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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

A. Summary of Practice relating to the Status, Privileges and Immunities of the United Nations

Study prepared by the Secretariat

(Provisional Edition)

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CHAPTER I. JURIDICAL PERSONALITY OF THE UNITED NATIONS

1. Contractual capacity

(a) Recognition of the contractual capacity of the United Nations

1. The contractual capacity of the United Nations, which is derived from Article 104 of the Charter and granted express recognition in section 1 (a) of the General Convention, has been fully acknowledged in practice. Recognition of United Nations capacity in this sphere has been given both by State organs on which the Organization has needed to rely in connexion with the performance of its contracts and by official bodies, private firms and individuals with whom the United Nations has wished to enter into contractual relations. The United Nations has exercised its contractual capacity both through officials of the Secretariat acting on behalf of the Secretary-General, in his capacity as chief administrative officer of the Organization, and through subsidiary bodies established for particular purposes by one of the principal organs. Subsidiary organs, such as UNICEF and UNRWA, which have been entrusted by the General Assembly with a wide range of direct functions, have regularly entered into commercial contracts in their own name.

2. Such difficulties as have arisen regarding the contractual capacity of the Organization have usually followed a dispute over the execution of a particular contract. On several occasions it has been alleged by the other party that the United Nations lacked juridical personality and thus could not enforce its contractual rights before a local court. These arguments, in which the legal personality of the Organization was denied as part of a denial of its capacity to institute legal proceedings, do not appear to have been raised in any commercial dispute in which the United Nations took action as a plaintiff, although they have been presented in correspondence. In U.N. v. B. and UNRRA v. Dean[1/] however, arguments denying the legal personality of the two organizations were presented by former staff members when action was brought to recover sums paid to them in error under their contracts of employment; these arguments were rejected by the courts. It may also be noted that in a dispute

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1/ See section 4 below.

which arose in 1952 with a private firm with whom the United Nations had entered into a commercial contract, the firm sought to halt arbitration proceedings by means of a court order on the grounds that the Organization's immunity from suit and execution rendered its contracts unenforceable. In correspondence the Office of Legal Affairs denied this argument, relying on precedents with respect to State immunities and its acceptance of an arbitral procedure for the settlement of disputes. The request for a motion to stay arbitration was subsequently dropped by the firm concerned.

3. So far as is known, no State has placed any express limitation upon its recognition of the contractual capacity of the United Nations. The Organization may therefore use its contractual powers, subject to the limitations imposed by its own structure and the authority given by resolutions adopted by its organs, for the same purposes as any other legal entity recognized by particular municipal systems.

4. In 1958, following a dispute as to the execution of a commercial contract, UNRWA sought to enter into arbitration with the other party. The other party having declined to appoint an arbitrator, in accordance with the terms of the contract UNRWA requested the President of the Court of Arbitration of the International Chamber of Commerce to appoint one. The latter appointed Professor Henri Batiffol of the Faculty of Law of the University of Paris. The section of Professor Batiffol's award dealing with the question of the competence of the arbitrator included the following passage which is of general interest regarding the capacity of an international organization, or of its subsidiary organs, to enter into contracts and to secure their enforcement:

> "... Attendu que l'UNRWA, organe des Nations Unies, tient des traités en vertu desquels elle a été constituée, et notamment de la convention sur les privilèges et immunités des Nations Unies, du 13 février 1946, la personnalité juridique, et le pouvoir de contracter; que la stipulation d'une clause compromissoire, impliquée par ce pouvoir, trouve donc son fondement juridique dans un acte relevant du droit international public et se trouve valable par application de ce droit sans qu'il soit nécessaire, à ce point de vue, de l'appuyer sur une loi nationale, comme ce serait le cas pour un contrat entre personnes privées toujours soumises, à ce jour, à l'autorité d'un Etat, donc à un système juridique national, que ce soit par leur nationalité ou leur domicile, la situation de leurs biens ou le lieu de leur activité;

Attendu que si certains systèmes juridiques permettent au signataire d'une clause compromissoire de saisir le juge de droit commun soit pour surveiller la procédure arbitrale, soit même, si ce juge l'estime opportun, pour le substituer à l'arbitre, une telle substitution suppose que le cause relève d'un système national ayant prévu cette possibilité, et réglé ses conséquences; que s'agissant en l'espèce d'une cause que ne relève pas d'un système juridique national, mais du droit international public lequel n'a pas prévu une telle possibilité, sans posséder d'ailleurs d'organisation propre à en régler les conséquences, il y a lieu d'entendre la clause compromissoire stipulée selon ses termes, lesquels excluent le recours au juge de droit commun sur les différends qu'elle vise, la solution étant d'ailleurs seule compatible avec l'immunité de juridiction des organismes internationaux;

Attendu que le refus de la société défenderesse de concourir à la désignation de l'arbitre et à l'établissement du compromis ne doit pas faire obstacle à l'exécution de la clause compromissoire; que si les systèmes juridiques nationaux répartissent différemment en cas d'inéxécution d'un contrat imputable au débiteur, les rôles respectifs des dommages-intérêts et de l'exécution en nature, tous reconnaissent, à des degrés divers, le droit d'exiger cette dernière dans la mesure où elle est possible; attendu que le droit international, sur lequel est fondée la présente clause compromissoire, ne portant aucune prescription à ce sujet, il y a lieu de s'en tenir au principe général de l'effet obligatoire des contrats et de rechercher si l'exécution selon sa teneur de la clause compromissoire est possible malgré le refus de la partie défenderesse d'y concourir;

Attendu que la désignation de l'arbitre malgré l'abstention de la partie défenderesse est possible au moins quand le contrat, comme dans la présente espèce, a prévu le recours à un tiers pour cette désignation en cas de désaccord des parties; qu'il n'y a pas lieu de distinguer entre le désaccord sur la personne à désigner et le désaccord sur l'opportunité d'une désignation; que la formule de l'article 12 ("Should the parties not agree within 30 days as to the choice of the arbitrator, the appointment will be made by the President of the Court of Arbitration of the International Chamber of Commerce") admet les deux éventualités, conformément à la volonté réelle des parties, que a été de soumettre à l'arbitrage tout différend né du contrat;

Attendu que le refus du défendeur de concourir à l'établissement du compromis peut-être suppléé par la soumission à l'arbitre du projet de compromis proposé au défendeur, l'arbitre décidant si le texte proposé définit suffisamment et correctement ou égard aux pièces produites et notamment à la correspondance des parties, l'objet du litige; que cette suppléance du contrat par un jugement, admise notamment en cas de refus d'exécuter une promesse de vente, n'est que l'exécution pure et simple, décidée par le juge, du contrat originaire, la décision rendue dans ces conditions tenant lieu de compromis;

Attendu qu'en l'espèce la partie demanderesse a demandé au Président de la Cour d'arbitrage de la Chambre de Commerce Internationale, conformément à l'article 12 des conditions générales annexées au contrat, la désignation de l'arbitre; qu'il y a été procédé; attendu que la demanderesse ayant soumis à l'arbitre désigné le projet de compromis proposé par elle à la société défenderesse, l'arbitre a estimé, au vu des pièces produites, que ce projet définissait suffisamment et correctement l'objet du litige; attendu que l'arbitre a donc été validement saisi, et est compétent pour connaître du litige."

The arbitrator found in favour of UNRWA as regards the merits of the dispute.

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

5. Generally speaking, United Nations contracts (both those of a commercial nature and employment contracts) have not made any mention in the contract of the kind of law applicable to the agreement. In the case of employment contracts, the contract itself has formed part of a growing system of international administrative law, independent of given systems of municipal law. The references to municipal law contained in employment contracts have therefore been specific rather than general (e.g., as to social security laws) or, very occasionally, introduced for the purposes of providing a convenient yardstick for measuring compensation or separation benefits.[2/] Clauses of the latter description have now almost ceased to be used; in any case, at no time did they amount to a choice of an actual system of municipal law to govern the entire terms of an employment contract. An internal appellate system has been established to consider disputes of a serious nature regarding employment contracts. The United Nations Administrative Tribunal has referred to the general principles of law in interpreting employment contracts, and has largely avoided reference to municipal systems.

6. In the case of commercial contracts, express reference has rarely been made to a given system of municipal law. The standard practice is for the contract to contain no choice of law clause as such; provision is made, however, for the

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2/ For the cases involving employment contracts which contained clauses of this nature, see Hilpern v. UNRWA and Radicopoulos v. UNRWA, Judgements of United Nations Administrative Tribunal, Nos. 1-70, Nos. 57, 63, 65 and 70. See also Bergaveche v. United Nations Information Centre, cited in section 7 below.

settlement of disputes by means of arbitration when agreement could not be reached by direct negotiations. Thus in the case of contracts concluded with parties resident in the United States, reference is made to arbitration according to the procedures established by the American Arbitration Association, by the Inter-American Arbitration Association in respect of contracts with Latin American suppliers, or by the International Chamber of Commerce in remaining cases. The clause presently in use reads as follows:

> "Any dispute arising out of the interpretation or application of the terms of this Contract shall, unless it is settled by direct negotiations, be referred to arbitration in accordance with the rules then obtaining of the (American Arbitration Association/Inter-American Arbitration Association/International Chamber of Commerce). The parties agree to be bound by any arbitration award rendered in accordance with this section as the final adjudication of any such dispute."

No further reference is made in the contract to the legal system to be applied.

7. In 1964 the Office of Legal Affairs advised the Office of General Services regarding a proposal that the United Nations standard bid form and United Nations contracts should specify that the place of arbitration would be New York. An extract from the opinion given is reproduced below:

> "There would naturally be practical advantages from our point of view should arbitrations be held in New York. On the other hand, there is the consideration that a requirement to this effect might dissuade parties either not resident or not represented in New York from bidding for United Nations contracts, and such a possibility should be avoided. To provide therefore in the standard bid form that arbitration should be in New York would not seem to us to be entirely advisable.
>
> On the other hand, when it is apparent at the time of contracting that a strong conflict of interest would exist between the United Nations and the contracting party in respect to the place of arbitration, it would be advisable to include agreement on the place of arbitration in the disputes clause. In such cases, should the United Nations consider it advisable that arbitration in the particular case should be in New York, it would be advisable to try to reach agreement on the inclusion of the words 'Any arbitration hereunder shall take place in New York unless otherwise agreed by the parties' in the arbitration clause of the contract." 3/

3/ United Nations Juridical Yearbook, 1964, p. 224.

8. The overwhelming majority of commercial contracts which have been entered into by the United Nations have been performed without the occurrence of any serious difficulty. The United Nations has therefore only had recourse to arbitral proceedings in a limited number of cases. The arbitral awards which have been given have been very largely based on the particular facts relating to the contract concerned and have not raised points of general legal interest regarding the status, privileges and immunities of the Organization.[4/] Very few cases regarding commercial contracts to which the United Nations was a party have come before municipal courts; in instances in which the United Nations was the plaintiff the most frequent issue was the capacity of the Organization to institute proceedings.[5/] In one case it was held that a United Nations subsidiary organ bringing an action arising out of a contract was obliged to comply with venue requirements.[6/]

4/ See, however, the award given by Professor Batiffol, cited in sub-section (a) above.

5/ See section 4 below.

6/ UNKRA v. Glass Production Methods, idem.

2. Capacity to acquire and dispose of immovable property

(a) Recognition of the capacity of the United Nations to acquire and dispose of immovable property

9. The capacity to acquire and dispose of immovable property, which is granted to the United Nations under section 1 (b) of the General Convention, has been widely recognized by both Member and non-member States. Even in the case of Curran v. City of New York et al,[1/] in which the plaintiff sought to forbid the transfer of the Headquarters site to the United Nations by the City of New York, the plaintiff did not deny the capacity of the United Nations to hold the land if it was transferred. Such problems as have arisen in this context appear to have been the result of the unique status of the United Nations, which have prevented its assimilation under national law to the position of either that of a government or to that of a private individual or corporation. The conditions under which the United Nations has acquired property have accordingly usually been determined at several levels; under the terms of an international agreement with the national government; under the terms of supplementary legislation adopted by the local authorities; and/or under the terms of a private contract. The number of parties and instruments involved has in itself therefore sometimes been conducive to administrative difficulties.

10. As regards the adoption of legislative or other provisions affecting the exercise of the United Nations capacity to acquire immovable property, it may be noted that in the State of New York, special conditions[2/] have been laid down regarding the acquisition of land by the United Nations in the State of New York. No objection was made to these conditions since they were not regarded as inconsistent with the Charter or with the major federal legislation granting the Organization the right to acquire property under United States law. It may also be noted that, when acceding to the General Convention, Turkey submitted a reservation that purchases of land and immovables by the United Nations were "subject to the conditions applied to foreigners"; this reservation was subsequently withdrawn however. A more stringent reservation was made by Mexico when acceding to the General Convention in 1962, in the following terms:

1/ See section 7 (a) below.

2/ See, e.g., the Act of the State of New York, February 27, 1947, (esp. section 59 (j)) cited in the letter quoted below.

"The United Nations and its organs shall not be entitled to acquire immovable property in Mexican territory, in view of the property regulations laid down by the Political Constitution of the United Mexican States."

11. In general it may be said that, in exercising its capacity to acquire immovable property (in instances where such exercise is not, as in the exceptional case of Mexico, denied, the Organization will comply with the normal requirements of local law, provided that these requirements do not constitute a hindrance to the way in which the Organization exercises its functions.

12. The following extract from a letter, dated 24 March 1947, from the Office of Legal Affairs to a firm of New York lawyers, in connexion with the purchase of the Headquarters site, summarizes the basic position under both international and United States law (including that of the State of New York):

"... We wish to advise you that under the laws of the United States and the State of New York, the United Nations possesses the legal capacity and authority to contract for and purchase real property for the purpose of carrying on its functions. Furthermore, we wish to advise you that the Secretary-General of the United Nations is authorized by the Charter of the United Nations and the resolution of its General Assembly to act for and on behalf of the Organization in purchasing land for use as a headquarters site.

The specific legal provisions which confer upon the United Nations, the aforesaid capacity and authority, are as follows:

(1) Article 104 of the Charter of the United Nations which provides as follows:

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

The Charter of the United Nations, which came into force on 24 October 1945 is a treaty of the United States duly ratified by and with the advice and consent of the Senate.

(2) Section 2 (a) of the International Organizations Immunities Act, Public Law 291 - 79th Congress, which provides:

'International organizations shall, to the extent consistent with the instrument creating them, possess the capacity:

(i) to contract;

(ii) to acquire and dispose of real and personal property'.

The United Nations was designated as an international organization entitled to enjoy the benefits of this act by the President of the United States in Executive Order No. 9698, dated February 19, 1946.

(3) Article 4 (b) of the State Law of New York as enacted by Chapter 25 of the Laws of 1947. Section 59 (j) of this article provides as follows:

> 'Acquisition of land. The United Nations may take by gift, grant or devise, acquire by purchase, but not by condemnation, any land necessary, useful or convenient in carrying on the functions of such organization within the state and hold, transmit and dispose of the same.'

The authority of the Secretary-General to act for and on behalf of the United Nations in this respect derived from Article 97 of the Charter which states that 'he shall be the Chief Administrative Officer of the Organization'. Specific authority of the Secretary-General to purchase land for use as a headquarters site has been granted by the General Assembly of the United Nations in a resolution adopted at the second part of its first session on 14 December 1946. This resolution provides, inter alia, as follows:

> '2. That the permanent headquarters of the United Nations shall be established in New York City in the area bounded by First Avenue, East 48th Street, the East River and East 42nd Street;
>
> '3. That the Secretary-General be authorized to take all steps necessary to acquire the land hereinabove described together with all appurtenant rights, and to receive the aforesaid gift of $8,500,000 (U.S.), and to apply the said gift to the acquisition of the land as provided in the terms of the offer'. (Resolution 100 (1) on the Headquarters of the United Nations adopted 14 December 1946)..."

13. In 1964 the United Nations purchased a lease and leasehold estate in New York City. A savings and loan association sought confirmation of the capacity of the United Nations to carry out the transaction. The United Nations replied as follows:

> "1. ... You have requested our opinion, first, with respect to the legal capacity of the United Nations to purchase the above lease and leasehold estate and to execute the various papers incidental to the purchase, and secondly, with respect to the United Nations officials authorized to execute on behalf of the United Nations the assumption of the lease and the other papers.

2. The United Nations, under Article 104 of its Charter, enjoys in the territory of each of its Member States 'such legal capacity as may be necessary for the exercise of its functions...'. This provision has in the United States been implemented through the International Organizations Immunities Act, which provides that 'International organizations shall, to the extent consistent with the instrument creating them, possess the capacity - (i) to contract; (ii) to acquire and dispose of real and personal property;....' ((22) USCA, section 288a, (a)); and the United Nations has been designated in Executive Order No. 8698 as a public international organization for the purpose of this Act. New York State legislation provides that the United Nations may acquire by gift, devise or purchase any land or interest in land within the State useful in carrying on the functions of the Organization (McKinney's New York State Law, section 59, i and j).

3. The property in question is to be used for office space for the United Nations Training and Research Institute which the United Nations General Assembly has, by resolution 1934 (XVIII) of 11 December 1963, requested the Secretary-General to establish. The purchase of the lease and leasehold estate and the execution of the papers required for that purpose are, therefore, valid exercises of the Organization's powers under the Charter and within its legal capacity recognized under United States Federal and New York State legislation.

4. The Secretary-General of the United Nations is, under Article 97 of the Charter, the chief administrative officer of the Organization. Unless the Secretary-General directs otherwise, the Under-Secretary, Director of General Services, or his authorized delegate is the contracting officer; this is provided in the United Nations Financial Rules which were formulated by the Secretary-General pursuant to the Financial Regulations adopted by the General Assembly at its fifth session (General Assembly resolution 456 (V) as amended by resolutions 950 (X) and 973 B (X)). With respect to the acquisition of the leasehold, the Under-Secretary, Director of General Services, is, ex officio, the official authorized to execute all the necessary papers except that concerned with immunity from legal process; the Secretary-General himself is the sole official authorized to agree to such waivers.

5. It is, therefore, our opinion that all action required under the United Nations Charter, the applicable General Assembly resolutions, and the Regulations and Rules of the Organization in order to authorize the Organization's purchase of the lease and leasehold estate and the execution of the various papers required in that connexion will have been taken by virtue of the execution by the Under-Secretary, Director of General Services, of the assumption of lease and leasehold and other agreements with the exception of the undertaking concerned with the Organization's immunity from legal process which will have been duly executed when signed by the Secretary-General himself." 3/

3/ United Nations Juridical Yearbook, 1964, p. 222.

14. As regards the acquisition of immovable property by the United Nations elsewhere than at Headquarters, in resolution 79 (I) the General Assembly approved an "Agreement concerning the execution of the transfer to the United Nations of certain assets of the League of Nations, signed on 19 July 1946", which provided for the transfer to the United Nations of rights in respect of the immovable and movable property of the League of Nations. The immovable property included such items as the Ariana site in Geneva and the buildings erected by the League on that site, ownership of other properties held by the League and the servitudes constituted in favour of the League. The movable property included the fittings, furniture, office equipment, books, the stock of supplies and all other corporal property belonging to the League of Nations. In addition, a specific agreement concerning the Ariana site was concluded between the United Nations and the Swiss Federal Council and approved by the General Assembly in resolution 98 (1).[4/] Under the agreement the United Nations is stated to be the owner of the buildings of the League of Nations on the Ariana site and of any other buildings it may erect there. The Organization has a transferable and exclusive right of user of the surface of the land on which these buildings are, or may be, erected, and a non-transferable and exclusive right of user over the remainder of the site. The property in the soil, however, remains with the Town of Geneva.

