Telecommunications Conference at Atlantic City and that the competent authorities of the ITU had been invited to be represented at the meeting of the Sub-Committee of the Sixth Committee which drew up this Convention in order to participate in its work.

78. On 7 January 1949, the Secretary-General of the ITU, by a letter to the Secretary-General of the United Nations, stated that, at its third session in September-October 1948, the Administrative Council of the ITU had adopted a resolution requesting him to ask if the United Nations would contemplate modifying the terms of section 11; in lieu of this, the Secretary-General of the United Nations was asked to consider suspending the provision until the matter could be considered by the next conference of the ITU, to be held in Buenos Aires in 1952. In his reply the Secretary-General of the United Nations stated that the Specialized Agencies Convention had already come into effect for some Member States in respect of a number of agencies. He also informed the ITU that there were no provisions in the Convention for the suspension of any of its clauses and that, as regards revision, this would be possible only if, in accordance with section 48, one-third of the States parties requested the Secretary-General to call a conference for this purpose.

79. At its fourth session, held from 15 August to 30 October 1949, the Administrative Council of the ITU adopted Resolution No. 142, in which it decided:

"1. To request the Secretary-General to keep up to date the list of the subsidiary organs of the United Nations and to forward to the Members and Associated Members of the Union a copy of this list and to advise them of any modifications therein;

"2. To request the Secretary-General to bring the terms of the above-mentioned opinion to the attention of the Members and Associate Members of the Union with the recommendation that, subject to any decisions reached by the appropriate authorities on the question of conflict of obligations, such Members and Associate Members shall, either by appropriate reservations to

article IV, section 11, of the Convention on Privileges and Immunities of Specialized Agencies or by any other appropriate means, limit to the Heads of the subsidiary organs of the United Nations the Government telecommunication privileges provided for in the Atlantic City Convention;

"3. To request the Secretary-General to suggest to the Members and Associate Members of the Union who are Members of the United Nations to place this matter on the agenda of the forthcoming General Assembly of the United Nations with a view to proposing that the United Nations consider the calling of a special Conference for the purpose of abrogating article IV, section 11, of the Convention on Privileges and Immunities of Specialized Agencies;

"4. To request the Secretary-General to recall to the Administrations present at the Paris Telegraph and Telephone Conference, 1949, the recommendation of the Conference that such Administrations recommend to their respective Governments that their representatives at the United Nations support the proposal of the Union that article IV, section 11, be abrogated;

"5. To request the Secretary-General to place this question on the agenda of the last session of the Administrative Council before the Plenipotentiary Conference, Buenos Aires, 1952, in the event that this question has not been resolved to the satisfaction of the Union before that date."

80. In his report<sup>4/</sup> dated 7 September 1949, on the general subject of the privileges and immunities of the United Nations, the Secretary-General of the United Nations referred to the discrepancy between the two Conventions. He summarized the correspondence between the Secretary-General of the ITU and himself but did not offer any recommendation of his own. At the 211th meeting of the Sixth Committee on 29 November 1949, the Assistant Secretary General in charge of the Legal Department presented the report and pointed to the divergent provisions in the ITU Convention of 1947 and those in the Specialized Agencies Convention. He said that, "it was for the Committee to decide what action to take on the report of the Secretary-General". No member of the Committee, however, adverted to the question. The Committee merely adopted a draft resolution proposed by the representative of Argentina to "take note of the Secretary-General's report".<sup>5/</sup>

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4/ Report of the Secretary-General on the Privileges and Immunities of the United Nations, A/940 and Add.1.

5/ Official Records of the General Assembly, fourth session, Sixth Committee, 211th meeting.



81. In accord with the decisions of the Administrative Council of the ITU, the United Kingdom made the following declaration in a letter addressed to the Secretary-General of the United Nations by which it transmitted its instrument of accession to the Specialized Agencies Convention (but not in the instrument of accession itself):

"I have to invite your attention to the fact that it is not possible for any Government fully to comply with the requirements of section 11 of that Convention in so far as it requires the Specialized Agency to enjoy in the territory of a state party to the Convention treatment not less favourable than that accorded by the Government of that state to any other Government in the matter of priorities and rates on telecommunications, unless and until all other Governments collaborate in according this treatment to the Agency in question. It is understood that this matter is being discussed in the International Telecommunication Union."

82. This declaration of the United Kingdom, which was received by the Secretary-General on 16 August 1949, was repeated, in essence, in connexion with the subsequent notifications made by the United Kingdom making the Convention applicable to additional specialized agencies, on 17 December 1954 and 4 November 1959.

83. The example set by the United Kingdom was followed by the Federal Republic of Germany, Gabon and New Zealand, on their respective accessions to the Convention on 10 October 1957, 9 September 1958 and 25 November 1960, respectively. Three other countries made declarations substantially to the same effect subsequent to their accessions, namely, Pakistan on 15 September 1961, 13 March 1962 and 17 July 1962; Norway on 20 September 1951; and Ivory Coast on 28 December 1961. In addition, Australia and the Malagasy Republic sent to the Secretary-General on 20 November and 27 August 1962, respectively, instruments of accession to the Convention containing reservations to section 11. Because of these (and other) reservations, the instruments of accession were not accepted for definitive deposit. On 3 January 1966, the Malagasy Republic withdrew its reservations but retained a declaration that it would not be able to comply fully with the provisions of article IV, section 11, of the Convention; its instrument of accession was thereupon accepted.

84. Whilst eight States Parties to the Specialized Agencies Conventions have therefore made declarations regarding the application of article IV, section 11, as of 1 April 1966, fifty-one States Parties had acceded to the Convention without

making such a declaration. It would appear that even in the case where States Parties have not made a declaration, specialized agencies have not in practice usually received the same treatment in respect of their telecommunications as those States have accorded to other Governments.

85. When, after protracted consideration at successive meetings, the ITU decided to make the Specialized Agencies Convention applicable to itself in accordance with section 37 of the Convention, it approved and transmitted to the Secretary-General the final text of an annex to the Convention in respect of the ITU in which it renounced for itself the telecommunication privileges provided under the Convention. The text of ITU annex, which was received on 18 January 1951, is as follows:

"The standard clauses shall apply without modification except that the International Telecommunication Union shall not claim for itself the enjoyment of privileged treatment with regard to the 'Facilities in respect of communications provided in article IV, section 11'."

86. The position of the specialized agencies in regard to their telecommunication privileges was the subject of consultations between them and the United Nations. During these consultations emphasis was laid on the recognition of the governmental status of the specialized agencies accorded by the General Assembly under section 11 of the Specialized Agencies Convention. The Secretary-General of the ITU reserved his position on the question. For the Buenos Aires Conference of the ITU, held from 3 October to 22 December 1952, the executive heads of the specialized agencies agreed to a statement which was then transmitted by the Secretary-General of the United Nations to the ITU, with the request that it be brought to the attention of the members of the ITU at the Conference. This statement pointed out the reasons why arrangements to facilitate the conduct of governmental and United Nations official business should also be applied in respect of such business carried on through the specialized agencies and proposed that the definition of government telegrams and telephone calls should include those originated by the executive heads of the specialized agencies. In respect of facilities and rates, the statement drew attention to the problem of special rates granted in respect of government telegrams and to the anomaly involved in having governments pay higher rates for telegrams chargeable to specialized agencies' budgets than are paid by them for telegrams chargeable directly to their individual budgets or the United Nations budget. This statement of the Secretary-General of the United Nations was

reported at a joint meeting of the Administrative Committee on Co-ordination and the Advisory Committee on Administrative and Budgetary Questions on 10 October 1952. The Advisory Committee took note of the statement and agreed that it was in conformity with the General Assembly's decision that no distinction should be made between the status of the United Nations in this field and that of the specialized agencies, as shown by the virtual identity of the relevant provisions in the two Conventions on Privileges and Immunities.

87. The Buenos Aires Convention, however, adopted by the Conference on 22 December 1952, provides as follows:

"Article 37

Priority of Government Telegrams and Telephone Calls

Subject to the provisions of articles 36 and 46, Government telegrams shall enjoy priority over other telegrams when priority is requested for them by the sender. Government telephone calls may also be accorded priority upon specific request and to the extent possible, over other telephone calls." [Note: Article 36 provides for "absolute priority" of telecommunications concerning safety of life; while Article 46 for "absolute priority" for distress calls and messages.]

88. Annex 3 of the Convention defined "Government telegrams and Government telephone calls" as including those originating from

"the Secretary-General of the United Nations, the Heads of the principal organs and the Heads of the subsidiary organs of the United Nations".

89. In Resolution No. 26, adopted by the Conference, it was suggested that specialized agencies traffic should, in an emergency, be carried over the United Nations point-to-point network. In a further Resolution, No. 27, the Conference resolved

"... that if a specialized agency wishing to obtain special privileges for its telecommunications informs the Administrative Council, justifying the particular cases in which special treatment is necessary, the Administrative Council

- (a) shall inform Members and Associate Members of the Union of the requests which, in their opinion, should be accepted;
- (b) shall take a final decision on these requests, bearing in mind the opinion of the majority of Members and Associate Members."

90. A further resolution, No. 28, read as follows:

"The Plenipotentiary Conference of the International Telecommunication Union, Buenos Aires,

Considering

1. the seeming conflict between the definition of Government Telegrams and Government Telephone Calls contained in Annex 2 of the International Telecommunication Convention, Atlantic City, 1947, and the provisions of Article IV, Section 11 of the Convention on the Privileges and Immunities of the Specialized Agencies;

2. that the International Telegraph and Telephone Conference, Paris, 1949, recommended to the Administrative Council that the Secretary-General of the Union be instructed to communicate to the Secretary-General of the United Nations the proposal that the United Nations should consider the revision of Article IV, Section 11 of the Convention on the Privileges and Immunities of the Specialized Agencies;

3. that as a result of this recommendation, the proposal was put on the Agenda of the Fourth Session of the General Assembly of the United Nations, and that the Sixth Committee of that Assembly merely took note of the situation;

4. that the Plenipotentiary Conference of Buenos Aires has decided not to include, in Annex 3 of the Buenos Aires Convention, the Heads of the specialized agencies among the authorities entitled to send government telegrams or to request government telephone calls;

Recognizing

that it is desirable that the United Nations be asked to reconsider this problem;

Instructs

the Secretary-General of the Union to request the Secretary-General of the United Nations to place before the Eighth Session of the General Assembly of the United Nations the opinion of this Conference that Article IV, Section 11 of the Convention on the Privileges and Immunities of the Specialized Agencies should be revised in view of the decision taken."

91. Resolution No. 28 of the ITU, quoted above, was transmitted by the Secretary-General of ITU, by letter of 26 March 1953, to the Secretary-General of the United Nations, with the request that the latter "place before the eighth session of the General Assembly of the United Nations the opinion of the Plenipotentiary Council that section 11 of the Convention on the Privileges and Immunities of Specialized

Agencies should be revised". The decision of the ITU Conference was accordingly reported to the General Assembly at its eighth session, in the form of a paragraph in the Annual Report of the Secretary-General on the work of the Organization.<sup>6/</sup> In his report, the Secretary-General stated that, in communicating the opinion of the ITU to the General Assembly, he would call attention to the fact that the Administrative Committee on Co-ordination, at its sixteenth session, had arranged for consultations to take place between officials of specialized agencies and officials of ITU, which it was hoped might open the way to some practical solution of the problem. In the deliberations of the General Assembly, however, no allusion was made to this possibility.

92. The Buenos Aires Convention of 1952 was subsequently superseded by the International Telecommunication Convention of Geneva, 1959. In this Convention priority of government telegrams and telephone calls was provided for in article 39, which is substantially the same as article 37 of the Buenos Aires Convention. The definition in annex 3 of the term "government telegrams and government telephone calls" includes telegrams and telephone calls originating with "the Secretary-General of the United Nations; Heads of the principal organs of the United Nations". In Resolution No. 31, adopted at the Geneva Conference, the Union confirmed its earlier decision not to include in annex 3 the heads of the specialized agencies among the authorities entitled to send government telegrams or to request government telephone calls and again expressed the hope that the United Nations would reconsider the problem and make the necessary amendment to section 11. Thus, except in certain extreme cases (e.g. urgent epidemiological telegrams of the WHO, under article 62 of the Telegraph Regulations, or where strikes prevented the dispatch of ordinary cables so that the procedure envisaged in Resolution 27 of the Buenos Aires Convention might be applied) the specialized agencies have not enjoyed the privilege of priority for their telecommunications, nor the advantage of government rates. The possibility, moreover, that the traffic of the specialized agency might be carried over the United Nations point-to-point network has not proved of practical assistance when emergencies have arisen.

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<sup>6/</sup> Official Records of the General Assembly, Eighth Session, Suppl. No. 1  
(A/2404, p. 111).

93. In view of these considerations, and the fact that the amount of priority traffic was unlikely to be heavy, the specialized agencies requested the International Telecommunications Conference which met at Montreux in September and October 1965 to admit the heads of the various specialized agencies and their duly authorized representatives to originate telegrams and telephone calls on the same terms of priority as Governments. The Conference declined to do so, however, and instructed the ITU Administrative Council to take the necessary steps to seek an amendment to section 11 of the Specialized Agencies Convention.

94. The facilities to be accorded to the communications of the IBRD, IDA, IFC and IMF are set forth in their respective Articles of Agreement in closely similar terms. Article VII, section 7, of the Articles of Agreement of the IBRD, for example, provides that:

"The official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of other members."

95. Since all States becoming members are obliged to accept these provisions, which form part of the constitutions of the agencies in question, the latter have enjoyed the privilege of government treatment in respect of their telecommunications. In 1949, however, the United States cable companies sought to revise their tariff charges so as to require IBRD and IMF to pay at normal commercial rates; previously IBRD and IMF had paid the same rates as applied to the messages of the representatives of foreign Governments sent from the United States to their own countries. The IBRD and IMF thereupon filed a joint complaint before the United States Federal Communications Commission,<sup>7/</sup> alleging that the revised tariffs were in breach of the relevant provisions of their respective Articles of Agreement.

96. The Commission agreed that, under the terms of the Articles of Agreement and the United States Erection Woods Act (59 Stat. 512), the United States was

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7/ In the Matter of International Bank for Reconstruction and Development and International Monetary Fund v. All America Cables and Radio Inc., and Other Cable Companies, Federal Communications Commission, 23 March 1953. The case is fully discussed in Gold, The Fund Agreement in the Courts, at pp. 20-27 and pp. 55-59.

under an obligation to accord to international telegrams of IBRD and IMF the same treatment as regards rates as it afforded to other Governments which were members of the two organizations. The basic question which arose for decision, therefore, was whether the "treatment" referred to in the Articles of Agreement was confined to matters such as priorities and freedom from censorship, as the cable companies contended, or also related to the question of rates. The Executive Directors of IBRD and IMF had previously given as unanimous ruling that the term "treatment" should be interpreted in the wider sense. The Commission held that, under the Articles of Agreement, an interpretation so given by the Executive Directors was final. It rejected an assertion made on behalf of the cable companies that the interpretation was ultra vires because the question arose solely between the companies and the IBRD and IMF, and did not arise as between Member States, or between the Member State and the organizations. The Commission distinguished the position as provided for under the International Telecommunications Convention signed at Atlantic City in 1947 and the Telegraph Regulations annexed thereto, pointing out that the latter instruments, though they did not allow, did not specifically prohibit, the granting of equal treatment. No indication had been given, moreover, of any intention to abrogate the communications privileges otherwise enjoyed by the IBRD and IMF. The government treatment of the telecommunications of IBRD, IMF, and the other agencies whose constitutions contain the same provisions, has not subsequently been challenged.

97. Lastly, it may be noted that, in article IV, section 10, of the IAEA Agreement on Privileges and Immunities, communication facilities are only given on the same terms as those enjoyed by Governments to the extent to which such action is "compatible with any international conventions, regulations and arrangements" to which the State concerned is a party. A similar provision is contained in article VI, section 13, of the IAEA Host Agreement with Austria and in article 10 of the UNESCO Host Agreement with France.

19. Use of codes and dispatch of correspondence by courier or in bags

98. Section 12 of the Specialized Agencies Convention provides as follows:

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

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

Nothing in this section shall be construed to preclude the adoption of appropriate security precautions to be determined by agreement between a State party to this Convention and a specialized agency." 1/

99. The majority of specialized agencies do not use codes or dispatch correspondence by courier or in sealed bags. Those that do so stated that they had not experienced any serious difficulties in securing appropriate recognition of their rights in this regard.