15. Premises occupied by the United Nations other than at Headquarters and the Geneva Office have mostly been rented or leased, or, in some cases, made available by Governments, and not owned outright.

16. Following the acquisition of immovable property, the problem encountered by the United Nations as owner or possessor have been broadly the same as those of any occupier. In the case of the Headquarters Agreement with the United States, for example, specific arrangements were made for the supply of public services. Section 17 (a) of the Agreement provides:

> "... The appropriate American authorities will exercise, to the extent requested by the Secretary-General, the powers which they possess to ensure that the headquarters district shall be supplied on equitable terms with the necessary public services, including electricity, water,

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4/ The agreement is reproduced in "Negotiations with the Swiss Federal Council, Report by the Secretary-General" (A/175), annex II.

gas, post, telephone, telegraph, transportation, drainage, collection of refuse, fire protection, snow removal, et cetera. In case of any interruption or threatened interruption of any such services, the appropriate American authorities will consider the needs of the United Nations as being of equal importance with the similar needs of essential agencies of the Government of the United States, and will take steps accordingly to ensure that the work of the United Nations is not prejudiced."

Similar provisions are contained in the ECAFE and ECA Agreements.5/

17. Steps have also been taken, in conjunction with the local authorities, to protect the amenities of the area adjacent to United Nations premises. Section 18 of the Headquarters Agreement specifies that:

"... The appropriate American authorities shall take all reasonable steps to ensure that the amenities of the headquarters district are not prejudiced and the purposes for which the district is required are not obstructed by any use made of the land in the vicinity of the district. The United Nations shall on its part take all reasonable steps to ensure that the amenities of the land in the vicinity of the headquarters district are not prejudiced by any use made of the land in the headquarters district by the United Nations."

18. Pursuant to this provision, the United Nations has received special protection under local zoning laws. In Geneva, protection of the amenities of the Palais des Nations was given as the main reason for the exchange of two properties, "Le Chêne", owned by the United Nations, and "Le Bocage", which the Cantonal Government had purchased from a private owner. The advisory Committee on Administrative and Budgetary Questions reported to the seventh session of the General Assembly as follows:

"Protection of the amenities of the Palais is a matter of considerable importance to Member States. With this purpose in view, representatives of the Secretary-General recently entered into negotiations with the Cantonal authorities, who have now formally agreed that, subject to the approval of the General Assembly of the United Nations, ownership of the two properties should be exchanged without other consideration.

The proposed scheme... would afford a safeguard against the commercial development of any part of the properties surrounding the Palais des Nations. Such a contingency would obviously impair the amenities of the Palais and cause a serious depreciation of property values. Except where 'Le Bocage' is concerned, the interest of the United Nations in this respect is already

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5/ Section 16, ECA Agreement, and section 24, ECAFE Agreement.

fully protected. The belt of properties immediately surrounding the Palais and its grounds is unbroken except for one strip of land which comprises, in almost the whole of its area, the latter property. Commercial development on this belt is precluded." 6/

19. As regards the disposal of immovable property, in the case of a number of its major installations the United Nations has agreed to act in consultation with the host authorities. Sections 22 to 24 of the Headquarters Agreement, for example, provide:

"Section 22. (a) The United Nations shall not dispose of all or any part of the land owned by it in the headquarters district without the consent of the United States. If the United States is unwilling to consent it shall buy the land in question from the United Nations at a price to be determined as provided in paragraph (d) of this section.

(b) If the seat of the United Nations is removed from the headquarters district, all right, title and interest of the United Nations in and to real property in the headquarters district or any part of it shall, on request of either the United Nations or the United States, be assigned and conveyed to the United States. In the absence of such request, the same shall be assigned and conveyed to the sub-division of a state in which it is located or, if such sub-division shall not desire it, then to the state in which it is located. If none of the foregoing desire the same, it may be disposed of as provided in paragraph (a) of this section.

(c) If the United Nations disposes of all or any part of the headquarters district, the provisions of other sections of this agreement which apply to the headquarters district shall immediately cease to apply to the land and buildings so disposed of.

(d) The price to be paid for any conveyance under this section shall, in default of agreement, be the then fair value of the land, buildings and installations, to be determined under the procedure provided in section 21.

Section 23. The seat of the United Nations shall not be removed from the headquarters district unless the United Nations should so decide.

Section 24. This agreement shall cease to be in force if the seat of the United Nations is removed from the territory of the United States, except for such provisions as may be applicable in connexion with the orderly termination of the operations of the United Nations at its seat in the United States and the disposition of its property therein."

6/ Official Records of the General Assembly, Seventh Session, Annexes, fourteenth report of the Advisory Committee on Administrative and Budgetary Questions (A/2262).

Balancing these provisions, section 3 of the Agreement states:

> "Section 3. The appropriate American authorities shall take whatever action may be necessary to assure that the United Nations shall not be dispossessed of its property in the headquarters district, except as provided in section 22 in the event that the United Nations ceases to use the same, provided that the United Nations shall reimburse the appropriate American authorities for any costs incurred, after consultation with the United Nations, in liquidating by eminent domain proceedings or otherwise any adverse claims."

20. Under article 4 of the deed transferring the site of the ECLA offices, the land would revert to the Government of Chile if the United Nations ceases to exist as a legal entity in international law or if it decides to remove its offices and services permanently from Chilean territory. In the event of such reversion, a fair price is to be paid for the buildings and installations, as determined between the Government of Chile and the United Nations. As an exception to this right of reverter, the deed provided that the ownership of the land may be transferred to an international or regional organization which is recognized by the Government of Chile, provided that the transfer is authorized by that Government.

21. Lastly, it may be noted that in a number of instances, the United Nations has occupied property the title to which was either uncertain or was in dispute between various governmental parties. Examples include the occupation of Government House, Jerusalem, and of several military bases and installations in the Republic of the Congo. These instances have turned on the special facts involved in each case, including the relevant provisions of international agreements. In general, however, it may be said that in these instances the role of the United Nations has been that of a trustee, occupying the premises concerned under a prima facie right to do so until the question of title has been clarified.

(b) Acquisition and disposal of immovable property

22. The United Nations has acquired and disposed of immovable property, or of interests in immovable property[7/] (e.g. leaseholds), on a number of occasions during its history.

7/ For purposes of convenience all interests in immovable property have been considered as falling within the present section even if under given systems of national law the interests may be classified according to a different criterion.

23. At New York, the first premises occupied for any appreciable length of time, namely at Lake Success, were held under lease. The Interim Headquarters Agreement regarding the Lake Success site made provision for this fact in the following article:

> "The United Nations agrees, in view of the fact that the premises occupied by it as the temporary headquarters are under lease from persons not parties to this agreement, that passes will be provided by the Secretary-General to such persons or their duly authorized agents for the purposes of enabling them to inspect, repair and maintain the said premises in accordance with the terms of the lease.
>
> The United Nations further agrees that this Interim Agreement shall not affect any existing arrangements with respect to payment of taxes or payments in lieu of taxes on property under lease from persons not parties to this agreement or impair the power of any municipality to impose taxes on property so leased."

Moreover, the description of the property at Lake Success which was annexed to the Agreement declared that,

> "The foregoing description of the property has been taken from the proposed lease between the Reconstruction Finance Corporation and the United Nations. The said description is subject to such modification as may be contained in the lease as executed between the Reconstruction Finance Corporation and the United Nations."

24. The present Headquarters Agreement does not refer specifically to the terms under which the site was acquired, although provision is made regarding possible disposal.[8/] The Agreement reproduced below, between the City of New York and the United Nations, gives details of the transfer of a portion of the Headquarters site to the United Nations; the agreement is thus ancillary to the Headquarters Agreement between the Organization and the United States Government.

> "AGREEMENT made this 22nd day of August, 1947, between the CITY OF NEW YORK, a municipal corporation, having its principal office at the City Hall, Borough of Manhattan, City of New York, pursuant to the authority contained in a Resolution of the Board of Estimate adopted the 22nd day of May, 1947 (Calendar No. 202), hereinafter described as the City, and UNITED NATIONS, hereinafter described as the UN.

8/ See the provisions quoted in sub-section (a) above.

WITNESSETH

That the City for and in consideration of the price hereinafter specified and the convenants, promises and agreements on the part of the UN herein contained and made, agrees hereby to sell and convey to the UN, subject to and upon each and all of the terms, covenants and conditions of this agreement, and the UN in consideration of the premises hereby agrees to acquire the real property situate in the City of New York, County of New York and State of New York, hereinafter described as follows:

ALL that certain lot, piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of East 42nd Street, distant 100 feet easterly from the corner formed by the intersection of the easterly side of 1st Avenue and the northerly side of East 42nd Street; thence northerly parallel with the easterly side of 1st Avenue 100 feet 5 inches to the centre line of the block between East 43rd Street and East 42nd Street, thence easterly along said centre line of the block 100 feet; thence southerly and again parallel with the easterly side of 1st Avenue 100 feet 5 inches to the northerly side of East 42nd Street; thence westerly along the northerly side of East 42nd Street 100 feet to the point or place of beginning as said streets existed on March 1, 1947.

Subject to:

(a) Any state of facts which an inspection of the premises and an accurate survey may show and any encroachments upon said premises or contiguous premises.

(b) Covenants, conditions, restrictions, reservations, easements, and rights of way, if any, contained in former instruments of record affecting said premises so far as the same may now be in force or effect.

(c) Liens, charges and encumbrance made, created or suffered by the UN, or to be paid, discharged or assumed by the UN hereunder.

(d) Restrictions and zoning laws, ordinances or regulations adopted or imposed by any governmental authority, and to any modifications or amendments thereof.

The purchase price for which the City agrees to sell and convey and the UN agrees to acquire said property is ONE MILLION FOUR HUNDRED NINETY-FOUR THOUSAND DOLLARS ($1,494,000) which the UN covenants and agrees to pay in lawful money of the United States of America to the City in the following manner:

/...

One-fifth thereof upon the execution and delivery of this agreement, receipt of which is hereby acknowledge, and a like sum on the first day of July of each year thereafter to and including the first day of July 1951, with the privilege to make full payment of the purchase price of any unpaid balance thereof at any time.

The UN may enter into possession of the premises herein described immediately, and may make alterations therein. The UN covenants, by reason of taking possession, that it will not commit, permit or suffer any waste of said property and agrees to keep and maintain same in good condition and repair and promptly pay all costs and charges therefor. The UN shall cause to be discharged at its own costs and expense any claims or liens that may be filed against the property by reason of such repairs, improvements or alterations.

In the event the UN defaults in its payment of any installments as set forth herein, or in the event the UN ceases to use the premises as its International Headquarters, the City shall be entitled to re-enter the primises and become repossessed thereof.

If the City becomes repossessed thereof as above provided, all sums theretofore paid by the UN to the City on account of such purchase price shall be deemed payment for use and occupation of the premises by the UN.

Upon the full payment of the purchase price, the City shall deliver to the UN a good and sufficient Bargain and Sale Deed at the Office of the Corporation Counsel, Municipal Building, Room 1263, Borough of Manhattan, City of New York, in proper statutory form for record which shall be duly executed by the Mayor or Deputy Mayor and the City Clerk so as to convey to the UN the fee simple of the said premises free and clear of all liens, encumbrances or objections except as herein stated and provided for and except such liens charges or encumbrances made, created or suffered by the UN, and subject to the exceptions mentioned in this agreement.

IN WITNESS THEREOF, the parties hereto have caused these presents to be executed the day and year first above written."

25. The majority of property transactions have not occurred, however, in New York or Geneva, but in countries in which United Nations offices and installations have been established in connexion with technical assistance and field operations, or with public information activities. In a significant number of cases the agreement under which the United Nations agreed to provide the services in question also determined, at least in outline, the conditions under which the United Nations might occupy property. Field agencies, such as UNRWA AND UNKRA, have also occupied property, erected buildings for the beneficiaries of their programmes, and executed deeds of transfer, on a wide scale. It may be noted that article IV of the Agreement between UNRWA and Jordan provides in part as follows:

"The Agency agrees to pay to the Jordan Government, with effect from 1st March 1951, the sum of five hundred Jordanian Dinars per month towards all costs arising out of rents for land occupied by refugee camps and for charges of water consumed by refugees within the Hashemite Kingdom of the Jordan, it being understood that the responsibility for the provision of camp sites and of water and for resolving all questions arising out of their procurement shall rest with the Government.

The Hashemite Government of Jordan agrees to bear all costs arising out of rents for land occupied by refugee camps and for charges of water consumed by refugees in excess of five hundred Jordanian Dinars per month."

26. In article II (i) of the Agreement between the United Nations and the Republic of Korea signed on 6 November 1959, the land on which the United Nations Memorial Cemetery stands is granted to the United Nations "in perpetuity and without charge".

3. Capacity to acquire and dispose of movable property

(a) Recognition of the capacity of the United Nations to acquire and dispose of movable property

27. The capacity of the United Nations to acquire and dispose of movable property has been fully recognized, both by Member States (whether or not they have become parties to the General Convention), and by non-member States. Specific problems relating to the terms under which such property has been acquired or might be disposed of under national law, in particular as regards taxation, are considered in chapter II below. The legal capacity of the United Nations to own movable property or otherwise exercise legal powers in relation to movable property, has not itself been called in question.

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

(i) Land vehicles

28. In the majority of cases land vehicles owned and operated by the United Nations have been registered with the road licensing authorities of the host State in which the vehicles were to be used. The local authorities have frequently granted a special registration number or a special prefix (e.g. "U.N.") to designate such vehicles.

29. A number of bodies performing peace-keeping operations in the field, however, have issued their own identification marks and licences, which they have notified to the local authorities concerned. In the case of UNTSO, which appears to be the forerunner in this respect, vehicles used are not registered with the authorities of any of the States in which UNTSO operates and the licence plates, which carry the letters "UN" and a number, are issued by UNTSO itself. In the Exchange of Letters between the Secretary-General and the Foreign Minister of Lebanon concerning the status of the United Nations Observation Group in Lebanon "the use of United Nations vehicle registration plates" was included in the list of "privileges and immunities necessary for the fulfilment of the functions of the Observation Group"; a similar provision was included in the Exchange of Letters regarding the stationing in Jordan of a United Nations subsidiary organ under the charge of a Special Representative of the Secretary-General, and in the Exchange of Letters between the United Nations and Saudi Arabia concerning the observation operation along the Saudi-Arabia-Yemen border.[1/]

1/ United Nations Treaty Series, vol. 474, p. 155.

30. Paragraph 21 of the UNEF Agreement provides in part as follows:

> "Service vehicles, vessels and aircraft shall carry a distinctive United Nations identification mark and licence which shall be notified by the Commander to the Egyptian authorities. Such vehicles, vessels and aircraft shall not be subject to registration and licensing under the laws and regulations of Egypt. Egyptian authorities shall accept as valid, without a test or fee, a permit or a licence for the operation of service vehicles, vessels and aircraft issued by the Commander."

Similar provisions were contained in the ONUC and UNFICYP Agreements.[2/]

(ii) Vessels

31. The United Nations has on occasions operated vessels under the United Nations flag. In 1961 the Director, Legal Division, IAEA, informed the Legal Counsel of a proposal which had been made to allow inter-governmental organizations to act as licensing States under the draft Convention on the Liability of Operators of Nuclear Ships. The reply of the Legal Counsel, dated 24 May 1961, summarizes past United Nations practice[3/] and indicates some of the problems which would be posed by the establishment of a maritime register by the United Nations.

> "I was most interested to hear of the proposal made by Belgium, Denmark and India, at the recent Conference on Maritime Law held in Brussels, to add an Article to the draft Convention on Liability of Operators of Nuclear Ships which would permit an intergovernmental organization to act as a licensing State under the Convention. The proposal takes into account the principle that ships may, in certain circumstances, be navigated under the flag of an intergovernmental organization. This principle has already gained recognition in one of the most important maritime Conventions of this decade, namely the Convention on the High Seas, concluded at the First United Nations Conference on the Law of the Sea. Article 7 of that Convention provides as follows:

2/ Paragraph 32, ONUC Agreement, ibid., vol. 414, p. 245, and paragraph 21, UNFICYP Agreement, ibid., vol. 492, p. 70.

3/ For more detailed information on United Nations ships see the memorandum prepared by the Secretariat in United Nations Conference on the Law of the Sea, 1958, Official Records, vol. IV, p. 138. The consideration of the right of the United Nations to sail vessels under its own flag by the International Law Commission and during the United Nations Conference on the Law of the Sea is summarized, with detailed references, in Repertory of Practice of United Nations Organs, Suppl. No. 1, vol. II, pp. 418-422 and ibid., Suppl. No. 2, vol. III, pp. 515-517.

'The provisions of the preceding Articles [on nationality of ships] do not prejudice the question of ships employed on the official service of an intergovernmental organization flying the flag of the organization.'

It is gratifying, furthermore, to see from the proposal of Belgium, Denmark and India, that States members of the United Nations and related agencies have kept in mind the possibility of international co-operative endeavours.

In the instant case, the possible concern of the United Nations is for future developments rather than for the present. While the Organization will probably find no necessity for licensing a nuclear ship to operate under its own flag in the years which lie immediately ahead, it may prove undesirable to preclude it from doing so in the more distant future. Circumstances have in the past already given rise to several instances where the United Nations flag has been used as the sole maritime flag on vessels. During 1954 ten fishing trawlers constructed in Hong Kong by the United Nations Korean Reconstruction Agency were navigated to Pusan, in Korea, for delivery to future Korean owners under United Nations registration and flag, as practical and other considerations did not permit of their being placed upon a national register for that particular voyage. Similarly, the United Nations Emergency Force has operated a Landing Craft Mechanized between Gaza and Beirut under United Nations registration and flag. While these examples appear of small import in comparison with the licensing and operation of a nuclear ship, indications are not wanting that the United Nations or specialized agencies might have occasion to navigate their own vessels, under their own flags, for considerable periods of time. Thus I understand that some thought has been given to the use by UNESCO of international oceanographic vessels, for research purposes, using the United Nations flag as the maritime flag. Co-operative ventures of a similar nature may eventually become a commonplace in the work of international organizations.

The establishment of a maritime register by the United Nations involves certain problems, such as those relating to the exercise of criminal and civil jurisdiction over the crews, which have perhaps so far limited the examples in which ships have been navigated under the United Nations flag alone. However, these problems have been under active consideration and are by no means insoluble. In this respect it would be possible to conclude agreements with States, whereby they would extend their jurisdiction to vessels navigated under the United Nations flag."

32. As regards the question of jurisdiction, the International Law Commission commented in 1955[4] that:

4/ Comment on provisional article 4, Regime of the High Seas, Yearbook of the International Law Commission, 1955, vol. II, p. 22. See also the discussion at the 320th Meeting, Yearbook of the International Law Commission, 1955, vol. 1, p. 224 et seq.

"... Member States will obviously respect the protection exercised by the United Nations over a ship where the competent body has authorized the vessel to fly the United Nations flag. It must, however, not be forgotten that the legal system of the flag State applies to the vessel authorized to fly the flag. In this respect the flag of the United Nations or that of another international organization cannot be assimilated to the flag of a State. The Commission was of the opinion that the question calls for further study, and it proposes to undertake such study in due course."