100. No security arrangements have been entered into in pursuance of this section. Several instances were reported when States had censored or attempted to censor, official correspondence and other communications; these cases were relatively rare, however, and the practice had apparently been discontinued after the agency concerned had protested.

20. Postal services provided by the specialized agencies and by IAEA

101. None of the specialized agencies, nor the IAEA, have provided postal services in the same way as the United Nations. In the agreements entered into in 1946 and 1948 between Switzerland and the ILO and WHO, however, provision is made for the issue of special stamps (timbres de service) by the Swiss federal authorities for those organizations, within the limits authorized by the Conventions of the UPU. Stamps have also been issued for the other specialized agencies having their headquarters in Switzerland.

21. Radio communications of the specialized agencies and of IAEA

102. None of the specialized agencies, nor the IAEA, have operated an independent radio system in the same way as the United Nations. As mentioned in section 18 above, messages originating from the specialized agencies have in special circumstances been carried on the United Nations point-to-point network.

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1/ It may be noted that the corresponding provision, section 10, of the Convention on the Privileges and Immunities of the United Nations, does not contain a paragraph regarding the adoption of security precautions, while the prohibition of censorship is included in section 9.



#### CHAPTER IV. PRIVILEGES AND IMMUNITIES OF OFFICIALS

22. Categories of officials to which the provisions of articles VI and VIII apply

103. Section 18 of article VI of the Specialized Agencies Convention states:

"Each Specialized Agency will specify the categories of officials to which the provisions of this article and of article VIII shall apply. It shall communicate them to the Governments of all States parties to this Convention in respect of that agency and to the Secretary-General of the United Nations. The names of the officials included in those categories shall from time to time be made known to the above-mentioned Governments."

104. Section 17 of the IAEA Agreement on Privileges and Immunities contains a similar provision whereby IAEA undertakes to inform States parties to the Agreement of the names of IAEA officials to whom articles VI and IX of the Agreement apply.

105. In applying section 18 the specialized agencies have followed the same criteria as are contained in resolution 76 (I) of the United Nations General Assembly whereby the privileges and immunities concerned are granted to all officials "with the exception of those who are recruited locally and are assigned to hourly rates". In some cases this has been confirmed by a resolution of the General Conference of the agency. Officials employed by the specialized agencies under the title of "technical assistance experts" have accordingly been entitled to the privileges and immunities set out in articles VI and VIII. Several agencies reported that difficulties had arisen, however, in respect of these officials whose title caused them to be confused by States with "experts on mission". Following explanatory memoranda from the organization and from the United Nations, the necessary privileges and immunities have normally been granted.

106. Under an exchange of notes between Austria and IAEA it was agreed that the term "members of the staff" of IAEA, as envisaged in the Host Agreement, should be considered to include officials of the United Nations and of the specialized agencies attached on a continuing basis to the staff of IAEA. Thus, FAO officials employed in the FAO-IAEA Joint Division of Agriculture, and the liaison officers of other United Nations organizations stationed at IAEA headquarters, enjoy the same status in Austria as IAEA staff members.

107. The lists of officials to whom the provisions of articles VI and VIII of the Specialized Agencies Convention apply (or, in the case of IAEA, of articles VI and IX of the IAEA Agreement on Privileges and Immunities) are normally prepared and sent to the various States parties on an annual basis. Though some variation exists in the details given, mention is usually made of the name of each official, his function, nationality, and current duty station. In addition special lists are prepared and communicated to the Host State; such lists are kept up to date throughout the year by periodical additions and deletions, according to the movements of staff. In some instances special lists are prepared according to nationality and sent to the Government concerned.

23. Immunity of officials in respect of official acts

108. Section 19 of the Specialized Agencies Convention provides that officials of the specialized agencies shall:

"(a) Be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity."

109. The specialized agencies have considered that the adjudication of whether or not an official was acting on official business in any given case has rested with them. They have not had recourse to specific systems of national law in making such a determination. The specialized agencies have maintained that, while it would not be desirable for them to claim immunity in circumstances where such a claim would not be justified, nevertheless it was essential to the independent conduct of their operations that they should be given a prior opportunity to claim immunity, if appropriate, where the person concerned was, in their opinion, acting in the exercise of his official duties.

110. The specialized agencies reported that relatively few cases had occurred in which the immunity of officials from legal process had not been recognized; the majority of incidents involving violation of the immunity in respect of official acts had taken place away from the headquarters of the various organizations.

111. As regards the extent of the immunity afforded, it may be noted that in a case which arose in 1965, a Member State contended that the immunity from legal process granted under section 19 (a) did not extend to immunity from compliance

with a summons addressed to two officials of a specialized agency, to appear as a witness in criminal proceedings brought against a third party. The specialized agency concerned declared that it was unable to accept the restrictive interpretation of section 19 (a) which this opinion implied; in its view the immunity from legal process enjoyed by officials extended not only to all forms of legal process relating directly or indirectly to acts performed by them, but also to their giving any information relating to the business of the organization. This applied irrespective of whether the proceedings were brought against an official himself or a third party. The specialized agency had no doubt that the evidence required from the two officials in the case in question related to the official information of the organization or to the performance of their official duties, and that they accordingly enjoyed immunity from legal process until their immunity had been waived by the organization. Having regard to the second sentence of section 22 of the Specialized Agencies Convention,<sup>1/</sup> the Director-General of the organization decided, after examining the circumstances of the case, to waive the immunity by which the two officials were covered.

112. The WHO has prepared a circular for use by its regional offices, giving them instructions on how to handle cases where legal proceedings are initiated against a staff member. Under this instruction all officials who are made the subject of legal proceedings in any form, whether as the result of a criminal prosecution, civil suit or a subpoena as a witness, are required to report the fact immediately. Where the official concerned enjoys diplomatic privileges and immunities, no legal proceedings can be commenced unless WHO has waived the immunity. In the case of officials to whom section 19 of the Specialized Agencies Convention applies, each case must be reviewed by the organization in order to determine the official or private character of the act. The decision reached is then to be communicated in writing to the Ministry of Foreign Affairs, which, in turn, is required to notify the judicial authorities of the State concerned. In the event of a

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<sup>1/</sup> See section 31 below relating to the waiver of the privileges and immunities of officials, where further information is also given regarding the furnishing of evidence by officials.

difference of opinion between the State and the organization regarding the latter's findings, recourse should, if necessary, be had to international arbitration. The payment of fines for minor traffic offences and the like are excluded from this procedure. The duration of the immunity of staff members in respect of their official acts is deemed to extend beyond the period of their employment.<sup>2/</sup>

24. Exemption from taxation of salaries and emoluments

113. Under section 19 (b) of the Specialized Agencies Convention officials of the specialized agencies:

"Enjoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations."

114. The instrument of accession to the Convention tendered for deposit by Canada was accompanied by the following reservation:

"Exemption from liability for any taxes or duties imposed by any law in Canada should not extend to a Canadian citizen residing or ordinarily resident in Canada."

The Administrative Committee on Co-ordination requested the Secretary-General in 1966 to pursue the matter with the Canadian Government.<sup>1/</sup>

115. The IAEA Agreement on Privileges and Immunities contains the same provision in section 18 (a) (ii). Two States, the Republic of Korea and Pakistan, have made reservations regarding the application of this clause to their nationals; the Federal Republic of Germany reserved the right to tax its nationals in so far as this right had not been renounced by double taxation treaties.

116. The immunity in question has been generally observed with no major differences emerging in the treatment accorded to United Nations officials on

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<sup>2/</sup> See section 23 (f) of Summary of Practice relating to the Status, Privileges and Immunities of the United Nations, A/CN.4/L.118/Add.1.

<sup>1/</sup> On the question of reservations to the Specialized Agencies Convention see generally section 46 below.

the one hand and to specialized agency officials on the other.<sup>2/</sup> States which have not ratified the Specialized Agencies Convention or which have not signed bilateral agreements with the various agencies, have applied their national law. In view of the fact, however, that in most countries liability to taxation is linked with residence or domicile, officials stationed outside their home country have often enjoyed a de facto exemption in respect of their salaries and emoluments, even though the State concerned has not agreed to grant exemption.