33. It may also be noted that in the Exchange of Letters between the United Nations and the Government of Egypt regarding the clearance of the Suez Canal it was stated by the Secretary-General that "In keeping with the United Nations responsibilities, the vessels would fly the flag of the United Nations in place of their national flag."5/

(iii) Aircraft

34. In answer to an inquiry made in 1960 by ICAO as to the registration and ownership of aircraft by the United Nations, the Office of Legal Affairs stated that the only aircraft which the United Nations had owned up to that date had been one which had been used for approximately a year in order to service the supply and personnel requirements of the United Nations Commission in Korea. The aircraft, which crashed in May 1951, had apprently not been registered; its only markings were the words "United Nations" on the fuselage, the letters "U.N." on the wings, and the United Nations flag, together with the letters "U.N. 99" on the rudder. It was stated that the case was an exceptional one, brought about by a particular emergency, and could not be regarded as typical of the arrangements normally made by the United Nations with respect to aircraft. On all other occasions aircraft had either been chartered or had been made available by a Government at the request of the United Nations; these aircraft had retained their national registration and marks, though in some instances, for example in the case of aircraft used by UNEF, planes had been painted white and bore the United Nations emblem. The reply of the Office of Legal Affairs continued as follows:

5/ See also the opinion contained in the United Nations Juridical Yearbook 1963, p. 180, in which the Office of Legal Affairs recommended that vessels used for the purposes of a Special Fund fishery project should fly the United Nations flag in addition to their own maritime flag.

"We have not, in the past, given any extensive consideration to possible distinctions between 'public' and other aircraft used by the United Nations. We have taken the position that a United Nations aircraft, regardless of the particular operation in which it is used, is entitled to the privileges and immunities accorded to United Nations property in the Convention on the Privileges and Immunities of the United Nations.

As you surmise, there are some provisions relating to United Nations aircraft in certain special agreements governing particular United Nations operations. For example, the Agreement between the United Nations and Egypt concerning the status of UNEF provides, inter alia, in paragraph 21 that:

> '... Service vehicles, vessels and aircraft shall carry a distinctive United Nations identification mark and licence which shall be notified by the Commander to the Egyptian authorities. Such vehicles, vessels and aircraft shall not be subject to registration and licensing under the laws and regulations of Egypt. Egyptian authorities shall accept as valid, without a test or fee, a permit or licence for the operation of service vehicles, vessels and aircraft issued by the Commander.'

Paragraph 32 states that:

> 'The force and its members shall enjoy together with service vehicles, vessels, aircraft and equipment, freedom of movement between Force headquarters, camps and other premises, within the area of operations, and to and from points of access to Egyptian territory agreed upon or to be agreed upon by the Egyptian Government and the Commander....

Under paragraph 33 UNEF has the right 'to the use of... airfields without the payment of tolls or charges either by way of registration or otherwise, in the area of operations and the normal points of access, except for charges that are related directly to services rendered.'

The 'Provisional Arrangement' between the United Nations and Lebanon, concerning the UNEF Leave Centre in Lebanon, contains, in paragraph 12, a provision similar to paragraph 21 of the Agreement just discussed. Should you wish to refer further to the Agreement and the Arrangement you will find them reproduced in volumes 260 and 266 of the United Nations Treaty Series.

It is our understanding, however, that special agreements of the above nature merely define in more detail some of the privileges to which United Nations aircraft are entitled under the Convention on Privileges and Immunities of the United Nations."

35. In response to a further inquiry, the Office of Legal Affairs notified ICAO in 1965 of certain developments which had occurred since 1960.

"... A number of aircraft for instance were purchased by the United Nations between 1960 and 1963 for its operations in the Congo.

These aircraft were exempt from the requirements of Congolese law relating to the registration of aircraft, by reason of the Agreement between the United Nations and the Republic of the Congo concerning the status of the United Nations in the Congo. The Agreement provided in paragraph 32 that

'United Nations vehicles, aircraft and vessels shall carry a distinctive United Nations identification mark. They shall not be subject to the registration or licensing prescribed by Congolese laws or regulations.'

The United Nations accordingly did not register these aircraft in the Congo. Nor were they registered by the United Nations in any other country.

Many of these aircraft were purchased by the United Nations from Governments and, depending on national law requirements concerning the registration of government aircraft, these aircraft may or may not have been registered when purchased. However, in the case of aircraft that were in fact registered when purchased by the United Nations, I assume that their national registrations would have expired in consequence of the change in ownership.

It seems likely therefore that while these aircraft were being operated by the United Nations they were without national registration.

While in United Nations ownership, all these aircraft bore only United Nations distinguishing marks and United Nations identification numbers.

I should add that there are, as of now, only two of these aircraft that are still owned by the United Nations. Both aircraft are in the Congo but are to be sold in the near future.

Aside from the aircraft that were purchased for the Congo I am informed that the United Nations has, while acting as Executing Agency for the Special Fund, purchased three other aircraft.

The first of these was an Aero-Commander aircraft which was purchased in 1961 for the Special Fund's Mineral Survey Project in Chile. When purchased the aircraft was registered in the United States. Such registration, however, expired in consequence of the sale, and the United Nations then re-registered the aircraft in the United States. The aircraft which bears the United States registration marks 'N.4113 B' is still in Chile and in United Nations ownership.

The second was a Twin Pioneer aircraft which was purchased by the United Nations in 1962 for the Special Fund's Survey of Metallic Mineral Deposits in Mexico. When purchased the aircraft was registered in the United Kingdom. This registration, however, expired in consequence of the sale of the aircraft, and the United Nations then registered the aircraft in Mexico. The aircraft which bears the Mexican registration marks 'XC-CUJ' is still in Mexico and is still owned by the United Nations, though it is to be sold shortly.

The third was a Pilatus Porter aircraft which was purchased by the United Nations in 1963 for the Special Fund's Karnali River Hydroelectric Development Project in Nepal. When purchased the aircraft was registered in Switzerland. Swiss registration, however, expired in consequence of the sale of the aircraft, and the aircraft was thereafter registered by the United Nations in Nepal. The aircraft which bears the Nepalese registration marks 'GN-AAN' is still in Nepal and still in United Nations ownership."

4. Legal proceedings brought by and against the United Nations

36. Section I (c) of the General Convention refers expressly to the capacity of the United Nations "to institute legal proceedings". This capacity has been widely recognized by judicial and other state authorities; apart from arbitrations, the United Nations has not instituted proceedings before any international tribunals, other than the International Court of Justice in the form of requests for advisory opinions.

37. United Nations practice in respect of the receipt of private law claims, and the steps taken to avoid or mitigate such claims, is also considered below.

(a) Legal proceedings brought by the United Nations in respect of commercial contracts

38. In Balfour, Guthrie & Co. Ltd., et al. v. United States et al.,[1] the United Nations brought an action for damages against the United States Government arising out of the loss of and damage to a cargo of milk which had been shipped on behalf of UNICEF on a United States vessel; the United Nations action was joined with that of six other shippers. The Court stated that, having regard to the terms of Article 104 of the Charter which, as a treaty ratified by the United States formed part of the law of the United States "No implemental legislation would appear to be necessary to endow the United Nations with legal capacity in the United States". The President, however, "has removed any possible doubt by designating the United Nations as one of the organizations entitled to enjoy the privileges conferred by the International Organizations Immunities Act", under section 2 (a) of that Act. These privileges included "to the extent consistent with the instrument creating them," the capacity "to institute legal proceedings."

39. In UNKRA v. Glass Production Methods, Inc. et al.,[2] UNKRA brought an action against a corporation domiciled in New York and against three individuals, two of

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1/ United States District Court for the Northern District of California, 5 May 1950; 90 F. Supp. 831. See also the case of International Refugee Organization v. Republic S.S. Corp. et al. referred to in Summary of Practice relating to the Status, Privileges and Immunities of the Specialized Agencies and of the International Atomic Energy Agency, section 1.

2/ District Court, Southern District of New York, 3 August 1956; 143 F. Supp. 248

whom were residents of Connecticut. The individual defendants moved to dismiss the suit on grounds of improper venue; UNKRA contended that the International Organizations Immunities Act, which invested international organizations with the power to institute legal proceedings, was intended to afford access to the federal courts irrespective of venue requirements. The Court held that the action should be severed and, with respect to the two defendants who resided in Connecticut, transferred to the District Court there. The statute granting the privilege of instituting legal proceedings to international organizations did not alter or provide an exemption from the normal venue requirements. It was pointed out that even the United States Government when it commenced an action had to comply with the federal venue statutues; in the opinion of the Court, Congress had not intended to confer upon United Nations agencies greater privileges in this respect than were afforded to citizens of the United States, or to the United States Government itself.

40. A Canadian decision in which attention was paid to the formal requirements of the United Nations capacity to institute legal proceedings was that of United Nations v. Canada Asiatic Lines Ltd.[3/] The United Nations brought an action to recover money owed to it by the defendant. The lawyer acting on behalf of the United Nations produced a power of attorney signed by the Secretary-General, whose signature had been duly authenticated. The defendant sought to reject the power of attorney on the ground that the person who signed it, namely the Secretary-General, had no authority to bind the United Nations in respect thereof. The motion was dismissed by the Court which declared, on the basis of Canadian Order-in-Council No. 3946 and Article 104 of the Charter, "The United Nations has the legal capacity of a body corporate". The Court distinguished the cases which had been cited to it relating to companies on the grounds that, "The affairs of the United Nations are administered by the Secretariat and not by a Board of Directors as is done in the case of a company incorporated under Letters Patent." The Secretary-General was chief administrative officer of the United Nations and the institution of the present action fell within the scope of the authority of the Secretariat. The Court therefore concluded that:

3/ Superior Court of Montreal, 2 December 1952.

"The power of attorney signed by the Secretary-General of the United Nations and bearing the Seal of the United Nations makes prima facie proof of its contents and of the authority of its signatory. The said power of attorney is good, valid and sufficient and the defendant's action to reject is unfounded."

(b) Legal proceedings brought by the United Nations in respect of non-commercial contracts and criminal acts

41. In U.N. v. B.[4] the United Nations sought to recover before a Belgian Court an over-payment of salary made to a former UNKRA staff member after he had left the service. The defendant contended that UNKRA and the United Nations lacked legal personality and that, in any case, the United Nations had not succeeded to the rights of UNKRA. The Court held that the sum should be repaid; UNKRA and the United Nations enjoyed legal personality in Belgium and UNKRA had, by its agreement with the United Nations, transferred its rights to the latter, on behalf of UNICEF.[5]

42. In 1960 UNICEF considered bringing legal proceedings in Mexico following the embezzlement of part of its funds. The following memorandum prepared by the Office of Legal Affairs describes the legal foundations for UNICEF's capacity to do so.

"1. UNICEF is a subsidiary organ of the United Nations, established by General Assembly resolution 57 (I) of 11 December 1946. Consequently it possesses the legal capacity conferred upon the United Nations by Article 104 of the Charter which states that:

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

Article 104 has always been interpreted as endowing the United Nations with the capacity to institute legal proceedings in national courts. For example, the Convention on the Privileges and Immunities of the United Nations, which details some of the constituent elements of Articles 104 and 105 of the Charter, provides, in Article 1, Section 1, that the Orgaization shall 'have the capacity... to institute legal proceedings.'

4/ Tribunal Civil of Brussels, 27 March 1952.

5/ For a similar case in Holland regarding overpayment see UNRRA v. Daan, Cantonnal Court, Amersfood, 16 June 1948; District Court of Utrecht, 23 February 1949; Supreme Court, 19 May 1950.

National courts have always in the past recognized the capacity of the Organization and its subsidiary organs to institute legal proceedings before them even in States Members of the United Nations, which are not parties to the Convention on Privileges and Immunities.

2. While Mexico is not yet a party to the Convention on Privileges and Immunities it is, of course, bound by Article 104 of the Charter. Furthermore, on 20 May 1954 Mexico and UNICEF signed an Agreement concerning the activities of the latter in Mexico. Under Article VIII of this Agreement Mexico undertakes to grant to UNICEF and its representatives 'the privileges and immunities granted to other subsidiary organizations and Specialized Agencies of the United Nations and their representatives in Mexico.' In this respect it is relevant to note that under Article III of an Agreement signed on 5 January 1955 between Mexico and the ILO, a specialized agency of the United Nations, the former recognizes that an office of the ILO in Mexico 'shall possess juridical personality including the capacity to institute legal proceedings.' It has been the practice of the Organization, endorsed by the General Assembly in its adoption of the Convention on the Privileges and Immunities of the United Nations, to consider the question of juridical personality as an integral part of the question of privileges and immunities. It must be concluded, therefore, that in accordance with Article 104 of the Charter and Article VIII of the Agreement of 20 May 1954 between Mexico and UNICEF, the latter has the right to institute legal proceedings in Mexico."

43. Following a complaint for criminal fraud filed by UNICEF, in a judgement handed down on 18 February 1954, the Tribunal Correctionnel de la Seine found two persons guilty of fraud and, inter alia, ordered them to pay damages to UNICEF, in a case arising out of a contract entered into by UNICEF on behalf of UNRWA.[6/]

(c) Claims of a private law nature made against the United Nations and the steps taken to avoid or mitigate such claims

44. Apart from the cases it has itself instituted, the United Nations has received a number of claims of a private law nature. Claims arising out of commercial contracts have been settled by negotiation and arbitration; disputes concerning contracts of employment have been determined by means of internal appellate procedures.[7/] Other claims of a private law nature, for example, in

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6/ See Annual Report of the Secretary-General, Official Records of the General Assembly, Ninth Session, Supplement No. 1 (A/2663), p. 106. Several cases brought by UNRWA are also noted, ibid.

7/ See section 1 (b) above. See, however, section 7 below for a number of cases in which persons sought to bring actions against the United Nations in respect of private claims, in particular of claims arising out of contracts of employment.

respect of personal injuries incurred on United Nations premises or caused by vehicles operated by the United Nations, have for the most part been met by means of insurance coverage or, in the relatively few cases where such coverage did not exist, by agreement following discussions between the United Nations and the injured party.

45. The remaining category of claims has chiefly concerned the operational programmes of the United Nations. In order to anticipate possible liability in this sphere, the United Nations has concluded a number of agreements whereby the beneficiary State has agreed to hold harmless the United Nations in respect of any claims which may arise; the procedure used thus operated both at an international level and in terms of national law. The Revised Model Agreement concerning the activities of UNICEF,[8/] for example, provides as follows:

"Article VI. Claims against UNICEF

1. The Government shall assume, subject to the provisions of this Article, responsibility in respect of claims resulting from the execution of Plans of Operations within the territory of _____.

2. The Government shall accordingly defend, indemnify and hold harmless UNICEF and its employees or agents against all liabilities, suits, actions, demands, damages, costs or fees on account of death or injury to persons or property resulting from anything done or committed to be done in the execution within the territory concerned of Plans of Operations made pursuant to this Agreement, not amounting to a reckless misconduct of such employees or agents.

3. In the event of the Government making any payment in accordance with the provisions of paragraph 2 of this Article, the Government shall be entitled to exercise and enjoy the benefit of all rights and claims of UNICEF against third persons.

4. This Article shall not apply with respect to any claim against UNICEF for injuries incurred by a staff member of UNICEF.

5. UNICEF shall place at the disposal of the Government any information or other assistance required for the handling of any case to which paragraph 2 of this Article relates or for the fulfilment of the purposes of paragraph 3."

46. Similarly the Model Revised Standard Agreement concerning Technical Assistance[9/] states in article I, paragraph 6,

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8/ UNICEF Field Manual, vol. II, part IV-2, appendix A (16 August 1961).

9/ Technical Assistance Board/Special Fund, Field Manual, section DL/1 a (i) (February 1963).

"6. The Government shall be responsible for dealing with claims which may be brought by third parties against the Organizations and their experts, agents or employees and shall hold harmless such Organizations and their experts, agents and employees in case of any claim or liabilities resulting from operations under this Agreement, except where it is agreed by the Government, the Executive Chairman of the Technical Assistance Board and the Organizations concerned that such claims or liabilities arise from the gross negligence or wilful misconduct of such experts, agents or employees."

47. The Model Agreement concerning assistance from the Special Fund[10/] provides in article VIII, paragraph 6, that,

"6. The Government shall be responsible for dealing with any claims which may be brought by third parties against the Special Fund or an Executing Agency, against the personnel of either, or against other persons performing services on behalf of either under this Agreement, and shall hold the Special Fund, the Executing Agency concerned and the above-mentioned persons harmless in case of any claims or liabilities resulting from operations under this Agreement, except where it is agreed by the Parties hereto, and the Executing Agency that such claims or liabilities arise from the gross negligence or wilful misconduct of such persons."

48. Lastly, the Model Agreement regarding the provision of OPEX personnel declares that:

"6. The assistance rendered pursuant to the terms of this Agreement is in the exclusive interest and for the exclusive benefit of the people and Government of ..... In recognition thereof, the Government shall bear all risks and claims resulting from, occurring in the course of,... otherwise connected with any operation covered by this Agreement. Without restricting the generality of the preceding sentence, the Government shall indemnify and hold harmless the United Nations and the officers against any and all liability suits, actions, demands, damages, costs or fees on account of death, injuries to person or property or any other losses resulting from or connected with any act or omission performed in the course of operations covered by this Agreement "

10/ Technical Assistance Board/Special Fund, Field Manual, section DL/1 a (ii) (February 1963).

5. International claims brought by and against the United Nations

(a) Capacity of the United Nations to bring claims against other subjects of international law

49. In its Advisory Opinion of 11 April 1949, on the Reparation for Injuries Suffered in the Service of the United Nations,[1] the International Court of Justice held unanimously that, having regard to the powers necessary for the exercise of its functions, the United Nations had the capacity to bring an international claim in respect of the damage it had itself incurred. The Court also held, by 11 votes to 4, that the United Nations might claim in respect of damage caused to its agents or their dependants. Lastly, the Court held, by 10 votes to 5, that a conflict between a claim brought by the United Nations and a potential claim by the national State arising out of the injury of an individual who had been acting in the service of the United Nations might normally be avoided by virtue of the fact that, in bringing a claim in respect of injury to its agent, the Organization would be seeking reparation for a breach of an obligation due to itself; if a reconciliation of such claims was necessary, however, it would depend on considerations applicable to the particular case and on agreements reached between the Organization and the national State concerned.[2]

50. Following the delivery of this Opinion the Secretary-General submitted a report of the General Assembly[3] in which he stated that:

> "In his judgement the Secretary-General, as chief administrative officer of the Organization, is the appropriate organ for the presentation and settlement of the claims here involved. The Secretary-General has acted on behalf of the Organization in the prosecution of all other claims, and there is no apparent reason for differentiation here."

51. Having regard to the Advisory Opinion the Secretary-General outlined a proposed procedure for dealing with claims for reparation of injuries suffered in the service of the United Nations. Under this procedure, the Secretary-General would: (a) determine whether the case appeared likely to involve the responsibilities of a State; (b) consult with the Government of the State of which the victim was a

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1/ I.C.J. Reports, 1949, p. 174.

2/ Ibid., pp. 187-8.

3/ Official Records of the General Assembly, Fourth Session, Sixth Committee, annex, A/955, p. 18.

national, in order to determine whether the Government had any objection to the presentation of claims by the United Nations or desired to join in submission; and (c) negotiate with the State responsible for the injury, for the purpose of determining the facts of the case and the amount of reparations, if any. The Secretary-General would be given discretion in negotiating a settlement of the claims both with respect to the elements of damage included in any claim, and with respect to the amount of reparation to be requested or eventually accepted; but he would not be authorized to advance any claim for exemplary damages. If the claim could not be settled by negotiation, the Secretary-General might submit any differences of opinion to arbitration by a tribunal of three members, one of whom was to be named by him.

52. In resolution 365 (IV) the General Assembly authorized the Secretary-General to act in accordance with the procedure outlined above. In pursuance of this resolution the Secretary-General presented a number of international claims against the Governments of Israel, Jordan and Egypt respectively, and reported to the General Assembly regarding them.[4/] The following is a succinct summary of the claims formally presented in respect of the death or injury of United Nations personnel.