117. Where income tax has been levied the organization concerned has normally reimbursed the staff member accordingly, to avoid placing otherwise comparable staff members in an unequal position. The administrative procedures regarding such reimbursements have been strictly interpreted; the specialized agencies have accepted an obligation to make reimbursement only where the terms of appointment of the official so provide. The ILO regulates the matter as follows:

(a) in the case of ILO national correspondents and the staff of ILO branch offices, who are normally of local nationality, their emoluments are fixed in such a manner as to include an amount covering the payment of taxes;

(b) as regards other staff members, provided their contracts expressly declare that the salaries are tax exempt, taxes paid on ILO income are reimbursed as follows:

- (i) in the case of an official employed during the entire taxation year, the amount of reimbursement does not exceed the minimum tax payable by that official on such income alone, account being taken of all exemptions and deductions to which the official is entitled by the relevant laws and regulations of the country concerned, but no account being taken of any income received from sources other than the Organization or of any higher rate of tax which may be levied by reason of such other income;
- (ii) in the case of an official employed for less than the entire taxation year the amount of reimbursement is, if he received no income from sources other than the Organization, the minimum tax payable in terms of (i) above; if he received such other income, the amount of reimbursement is whichever is the lesser of:

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<sup>2/</sup> See, in particular as regards the position in the United States and Switzerland, section 24, Summary of Practice relating to the Status, Privileges and Immunities of the United Nations, A/CN.4/L.118/Add.1.

- a proportion, corresponding to the ratio of the period of his employment to the full taxation year, of the minimum tax payable in terms of (i) above; or
- a proportion of the total tax;
- a proportion of the total tax paid by the official determined by the formula;

ILO income subject to tax x total tax

Total income subject to tax

- (iii) an official who, by reason of the subsequent exclusion from his total taxable income of salaries and emoluments received from the Organization, recovers any income tax previously paid by him, is required to refund to the Organization such portion of the amount recovered as had been previously reimbursed or advanced to him by the Organization;
- (iv) officials are responsible for complying with any income tax laws applicable to them: penalties, interest or other charges resulting from non-compliance with such laws are not reimbursable by the Organization.

118. As regards contributions to social security schemes, in the case of agencies having their headquarters in France or Switzerland, staff having the nationality of the host State are obliged to participate in national social security schemes unless they can show that the organization provides them with equivalent protection; full participation in the United Nations Joint Staff Pension Fund is so regarded. In the case of IAEA the matter is regulated by two supplementary agreements to the host Agreement; broadly speaking, Austrian nationals who are full participants in the United Nations Pension Fund are excluded from the state pension scheme and, as regards health insurance, are given a choice between remaining in the state system or joining a contractual insurance scheme approved by IAEA.

## 25. Immunity from national service obligations

119. Whereas section 18 (c) of the Convention on the Privileges and Immunities of the United Nations provides solely that United Nations officials are "immune from national service obligations", more elaboration arrangements are made in section 20 of the Specialized Agencies Convention, which states as follows:

"The officials of the specialized agencies shall be exempt from national service obligations, provided that, in relation to the States of which they are nationals, such exemption shall be confined to officials of the specialized agencies whose names have, by reason of their duties, been placed upon a list compiled by the executive head of the specialized agency and approved by the State concerned.

"Should other officials of specialized agencies be called up for national service, the State concerned shall, at the request of the specialized agency concerned, grant such temporary deferments in the call-up of such officials as may be necessary to avoid interruption in the continuation of essential work."

120. The majority of specialized agencies have not attempted to compile the list referred to in the opening paragraph; very few officials appear to have been actually called up for military service. The only clear practice which has emerged relates to Swiss nationals, where the position is as stated in section 25 of the Summary of Practice relating to the Status, Privileges and Immunities of the United Nations, A/CN.4/L.118/Add.1. Total exemption from military service is granted to a small number of Swiss officials; the special tax payable in such cases is not reimbursable by the specialized agencies.

121. In accordance with Article XIII, Section 27 (g) of the Headquarters Agreement, the Italian Government has granted temporary deferments of military service to Italian staff members of FAO, at the request of the Organization.

26. Immunity from immigration restrictions and alien registration

122. Under section 19 (c) of the Specialized Agencies Convention officials are declared

"... immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration".

123. The specialized agencies reported that this provision had been generally well observed; it was pointed out that in several countries immunity from alien registration was given automatically to holders of United Nations laissez-passer and their dependents.

124. The IAEA stated that, although no system of alien registration or immigration restrictions exists in Austria, the lessee or lessor of premises is obliged to register with the local police station on taking up residence in Austria, or on

changing residence; this requirement applies to all persons living in Austria and is not restricted to non-Austrian nationals. The IAEA concurred in the view of the Austrian Government that such police registration does not constitute alien registration within the meaning of section 38 (f) of the host Agreement.

27. Exchange facilities:

125. Section 19 (d) of the Specialized Agencies Convention provides that officials shall

"Be accorded the same privileges in respect of exchange facilities as are accorded to officials of comparable rank of diplomatic missions".

126. The majority of specialized agencies reported that no special problems had arisen in the application of this provision. The ILO stated, however, that officials employed at its headquarters and living in France were required to transfer 50 per cent of their salaries through the French clearing office at the official rate of exchange. This was accepted by the Organization on the ground that the officials had elected for their own convenience to live in France.

127. UNESCO reported that it often occurs that officials or experts stationed away from headquarters cannot transfer their funds upon termination of service, or upon transfer or return to headquarters, without it having been established that members of diplomatic missions in the State in question were subject to any such restriction.

28. Repatriation facilities in time of international crisis

128. The provision in section 19 (e) of the Specialized Agencies Convention that officials should

"Be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crises as officials of comparable rank of diplomatic mission",

has rarely, if ever, been applied. No specialized agency has entered into standing arrangements with any Member State regarding repatriation. The only occasions of repatriation which were mentioned were the repatriation of all but a skeleton staff of the WHO office at Alexandria in October 1956, and of the dependents of various agency officials in the Congo, where evacuation was arranged through ONUC.



29. Importation of furniture and effects

129. Section 19 (f) of the Specialized Agencies Convention provides that officials

"Have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question".

The experience of the specialized agencies in this regard has been closely similar to that of the United Nations.<sup>1/</sup> Apparently only the United Kingdom does not include a car amongst the "effects" which an official may import duty-free, although several other countries subject the importation of cars to the terms of a "temporary admission" procedure. The period of time after entry of an official allowed for importation varies from approximately six to eighteen months, according to the customs regulations of the country concerned and the facts of the particular case.

30. Diplomatic privileges and immunities of the executive head and other senior officials of the specialized agencies and of IAEA

130. Section 21 of the Specialized Agencies Convention provides that:

"In addition to the immunities and privileges specified in sections 19 and 20, the executive head of each specialized agency, including any official acting on his behalf during his absence from duty, shall be accorded in respect of himself, his spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law."

131. The specialized agencies reported that the diplomatic privileges and immunities referred to in section 21 had been fully accorded without difficulty. A number of specialized agencies also stated that certain additional officials had been granted diplomatic privileges and immunities. The position in respect of these organizations is summarized below.

(1) FAO

132. In the FAO Annex to the Specialized Agencies Convention the provisions of section 21 are extended to the Deputy Director-General of the Organization. At the thirteenth session of the FAO Conference, held in December 1965, it was

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<sup>1/</sup> In particular as regards practice in Switzerland, see section 29, Summary of Practice Relating to the Status, Privileges and Immunities of the United Nations, A/CN.4/L.118/Add.1.

decided to extend this provision to cover Assistant Directors-General also. In addition, in section 28 of the FAO Headquarters Agreement it is provided that

"(iii) The Deputy Director-General, Special Assistants to the Director-General, Regional Representatives, senior members of the Office of the Director-General, Directors and Deputy Directors of Divisions and such additional senior officers as may be designated by the Director-General on the grounds of the responsibilities of their positions in FAO, shall be accorded privileges and immunities, exemptions and facilities not less than those accorded to members of the diplomatic corps."

In the Agreements relating to the establishment of FAO regional offices provision is made for the FAO staff concerned to receive various diplomatic privileges, ranging, according to the rank of official, from full diplomatic privileges and immunities in the case of officials holding Directors' posts, to extended customs privileges in the case of lesser officials.

(ii) IAEA

133. Section 20 of the IAEA Agreement on Privileges and Immunities, which corresponds to section 21 of the Specialized Agencies Convention, extends to "a Deputy Director-General or official of equivalent rank of the Agency" as well as to the Director-General himself. The United Kingdom made a specific reservation to section 20 as regards its application by that country with respect to its nationals.

134. By virtue of section 39 of the Headquarters Agreement, all IAEA staff of the rank of Senior Officer (P.5) or above, other than those who are Austrian nationals, enjoy diplomatic privileges. The Austrian commentary to the Agreement states that the rank of Senior Officer corresponds to that of Counsellor of Legation in the diplomatic service. The Italian Government has accorded diplomatic status to the Director of the International Centre for Theoretical Physics at Trieste.

(iii) IBRD, IDA, IFC, IMF

135. The above-mentioned organizations stated that some of their officials, in particular some resident representatives, had been granted diplomatic privileges as a matter of courtesy.

(iv) ICAO

136. Under paragraph 1 of the ICAO Annex to the Specialized Agencies Convention, the provisions of section 21 are also accorded to the President of the Council of the organization. The host agreement concluded with Egypt in 1953 provides that the President of the ICAO Council, the Secretary-General, the Assistant Secretaries-General, and the Director and Deputy Directors of the Middle East Office, and their spouses and minor children, are accorded "the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law and usage". Section 11 of the agreement entered into with Mexico on 20 December 1956 contains a similar provision, with the omission of the words "to diplomatic envoys". In an exchange of notes of the same date it was stated that "... it should be made clear that section 11 is to be construed as meaning that, while equality of status with diplomatic envoys is not necessarily implied thereby" the prerogatives in question "shall be similar to those ordinarily accorded to diplomatic envoys in accordance with international law".

(v) ILO

137. Under paragraph 2 of the ILO Annex to the Specialized Agencies Convention the provisions of section 21 are extended to all Deputy and Assistant Directors-General of the organization.

(vi) IMCO

138. Paragraph 1 of the IMCO Annex to the Specialized Agencies Convention provides as follows:

"The privileges and immunities, exemptions and facilities referred to in Article VI, Section 21 of the standard clauses, shall be accorded to the Secretary-General of the Organization and to the Secretary of the Maritime Safety Committee, provided that the provisions of this paragraph shall not require the Member in whose territory the Organization has its Headquarters to apply Article VI, Section 21 of the standard clauses to any person who is its national."

(vii) UNESCO

139. Under paragraph 2 of the UNESCO Annex to the Specialized Agencies Convention the benefits of section 21 are given to the Deputy Director-General. Under article 19 and annex B of the Headquarters Agreement, diplomatic privileges and

immunities are effectively extended to officials of the rank of Senior Officer (P.5) or above; officials of French nationality may not plead such immunity, however, in cases brought before French tribunals arising out of non-official acts.

(viii) WHO

140. Under paragraph 4 of the WHO Annex, the provisions of section 21 of the Specialized Agencies Convention are extended to Deputy and Assistant Directors-General and to Regional Directors. In certain regional offices officials of a Director's status, such as Deputy Regional Directors, enjoy diplomatic privileges under the pertinent host agreement. The organization also claims diplomatic privileges for its Representatives, in those countries to which such Representatives are assigned, under the provisions of article V, paragraph 2, of the WHO Basic Agreement. This provision states as follows:

"Staff of the Organization, including advisers engaged by it as members of the staff assigned to carry out the purposes of this Agreement, shall be deemed to be officials within the meaning of the above Convention. This Convention shall also apply to any WHO representative appointed to... who shall be afforded the treatment provided for under Section 21 of the said Convention."

31. Waiver of the privileges and immunities of officials<sup>1/</sup>

141. Section 22 of the Specialized Agencies Convention provides that

"Privileges and immunities are granted to officials in the interests of the specialized agencies only and not for the personal benefit of the individuals themselves. Each specialized agency shall have the right and the duty to waive the immunity of any official in any case where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the specialized agency."

142. The specialized agencies reported that they had received few or no requests to waive the immunity of any of their officials. Most of such requests as had been received related to private matters (e.g., traffic accidents), in which the official had been involved without any question of official responsibility; accordingly, after determination by the agency of the private nature of the case, the requests received had been granted.

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<sup>1/</sup> See also section 8 above.

143. Only one agency stated that it had received a request for waiver of immunity in respect of an act performed by an official during the course of his official duties. A private pharmaceutical concern wished to learn the name of the person who had made a particular statement in an agency publication regarding the use of a certain product. The agency concerned declined to make the information available on the ground that the statement referred to represented the collectivity of views expressed by a technical discussion group and that the request impliedly involved a request for waiver of immunity for the purposes of bringing a legal action against the speaker, in violation of the provisions of the Convention and of the Constitution of the agency granting immunity in respect of statements expressed in the course of official meetings.

144. Where proceedings have been instituted against third persons and officials have been requested to appear as witnesses,<sup>2/</sup> agencies have generally preferred to allow the official to make a written deposition rather than to extend the waiver of immunity to appearance in court, in particular where the official was required to give evidence regarding actions performed by him in an official capacity. The practice has varied, however, according to the duties performed by the official, the need to ensure that the interests of the organization would not be adversely affected, the nature of the case being tried and the obligation to co-operate with the local authorities to facilitate the proper administration of justice.

32. Co-operation with the authorities of member States to facilitate the proper administration of justice

145. Section 23 of the Specialized Agencies Convention requires that

"Each specialized agency shall co-operate at all times with the appropriate authorities of member States to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuses in connexion with the privileges, immunities and facilities mentioned in this article."

146. The specialized agencies and IAEA have taken the necessary steps to comply with this provision. When complaints have been received from local police authorities (chiefly as regards traffic offences) the matter in question has been

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<sup>2/</sup> See also section 23 above.

drawn to the attention of the official or officials concerned and, if necessary, disciplinary measures taken against them. The organizations have also sought through administrative action to ensure that officials pay their recognized debts. A more difficult case has been when the authorities of a member State have sought to direct that payment of monies owed to a supplier should be paid to another party, e.g., to the State revenue authorities, or to a private party under a court judgement. Whilst maintaining its own immunity from jurisdiction, the organizations concerned have tried to ensure that the object of such requests was in fact obtained.

CHAPTER V. PRIVILEGES AND IMMUNITIES OF EXPERTS ON MISSIONS  
FOR THE SPECIALIZED AGENCIES AND PERSONS HAVING  
OFFICIAL BUSINESS WITH THE SPECIALIZED AGENCIES  
AND IAEA

33. Persons falling within the category of experts on missions for the specialized agencies and IAEA

147. Under article VI of the Convention on the Privileges and Immunities of the United Nations certain immunities, broadly similar to those accorded to officials, are granted to "Experts... performing missions for the United Nations". The Specialized Agencies Convention does not contain an equivalent article; the only reference to "experts" in the text of the Convention is in article VIII, section 29, whereby States Parties are asked to grant travel facilities to "experts and other persons" who are travelling "on the business of a specialized agency". However, the provisions of article VI of the United Nations Convention are contained in the annexes to the Specialized Agencies Convention in respect of the FAO, ICAO, the ILO, IMCO, UNESCO and WHO.

148. The use of the designation "expert" has been relatively sparsely used. One agency summarized its practice, which may be taken as representative, as being to include in this category "generally speaking, all persons appointed in an advisory or consultative capacity to the organization or to a Government for temporary periods, and who are not considered as staff members". In the case of IAEA the range of persons to be considered as experts receives some definition from the terms of article VII, section 23, of the IAEA Agreement on Privileges and Immunities. This states that the privileges and immunities enumerated in the article are to be accorded to

"Experts (other than officials coming within the scope of Article VI) serving on committees of the Agency or performing missions for the Agency, including missions as inspectors under Article XII of the Statute of the Agency and as project examiners under Article XI thereof".

In practice, staff members, and not experts within the meaning of this section, have been designated as IAEA inspectors.

34. Privileges and immunities of experts on missions for the specialized agencies and IAEA

149. The relevant provisions of the various annexes and of article VII of the IAEA Agreement on Privileges and Immunities are almost identical; with minor variations

the experts in question are given immunity from arrest and from seizure of their personal baggage; immunity from legal process in respect of acts done by them in performance of their official duties; inviolability for papers and documents; and diplomatic facilities in respect of currency and exchange restrictions. In so far as these privileges and immunities are similar to some of those accorded to officials under article VI of the Convention, the practice of the specialized agencies in respect to the latter may be considered equally applicable. No major differences of interpretation appear to have developed in the case of these common privileges and immunities, as applied to officials on the one hand and to experts on the other.

35. Privileges and immunities of persons having official business with the specialized agencies and IAEA

150. Besides officials, experts on missions, and the representatives of member States, persons having official business with a specialized agency or with the IAEA may also enjoy privileges and immunities. Persons falling within this category include those invited to give evidence before specialized agency bodies or to supply information to such bodies, radio and press representatives, and participants in seminars and similar meetings organized by specialized agencies.