(i) Claim in respect of the death of Count F. Bernadotte, United Nations Mediator

A claim for reparation of $54,628, representing the expenses incurred by the United Nations in respect of the death of the United Nations Mediator was presented against the Government of Israel and paid in full.

4/ See the Annual Report of the Secretary-General, Official Records of the General Assembly, Fifth Session, Supp. No. 1 (A/1287), p. 124; ibid., Official Records of the General Assembly, Sixth Session, Suppl. No. 1 (A/1844), p. 188; ibid., Official Records of the General Assembly, Seventh Session, Suppl. No. 1 (A/2141), p. 160; ibid., Official Records of the General Assembly, Eighth Session, Suppl. No. 1 (A/2404), p. 144; ibid., Official Records of the General Assembly, Ninth Session, Suppl. No. 1 (A/2663), p. 101; ibid., Official Records of the General Assembly, Tenth Session, Suppl. No. 1 (A/2911), p. 109. None of the national States of the victims raised any objection to claims being made by the United Nations, or themselves pursued claims.

(ii) Claims in respect of the death or injury of Military Observers

(a) Col. A. Sérot. Col. Sérot, a French Officer serving on the staff of the United Nations Mediator in Palestine, was killed at the same time as the Mediator in circumstances involving the responsibility of the Government of Israel. A claim in respect of $25,000, paid by the United Nations to Col. Sérot's widow, $233 funeral expenses, and 200,000 Fr. francs ($575) on behalf of Col. Sérot's eighty-nine year old father, was presented against the Government of Israel and paid in full.

(b) Lt.Col. J. Queru and Capt. P. Jeannel. These two United Nations military observers from France were killed on 28 August 1948 at Gaza airfield by Saudi Arabian troops to which the Egyptian Army had entrusted the guarding of the airfield. A claim was presented against the Government of Egypt for $52,874.20, with respect to their deaths. This amount consisted of $25,000 paid by the United Nations to the beneficiary of each of the deceased and $2,874.20 for damage to aircraft. The claim has not yet been settled.

(c) Lt.Col. E. Thalen. Lt.Col. Thalen, a Swedish military observer serving with UNTSO, suffered an injury resulting in total disability when fired upon by members of the Jordanian National Guard. A claim for $26,518.26 in respect of the monetary damage borne by the United Nations with respect to Lt.Col. Thalen's injuries was presented to the Government of Jordan and was paid in full. This amount consisted of $18,000 paid by the United Nations to Lt.Col. Thalen and $8,518.26 in medical expenses.

(d) Colonel Flint. Colonel Flint, a Canadian military observer serving with UNTSO, was killed on Mt. Scopus in 1958. A claim was presented to the Government of Jordan in 1966 and remains under consideration.

(iii) Claim in respect of a member of a UNEF contingent

The Government of the United Arab Republic paid reparations amounting to $21,433 to the Government of Canada, in respect of the damages incurred by the latter by reason of the death of a member of the Canadian contingent to UNEF in circumstances for which the Government of the United Arab Republic admitted responsibility.

Under regulation 40 of the UNEF Regulations, responsibility for benefits or compensation awards in respect of service-incurred death, injury or illness rests with the State from whose military services the individual soldier has come.

Unlike the case of military observers or of staff members, therefore, the United Nations does not itself incur a financial loss unless the Government concerned claims reimbursement. In the case under discussion the Government of the United Arab Republic admitted responsibility and paid the amount asked by the Canadian Government through the Commander of UNEF.

(iv) Claim in respect of a United Nations staff member

Mr. Ole Helge Bakke, a United Nations staff member, was killed in circumstances involving the responsibility of the Government of Jordan. A claim for $36,803.76 and 22,000 Norwegian Kroner ($3,080) was presented against the Government of Jordan but the case has not yet been settled. The sum claimed consisted of $25,000 paid to the widow and of funeral, administrative and excess insurance expenses. The claim for 22,000 Norwegian Kroner was made on behalf of Mr. Bakke's dependent mother.

53. In the case of certain United Nations peace-keeping operations, and to some extent in various headquarters agreements, regular machinery and procedures exist to deal with international claims arising between the United Nations and States; none of the cases which have arisen, either in these or in other instances have been the subject of third-party settlement, whether before a court or by means of an agreed form of arbitration. In the majority of these cases, however, the element of material damage has been slight and the major issue has been the duty of protection owed to the Organization, its premises and its staff, and the obligation of the State concerned to respect the Organization's inviolability and freedom from interference. No international claims have been presented by the United Nations against subjects of international law other than States.

(b) Claims made against the United Nations by States or by other international organizations

54. No claims have been made against the United Nations by other international organizations in respect of a breach of international law. As regards claims made against the United Nations by States, these have been comparatively rare. Apart from cases involving car accidents, the only claims of any significance brought by States (whether on their own behalf or on behalf of their nationals) arose out of the United Nations activities in the Republic of the Congo (Leopoldville). Belgium submitted a number of claims in respect of injuries

suffered by Belgian nationals and for loss of or damage to Belgian owned property, alleged to have been caused by troops under United Nations command. These claims, together with certain United Nations counter-claims, were settled following lengthy negotiations, without recourse to third party procedures. In an exchange of letters dated 20 February 1965, between the Secretary-General and the Minister for Foreign Affairs of Belgium, the Secretary-General wrote as follows:

"Sir,

A number of Belgian nationals have lodged with the United Nations claims for damage to persons and property arising out from the operations of the United Nations Force in the Congo, particularly those which took place in Katanga. The claims in question have been examined by United Nations officials assigned to assemble all the information necessary for establishing the fact submitted by the claimants or their beneficiaries and any other available information.

The United Nations has agreed that the claims of Belgian nationals who may have suffered damage as a result of harmful acts committed by ONUC personnel, not arising from military necessity, should be dealt with in an equitable manner.

It has stated that it would not evade responsibility where it was established that United Nations agents had in fact caused unjustifiable damage to innocent parties.

It is pointed out that under these principles, the Organization does not assume liability for damage to persons or property, which resulted solely from military operations or which, although caused by third parties, gave rise to claims against the United Nations; such cases are therefore excluded from the proposed compensation.

Consultations have taken place with the Belgian Government. The examination of the claims having now been completed, the Secretary-General, shall, without prejudice to the privileges and immunities enjoyed by the United Nations, pay to the Belgian Government one million five hundred thousand United States dollars in lump-sum and final settlement of all claims arising from the causes mentioned in the first paragraph of this letter.

The distribution to be made of the sum referred to in the preceding paragraph shall be the responsibility of the Belgian Government. Upon the entry into force of this exchange of letters, the Secretary-General shall supply to the Belgian Government all information at his disposal which might be useful in carrying out the distribution of the amount in question, including the list of individual cases in respect of which the United Nations has considered that it must bear financial responsibility, and any other information relevant to the determination of such responsibility.

Acceptance of the above-mentioned payment shall constitute lump-sum and final settlement between Belgium and the United Nations of all the matters referred to in this letter. It is understood that this settlement does not affect any claims arising from contractual relationships between the claimants and the Organization or those which are at present still handled by United Nations administrative departments, such as ordinary requisitions.

Accept, Sir, the assurances of my highest consideration.

(Signed) U Thant
Secretary-General" 5/

The Minister for Foreign Affairs of Belgium accepted the proposals made and the agreement entered into force on 17 May 1965.

55. The Acting Permanent Representative of the Soviet Union wrote to the Secretary-General on 2 August 1965 6/ stating that Belgium had "committed aggression against the Republic of the Congo and as an aggressor has no moral or legal basis for making claims against the United Nations either on its own behalf or on behalf of its citizens". In these circumstances

"... the payment of compensation by the United Nations Secretariat to the Belgian Government for the so-called losses caused to Belgian citizens in the Congo by United Nations forces cannot be regarded as other than an encouragement to aggressors, as a reward for brigandage. In accordance with the generally recognized rule of international law concerning the responsibility of the aggressor for the aggression committed by him, the Belgian Government should itself bear full moral and material responsibility for all consequences of its aggression against the Republic of the Congo.

The Permanent Mission of the USSR to the United Nations draws the Secretariat's attention to the fact that it has no right in this case to enter into any agreements on behalf of the United Nations concerning the payment of compensation without the authorization of the Security Council.

Accordingly, the Permanent Mission of the USSR to the United Nations expects the Secretary-General to take immediate steps to cancel the agreement concluded by the Secretariat concerning the payment of the above-mentioned compensation."

5/ Letter dated 6 August 1965 from the Secretary-General addressed to the Acting Permanent Representative of the Union of Soviet Socialist Republics (S/6597) annex I.

6/ Letter dated 2 August 1965 from the Acting Permanent Representative of the Union of Soviet Socialist Republics addressed to the Secretary-General (S/6589).

56. The Secretary-General replied as follows:

"... The arrangement to which your letter refers was brought about in the following circumstances. In the course of the United Nations activities in the Congo, the Secretariat received a number of claims from Belgian citizens as well as from individuals of various other nationalities alleging that they had suffered injury or damage to property by acts of United Nations personnel which gave rise to liability on the part of the Organization.

It has always been the policy of the United Nations, acting through the Secretary-General, to compensate individuals who have suffered damages for which the Organization was legally liable. This policy is in keeping with generally recognized legal principles and with the Convention on Privileges and Immunities of the United Nations. In addition, in regard to the United Nations activities in the Congo, it is reinforced by the principles set forth in the international conventions concerning the protection of the life and property of civilian population during hostilities as well as by considerations of equity and humanity which the United Nations cannot ignore.

Accordingly, the claims submitted were investigated by thc competent services of ONUC and at United Nations Headquarters in order to collect all of the data relevant to determining the responsibility of the Organization. Claims of damage which were found to be solely due to military operations or military necessity were excluded. Also expressly excluded were claims for damage found to have been caused by persons other than United Nations personnel.

On this basis, all individual claims submitted by Belgian nationals, as well as those submitted by nationals of other countries, were carefully scrutinized and a list of cases was established by the Secretariat with regard to which it was concluded that compensation should be paid. Of approximately 1,400 claims submitted by Belgian nationals, the United Nations accepted 581 as entitled to compensation.

As regards the role of the Belgian Government, it was considered that there was an advantage for the Organization both on practical and legal grounds that payment to the Belgian claimants whose claim has been examined by the United Nations should be effected through the intermediary of their Government. This procedure obviously avoided the costly and protracted proceedings that might have been necessary to deal with the 1,400 cases submitted and to settle those in which United Nations responsibility was found.

Following consultations, the Belgian Government agreed to act as an intermediary and also agreed that the payment of a lump sum amounting to $1.5 million would constitute a final and definite settlement of the matter. At the same time, a number of financial questions which were outstanding between the United Nations and Belgium were settled. Payment was effected by off-setting the amount of $1.5 million against unpaid ONUC assessments amounting approximately to $3.2 million.

Similar arrangements are being discussed with the Governments of other countries, the nationals of which have similarly suffered damage giving rise to United Nations liability. About 300 unsettled claims fall within this category.

In making these arrangements, the Secretary-General has acted in his capacity of chief administrative officer of the Organization, consistently with the established practice of the United Nations under which claims addressed to the Organization by private individuals are considered and settled under the authority of the Secretary-General." 7/

There have been a number of other claims presented by States on behalf of their nationals arising out of ONUC operations, which were settled on a broadly similar basis.

7/ Reference given in note 5 above.

6. Treaty-making capacity

(a) Treaty-making capacity of the United Nations

57. The United Nations has concluded a large number of international agreements with other subjects of international law i.e. both with States and with other international organizations. The capacity of the Organization or its organs to conclude agreements is provided in various provisions of the Charter itself. In Article 43 the Security Council is empowered to enter into agreements with Member States or groups of Members regarding the armed forces, assistance and facilities to be made available to the Security Council for the purpose of maintaining international peace and security; Article 43 concludes by providing that these agreements "shall be subject to ratification by the signatory States in accordance with their constitutional processes". Furthermore, as was stated by the United Nations before the International Court of Justice in the hearings of the case relating to "Reparation for Injuries suffered in the service of the United Nations", by virtue of Article 105 the Organization is a party to the General Convention, "which binds the United Nations as an Organization, on the one part, and each of its Members individually, on the other part".[1] Reference was also made in the United Nations statement to the agreements concluded with individual States, such as the Headquarters Agreement and the Agreement with Switzerland, and to Article 63 of the Charter whereby the United Nations may enter into agreements with the specialized agencies.[2] In its Advisory Opinion the International Court affirmed the possession by the United Nations of international personality by reference, inter alia, to its treaty-making capacity.

> "Practice - in particular the conclusion of conventions to which the Organization is a party - has confirmed this character of the Organization, which occupies a position in certain respects in detachment from its Members, and which is under a duty to remind them, if need be, of certain obligations.... The 'Convention on the Privileges and Immunities of the United Nations' of 1946 creates rights and duties between each of the signatories and the Organization (see, in particular, section 35)." [3]

1/ I.C.J. Pleadings, Oral Arguments, Documents, 1949. Reparation for Injuries Suffered in the Service of the United Nations, p. 71.

2/ Ibid.

3/ I.C.J. Reports 1949, p. 174, at p. 179.

The Court also laid down the following principle:

> "Under international law, the Organization must be deemed to have those powers which, though not expressly provided for in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties." 4/

58. It was on this basis that Sir Humphrey Waldock, Special Rapporteur on the Law of Treaties, proposed 5/ that the International Law Commission should consider adopting a provision recognizing the capacity of subjects of international law other than States to conclude treaties when invested with capacity to do so by treaty or custom. The International Law Commission examined the question but finally decided that its articles relating to treaties should deal only with agreements between States. Nevertheless, as the Rapporteur noted, in its discussions the Commission

> "fully accepted that international organizations may possess treaty-making capacity and that international agreements concluded by international organizations possessing such capacity fall within the scope of the law of treaties." 6/

59. It may be noted that the Regulations adopted by the General Assembly to give effect to Article 102 of the Charter concerning treaty registration, expressly refer to cases where the United Nations is a party to a treaty or agreement. 7/ The United Nations Treaty Series accordingly contains a large number of agreements concluded by the United Nations with different States and other international organizations. Some of the major topics covered by such agreements are the following: the provision of technical assistance; the holding of ad hoc conferences or seminars; the establishment of permanent installations (for example, in the case of information centres or of the regional economic commissions); the operations conducted in given countries by subsidiary organs such as UNICEF and

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4/ Ibid., p. 182.

5/ "First Report on the Law of Treaties", A/CN.4/144, Yearbook of the International Law Commission 1962, vol. II, p. 35. See also the references to earlier consideration of the question by the International Law Commission at p. 30.

6/ "First Report on the Law of Treaties", A/CN.4/144, Yearbook of the International Law Commission 1962, vol. II, p. 30.

7/ Article 4, para. 1 (a) and art. 10 (a) of the Regulations, United Nations Treaty Series, vol. 76, pp. XXII and XXVI.

UNRWA; status-of-forces agreements with respect to United Nations peace-keeping forces and agreements with States providing troops for such forces; and the arrangement of communication and associated facilities, for example as regards the sale of stamps, the dispatch of mail, or United Nations radio operations.

60. The treaty-making capacity possessed by the Organization may only be exercised, normally by the Secretary-General on behalf of the Organization, upon the basis of authorization contained, expressly or impliedly, in the provisions of the Charter,[8] or in resolutions adopted by one of the principal organs on which Member States are represented; in the case of subsidiary organs, such as UNICEF, and UNRWA, agreements may be concluded by the body concerned on the basis of resolutions of the parent organ or by the Secretary-General or his representative, acting on their behalf. It is not possible to give a categorical answer to the question of the precise extent to which authorization from a representative organ is required (other than in cases arising directly from Charter provisions) before an international agreement may be concluded by the United Nations, or whether agreements must receive the approval of such an organ before entering into force. It may be noted that the General Assembly has adopted a number of resolutions specifically approving the terms of agreements between the United Nations and certain Governments relating to privileges and immunities.[9] In the case of "standard" agreements, e.g. those concluded by UNICEF or by the various technical assistance bodies, a general authorization has been relied on.

61. As regards procedural aspects of United Nations treaty practice, the following extract from a letter dated 22 November 1961, sent by the Office of the Legal Affairs in response to an inquiry by the Special Rapporteur of the International Law Commission on the Law of Treaties as to whether the United Nations issues anything that corresponds to credentials or full-powers, provides a general survey of the arrangements which have been adopted.

8/ Besides Articles 43, 63 and 105 of the Charter, these provisions include Chapter XXI dealing with the International Trusteeship System and Chapter XV dealing with the powers of the Secretary-General.

9/ See "Resolutions of the General Assembly concerning the Law of Treaties" (A/CN.4/154) in Yearbook of the International Law Commission 1963, vol. II, pp. 9-11. The question on the conclusion of international agreements by Member States by means of United Nations resolutions is a separate issue, falling outside the scope of the present study.

"... The procedures heretofore followed in the United Nations in this regard have been rather informal. Where the Secretary-General concluded an agreement with the Government of a State on behalf of the Organization, in the implementation of a decision of one of its organs or in the performance of his regular duties, there is of course no question of credentials or full-powers since, as Chief Administrative Officer of the Organization under Article 97 of the Charter, his power of making treaties on behalf of the Organization in the performance of his functions is implied.

On occasion, the Secretary-General has been authorized by an organ of the United Nations to conclude with the Government of a State an agreement for a specific purpose. Thus, in view of the decision to establish the seat of the United Nations in the United States, the General Assembly first adopted a resolution by which it 'authorizes' persons appointed by certain Governments, to negotiate with the competent authorities of the United States the arrangements required (resolution 22 B (I), 13 February 1946). Upon receipt of a report by the Secretary-General and the negotiating committee on the negotiations carried out in pursuance of the above-mentioned resolution, the General Assembly further authorized the Secretary-General 'to negotiate and conclude with the appropriate authorities of the United States of America an agreement concerning the arrangements required as a result of the establishment of the permanent headquarters of the United Nations in the City of New York, such agreement to come into force only upon approval by the General Assembly' (resolution 99 (I), 14 December 1946). On the basis of this resolution, the Secretary-General signed with the Secretary of State of the United States an agreement between the United Nations and the United States on 26 June 1947 regarding the headquarters of the United Nations and submitted it to the General Assembly for approval. By a third resolution, the General Assembly approved the agreement as signed and authorized the Secretary-General to bring it into force (resolution 169 A (II), 31 October 1947).

Where an Under-Secretary of the United Nations signs an agreement on behalf of the United Nations, his authority for doing so is deemed to have derived from the Secretary-General, express or implied, in the normal courses of administration and no full-powers or any other form of specific authorization to sign such agreement have been considered necessary.

In cases of agreements negotiated and concluded overseas by a Representative of a subsidiary organ of the United Nations, such as the United Nations Special Fund, with the Government of a State the executive head of the subsidiary organ usually issues a letter stating simply that the Representative has been authorized to sign such agreement on his behalf. This letter may be addressed to the Representative or to the Government concerned, depending on the preference of the Government. There have been occasions where a telegram was sent instead of a letter when time was of the essence. In the case of Standard Agreements on Technical Assistance negotiated by a Resident Representative of the United Nations Technical Assistance Board, such Representative receives authorization, again in a similarly informal manner, from the Executive Chairman of the said Board and signs such agreements on behalf of all the participating agencies on the Board, namely the United Nations, the International Atomic Energy Agency and seven specialized agencies...."

62. When agreements have been signed on behalf of the United Nations by officials below the rank of Under-Secretary, full powers have sometimes been issued by the Secretary-General at the request of the other party.

(b) Treaties with non-member States

63. The United Nations has entered into a number of agreements with non-member States. Examples of such treaties include the Agreement with Switzerland concluded in 1946; the Agreement of 27 September 1951 entered into with the Republic of Korea; and the Agreement signed on 25 July 1952, between the United Nations and Japan, before that country became a Member State. Each of these Agreements concerned the privileges and immunities to be enjoyed by the United Nations in the States concerned.

(c) Registration or filing and recording of Agreements on the Status, Privileges and Immunities of the United Nations

64. The United Nations Secretariat has registered or filed and recorded all agreements which have been entered into by the United Nations dealing with the status, privileges and immunities of the Organization, in accordance with the Regulations to give effect to Article 102 of the Charter, adopted by the General Assembly in resolution 97 (I), as modified by resolutions 364 B (IV) and 482 (V).[10/]

10/ United Nations Treaty Series, vol. 76, p. XVIII.

CHAPTER II. PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS IN RELATION TO ITS PROPERTY, FUNDS AND ASSETS

7. Immunity of the United Nations from legal process

(a) Recognition of the immunity of the United Nations from legal process

1. As stated in section 2 of the General Convention,

> "The United Nations, its property and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity..."

2. Similar provisions are contained in the majority of other international agreements relating to the privileges and immunities of the United Nations.[1/] Article I, section 1, of the Agreement with Switzerland expresses the privileges as one derived from international law:

> "The Swiss Federal Council recognizes the international personality and legal capacity of the United Nations. Consequently, according to the rules of international law, the Organization cannot be sued before the Swiss Courts without its express consent."

3. Immunity from legal process is not one of the privileges granted to the Organization under the Headquarters Agreement with the United States Since the United States is not a party to the General Convention,[2/] the Organization's immunity from suit in that country has been based on national enactments.[3/] Title I,

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1/ For the Economic Commissions see section 7 of the ECLA Agreement and section 6 of the ECAFE Agreement. In the case of the ECA Agreement, no immunity from legal process is provided for the Commission itself, expressis verbis, though the Headquarters of the Commission are declared inviolable (section 2), its officials are granted immunity in respect of officials' acts (section 11 a), and the Executive Secretary himself and his immediate assistants are granted diplomatic privileges and immunities (section 13); the Agreement and the General Convention are stated to be complementary, however, insofar as their provisions relate to the same subject matter (section 17).

2/ Although nota bene, in section 26 of the Headquarters Agreement, the Agreement is said to be complementary to the General Convention.

3/ It is the position of the United Nations that its immunity from suit forms part of general international law, and thus part of the law of the United States, even in the absence of any legislation and, moreover, that the Organization's immunity from suit is derived from Articles 105 and 104 of the Charter, a treaty to which the United States is a party and which similarly forms part of the law of the land. United States courts have preferred to rely on national legislation, however, in upholding the Organization's immunity.

section 2 (b) of the International Organizations Immunities Act provides:

> "International organizations, their property and their assets, wherever located, and by whomsoever, held, shall enjoy the same immunity from suit and every form of judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract."

4. A number of judicial decisions may be noted. In Curran v. City of New York et al.,[4/] the plaintiff brought an action against the City of New York, the Secretary-General and others, to set aside grants of lands and easements by the City to the United Nations for its headquarters site, exemption of the site from taxation and the allocation of funds by the City for the improvement of nearby streets. The Secretary-General moved to dismiss the action against him on grounds of his immunity from suit and legal process. The United States Attorney for the Eastern District of New York informed the Court that the State Department recognized and certified the immunity of the United Nations and of the Secretary-General. The City of New York sought to dismiss the complaint on the ground that it failed to state a sufficient cause of action. The Court held that the complaint should be dismissed. As regards the Secretary-General, the Court stated:

> "The Department of State, the Political branch of our Government, having, without any reservation or qualification whatsoever, recognized and certified the immunity of the United Nations and the defendant Lie to judicial process, there is no longer any question for independent determination by this Court."

5. In the case of Gregoire v. Gregoire[5/] the plaintiff wife, in an action for divorce, sought an order directing the sequestration of the defendant's property within the State of New York. The only property of the defendant which might be sequestered were the benefits he was due to receive from the United Nations Provident and Pension Funds and from the United Nations (by which he has formerly been employed) in respect of accumulated leave. After citing the International

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4/ Supreme Court (Special Term) of Queen's County, 29 December 1947; 77 N.Y.S. 2d. 266. The United Nations was not a defendant as such. It may be assumed, however, that the Secretary-General was named in his representative capacity.

5/ New York Law Journal, 28 February 1952.

Organizations Immunities Act, the Court declared that the United Nations was immune from process in respect of the action unless it had expressly waived its immunity. Since the Organization had not done so, the motion was denied.

6. In Wencak v. United Nations[6] the plaintiff contended that he had been injured on 1 December 1945, in an accident for which UNRRA was responsible. UNRRA having been liquidated and the United Nations having agreed in 1948 to settle claims against UNRRA, subject to certain conditions, the plaintiff brought an action against the United Nations in respect of his injury. The United Nations moved to dismiss the case on the ground that it was immune from suit under section 2 of the International Organizations Immunities Act, which had come into effect on 29 December 1945. The plaintiff argued that the statute was inapplicable since the accident had occurred before the statute became effective. The Court held that the plaintiff had had no cause of action against the United Nations on the date the injury was incurred. The United Nations, though it had undertaken to administer the liquidation of UNRRA, was in no sense the successor of the latter organization. The administration of the liquidation was not an assumption of liabilities upon succession to the assets, as in the case of business corporations. The United Nations had agreed on 27 September 1948, to settle the claims which were on the UNRRA's books for liquidation and any claims subsequently presented, if there were sufficient funds and the claim itself appeared just. The books had been closed on 31 March 1949. Thus, even assuming that the facts might disclose a cause of action against the United Nations, this had only arisen after the statute had come into force. The certification of the immunity of the Organization, which had been filed with the Court by the Attorney-General on behalf of the Department of State, had not indicated any limitation of the immunity conferred by the statute. The case was therefore dismissed.

7. In Awad Iskandar Guirgis v. UNRWA Representative and the Director, Department of Palestine Affairs[7] a former UNRWA staff member initiated proceedings, claiming compensation for the allegedly wrongful termination of his appointment. The

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6/ Supreme Court of New York, Special Term, 18 January 1956.

7/ Cairo Court of First Instance, Department 23 - Labour Tribunal, Case No. 258 of 1958; judgement delivered on 31 December 1961. See also the case of Bergaveche v. United Nations Information Centre, referred to in sub-section (b) below.

plaintiff argued, inter alia, that though UNRWA officials, including the head of that body, had immunity, no immunity extended to UNRWA itself. The Court held that UNRWA, as a subsidiary organ of the United Nations, enjoyed the privileges and immunities of the General Convention and that, since immunity from suit had not been waived, the case should be dismissed.

(b) Action taken by the United Nations when its immunity from legal process was not recognized

8. On a number of occasions, most notably in the case of actions involving United Nations immunities brought before United States courts, the United Nations has entered an amicus curiae brief. The majority of these cases, however, were in the early years of the Organization's history. The established practice at the present time is to assert the immunity from suit of the United Nations in a written communication to the Ministry of Foreign Affairs of the State concerned. When time permits this communication is sent through the Permanent Representative of the State concerned at United Nations Headquarters. In the written communication the Ministry of Foreign Affairs is requested to take the necessary steps to inform the appropriate office of government (usually the Ministry of Justice or the Attorney-General's Office) to appear or otherwise move the court to dismiss the suit on the grounds of the Organization's immunity. When a summons or notification of appearance has been received, this is returned to the Ministry of Foreign Affairs. In cases brought by former staff members the United Nations has usually referred in its note to the Ministry of Foreign Affairs to the fact that an alternative means of recourse exists for the staff member in the internal appellate machinery maintained by the Organization for its staff.

9. In some instances local courts have taken decisions denying the immunity of the Organization or of its subsidiary organs despite the non-waiver of immunity.8/

8/ A number of these cases, mostly given by courts of first instance, involved UNRWA. For a summary see Annual Report of the Secretary-General, Official Records of the General Assembly, Ninth Session, Supplement No. 1 (A/2663), pp. 106-7, and Repertory of Practice of United Nations Organs, Suppl. No. 2, vol. III, pp. 518-9. Further information is contained in Annual Report of the Director of UNRWA, Official Records of the General Assembly, Ninth Session, A/2717, Annex G, para. 11 (i); ibid., Tenth Session, A/2978, Annex G, para. 19; ibid., Eleventh Session, A/3212, para. 19, ibid., Thirteenth Session, A/3931, Annex H, para. 26.

10. The case of Bergaveche v. United Nations Information Centre[9] concerned an employee of the United Nations Information Centre in Buenos Aires. In 1954, when his fixed-term contract was not renewed, he brought an action before the local Labour Court for termination indemnities. The United Nations Information Centre did not submit to the jurisdiction and requested the Ministry of Foreign Relations to notify the Court of its immunity from suit. The Court dismissed the action on the grounds that under the terms of Article 105 of the Charter and of the General Convention it lacked jurisdiction.

11. In response to a fresh submission by Mr. Bergaveche, another Labour Court gave a decision on 7 February 1956, in which it assumed jurisdiction by virtue of the fact that Argentina was not a party to the General Convention. Argentina acceded to the Convention on 31 August 1956 and in April 1957 the Ministerio Público advised the Labour Court that the action should be dismissed since the United Nations and its agencies enjoyed immunity from suit under the Convention and the Convention had become law in Argentina. The Court therefore dismissed the action on 23 April 1957. On appeal it was argued that, since the employment of Mr. Bergaveche had ended in 1954, the Statute adopted in 1956 could not be applied retroactively to his case, or, if retroactivity was intended, this could not affect rights under labour legislation already acquired. In its decision of 19 March 1958, the Court held that the appellant's argument did not succeed since the statute concerned was a procedural one which was immediately applicable in the case of both pending and future proceedings.

(c) Interpretation of the phrase "Every Form of Legal Process"

12. These words have been broadly interpreted to include every form of legal process before national authorities, whether judicial, administrative or executive functions according to national law. The Organization's immunity from "every form of legal process" has also been regarded as extending irrespective of whether the Organization was named as defendant or was asked to provide information or to perform some ancillary role.[10] This interpretation, the essence of which is the maintenance

9/ Camara Nacional de Apelaciones del Trabajo de la Capital Federal, 19 March 1958.

10/ This position was recognized in the case of Gregoire v. Gregoire, referred to in sub-section (a) above.

of the freedom from interference of the United Nations, does not, however, imply that the United Nations may not itself decide to take part in such proceedings, in particular if it considers that the requirements of justice so demand,[11] but only that the determination in each case is one to be made by the United Nations itself.

13. One particular application of this principle concerns the possibility of a garnishee order being issued against the Organization in respect of the salary to be paid to a staff member who has incurred a private debt. Although the specific inviolability of the Organization's financial assets is also a defence for the Organization, its immunity "from every form of legal process" in itself prevents the issue of a garnishee order and the incurring by the United Nations of any legal obligation to participate in the proceedings themselves or to abide by any judgement given. Although Switzerland is not a party to the General Convention, the Swiss case of In re Poncet[12] is of interest in this connexion. Mr. Poncet instituted proceedings for the attachment of the salary of a staff member employed at the European Office of the United Nations, in order to satisfy debts incurred by the staff member. The local authorities declined to issue the appropriate order on the grounds that the garnishee, the United Nations, was not subject to local jurisdiction. On appeal to the Federal Tribunal it was held that the case must be returned to the cantonal authorities for a decision as to whether the judgement debtor herself was immune; the immunity of the garnishee, in particular the fact that notice of attachment could not be served on the United Nations, was not a bar to proceedings for attachment for debt. The Court stated:

> "Notice to the garnishee is not an essential condition of the validity of the attachment. Its main object is to prevent the garnishee from paying his debt to the defendant. Whether chattels or debts are involved, the execution of the attachment consists in a declaration made by the court office that a certain asset has been seized, and in the entry of that declaration in the record. ... It is not true that the attachment of a salary without notice to the garnishee must remain devoid of effect. In the first instance, the garnishee may have been informed of the attachment by other means...and it may feel bound to pay the sum in question to the court office. It is also possible that the defendant, who knows or is deemed to know that she is not entitled to dispose of the attached funds...will herself pay the equivalent sum..."

11/ See section 32 below regarding co-operation with national authorities to facilitate the proper administration of justice.

12/ Federal Tribunal, Chambre des Poursuites et des Faillites, 12 January 1948.

14. As envisaged in the judgement, administrative arrangements have been made at the European Office and at other offices to enable creditors to receive satisfaction in accordance with relevant court orders; such arrangements have not, however, amounted to a waiver of the United Nations immunity from legal process.

15. The United Nations considers its immunity from any measure of execution under section 2 of the General Convention extends to garnishee orders.[13/]

13/ See section 8 (c) below.

8. Waiver of the immunity of the United Nations from legal process

(a) Practice relating to the waiver by the United Nations of its immunity from legal process 1/

16. Section 2 of the General Convention provides that the United Nations shall enjoy immunity from every form of legal process,

> "except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution."

17. The Agreement with Switzerland states that, in view of the recognition given by the Swiss Federal Council to the international personality and legal capacity of the Organization, it "cannot be sued before the Swiss Courts without its express consent". In the United States the question is regulated by section 2 (b) of the International Organizations Immunities Act, which grants to such organizations:

> "the same immunity from suit and judicial process as is enjoyed by foreign governments, except to the extent that such organizations may expressly waive their immunity for the purpose of any proceedings or by the terms of any contract."

18. In an internal memorandum prepared by the Office of Legal Affairs in 1948 it was stated with reference to section 2 of the General Convention that, since the words "except in so far as in any particular case it shall have waived its immunity" must refer to the immediately preceding words ("shall enjoy immunity from every form of legal process"),

> "it would appear that by this Article permission is given to the United Nations to waive its immunity only insofar as legal process in any particular case is concerned, and such waiver cannot extend to any measure of execution."

19. This conclusion was said to be in accordance with a number of municipal decisions, notably those given by English and United States courts, in respect of the waiver of state immunities. The memorandum then continued:

1/ Questions relating to the service of legal process within the United Nations premises are considered under section 9 (b) (iv) below.

"According to the reports of the Preparatory Commission of the United Nations, Article 2 of the General Convention was based on similar articles in the constitutions of international organizations. Some of these constitutional instruments, such as that of UNRRA, provide that the member government accord to the administration the facilities, privileges, exemptions and immunities which they accord to each other 'including immunity from suit and legal process except with the consent of or so far as is provided for in any contract entered into by or on behalf of the Administration.'

"A similar provision is contained in Article IX, Section 3 of the Articles of the International Monetary Fund, providing for waiver of immunity for the purposes of any proceeding or by the terms of any contract thereby differentiating between the two forms of waiver. Apparently, it was not the intention of the Preparatory Commission or the General Assembly to extend waiver this far insofar as the United Nations was concerned, or such a provision would have been included, rather than just the words 'legal process'. In fact the words used in the original draft of this section were: 'The Organization, its property and its assets wherever located and by whomsoever held shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.'

"This wording was changed by the Legal Committee of the Preparatory Commission to read in the more restrictive fashion that it now stands. It must be concluded, therefore, that it was not the intention of the Preparatory Commission, or of the General Assembly, to extend the right of waiver to waiver in future by the terms of a contract.

"Since permission is given by the General Convention to the United Nations to waive its immunity in any particular case insofar as legal process is concerned, it is to be supposed that the authority to carry out such a waiver is placed with the Secretary-General, since the Secretary-General is responsible for the administration of the United Nations. It would not be possible to expect the Secretary-General to ask further authority from the General Assembly in each instance that legal process is to be served upon the United Nations; also the fact that the General Assembly found it necessary to write in a limitation upon the extent of any waiver, insofar as execution is concerned, would indicate that the General Assembly intended to transfer this authority to the Secretary-General, since if it were itself the waiving authority, there would be no necessity for making a limitation for its own right of waiver. This argument might be countered by stating that it is specifically provided in the General Convention that the Secretary-General may waive immunity insofar as officials and experts of the United Nations are concerned (Sections 20, 23, 29). However, such a provision would be necessary in this instance since otherwise it might be supposed that the official or expert was entitled to waive his own immunity. In the case of the United Nations, the Secretary-General is 'the chief administrative officer of the organization' and therefore such a clarification concerning the ability probably did not appear to be necessary to the Preparatory Commission or the General Assembly."

In practice, the Secretary-General has determined in all cases whether or not the immunity of the Organization should be waived.

20. In 1949 a suit was commenced by a private individual against the United Nations for damages arising out of a motor car accident in New York in which a United Nations vehicle was involved. Under the terms of the insurance policy held by the United Nations, the insurers were ready to defend the action in court. Before they could do so, however, it was necessary for the United Nations to waive its immunity. In an internal memorandum the Office of Legal Affairs recommended that this should be done

> "for the purpose of allowing this particular suit to go to trial and that as a matter of policy it also be prepared to waive its immunity in any other case of a similar nature, subject to each such case being first reviewed by the Office of Legal Affairs to make sure that it has no complication such as might merit special treatment."

The memorandum then continued:

> "The question arises as to how this immunity may be waived. Resolution 23 (I), paragraph E, instructs the Secretary-General 'to insure that the drivers of all official motor cars of the United Nations and all members of the staff who own or drive motor cars shall be properly insured against third party risk.'
>
> Under this resolution the Secretary-General has clear authority to take whatever steps he may deem necessary to implement its terms. As it is really not feasible to take out insurance without permitting the insurance carrier the right to defend any suits which might be brought against the United Nations, the Secretary-General clearly has the power to waive the immunity of the United Nations for the purpose of permitting such suits to be brought.
>
> This memorandum is only intended to deal with the waiver of the Organization's immunity in insurance cases. The question as to under what circumstances the United Nations might be prepared to waive its immunity in other cases is complex, but as this question has no bearing on the insurance cases which are in a class by themselves, the necessity for discussing the waiver of immunity as a whole does not arise at this time.
>
> In accordance with the conclusions reached in this memorandum, it is proposed that the Office of Legal Affairs should authorize the insurance carrier to defend this particular suit on behalf of the United Nations, thereby, of course, resulting in the United Nations waiving its immunity for this particular case and that the Office of Legal Affairs take similar action in all other insurance cases where it considers it would be within the spirit of the relevant General Assembly Resolution so to do."

The same policy has been followed in subsequent cases.

(b) Special agreements obliging the United Nations to waive its immunity in specified circumstances

21. The United Nations has not normally entered into agreements, either with private contractors, other international organizations, or with Governments, whereby it has agreed in advance to waive its immunity if specified events occurred.

22. In 1960 one of the specialized agencies proposed that article II of the standard Special Fund Agreement[2/] with Executing Agencies should be amended so that the Executing Agency would no longer be obliged, as at present, to waive the privileges and immunities of private firms employed on Special Fund projects in cases where the Special Fund requested such a waiver, but would merely "consider the possibility of waiving such immunity".