151. A number of agreements make provision for such persons; some of the main examples are listed below. Article V, section 27, of the ICAO Headquarters Agreement states:

"The Government of Canada shall permit and facilitate the entry into Canada of:

(a) Representatives of the press, or of radio, film or other information agencies who have been accredited to the Organization after consultation with the Government of Canada".

Article IX, section 27, of the Agreement between Egypt and ICAO provides that the Egyptian Government shall take "all measures required to facilitate the entry into, residence in, and departure from Egypt of all persons having official business with the Organization".



152. Under article X, section 22, of the FAO Headquarters Agreement "persons invited to the headquarters seat by FAO on official business" and whose names are communicated to the Host Government by the Director-General, are granted transit facilities by the Italian Government, which also undertakes to afford them any necessary protection in transit. Furthermore, under article XIV of the same Agreement, the same privileges and immunities as experts on missions are granted to "representatives of official organizations or bodies invited by FAO".<sup>1/</sup>

153. In the case of UNESCO, article 9 of the Headquarters Agreement provides that the French authorities will permit persons having official business at UNESCO headquarters to enter and remain in France, without charge for a visa. Persons falling in this category include

"e) Les membres du conseil de direction et les fonctionnaires des organisations non gouvernementales admises par l'Organisation au bénéfice d'arrangements consultatifs et dont les bureaux sont établis au siège"

and

"g) Toutes personnes invitées, pour affaires officielles, par la Conférence générale, le Conseil exécutif ou le Directeur général de l'Organisation".

as well as press and similar public information representatives and representatives of non-governmental organizations in consultative status, other than those referred to in clause (e) above. These persons may not be required to leave France except in the event of an abuse of privileges in respect of activities falling outside their official functions or business, nor may any act be taken against them which might cause them to leave France without the consent of the French Foreign Minister, acting in consultation with the Director-General of UNESCO. Article 14 of the Agreements between Switzerland and the ILO, WHO and WMO provide for liberty of access and residence of all persons, irrespective of nationality, invited by those organizations.

154. In accordance with article XVI of the IAEA Headquarters Agreement, the representatives of organizations with which the IAEA has established official

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<sup>1/</sup> See also art. X, section 20, of the Agreement between the FAO and Chile; art. VIII, section 19, of the Agreement between the FAO and Egypt; and art. XII, section 23, of the Agreement between the FAO and Thailand.

relations in accordance with its Statute, or which are invited by the IAEA Board of Governors or General Conference for purposes of official business, are granted the same privileges and immunities, including those of transit and residence, as experts or members of IAEA missions.

155. The specialized agencies reported that relatively few difficulties had arisen in this connexion. On occasions, agencies have intervened with the competent authorities, however, in order to speed up the granting of visas so as to enable the persons concerned to perform their official functions.

CHAPTER VI. UNITED NATIONS LAISSEZ-PASSER AND  
FACILITIES FOR TRAVEL

36. Issue of United Nations laissez-passers and their recognition by States as valid travel documents

156. Article VIII, section 26, of the Specialized Agencies Convention provides that:

"Officials of the specialized agencies shall be entitled to use the United Nations laissez-passers in conformity with administrative arrangements to be concluded between the Secretary-General of the United Nations and the competent authorities of the specialized agencies, to which agencies special powers to issue laissez-passers may be delegated. The Secretary-General of the United Nations shall notify each State party to this Convention of each administrative arrangement so concluded."

Section 27 continues,

"States parties to this Convention shall recognize and accept the United Nations laissez-passers issued to officials of the specialized agencies as valid travel documents."

157. Agreements have been concluded with each of the specialized agencies<sup>1/</sup> and with IAEA<sup>2/</sup> regarding the issue of United Nations laissez-passers by the United Nations, following an official request by a specialized agency or by IAEA that one be issued in respect of a particular staff member. The only body, other than the United Nations itself, which has issued laissez-passers has been the ILO, in pursuance of an agreement entered into between the two organizations in 1950;<sup>3/</sup> section 26 expressly refers to the delegation to specialized agencies of the power to issue United Nations laissez-passers. The conditions under which the ILO issues its laissez-passers are closely analogous to those observed by the United Nations. The Directors-General and certain other senior staff of the specialized agencies and the IAEA, like the Secretary-General and senior officials of the United Nations, receive red-backed laissez-passers.

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1/ For an example of the Standard Agreement, see section 42, Summary of Practice relating to the Status, Privileges and Immunities of the United Nations, A/CN.4/L.118/Add.1.

2/ United Nations Treaty Series, vol. 281, p. 370..

3/ Ibid., vol. 68, p. 215.

158. Although States have recognized the laissez-passer as a valid travel document, in a number of countries the authorities have also demanded production of a national passport before permitting entry. One agency has protested against this practice, especially since, in the cases in question, the laissez-passer which were presented contained an entry visa. It may also be noted that, since a number of States, particularly in Europe, have concluded agreements permitting the entry of each other's nationals without a visa, production of the laissez-passer is often less helpful than a national passport. In general, the specialized agencies considered that the laissez-passer was most useful in instances where, owing to strained or otherwise distant relations between the two countries concerned, production of a national passport alone was likely to result in delays or difficulties, but that, where this was not the case, use of the national passport was frequently more convenient.

37. Freedom of movement of the personnel of the specialized agencies and of IAEA: inapplicability of the persona non grata doctrine

159. Although the specialized agencies and IAEA have had less occasion than the United Nations to assert the right of their officials and others (e.g., experts on mission) to be granted freedom of movement by all Member States, cases have arisen in which it has been necessary for them to do so. In 1961, and again in 1963, following protests by the specialized agency concerned, the Secretary-General of the United Nations protested to the Government of a Member State which had refused to allow certain specialized agency and United Nations officials to enter the country on grounds of their nationality.<sup>1/</sup>

160. The persona non grata doctrine is inapplicable to the officials of a specialized agency or of the IAEA since they, no less than United Nations personnel, must serve as independent and impartial international officials, and not as diplomats accredited to a particular Government. Section 25 of the Specialized Agencies Convention states that

"Officials within the meaning of section 18, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity."

<sup>1/</sup> See section 37, Summary of Practice relating to the Status, Privileges and Immunities of the United Nations, A/CN.4/L.118/Add.1.

The section continues

"In the case, however, of abuse of privileges of residence committed by any such person in activities in that country outside his official functions, he may be required to leave by the Government of that country provided that:

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

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

161. Two specialized agencies reported that occasions had arisen when expulsion proceedings had been taken against members of their staff - in each instance technical assistance or advisory staff - in violation of section 25. One of the agencies stated that in the majority of cases the action had been taken on extraneous political grounds and was without any justification. Except where there was a manifestly improper motivation, the agency had contented itself with asking the staff member concerned to make a protest and thereafter reassigned him to another post. The other agency declared that two of its officials had been expelled as a result of action taken by the police authorities of the State concerned, without consulting the Ministry of Foreign Affairs or the agency. After the agency had protested, the decision to expel the officials had been rescinded.

38. Issue of visas for holders of United Nations laissez-passer

162. Section 28 of the Specialized Agencies Convention states that:

"Applications for visas, where required, from officials of specialized agencies holding United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of a specialized agency, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel."

163. The specialized agencies reported that, though this provision had been generally observed, the term "as speedily as possible" had been subject to a wide interpretation and often varied according to the nationality of the holder of the laissez-passer. One agency stated that the second sentence had not been observed.

164. Usually the necessary visas are issued without charge. On the other hand a number of countries impose a charge on visas being sought on national passports for duty travel, notwithstanding the fact that the holders of such passports possess a certificate indicating that they are travelling on official business. Lastly, the renewal of the validity of passports is subject to taxes in practically all countries (exemption is granted in certain cases, however, e.g., the Netherlands and the United Kingdom).

39. Certificates issued by the specialized agencies and by IAEA

165. Section 29 of the Specialized Agencies Convention provides that

"Similar facilities to those specified in section 28, shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of a specialized agency."

166. The persons who have held a certificate stating that they were travelling on official business have usually been consultants or others engaged on a mission or contract of relatively short duration and who were not staff members of the organization.<sup>1/</sup> Different opinions were expressed as to the effectiveness of these documents; whereas some agencies considered that adequate recognition had been given to them, others considered them of only limited help in difficult cases.