23. The Office of Legal Affairs informed the Special Fund that in its opinion this amendment was not acceptable and gave its reasons, which are of interest in the present connexion, and were as follows:

> "It should first be observed that a private firm would only receive privileges and immunities from a Government on the basis of the Agreement between the Government and the Special Fund. Any rights and obligations deriving from the latter Agreement can obviously be waived only by the parties thereto, and it was for this reason that our earlier drafts of the standard agreement with Executing Agencies provided for waiver of such immunities by the Special Fund only. During... discussions with the other Specialized Agencies on these earlier drafts, they proposed that the waiver should be effected by the Executing Agency upon request of the Special Fund. We agree to this proposal inasmuch as the Special Fund still retained an effective right to waive the immunities in question, and we did not think that any Government would object if such a waiver were nominally effected by an Executive Agency rather than by the Special Fund.
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> In contrast, however, the present proposal would vest in the Executive Agency the sole right to waive, and the Special Fund would lose a right belonging to it under its agreement with a Government. It is legally questionable whether the arrangement proposed... could be made effective as

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2/ It may be noted that under the Special Fund Agreement both the General Convention and the Specialized Agencies Convention are declared applicable. A similar provision is contained in either agreements whereby the United Nations and the specialized agencies provide technical assistance.

against the Government, which after all is a party directly affected by a decision whether or not to waive. In other words, the Government could simply refuse to recognize the right of the Agency to demand immunities for a private firm since the Agency would have no such right in the Special Fund Government Agreement, and could look to the Special Fund to waive such immunities where such a waiver is called for, notwithstanding any provision to the contrary in the Special Fund - Agency agreement.

The only reason given to justify the proposal is that the Executing Agency may have information concerning the circumstance of a particular case involving waiver of immunity which the Managing Director does not have. The General Assembly has expressly and specifically placed on the Managing Director the over-all responsibility for the Special Fund [para. 21, part D, resolution 1240 (XIII)]. It seems to us only proper that any information on such an important matter should be brought to his attention and that he should have substantial control over the application of any provision in a Government agreement granting immunities to a private firm."

(c) Interpretation of the phrase "any measure of execution"

24. The provision that the Organization's waiver of immunity should not extend to "any measure of execution" has received relatively little interpretation in decided cases. In the understanding of the Secretariat the words are to be interpreted in their plain meaning, namely, that even in the event that the Organization does waive its immunity in a particular case, no judgement given against the Organization can be enforced by court orders or by actions taken by the executive or other authorities and directed against the Organization itself, or its property and assets. In short, the manner of compliance with any decision remains within the discretion of the United Nations, even though the United Nations may have agreed to submit to the substantive provisions of national law as regards the issue in dispute.

25. The immunity of the United Nations from any measure of execution does not render its contracts void or unenforceable.[3] The immunity extends to cover immunity from garnishee orders.[4]

3/ See also Section 1 (a) above.

4/ See also Section 7 (c) above.

9. Inviolability of United Nations premises and the exercise of control by the United Nations over its premises

(a) Inviolability of United Nations premises

26. The inviolability of United Nations premises and of areas under United Nations control (e.g. the Headquarters district in New York) has been expressly provided for in the pertinent international agreements.[1/] The principle laid down, that United Nations premises may not be entered and that the United Nations must itself be permitted to control activities occurring on those premises unless it requests the local authorities to intervene, has in general been well observed.

27. In 1965, in response to an inquiry raised by a Member State, the United Nations prepared the following aide-mémoire, setting out the grounds for the inviolability of rented premises no less than for those owned by the Organization.

> "With only a very few exceptions, notably in the United States and Switzerland, all offices of the United Nations throughout the world are located in rented premises comprising either whole buildings or parts thereof These premises enjoy inviolability either directly under the Convention on the Privileges and Immunities of the United Nations to which ninety Member States have acceded, or, where the State was not a party to the Convention, by special agreement with the Government concerned.
>
> Article II, Section 3, of the Convention provides, inter alia, that 'the premises of the United Nations shall be inviolable'.
>
> In those cases where the State is not a party to the Convention, agreements concerning privileges and immunities are included which incorporate all the provisions of the Convention or set forth those privileges and immunities considered essential including inviolability of premises. For example, agreements with the Republic of Korea, which is not a member of the United Nations, and with Japan, before it became a member of the United Nations, provided that the United Nations would enjoy, inter alia, the privileges and immunities defined in Article I, II and III of the Convention on the Privileges and Immunities of the United Nations. (See paragraph 1 of Article IV of the exchange of letters constituting an agreement between the United Nations and Korea regarding privileges and immunities to be enjoyed by the United Nations in the Republic of Korea, signed at Pusan on 21 September 1951, United Nations Treaty Series, vol. 104, page 323, and Article I, paragraph (1) of the Agreement between the United

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1/ See Section 3, General Convention; Section 2, Agreement with Switzerland; Section 9 (a), Headquarters Agreement with the United States; Section 3 (a) and 8, ECLA Agreement; Section 3, ECAFE Agreement; and Section 2, ECA Agreement.

Nations and Japan on privileges and immunities of the United Nations, signed at Tokyo on 25 July 1952, United Nations Treaty Series, vol. 135, page 305.) The Status of ONUC Agreement concluded with the Congo, before it became a party to the Convention on the Privileges and Immunities of the United Nations, contained a special article on premises as follows:

Premises

'24. The Government shall provide, in agreement with the United Nations accommodation service, such buildings or areas for headquarters, camps or other premises as may be necessary for the accommodation of the personnel and services of the United Nations and enable them to carry out their functions. Without prejudice to the fact that all such premises remain Congolese territory, they shall be inviolable and subject to the exclusive control and authority of the United Nations. This authority and control extend to the adjacent public ways to the extent necessary to regulate access to the premises. The United Nations alone may consent to the entry of any government officials to perform duties on such premises or of any other person. Every person who so desires for a lawful purpose shall be allowed free access to the premises placed under the authority of the United Nations.

'25. If the United Nations should take over premises previously occupied by private persons and thus represented a source of income, the Government shall assist the United Nations to lease them at a reasonable rental.' (Documents S/5004 and A/4986).

TAB and the Special Fund concluded special agreements which follow a model text committing the government, where it is not already a party, to apply the provisions of the Convention on the Privileges and Immunities of the United Nations. (See ST/LEG/SERIES B/10, pages 374 and 377)

In summary, the vast majority of the United Nations offices are in rented premises which are inviolable either under the Convention on the Privileges and Immunities of the United Nations or under special agreements.

Incidentally it may also be noted that the Vienna Convention on Diplomatic Relations, 1961, makes no distinction with respect to rented premises, Article 1 (i) gives the following definition:

'the "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.' (underlining added)

"Article 22 of the Vienna Convention provides:

'1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

'2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

'3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.'

While the Vienna Convention of course does not apply to international organizations, it is indicative of the fact that no distinction is made in the inviolability of these premises which are owned and those premises which are rented or otherwise held on a more temporary basis. In this respect it is declaratory of existing international law."

28. A number of cases in which the inviolability of United Nations premises was not respected are described briefly below; the list is not exhaustive of all incidents which might be included under this section.

29. In 1949 officials of a Member State entered a United Nations Information Centre without authorization and requested a United Nations official employed there to leave the premises for questioning.[2/] The official declined to leave and remained in the premises of the Centre until the matter had been clarified. The Secretary-General protested to the Ministry of Foreign Affairs over this infringement of the inviolability of United Nations premises. The Ministry of Foreign Affairs apologized for the incident.

30. Members of the armed forces of a Member State entered premises occupied by the members of a United Nations Mixed Armistice Commission in 1952 without the consent of the United Nations; a protest was made to the Government concerned.

31. In 1954 the Secretary-General protested to a Member Government after an army officer entered the premises jointly occupied by two United Nations subsidiary organs and sealed a United Nations radio station which was installed there. In 1956 a further violation of the same premises occurred when military police entered the building without authorization and forcibly removed a United Nations official; approximately ten minutes later three detectives returned and ordered another official to follow them. The Secretary-General protested to the Permanent Representative of the State concerned over the incident. In January 1957,

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2/ See also Section 23 (c) below.

a subsequent incident took place when a security officer entered the premises without the consent of the official in charge and sought to take a United Nations official into custody for questioning.[3]

32. The obligation imposed on host authorities to respect the inviolability of United Nations premises extends, firstly, to the possibility of direct interference through the acts of public officials. It also includes, however, the obligation of the host authorities to take reasonable steps to ensure that the inviolability of United Nations premises is respected by private individuals. This obligation, though less absolute in character than that in respect of the acts of public officials, is in turn wider in scope than the inviolability of United Nations premises per se; it may in general be expressed as an obligation to allow the United Nations to perform its allotted functions without improper interference or interruption which, whilst not in itself an immediate violation of United Nations premises, may nevertheless achieve an effect within those premises. Ex hypothesi, the obligation in respect of private acts extends to the prevention of actual attacks on or unauthorized entry into United Nations premises on the part of private individuals, where such actions could and ought reasonably to have been foreseen by the host authorities concerned. A number of host agreements refer expressly to the duty of the national authorities in this regard.[4]

33. In 1956 the Legal Counsel wrote to the Secretariat official in charge of the Security and Safety Section, setting out the relevant provisions of the Headquarters Agreement and referring to the statutory and other steps taken under local law regarding picketing at United Nations headquarters.

> "1. It appears that certain organizations may attempt to picket, distribute leaflets, or otherwise demonstrate on the East side of First Avenue immediately adjacent to the United Nations Headquarters District or even within the Headquarters property. I assume that the Security and Safety Section will seek an understanding with the New York City police to cope with any such situation as may arise.
>
> 2. This matter does not raise any question as to the public character of the City sidewalks, ordinary rights of peaceful picketing, or civil liberties in general. As far as concerns the area immediately contiguous to the United Nations Headquarters District it relates solely to the implementation of the undertaking by the United States Government that the

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3/ Ibid.

4/ See e.g., Section 5 (A) ECAFE Agreement and Section 4 (a) ECA Agreement.

strictly international character and the tranquility of the Headquarters will be preserved at all times.

3. There can be no legal doubt as to police requirements on this score. The New York City Administrative Code in Section D41-28.0 d., implementing for municipal purposes the establishment of the Headquarters in New York City and declaring as a matter of legislative determination that a public purpose and the interests of the State and City of New York were promoted thereby, authorized the board of estimate, among other things, to regulate and limit exhibits and displays contiguous to, fronting upon or surrounding the lands occupied by the United Nations. It stated that the purpose was 'to insure the safe and orderly conduct of such United Nations and to protect the useful and desirable purpose of the same and to provide for the safety, convenience and comfort of officials, delegates, personnel and visitors to the same'. Any violation of such regulations is a misdemeanour.

4. Likewise the Headquarters Agreement was adopted by a Joint Resolution of the United States Congress and under the US Constitution is the supreme law of the land. Section 16 (a) states:

> 'The appropriate American authorities shall exercise due diligence to ensure that the tranquility of the headquarters district is not disturbed by the unauthorized entry of groups of persons from outside or by disturbances in its immediate vicinity and shall cause to be provided on the boundaries of the headquarters district such police protection as is required for these purposes.'

It is well established in international law that picketing or other demonstrations concerning the political or social views of any foreign government constitutes a disturbance when conducted in the immediate vicinity of diplomatic territory. This is true even when the activity is otherwise of an orderly nature.

In addition, Section 18 of the Headquarters Agreement provides that:

> 'The appropriate American authorities shall take all reasonable steps to ensure that the amenities of the headquarters district are not prejudiced and the purposes for which the district is required are not obstructed by any use made of the land in the vicinity of the district.'

United States courts have also upheld a congressional enactment against picketing in front of embassies as in no way violating civil rights under the Constitution but merely carrying out US obligations under international law to protect the dignity of diplomatic property and to prevent any action in its immediate vicinity tending to bring a foreign government into public disrepute.

Any one of the above provisions would be sufficient in itself to authorize and support police action in prohibiting any kind of demonstration on the edge of the Headquarters District which might give offence to Member Governments and so cause harm to US foreign relations. Read together, there can be no doubt that the New York City Administrative Code implements the cited provisions of the Headquarters Agreement and authorizes action by City authorities to give full force and effect to the requirements of police protection.

In addition, if any attempt should be made to demonstrate or carry on political activities within the Headquarters District, strict application of Section 16 (b) of the Headquarters Agreement will be necessary. It provides:

> 'If so requested by the Secretary-General, the appropriate American authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters district, and for the removal therefrom of persons as requested under the authority of the United Nations.'

The New York case of People v. Carcel et al (City Magistrate's Court of City of New York, Upper Manhattan Arrest Court, 30 March 1956 2 Misc. 2d 827, 150 N.Y.S. 2d 436 and Court of Appeals of New York, 3 July 1957, 3 N.Y.S. 2d 327, 165 N.Y.S. 2d 113, 114 N.E. 2d. 81) may also be noted. The defendants were arrested by the police and charged with disorderly conduct after they had refused to discontinue picketing on the eastern side of First Avenue immediately outside the main entrance of the United Nations; the police had previously requested them to picket on the other side of the street. The arrest followed a complaint by the United Nations. The defendants maintained that their arrest was in breach of their right to free speech and assemblage. The Magistrate found the defendants guilty of disorderly conduct. After citing the relevant provisions of the Headquarters Agreement and various court decisions given in respect of the restrictions placed on picketing near embassy premises in Washington, he declared,

> 'It is rather evident that because of the necessity of affording to the Member Nations of the United Nations such protection as will not involve the United States in any difficulty with the members of the United Nations because of the failure on the part of the United States as host to give ample protection to the members, the courts have felt it proper to approve such measures which aid towards the protection of foreign governments... It is indeed a duty upon the United States to take reasonable precautions to prevent the doing of things which might lead to a disruption of the proceedings of the United Nations.'

The defendants' appeal was dismissed by the Court of Special Sessions of the City of New York. On further appeal to the Court of Appeals of New York, however, the convictions were reversed on the ground that the conduct of the defendants did not amount to disorderly conduct under S. 722 of the New York Penal Law; the Court held that the case did not turn upon the provisions of the Headquarters Agreement but arose solely under New York Law."

(b) The exercise of control by the United Nations over its prem:

34. The principle that the premises of the United Nations are inviolable has as its counterpart the principle that, unless otherwise provided, the United Nations is alone competent to exercise control over its premises and activities conducted there. The following description of the way in which the United Nations has exercised the control conferred upon it in relation to premises is subdivided, so far as is practicable, under four headings:

(i) The extent of the headquarters or other area in which United Nations premises are situated.

(ii) The power of the United Nations to make regulations and the applicability of local law.

(iii) The exercise of police and other official functions.

(iv) The service of legal process within United Nations premises.

(i) The extent of the headquarters or other area in which United Nations premises are situated

35. When entering into an agreement with a host State regarding permanent installations, such as those in New York or Geneva or the headquarters of the Economic Commissions, the United Nations has sought to define, either in the headquarters agreement itself or in a supplementary agreement or annex, the precise limits of the area in which its premises are situated or over which it has control. Thus in the case of the Headquarters Agreement with the United States, Annex I to that Agreement gives an exact definition of the "headquarters district" referred to in the Agreement; it also provides that the expression "headquarters district" may include

"(2) any other lands or buildings which may from time to time be included therein by supplemental agreement with the appropriate American authorities."

36. In 1966, following the acquisition by the United Nations of premises outside the headquarters district, as originally defined, the United Nations and the United States entered into the Supplemental Agreement set out below.

"The United States of America and the United Nations:

Considering that the office space available within the Headquarters District as defined in Annex 1 to the Agreement Regarding the Headquarters of the United Nations signed at Lake Success on 26 June 1947 is inadequate and it has become necessary for units of the Secretariat of the United Nations to be provided with other premises outside the area so delineated;

Considering that, for the purpose, the United Nations has acquired the building and long-term lease to the land known as 805-7 First Avenue (801 United Nations Plaza) and 343 East 45th Street in the Borough of Manhattan and has also acquired a five-year lease of certain office space in the Alcoa Plaza Associates Building in New York City;

Considering that it is desirable that, with respect to those premises, the United Nations, officials of the United Nations, and Representatives of the Members of the United Nations be accorded the necessary privileges and immunities as envisaged in Article 105 of the Charter of the United Nations and in the Headquarters Agreement; and

Desiring to conclude a supplemental agreement, in accordance with Section 1 (a) of the Headquarters Agreement, in order to include those premises within the Headquarters District in addition to the area defined in Annex 1 to the Headquarters Agreement;

Have agreed as follows:

ARTICLE I

The Headquarters District, within the meaning of Section 1 (a) of the Agreement between the United States of America and the United Nations Regarding the Headquarters of the United Nations, signed at Lake Success on 26 June 1947, shall include, in addition to the area defined in Annex 1 to that Agreement, the following premises:

(1) All of the office building known as 805-7 First Avenue (801 United Nations Plaza) and 343 East 45th Street, located on a parcel of land in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

'BEGINNING at a point formed by the inter-section of the Westerly side of First Avenue and the Northerly side of 45th Street; running thence Westerly along the Northerly side of 45th Street 100 feet; thence Northerly parallel with First Avenue and part of the way through

a party wall 80 feet; thence Easterly parallel with 45th Street 20 feet; thence Southerly parallel with First Avenue 39 feet 7 inches; thence again Easterly parallel with 45th Street and part of the way through another party wall 80 feet to the Westerly side of First Avenue; thence Southerly along the Westerly side of First Avenue 40 feet 5 inches to the point or place of beginning.'

Provided, however, that the foregoing shall not include those parts of the building on the street floor and basement which are sublet to the Ninth Federal Savings and Loan Association of New York City and to the Radnor Delicatessen, Inc. (with an assignment to Deli-Napoli, Inc.) until such time as the United Nations shall occupy and use those parts for offices of the Secretariat.

(2) That part of the Alcoa Plaza Associates Building located at 866 United Nations Plaza, New York City, as identified by the cross-hatching on the plan annexed hereto. Said premises shall include all offices, rooms, halls and corridors located on the third floor of said building within the space identified by said cross-hatching. These premises shall further include the remainder of the third floor from the date that the United Nations takes possession thereof. Said premises shall not, however, include any stairways and elevators giving public access to other floors.

ARTICLE II

The Secretary-General of the United Nations shall notify the Permanent Representative of the United Nations immediately should any of the premises described in Article I, or any part of such premises, cease to be used for offices by the Secretariat of the United Nations. Such premises, or such part thereof, shall cease to be a part of the Headquarters district from the date of such notification.

ARTICLE III

The Secretary-General of the United Nations shall notify the Permanent Representative of the United States to the United Nations immediately of the termination of any subleases of parts of the premises described in Article I and of the possession of such parts by the United Nations. Such parts of such premises shall become a part of the Headquarters District from the date of such occupation.

ARTICLE IV

This Supplemental Agreement shall enter into force upon its signature.

IN WITNESS WHEREOF the respective representative have signed this Supplemental Agreement.

DONE in duplicate, in the English language, at New York this ninth day of February, 1966."

37. The United Nations notified the United States on taking possession of the remainder of the third floor of the premises (see article I (2) above). The Agreement was subsequently amended so as to include a further paragraph, extending the Headquarters district to that part of the sixth floor of 866 United Nations Plaza which is used by UNICEF.

(ii) The power of the United Nations to make regulations and the applicability of local law

38. Apart from declaring United Nations premises inviolable, the General Convention and the Agreement with Switzerland contain no provision dealing with the question of how United Nations control over its premises is to be exercised. The Headquarters Agreement with the United States, however, regulates the matter with some precision. Sections 7 and 8 of that Agreement provide as follows:

"Section 7. (a) The headquarters district shall be under the control and authority of the United Nations as provided in this agreement.

(b) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local law of the United States shall apply within the headquarters district.

(c) Except as otherwise provided in this agreement or in the General Convention, the federal, state and local courts of the United States shall have jurisdiction over acts done and transactions taking place in the headquarters district as provided in applicable federal, state and local laws.

(d) The federal, state and local courts of the United States, when dealing with cases arising out of or relating to acts done or transactions taking place in the headquarters district, shall take into account the regulations enacted by the United Nations under section 8.

Section 8. The United Nations shall have the power to make regulations operative within the headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the headquarters district. Any dispute, between the United Nations and the United States, as to whether a regulation of the United Nations is authorized by this section or as to whether a federal, state or local law or regulation is inconsistent with any regulation of the United Nations authorized by this Section, shall be promptly settled as provided in Section 21. Pending such settlement, the regulation of the United Nations

shall apply, and the federal, state or local law or regulation shall be inapplicable in the headquarters district to the extent that the United Nations claims it to be inconsistent with the regulation of the United Nations. This section shall not prevent the reasonable application of fire protection regulations of the appropriate American authorities."

39. In resolution 481 (V), adopted on 12 December 1950, the General Assembly requested the Secretary-General to present to the Assembly for approval any draft regulation "within the provisions of the Headquarters Agreement which may in his opinion be necessary for the full execution of the functions of the United Nations", and decided that,

"if, in the opinion of the Secretary-General it is necessary to give immediate effect to any regulation within the provisions of the Headquarters Agreement, he shall have authority to make such regulation. The Secretary-General shall report any action so taken to the General Assembly as soon as possible".

40. In accordance with resolution 481 (V) the General Assembly adopted resolution 664 (VI) on 1 February 1952, in which it confirmed Headquarters Regulation No. 1, relating to the United Nations social security system, which had been promulgated by the Secretary-General on 26 February 1951, and approved Headquarters Regulation No. 2, a qualification for professional or other special occupational services within the United Nations, and Headquarters Regulation No. 3 on the operation of services within the Headquarters District. These regulations are reproduced below; the United Nations has not adopted any regulations since 1952.

"Headquarters Regulations

For the purpose of establishing in the Headquarters District conditions in all respects necessary for the full execution of the functions of the United Nations, and in particular for the purposes specified in each regulation, the following regulations are in effect:

Regulation No. 1
United Nations Social Security System

For the purpose, in the field of staff social security, of giving immediate effect to measures necessary for avoiding multiple obligations arising from the possible application of overlapping laws and regulations:

1. A comprehensive United Nations social security system having been established for the purpose of affording protection against all reasonable risks arising out of or incurred during service with the United Nations, the provisions of the United Nations social security system shall constitute the only obligations of the United Nations in respect of such risks.

2. The provisions of the United Nations social security system shall constitute the sole provisions under which persons in the service of the United Nations in respect of any risks within the purview of the United Nations social security system, and any payments made under the United Nations social security system shall constitute the sole payments which any such person shall be entitled to receive from the United Nations in respect of any such risks.

3. This regulation shall take effect on the date of its promulgation, without prejudice, however, to any elements of the United Nations social security system, or any rights or obligations thereunder, already existing at the date of this regulation.

Regulation No. 2
Qualifications for professional or other special occupational services with the United Nations

For the purpose of availing the United Nations of the professional or special occupational services of persons recruited on as wide a geographical basis as possible:

The qualifications and requirements necessary for the performance of professional or other special occupational services within the Headquarters District shall be determined by the Secretary-General; provided that, prior to authorizing medical or nursing services by any person, the Secretary-General shall ascertain that such person has been duly qualified to perform such services in his own or another country.

Regulation No. 3
Operation of services within the Headquarters District

For the purpose of ensuring uninterrupted services necessary to the proper functioning of the principal and subsidiary organs of the United Nations:

The times and hours of operation of any services and facilities or retail establishments authorized within the Headquarters District shall be in compliance with schedules fixed by the Secretary-General; no regulations, requirements or prohibitions beyond those so prescribed shall be imposed without his approval."

41. In 1951 the Attorney-General of the State of New York advised the State Liquor Authority that the Alcoholic Beverage Control Law of New York State was not

applicable within the United Nations premises in New York. The major portions of his opinion were as follows:

"Gentlemen:

This is in reply to your letter of September 21, 1951, requesting my opinion as to whether the Conference Building and the General Assembly Building of the United Nations Headquarters in the Borough of Manhattan, City of New New York, are subject to the jurisdiction of the State of New York and to the provisions of the Alcoholic Beverage Control Law.

Although Article IV-B of the State Law (added by Chapter 25 of the Laws of 1947) authorizes the Governor, upon fulfillment of certain prescribed conditions, to execute in the name of the State a deed or release ceding jurisdiction of any land in the State acquired by the United Nations, and although the United Nations has acquired or is in possession under contract to acquire the lands constituting its Headquarters District in the Borough of Manhattan in the City of New York ... no formal cession of jurisdiction pursuant to Article IV of the State Law has been made, nor has any application therefor been received; and since the jurisdiction of the State over lands within its territorial limits cannot be abrogated except by its consent, it must be stated as a general principle that the United Nations headquarters district in the Borough of Manhattan is subject to the political jurisdiction of this State. However, this conclusion does not dispose of your question."

42. The opinion then refers to Articles II and VI of the United States Constitution, relating to the treaty-making power of the United States; to Articles 104 and 105 of the Charter; to the International Organizations Immunities Act, Section 2 (b) and (c); and to the General Convention, Sections 2, 3 and 7 (a), and Sections 7, 8, 9 and 26 of the Headquarters Agreement. The opinion continues:

"In the light of the foregoing statement of facts, I think the conviction is inescapable that while the headquarters district of the United Nations in the Borough of Manhattan continues to be under the general political jurisdiction of the State of New York, there has come into existence a concurrent jurisdiction of the United Nations to make regulations, operative within the district for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions, and that in any case of conflict between a regulation so made and any law of this State, the regulation of the United Nations must prevail; and that the jurisdiction of the State may not be so exercised or its laws so enforced as to deny or interfere with the enjoyment by the United Nations within the headquarters district of any privileges or immunity necessary for the unhampered exercise of its functions or fulfillment of its purposes. This limitation upon the State in the exercise of its right of sovereignty is by the consent of the State,

given by its ratification on July 26, 1788, of the Constitution of the United States; for the privileges and immunities and the powers of the United Nations in the premises flow from and have their fountainhead in the multilateral treaty known as the United Nations Charter which, by express provision of the Federal Constitution, is declared to be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding.

I think it is self-evident that any attempt to assert the applicability of the State Alcoholic Beverage Control Law as against the United Nations within its headquarters district would tend to embarrass it in the exercise of its functions and would interfere with the enjoyment by it of privileges and immunities necessary for the fulfillment of its purposes; would be contrary to its Charter and to measures taken by the United States and the United Nations to give practical effect to the provisions thereof; and that, therefore, such State Law is not applicable as against the United Nations within its headquarters district in the Borough of Manhattan."

43. The United Nations occupation of premises has raised a number of detailed problems as regards the maintenance of machinery, and indeed of the premises in general, in accordance with proper safety and health standards. In general the United Nations has declined to permit inspections or similar measures, either of the premises or of installations (e.g. of fire alarms, elevators, escalators) to be conducted by the local authorities, in particular if those authorities claimed the right to conduct such inspections at any time, but has ensured, in conjunction with the pertinent authorities, that the substantive conditions as to safety and adequacy were fully met. These conditions have been satisfied by means of inspections carried out by United Nations maintenance and security staff. This approach was followed in 1963, for example, in respect of the smoke detectors installed in the Headquarters district as part of a fire protection scheme. In a very few instances, where the United Nations considered that it could not itself inspect or otherwise ensure that the apparatus in question was in proper condition (e.g. in the case of a window-washing machine) local officials have been permitted to enter, subject to advance notice, to survey and conduct tests of the equipment concerned.

(iii) The exercise of police and other official functions

44. Sections 9 and 10 of the Headquarters Agreement provide as follows:

"Section 9(a). The headquarters district shall be inviolable. Federal, state or local officers or officials of the United States, whether

administrative, judicial, military or police, shall not enter the headquarters district to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General. The service of legal process, including the seizure of private property, may take place within the headquarters district only with the consent of and under conditions approved by the Secretary-General. (b) Without prejudice to the provisions of the General Convention or Article IV of this Agreement, the United Nations shall prevent the headquarters district from becoming a refuge either for persons who are avoiding arrest under the federal, state, or local law of the United States or are required by the Government of the United States for extradition to another country, or for persons who are endeavouring to avoid service of legal process.

Section 10. The United Nations may expel or exclude persons from the headquarters district for violation of its regulations adopted under Section 8 or for other cause. Persons who violate such regulations shall be subject to other penalties or to detention under arrest only in accordance with the provisions of such laws or regulations as may be adopted by the appropriate American authorities."

45. Various arrangements have been made with the local police authorities in New York, in strict accordance with the terms of these Sections, in order to deal with particular problems which have arisen. In 1949, for example, the United States Mission forwarded a request from the New York City Police authorities that police officers and other municipal authorities should be permitted to enter the Headquarters District during the construction of the present Headquarters in New York City "for the purpose of making inspections provided by law and regulation for the public safety, and for other law enforcement purposes". After a meeting with United States Mission and City officials, agreement was reached on the steps which might be taken by the local authorities. On 1 July 1949, the Secretary-General wrote to the United States Representative as follows:

"... It is the understanding of the Secretary-General that it is the desire of the United States Representative for certain appropriate officials to be allowed entry into the Headquarters district of the United Nations temporarily in order that the following matters may be taken care of:

(i) pursuit and arrest in case criminals seek refuge in the Headquarters district or crime is committed in the district, or vagrants establish themselves in the district;

(ii) immediate entrance in case of disaster, in order that assistance may be brought, and investigation made;

(iii) entrance for municipal authorities in order that appropriate inspections in connection with laws and regulations provided for the public safety may be made and the Secretary-General notified in case of violations of such laws and regulations.

The Secretary-General has the honour to inform the United States Permanent Representative at the Seat of the United Nations that he would be ready to enter into the following temporary arrangements, it being understood, however, that these arrangements are to apply only during the period of the construction of the Permanent Headquarters site and until the Secretary-General has notified the United States representative that suitable administrative arrangements including security precautions in the Headquarters district have been undertaken by the United Nations. It would also be understood that these temporary arrangements would apply only to that area of the Permanent Headquarters District not occupied by the United Nations, thus excluding the United Nations Manhattan Building, and that the Secretary-General would reserve the right to notify the United States representative from time to time that certain other buildings in the Permanent Headquarters site are being used for the official business of the United Nations and that, therefore, such arrangements would no longer apply to the corresponding areas of the Permanent Headquarters District:

1. Authority shall be given to the appropriate officials of the United States to enter the Headquarters area for the purpose of pursuing criminals, removing vagrants and preventing disturbances of the peace. Arrests may be made on the premises, it being understood, however, that under no circumstances shall an arrest of a United Nations official be made on the premises (or for an act which has occurred on the premises), without the prior consent of the Secretary-General, and in all cases where an arrest has been made of other persons, the Secretary-General will be notified as soon as possible.

2. If and when a disaster occurs, the Secretary-General will welcome the immediate entrance of the competent authorities in the Headquarters district for assistance in disaster relief. It is, however, requested that when it is felt appropriate for an investigation to be made of such a disaster, that the Secretary-General be immediately notified so that he may be associated through a representative with such investigation ab initio.

3. The Secretary-General is further prepared to give a general consent to municipal authorities to enter the Headquarters district in order to enable them to verify that precautions prescribed by local laws and regulations concerning public safety are being taken. The Secretary-General has the honour to request, however, that any information in regard to violation of such regulations shall be communicated to him as soon as possible in order that he may direct that the appropriate steps be taken...."

The arrangements outlined went into effect upon notification from the United States Representative.

46. Since the occupation of its present Headquarters the United Nations has assumed responsibility for the maintenance of security and general police functions

there through its own security staff. On comparatively rare occasions New York City police have been invited to enter the building, following the commission of acts of violence or other wrongdoing. When Heads of State or other distinguished persons visit the United Nations, United States police have been permitted to enter, not in order to perform police duties but in order that there shall be no gap in liaison between the protection provided by them and that provided by the United Nations. Responsibility thus remains with the United Nations.

47. A broader problem arose in 1952-53 in connexion with the investigations conducted by the United States of its nationals on the staff.5/ As part of those investigations, the United States authorities, acting under a Presidential Executive Order, sought the finger-prints of staff members of United States nationality and required them to complete a questionnaire; the staff members concerned were also interviewed by United States officials. The Secretary-General permitted the finger-printing to be conducted in the United Nations building, the distribution of the questionnaire to be made by the Secretariat officials, and the interviews to be conducted in the offices of staff members. The Secretary-General defended his action in a statement made to the General Assembly at its 413th plenary meeting during its seventh session, chiefly on the grounds that the authorization given the United States officials was for limited purpose only and that the convenience and morale of the staff required that the matter be handled as expeditiously as possible.

48. In the course of the discussion which followed the Secretary-General's statement the view was expressed that the convenience of the staff was not a valid ground for a procedure not in keeping with the international character of the Secretariat. It was said to be inconsistent with respect for that international character for a host State to request and for the Secretary-General to permit the use of premises and facilities of the Organization to enforce the internal laws and regulations of that State. In reply to these comments, at the Assembly's 421st plenary meeting the Secretary-General reiterated the reasons he had previously given and cited precedents in support of his action as follows:

> "It has happened in the past, when the interests of the United Nations have required it, that national police and other officials have been admitted to

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5/ See Repertory of Practice of United Nations Organs, vol. V. pp. 209-210, from which the following account is taken.

United Nations premises. This was not the first time, and I think we have some of them here today too. At the first part of the first session in London, British security police were admitted to Church House for the purpose of protection, and French police were invited and admitted to the Palais de Chaillot during the third and sixth sessions of the Assembly in Paris, both for security and for investigative reasons. Any Secretary-General must have some latitude or discretion in specific circumstances to admit national officials to United Nations premises when he believes that the interests of the United Nations requires it."

49. In 1961 a United Nations employee was arrested outside the Headquarters district and indicted for larceny committed within United Nations Headquarters. The Office of Legal Affairs informed the Judge trying the case that the United Nations had no regulation in the field of criminal law and, accordingly, had no objection under Sections 7 and 8 of the Headquarters Agreement to the case being determined according to the local law. When the case was brought before the Court of General Sessions, New York County[6/] the defendant objected to the proceeding on the ground that the Court lacked jurisdiction in view of his position as a United Nations employee and the fact that the alleged crime had taken place on United Nations premises. The Court found the defendant guilty. The Judge referred to Section 7 (b) of the International Organizations Immunities Act, under which immunity from suit and legal process was granted to United Nations officials only in respect of acts performed in their official capacity. After examining the defendant's claim based on Sections 8 and 9 of the Headquarters Agreement, the Judge stated:

"Accordingly, it would appear from this agreement that the local law shall have jurisdiction over any acts done or transactions taking place within the Headquarters District which are in violation of such laws and the courts of the appropriate American authorities shall have jurisdiction to try and determine issues between the parties. However, such Federal, State or local laws shall, of course, not be inconsistent with any regulation that has been authorized by the United Nations...

For the Court to recognize the existence of a general and unrestricted immunity over suits or transactions, as proposed by defendant, would be to establish a large preferred class of people within our borders who would be immune to punishment inasmuch as the United Nations has no tribunal for the control and punishment of defendants among its personnel. It can at

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6/ People of the State of New York v. Nicholas Coumatos, 19 January 1962, 224 N.Y.S. 2d. 507, Gen. Sess., 224 N.Y.S. 2d 504. See also Section 23 (b) below.

best expel or eject them from the Headquarters District and such persons would escape trial and punishment completely. Such a blanket immunity is contrary to our sense of justice and cannot be supported by any reference to the United Nations Charter, Acts of Congress or executive orders of the President."

50. The defendant also argued, on the basis of Article III, Section 9 (a) of the Headquarters Agreement, that even if he was no immune from legal process, the United Nations had to give its consent prior to the indictment and, since its consent was obtained after the indictment, such consent had no effect. The Court held that that section of the Headquarters Agreement was not applicable in the case since the defendant had been arrested outside the United Nations Headquarters.

51. The arrangements made in respect of United Nations Headquarters in New York are more elaborate than those made elsewhere. In Geneva the exercise of police functions appears to have been raised in recent years only in relation to traffic accidents occurring within United Nations grounds. In 1959 it was suggested that in the event of such accidents any immunity of the person or persons involved should be waived and the competent Swiss authorities allowed to enter the grounds in order to conduct the customary inquiry and report. Whilst there appeared little difficulty in permitting the Swiss authorities to enter the grounds, the different procedures applicable for the waiver of the various parties which might be involved (e.g., United Nations officials with and without diplomatic immunity, officials of the various specialized agencies with and without diplomatic immunity, the representatives of Member States, members of the governing bodies of various international organizations) effectively prevented any simple administrative procedure from being adopted.

52. At offices away from New York and Geneva the problems have been generally smaller in scale. In 1956 ECAFE raised a number of questions as to the exercise of police functions in the ECAFE premises in Bangkok. The Office of Legal Affairs advised that the matter was regulated by the General Convention, to which Thailand was a party, and by the ECAFE Agreement which the Government was applying pending formal ratification. The Office of Legal Affairs stated that it would be proper to allow the local police to make an investigation within ECAFE premises in the event of the possible theft of property on the premises, whether belonging to ECAFE or to staff members. The only restrictions were that the entry of police

must be authorized by the Executive Secretary and that the provision of information by the Executive Secretary and that the provision of information by staff members should not extend to supplying information of their official functions or of official knowledge not already having a public character, unless the Executive Secretary had first obtained permission for an appropriate waiver from the Secretary-General.

53. It may be noted that the ECAFE Agreement (which has now been ratified) includes the following provisions:

> "Section 4 (a). Officers or officials of the Government, whether administrative, judicial, military or police shall not enter the working site to perform any official duties therein except with the consent of and under conditions agreed to by the Executive Secretary;
>
> (b) Without prejudice to the provisions of Article VIII, the ECAFE shall prevent the working site from being used as a refuge by persons who are avoiding arrest under any law of Thailand, or who are required by the Government for extradition to another country, or who are endeavouring to avoid service of legal process or a judicial proceeding;
>
> Section 5 (a). The appropriate Thai authorities shall exercise due diligence to ensure that the tranquility of the working site is not disturbed by the unauthorized entry of groups of persons from outside or by disturbances in its immediate vicinity, and shall cause to be provided on the boundaries of the working site such police protection as is required for these purposes;
>
> (a) If so requested by the Executive Secretary, the appropriate Thai authorities shall provide a sufficient number of police for the preservation of law and order in the working site, and for the removal therefrom of persons as requested under the authority of the ECAFE.

Sections 3 and 4 of the ECA Agreement provide for similar arrangements vis-à-vis the Ethiopian authorities.

(iv) Service of legal process within United Nations premises

54. Service of legal process within United Nations premises, whether directed to the Organization itself or to an individual, constitutes a breach of the obligation to respect the inviolability of United Nations premises. In Section 9 (a) of the Headquarters Agreement it is expressly stated that:

"The service of legal process, including the seizure of private property, may take place within the headquarters district only with the consent of and under conditions approved by the Secretary-General;"

55. The United Nations has consistently refused to accept the service of legal process within its premises and, where attempts have been made (e.g. by leaving the process on the floor), it has returned the process to the local authorities. It may be noted that in the case of service of process upon the Organization, or upon an official who is protected by reason of his official position, there is, in effect, a double immunity, namely in respect of the place of service and in respect of the Organization itself or the person concerned. In the case where process is served, or attempted to be served, on a person who does not enjoy immunity in respect of the matter in question, only the first immunity applies (i.e., in respect of the place of service) so as to render the service of legal process without effect. Where it appears that the matter involved a purely private transaction of an official, the United Nations has on occasions given information as to the home address of the person concerned.