167. Besides these certificates the specialized agencies have also issued "family certificates" to the dependents of staff members, usually those stationed away from headquarters, so as to enable them to show their connexion with the organization when travelling separately from the staff member. These family certificates have been similar in form to those used by the United Nations.

168. Lastly, it may be noted that the ILO has issued special identity cards to its national correspondents for use in their countries, in addition to the laissez-passer used for international travel. As the name suggests, these identity cards are primarily designed to provide proof that the holder is an official representative of the ILO, and not to assist travel as such.

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<sup>1/</sup> See chapter V above.

40. Diplomatic facilities for the executive heads and other senior officials of the specialized agencies and of IAEA whilst travelling on official business

169. Section 30 of the Specialized Agencies Convention provides that

"The executive heads, assistant executive heads, heads of departments and other officials of a rank not lower than head of department of the specialized agencies, travelling on United Nations laissez-passer on the business of the specialized agencies, shall be granted the same facilities for travel as are accorded to officials of comparable rank in diplomatic missions."

170. No special problems have arisen over the interpretation and application of this section. One specialized agency referred to the production of the national passport, together with the laissez-passer, as being contrary to the spirit of this provision in the case of officials entitled to the benefits of section 30.

## CHAPTER VII. SETTLEMENT OF DISPUTES

### 41. Settlement of disputes

171. Section 31 of the Specialized Agencies Convention states that

"Each specialized agency shall make provision for appropriate modes of settlement of:

(a) Disputes arising out of contracts or other disputes of private character to which the specialized agency is a party;

(b) Disputes involving any official of a specialized agency who by reason of his official position enjoys immunity if immunity has not been waived in accordance with the provisions of section 22."

172. In order to provide an appropriate mode of settlement of disputes arising out of their commercial contracts the majority of specialized agencies have made provision for recourse to arbitration.<sup>1/</sup> Relatively few serious disputes have arisen, however, and most even of these have been settled by means of negotiations between the parties.

173. One organization referred to two cases of a private nature in which it has been engaged. In one of these, the father of a staff member injured himself by falling down the staircase after visiting his son's office. A local lawyer advised that, assuming national law to apply, it was doubtful if the organization was liable to pay damages; the organization therefore declined to pay the sum demanded by the injured man. Eventually the parties agreed that the dispute should be submitted to arbitration and determined according to local law. The arbitrator found in favour of the injured man and awarded damages against the organization of just over a third of the original demand; the organization was also ordered to pay the costs of the arbitration. The second case involved a dispute between the organization and the contractor who had undertaken the construction of the headquarters building. The organization requested two government ministers of the host country to recommend two senior national officials who could examine the

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<sup>1/</sup> See section 1 above. The practice in respect of IBRD, IDA and IFC differs in a number of important respects in the case of the non-commercial contracts with which those agencies are chiefly engaged; see section 1 above and section 43 below.



contractor's claim. Having examined the matter, the two officials dismissed three of the nine counts on the basis of which the claim was made and concluded that a sum, equal to approximately 14 per cent of that originally claimed, was due to the contractor. The Director-General of the organization accepted their conclusions and offered the contractor the sum which the officials considered should be paid, in accordance with market conditions. The contractor eventually accepted this sum, plus accrued interest.

174. As regards disputes involving officials, since very few, if any, requests for waiver have been refused, no formal procedure of settlement has been established.

42. Settlement of disputes regarding alleged abuses of privileges

175. Section 24 of the Specialized Agencies Convention provides as follows:

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

176. The specialized agencies reported that no cases had arisen under this section and that, so far as they knew, recourse to it had not been seriously considered, either by an agency or by a State. One agency expressed the view that the reference to the International Court of Justice of the question whether or not an abuse of privilege had occurred was an unduly complicated means of dealing with possible abuses; it was suggested that recourse to arbitration might be more suitable. No similar provision exists in the Convention on the Privileges and Immunities of the United Nations.

177. The instruments of accession tendered for deposit by the Governments of Czechoslovakia, Byelorussian SSR, Ukrainian SSR and USSR were accompanied by reservations to the effect that these Governments did not consider themselves bound by sections 24 and 32, concerning the compulsory jurisdiction of the International Court of Justice.

43. Reference to the International Court of Justice of differences arising out of the interpretation of the Specialized Agencies Convention

178. Section 32 of the Specialized Agencies Convention provides as follows:

"All differences arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between one of the specialized agencies on the one hand, and a member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court and the relevant provisions of the agreements concluded between the United Nations and the specialized agency concerned. The opinion given by the Court shall be accepted as decisive by the parties."

179. The specialized agencies stated that they had no practice with regard to this section. They had not given consideration to applying section 32 in any particular case. It may be noted that several headquarters agreements provide for the settlement of disputes regarding points of interpretation by means of arbitration if negotiations do not lead to a settlement.

180. In the case of the IBRD, IDA, IFC and IMF, a provision in their respective annexes to the Specialized Agencies Convention states that section 32 shall apply only to differences "arising out of the interpretation or application of privileges and immunities" derived from the Convention, "and are not included in those which (the organization) can claim under its Articles of Agreement or otherwise".

The interpretation of the Articles of Agreement of these organizations can be made only by their respective Executive Directors, under conditions determined in the articles themselves.

181. As noted in section 42 above, the instruments of accession tendered for deposit by the Governments of Czechoslovakia, Byelorussian SSR, Ukrainian SSR and USSR were accompanied by reservations regarding section 32 of the Specialized Agencies Convention.

## CHAPTER VIII. ANNEXES AND FINAL PROVISIONS

### 44. Annexes to the Specialized Agencies Convention

182. Article X of the Specialized Agencies Convention makes provision for the modification of the standard clauses of the Convention in relation to each specialized agency by means of separate annexes. The particular modifications introduced have been referred to in the appropriate sections of this survey.

183. Sections 33-38 and section 40 of article X state as follows:

#### "Section 33

In their application to each specialized agency, the standard clauses shall operate subject to any modifications set forth in the final (or revised) text of the annex relating to that agency, as provided in sections 36 and 38.

#### Section 34

The provisions of the Convention in relation to any specialized agency must be interpreted in the light of the functions with which that agency is entrusted by its constitutional instrument.

#### Section 35

Draft annexes 1 to 9 are recommended to the specialized agencies named therein. In the case of any specialized agency not mentioned by name in section 1, the Secretary-General of the United Nations shall transmit to the agency a draft annex recommended by the Economic and Social Council.

#### Section 36

The final text of each annex shall be that approved by the specialized agency in question in accordance with its constitutional procedure. A copy of the annex as approved by each specialized agency shall be transmitted by the agency in question to the Secretary-General of the United Nations and shall thereupon replace the draft referred to in section 35.

#### Section 37

The present Convention becomes applicable to each specialized agency when it has transmitted to the Secretary-General of the United Nations the final text of the relevant annex and has informed him that it accepts the standard clause, as modified by this annex, and undertakes to give effect to sections 8, 18, 22, 23, 24, 31, 32, 42 and 45 (subject to any modification of section 32 which may be found necessary in order to make the final text of the annex consonant with the constitutional instrument of the agency) and any provisions of the annex placing obligations on the agency.

The Secretary-General shall communicate to all Members of the United Nations and to other States members of the specialized agencies certified copies of all annexes transmitted to him under this section and of revised annexes transmitted under section 38.

#### Section 38

If, after the transmission of a final annex under section 36, any specialized agency approves any amendments thereto in accordance with its constitutional procedure, a revised annex shall be transmitted by it to the Secretary-General of the United Nations.

#### Section 40

It is understood that the standard clauses, as modified by the final text of an annex sent by a specialized agency to the Secretary-General of the United Nations under section 36 (or any revised annex sent under section 38), will be consistent with the provisions of the constitutional instrument then in force of the agency in question, and that if any amendment to that instrument is necessary for the purpose of making the constitutional instrument so consistent, such amendment will have been brought into force in accordance with the constitutional procedure of that agency before the final (or revised) annex is transmitted.

The Convention shall not itself operate so as to abrogate, or derogate from, any provisions of the constitutional instrument of any specialized agency, or any rights or obligations which the agency may otherwise have, acquire, or assume."

184. The annexes which have been concluded under these provisions fall into three groups.

(i) Annexes relating to the ITU, UFU and WMO

These annexes provide that the standard clauses shall apply without modification except that, in the case of ITU, that agency,

"... shall not claim for itself the enjoyment of privileged treatment with regard to the 'Facilities in respect of communications' provided in Article IV, Section 11". 1/

(ii) Annexes relating to FAO, ICAO, ILO, IMCO, UNESCO and WHO

With some variation, these annexes provide that article V and article VII, section 25, paragraphs 1 and 2 (1), shall extend to various members of the governing bodies of the above-mentioned agencies,<sup>2/</sup> that the privileges and immunities referred to in section 21 shall also be

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1/ See section 18 above.

2/ In the case of WHO these provisions also apply to the representatives of associate members. No such provision is contained in the ICAO annex.

accorded to certain senior officials of the agency;<sup>1/</sup> and that experts (other than officials coming within the scope of article VI) shall receive the privileges and immunities listed in the particular annex.<sup>2/</sup>

The annexes relating to FAO and WHO have been revised; it was stated that no problems had arisen in this connexion.

(iii) Annexes relating to IBRD, IDA, IFC and IMF

These annexes provide that:

- (1) Section 32 shall only apply to differences relating to the privileges and immunities derived solely from the Convention and which are not included in the privileges and immunities that these agencies can claim under their Articles of Agreement or otherwise;<sup>3/</sup>
- (2) that the provisions of the Convention, or of the annexes, shall not affect in any way the Articles of Agreement of these agencies or impair or limit any rights conferred under those articles, or under any national enactment of a member State, or otherwise;
- (3) that, in the case of IBRD, IDA and IFC, action may be brought against them in certain specified circumstances;<sup>4/</sup>
- (4) that, in the case of IFC, section 7, paragraph (b), of the standard clauses shall apply subject to article III, section 5, of its Articles of Agreement,<sup>5/</sup> and that the corporation in its discretion may waive any of the privileges and immunities conferred under article VI of its Articles of Agreement to such extent and upon such conditions as it may determine.<sup>6/</sup>

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<sup>1/</sup> See section 30 above.

<sup>2/</sup> See chapter V above.

<sup>3/</sup> See section 43 above.

<sup>4/</sup> See section 7 above.

<sup>5/</sup> See section 13 above.

<sup>6/</sup> See section 8 above.

45. Supplemental agreements

185. Section 39 of the Specialized Agencies Convention provides as follows:

"The provisions of this Convention shall in no way limit or prejudice the privileges and immunities which have been, or may hereafter be, accorded by any State to any specialized agency by reason of the location in the territory of that State of its headquarters or regional offices. This Convention shall not be deemed to prevent the conclusion between any State party thereto and any specialized agency of supplemental agreements adjusting the provisions of this Convention or extending or curtailing the privileges and immunities thereby granted."

186. As envisaged in that section, the specialized agencies have concluded a number of supplemental agreements with States, adjusting, extending or curtailing the privileges and immunities granted under the Convention.

187. For the period up to 1960, the majority of agreements concluded by the specialized agencies and by IAEA relating to their privileges and immunities are to be found in the United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations, vol. II. When the United Nations Juridical Yearbook was established in 1962, the specialized agencies and IAEA were invited to submit relevant material, including agreements relating to their privileges and immunities, for publication in the Yearbook. Accordingly, agreements relating to the privileges and immunities of the specialized agencies and of IAEA are to be found, expressly or by reference, in successive issues of the Yearbook beginning in 1962. Besides a large number of standard agreements, the following agreements concerning the status, privileges and immunities of the specialized agencies and of IAEA were concluded in the period between that covered in the Legislative Series and the start of the Juridical Yearbook, and were registered, compiled and recorded, with the United Nations Secretariat:

- Agreement for the establishment of the Latin-American Research and Training Institute in Venezuela under the auspices of the FAO. Approved by the Conference of the FAO at its tenth session, 18 November 1959, United Nations Treaty Series, vol. 390, p. 227.
- Agreement between IAEA, the Government of Monaco and the Oceanographic Institute concerning research on the effects of radioactivity at sea. 8 and 10 April 1961. United Nations Treaty Series, vol. 396, p. 255.

- Agreement between UNESCO and Thailand regarding the Asia Regional Office of UNESCO. 25 August and 6 September 1961. United Nations Treaty Series, vol. 410, p. 125.

46. Accession to the Specialized Agencies Convention by Member States of the United Nations and by member States of the specialized agencies

188. Sections 41 to 45 of article XI of the Specialized Agencies Convention provide as follows:

"Section 41

Accession to this Convention by a Member of the United Nations and (subject to section 42) by any State member of a specialized agency shall be effected by deposit with the Secretary-General of the United Nations of an instrument of accession which shall take effect on the date of its deposit.

Section 42

Each specialized agency concerned shall communicate the text of this Convention together with the relevant annexes to those of its members which are not Members of the United Nations and shall invite them to accede thereto in respect of that agency by depositing an instrument of accession to this Convention in respect thereof either with the Secretary-General of the United Nations or with the executive head of the specialized agency.

Section 43

Each State party to this Convention shall indicate in its instrument of accession the specialized agency or agencies in respect of which it undertakes to apply the provisions of this Convention. Each State party to this Convention may by a subsequent written notification to the Secretary-General of the United Nations undertake to apply the provisions of this Convention to one or more further specialized agencies. This notification shall take effect on the date of its receipt by the Secretary-General.

Section 44

This Convention shall enter into force for each State party to this Convention in respect of a specialized agency when it has become applicable to that agency in accordance with section 37 and the State party has undertaken to apply the provisions of the Convention to that agency in accordance with section 43.

Section 45

The Secretary-General of the United Nations shall inform all Members of the United Nations, as well as all members of the specialized agencies, and

executive heads of the specialized agencies, of the deposit of each instrument of accession received under section 41 and of subsequent notifications received under section 43. The executive head of a specialized agency shall inform the Secretary-General of the United Nations and the members of the agency concerned of the deposit of any instrument of accession deposited with him under section 42."

189. As of 15 May 1967, sixty-two States were parties to the Convention in respect of one or more of the specialized agencies. Eight States made declarations regarding the application of section 11.<sup>1/</sup> The instruments of accession tendered for deposit by four States were accompanied by reservations regarding the application of sections 24 and 32.<sup>2/</sup> It is the position of the specialized agencies that no reservation may be accepted which varies the application of specific immunities, other procedures being provided for agreed variations in the annexes to the Convention.

190. No serious difficulties have arisen in the application of article XI of the Specialized Agencies Convention. It may be noted that a number of States which are either not parties to the Convention or have not extended its application to all agencies, have nevertheless agreed, usually under a bilateral agreement, to apply the provisions of the Conventions to agencies operating in their territory.

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<sup>1/</sup> See section 18 above.

<sup>2/</sup> See sections 42 and 43 above. In addition the instrument of accession tendered for deposit by Canada was accompanied by a reservation regarding the application of section 19 (b) of the Specialized Agencies Convention; see section 24 above.



These agreements have mostly dealt with the provision of technical assistance,<sup>1/</sup> but have also related to the establishment of field or regional offices and to the holding of conferences in the territory of the State concerned.

191. The IAEA Agreement on Privileges and Immunities, which is open to all member States of the Agency, had twenty-six States parties as on 1 February 1966. It may be noted that article XV of the Statute of IAEA contains an obligation on member States to grant the necessary legal capacity, privileges and immunities to the agency, as defined in a separate agreement or agreements. Member States are therefore already bound by the terms of the Statute, even if they do not submit an instrument of acceptance to the Agreement on Privileges and Immunities, to accord to the agency the legal capacity, privileges and immunities it requires in order to fulfil its functions.

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1/ Article V of the Revised Standard Agreement for technical assistance provides as follows:

"1. The Government, in so far as it is not already bound to do so, shall apply to the organizations, their property, funds and assets, and to their officials, including technical assistance experts,

- (a) In respect of the United Nations, the Convention on the Privileges and Immunities of the United Nations;
- (b) In respect of the specialized agencies, the Convention on the Privileges and Immunities of the Specialized Agencies; and
- (c) In respect of the International Atomic Energy Agency, the Agreement on the Privileges and Immunities of the International Atomic Energy Agency.

2. The Government shall take all practical measures to facilitate the activities of the organizations under this Agreement and to assist experts and other officials of the organizations in obtaining such services and facilities as may be required to carry on these activities. When carrying out their responsibilities under this Agreement, the organizations, their experts and other officials shall have the benefit of the most favourable legal rate of conversion of currency."