56. A special exception to this principle was made in the case of the branch of the Chemical Bank and Trust Co. operating in the Headquarters District. In a letter to the Bank dated 29 December 1949, the Secretary-General referred to the legality of service of legal process against accounts maintained by the Bank at its branch within the Headquarters District, and continued:

"In pursuance to the authority vested in me under Section 9 (a) [7] consent is hereby given to the service of legal process against all accounts maintained by the above-referred to branches of your Bank with the exception of such of these accounts as are in the name of the United Nations itself, or as are in the name of any other international organization within the meaning of Public Law 291, or are in the name of a Government, or are in the name of any individual falling within Section 19 of the Convention of the Privileges and Immunities of the United Nations, or are in the name of any other individual or other entity entitled to the privileges and immunities, exemptions and facilities accorded to diplomatic envoys under international law."

57. The United Nations reserved the right to amend the terms of this consent at any time or to withdraw it entirely, upon written notice, if it considers the consequences were impairing, or might impair, the proper functioning of the Organization. The United Nations subsequently requested the Bank to arrange to receive service of any legal process which might be issued in respect of the accounts concerned at an office outside the Headquarters district.

7/ Sc. of the Headquarters Agreement.

10. Immunity of United Nations property and assets from search and from any other form of interference

58. As provided in Section 3 of the General Convention,

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

59. As regards the meaning of the word "search", the United Nations has interpreted this to include immunity from any actual inspection by national authorities and immunity from verification of the contents of United Nations property. Thus, in the case of United Nations food or other supplies, for example, contained in sacks, envelopes or other containers, in the opinion of the United Nations its official statement of what the contents are should be accepted by national authorities; any search of the containers would be in violation of Section 3. Similarly, in the case of a United Nations means of transport (car or lorry, plane, railway truck, etc.) an official statement by the United Nations as to the contents should be accepted, without unauthorized inspection (e.g., by opening the trunk of a car).

60. Amongst other forms of governmental action which the United Nations has considered in contravention of Section 3 of the General Convention, it may be noted that in 1959 the United Nations protested to the Government of a Member State after it has devalued certain large denomination bank notes to one tenth of their former value. The notes, whether held by the United Nations itself or by specialized agencies or by technical assistance personnel, had been supplied by the Government as part of its contribution to the local costs of technical assistance. It was declared by the United Nations that in these circumstances the devaluation, as it applied to the United Nations, amounted to a "confiscation" falling within Section 3 of the General Convention and Section 5 of the specialized agencies Convention.[1/]

61. The interpretation of the phrase relating to immunity "from..... any other form of interference" has been considered in a number of contexts. On occasion it has been pointed out in correspondence that unusually burdensome requirements

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1/ See section 13 below.

in respect of the documents needed for customs purposes might constitute interference. More direct forms of interference have also occurred. In 1952, for example, a United Nations plane was impounded at an airport by being refused clearance to take off. The United Nations informed the authorities of the State concerned that the incident, which it was presumed must have resulted from a misunderstanding, did not accord with Section 3 of the General Convention. It was also stated that if the impounding of the aircraft was for the purpose of enforcing payments of fees (which were in dispute), it was also contrary to the intent of Section 2 regarding the immunity of the United Nations from any measure of execution. In addition the refusal to grant clearance was inconsistent with the tenor of Sections 25 and 26 which provided for facilities for speedy travel for persons on United Nations business. Finally, since the refusal resulted in a delay for a senior official while he was travelling on official business, the matter was sufficiently important to be covered by Article 105 of the Charter.

11. United Nations name, emblem and flag

(a) United Nations name and emblem

62. At its first session in 1946 the General Assembly adopted resolution 92 (I) relating to the official seal and emblem of the United Nations.

"The General Assembly,

1. Recognizes that it is desirable to approve a distinctive emblem of the United Nations and to authorize its use for the official seal of the Organization;

Resolves therefore that the design reproduced below [1] shall be the emblem and distinctive sign of the United Nations and shall be used for the official seal of the Organization.

2. Considers that it is necessary to protect the name of the Organization, and its distinctive emblem and official seal;

Recommends therefore:

(a) That Members of the United Nations should take such legislative or other appropriate measures as are necessary to prevent the use, without authorization by the Secretary-General of the United Nations, and in particular for commercial purposes by means of trade marks or commercial labels, of the emblem, the official seal and the name of the United Nations, and of abbreviations of that name through the use of its initial letters;

(b) That the prohibition should take effect as soon as practicable but in any event not later than the expiration of two years from the adoption of this resolution by the General Assembly;

(c) That each Member of the United Nations, pending the putting into effect within its territory of any such prohibition should use its best endeavours to prevent any use, without authorization by the Secretary-General of the United Nations of the emblem, name, or initials of the United Nations, and in particular for commercial purposes by means of trade marks or commercial labels."

63. After cases had been brought to the notice of the Secretary-General of the unauthorized use of the emblem and name of the United Nations, the following letter was sent to all Member States.

1/ The official seal and emblem were reproduced at the end of the text of the resolution.

"14 July 1947

"Sir,

I have the honour to inform you that cases have been brought to the notice of the Secretary-General of the use without his authorization of the emblem and the name of the United Nations, both in its full and in its abbreviated form, by private persons and commercial organizations in different countries, contrary to the recommendations contained in Resolution 92 (I) which was adopted by the General Assembly on 7 December 1946. Many of the violations which I have in mind are particularly flagrant in view of the fact that the emblem and name of the United Nations have been used for commercial purposes, against which abuse the resolution of the General Assembly was particularly directed.

The adoption of this resolution by the General Assembly was a clear indication that the Members of the United Nations considered it highly undesirable for the United Nations to be connected in any way with private commercial enterprise. To prevent abuses the resolution recommended that the Members of the United Nations should take such legislative or other appropriate measures as might be necessary to protect the emblem, official seal and name of the United Nations, and that pending the taking of such legislative or other appropriate measures, each Member should use its best endeavours to prevent any use, without authorization by the Secretary-General of the emblem, official seal and name of the United Nations.

I have, therefore, the honour to request you to be so good as to direct the attention of the appropriate authority of your Government to this recommendation and to inform the Secretary-General in due course of such provisional measures as your Government has been able to take to protect the interests of the United Nations in this matter.

I have the honour to be,

Sir,
Your obedient Servant,

Adrian Pelt
Acting Secretary-General."

64. A number of Member States have adopted legislative enactments protecting the use of the United Nations name and emblem, in accordance with this request and in furtherance of resolution 92 (I). In the case of People v. Wright[1/]

1/ Court of Special Sessions of the City of New York, New York County, 22 April 1958, 12 Misc. 2d 961, 173 N.Y.S. 2d 160.

the defendant was charged with a violation of Section 964 -a of the Penal Law of the State of New York, in that he,

> "without express authority from the Secretary-General of the United Nations, and with the intent to deceive and mislead the public, unlawfully did assume, adopt and use the name of the United Nations, and abbreviation thereof, and simulation thereof which might deceive and mislead the public as to the true identity of the said defendant, and as to the official connection of the said defendant with the United Nations."

65. The defendant sought to dismiss the charge on the ground that the Section was unconstitutional. The Court held that the motion to dismiss the action should be disallowed. The statute concerned was valid under United States law without Congressional authorization and did not constitute a denial of due process or of the equal protection of law. Furthermore the fact that the Secretary-General was alone authorized to grant permission to use the name "United Nations" was not an improper delegation by the New York Legislature of its own legislative powers.

(b) United Nations flag

66. The United Nations flag code, as amended by the Secretary-General on 11 November 1952, is reproduced below:

> "Whereas by Resolution 167 (II) of 20 October 1947 the General Assembly decided that the flag of the United Nations should be the official emblem adopted by the General Assembly in Resolution 92 (I) of 7 December 1946, centred on a United Nations blue background, and authorized the Secretary-General to adopt a Flag Code, having in mind the desirability of a regulated use of the flag and the protection of its dignity;
>
> Whereas under this authority a Flag Code was issued by the Secretary-General on 19 December 1947; and
>
> Whereas it has become desirable to amend this Flag Code to permit display of the United Nations Flag by organizations and persons desiring to demonstrate their support of the United Nations;
>
> The Secretary-General, by virtue of the authority vested in him, hereby rescinds the Flag Code of 19 December 1947 and adopts the following Flag Code:
>
> 1. Design of Flag
>
> The flag of the United Nations shall be the official emblem of the United Nations, centred on a United Nations blue background. Such emblem

shall appear in white on both sides of the flag except when otherwise prescribed by regulation. The flag shall be made in such sizes as may from time to time be prescribed by regulation.

2. Dignity of Flag

"The flag shall not be subjected to any indignity.

3. Flag Protocol

(1) The flag of the United Nations shall not be subordinated to any other flag.

(2) The manner in which the flag of the United Nations may be flown, in relation to any other flag, shall be prescribed by regulation.

4. Use of Flag by the United Nations and Specialized Agencies of the United Nations

(1) The flag shall be flown

(a) From all buildings, offices and other property occupied by the United Nations.

(b) From any official residence when such residence has been so designated by regulation.

(2) The flag shall be used by any unit acting on behalf of the United Nations such as any committee or Commission or other entity established by the United Nations, in such circumstances not covered in this Code as may become necessary in the interests of the United Nations.

(3) The flag may be flown from all buildings, offices and other property occupied by any Specialized Agency of the United Nations.

5. Use of Flag Generally

"The flag may be used in accordance with this Flag Code by Governments, organizations and individuals to demonstrate support of the United Nations and to further its principles and purposes. The manner and circumstances of display shall conform, insofar as appropriate, to the laws and customs applicable to the display of the national flag of the country in which the display is made.

6. Use of Flag in Military Operations

"The flag may be used in military operations only upon express authorization to that effect by a competent organ of the United Nations.

7. Prohibition

"The flag shall not be used in any manner inconsistent with this Code or with any regulations made pursuant thereto. On no account shall the flag or a replica thereof be used for commercial purposes or in direct association with an article of merchandise.

8. Mourning

The Secretary-General will prescribed by regulation or otherwise the cases in which the flag shall be flown at half-mast as sign of mourning.

9. Manufacture and Sale of Flag

(1) The flag may be manufactured for sale only upon written consent of the Secretary-General.

(2) Such consent shall be subject to the following conditions:

(a) The flag shall be sold at a price to be agreed upon with the Secretary-General.

(b) It shall be the responsibility of the manufacturer to ensure that every purchaser of the flag is furnished with a copy of this Code as well as a copy of any regulations issued pursuant thereto, and that each purchaser is informed that his use of the flag is subject to the conditions contained in this Code and in the regulations made pursuant thereto, and that each purchaser is informed that his use of the flag is subject to the conditions contained in this Code and in the regulations made pursuant thereto.

10. Violation

Any violation of this Flag Code may be punished in accordance with the law of the country in which such violation take place.

11. Regulations

(1) The Secretary-General may delegate his authority under this Code.

(2) The Secretary-General or his duly authorized representative is the only person empowered to make regulations under this Code. Such regulations may be made for the purposes indicated in this Code and generally for the purpose of implementing or clarifying any provision of this Code whenever the Secretary-General or his duly authorized representative considers such implementation or clarification necessary.

Secretary-General."

Regulations

67. The following is the text of the Regulations which came into effect on 1 January 1967, replacing the Regulations as amended by the Secretary-General on 11 November 1952:

"I. DIMENSIONS OF FLAG

(1) In pursuance to article 1 of the Flag Code the proportions of the United Nations Flag shall be:

(a) Hoist (width) of the United Nations Flag--2;
Fly (length) of the United Nations Flag--3;

or

(b) Hoist (width) of the United Nations Flag--3,
Fly (length) of the United Nations Flag--5;

or

(c) The same proportions as those of the national flag of any country in which the United Nations Flag is flown;

(2) The emblem shall in all cases be one half of the hoist of the United Nations Flag and entirely centered.

II. FLAG PROTOCOL

In pursuance to article 3 (2) of the United Nations Flag Code the manner in which the United Nations Flag may be displayed is as follows:

1. General Provisions

(a) Under article 5 of the Flag Code the United Nations Flag may be displayed or otherwise used in accordance with the Flag Code by Governments, organizations and individuals to demonstrate support of the United Nations and to further its principles and purposes;

(b) The United Nations Flag may be displayed alone or with one or more other flags to demonstrate support of the United Nations and to further its principles and purposes. The Secretary-General may, however, limit such display to special occasions either generally or in particular areas. In special circumstances he may restrict the display of the United Nations Flag to official use by United Nations organs and specialized agencies;

(c) When the United Nations Flag is displayed with one or more other flags, all flags so displayed should be displayed on the same level and should be of approximately equal size;

(d) On no account may any flag displayed with the United Nations Flag be displayed on a higher level than the United Nations Flag and on no account may any flag so displayed with the United Nations Flag be larger than the United Nations Flag;

(e) The United Nations Flag may be displayed on either side of any other flag without being deemed to be subordinated to any such flag within the meaning of article 3 (1) of the United Nations Flag Code;

(f) The United Nations Flag should normally only be displayed on buildings and on stationary flagstaffs from sunrise to sunset. The United Nations Flag may also be so displayed at night upon special occasions;

(g) The Flag should never be used as drapery of any sort, never festooned, drawn back, nor up, in folds, but always allowed to fall free.

2. Closed circle of flags

The United Nations Flag should in no case be made a part of a circle of flags. In such a circle of flags, flags other than the United Nations Flag should be displayed in the English alphabetical order of the countries represented reading clockwise. The United Nations Flag itself should always be displayed on the flagpole in the centre of the circle of flags or in an appropriate adjoining area.

3. Line, cluster or semi-circle of flags

In line, cluster or semi-circle groupings all flags other than the United Nations Flag shall be displayed in the English alphabetical order of the countries represented starting from the left. The United Nations Flag, in such cases, should either be displayed separately in an appropriate area on in the centre of the line, cluster or semi-circle or, in cases where two United Nations Flags are available, at both ends of the line, cluster or semi-circle.

4. National flag of the country in which the display takes place

(a) The national flag of the country in which the display takes place should appear in its normal position according to the English alphabetical order;

(b) When the country in which the display takes place wishes to make a special display of its national flag, such a special display can only be made where the arrangement of the flags takes the form of a line, cluster or semi-circle grouping, in which case the national flag of the country in which the display is taking place should be displayed at each end of the line of flags separated from the grouping by an interval of not less than one fifth of the total length of the line.

III. USE OF FLAG GENERALLY

(a) In accordance with article 5 of the United Nations Flag Code the United Nations Flag may be used to demonstrate the support of the United Nations and to further its principles and purposes;

(b) It is deemed especially appropriate that the United Nations Flag should be displayed on the following occasions:

(i) On all national and official holidays,

(ii) On United Nations Day, 24 October,

(iii) On the occasion of any official event, particularly in honour of the United Nations,

(iv) On the occasion of any official event which might or is desired to be related in some way to the United Nations.

IV. PROHIBITIONS

(a) In accordance with article 7 of the United Nations Flag Code on no account shall the United Nations Flag or a replica thereof be used for commercial purposes or in direct association with an article of merchandise;

(b) Notwithstanding anything to the contrary contained in clause (a) of this section, neither the United Nations Flag nor any replica thereof shall be stamped, printed, engraved or otherwise affixed on any stationery, books, magazines, periodicals or other publications of any nature whatsoever in a manner such as could imply that any such stationery, books, magazines, periodicals or other publications were published by or on behalf of the United Nations unless such is in fact the case or in a manner such as has the effect of advertising a commercial product;

(c) Subject to the provisions of clauses (b) and (d) of this section neither the United Nations Flag nor any replica thereof should be affixed in any manner on any article of any kind which is not strictly necessary to the display of the United Nations Flag itself. Without restricting the generality of the foregoing sentence the United Nations Flag should not be reproduced on such articles as cushions, handkerchiefs and the like, nor printed nor otherwise impressed on paper napkins or boxes, nor used as any portion of a costume or athletic uniform or other clothing of any kind, nor used on jewellery.

(d) Notwithstanding anything to the contrary contained in this section, a replica of the United Nations Flag may be manufactured in the form of a lapel button;

(e) No mark, insignia, letter, word, figure, design, picture or drawing of any nature shall ever be placed upon or attached to the United Nations Flag or placed upon any replica thereof.

V. MOURNING

(a) Upon the death of a Head of State or Head of Government of a Member State, the United Nations Flag will be flown at half-mast at United Nations Headquarters, at the United Nations Office at Geneva and at United Nations offices located in that Member State;

(b) On such occasions, at Headquarters and at Geneva, the United Nations Flag will be flown at half-mast for one day immediately upon learning of the death. If, however, Flags, have already been flying on that day they will not normally be lowered, but will instead be flown at half-mast on the day following the death;

(c) Should the procedure in paragraph (b) above not be practicable due to weather conditions or other reasons, the United Nations Flag may be flown at half-mast on the day of the funeral. Under exceptional circumstances it may be flown at half-mast on both the day of the death and the day of the funeral;

(d) United Nations offices other than those covered by paragraph (a) above, in the case of the death of a national figure or a Head of State or Head of Government of a Member State, will use their discretion, taking into account the local practice, in consultation with the Protocol Office of the Ministry of Foreign Affairs and/or the Dean of the locally accredited Diplomatic Corps;

(e) The head of a specialized agency is authorized by the Secretary-General to lower the United Nations Flag flown by the agency to half-mast in cases where he wishes to follow the official mourning of the country in which the office of the agency is located. He may also lower the United Nations Flag to half-mast on any occasion when the specialized agency is in official mourning;

(f) The United Nations Flag may also be flown at half-mast on special instructions of the Secretary-General on the death of a world leader who has had a significant connexion with the United Nations;

(g) The Secretary-General may in special circumstances decide that the United Nations Flag, wherever displayed, shall be flown at half-mast during a period of official United Nations mourning;

(h) The United Nations Flag when displayed at half-mast should first be hoisted to the peak for an instant and then lowered to the half-mast position. The Flag should again be raised to the peak before it is lowered for the day;

(i) When the United Nations Flag is flown at half-mast no other flag will be displayed;

(j) Crepe streamers may be affixed to flagstaffs flying the United Nations Flag in a funeral procession only by order of the Secretary-General of the United Nations;

(k) When the United Nations Flag is used to cover a casket, it should not be lowered into the grave or allowed to touch the ground.

VI. MANUFACTURE OF UNITED NATIONS FLAG

In accordance with article 9 (2) (a) of the United Nations Flag Code the Secretary-General hereby grants permission to sell the United Nations Flag without reference to the Secretary-General as to the price to be charged.

VII. ALPHABETICAL ORDER

Attached is a schedule setting out the English alphabetical order of the Members of the United Nations.

Secretary-General

Schedule of Member Nations in the English Alphabetical Order
(not reproduced)

NOTE: In the event of any provision contained in this code or in any regulation made under this code being in conflict with the laws of any State governing the use of its national flag, said laws of any such State shall prevail."

The use of the United Nations flag in connexion with the operation of vessels by the United Nations is considered in Section 3 (b) (ii) above.

12. Inviolability of United Nations archives and documents

68. As stated in Section 4 of the General Convention,

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

In the ECLA Agreement, which contains the same provisions, the term "archives" is defined in Section 1 (9) as including,

> "the records, correspondence, documents, manuscripts, photographs, cinematograph films and sound recordings, belonging to or held by ECLA".

A similar definition of the term is given in Section 1 (g) of the ECA Agreement. The United Nations has interpreted Section 4 of the General Convention as necessarily implying the inviolability of information contained in archives and documents as well as the actual archives and documents themselves.

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

70. A somewhat different aspect arose in the case of Keeney v. United States,[1/] where the defendant was prosecuted for a contempt of Congress following her refusal to answer, when testifying before a Senate Sub-Committee, the question whether anyone in the State Department had aided her in obtaining employment with the United Nations. The main issue in the case turned on whether the defendant, as a former employee of the United Nations, was herself privileged from answering the question. The District Court held that her motion of privilege should be denied. The Court of Appeals reversed the conviction and granted a new

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1/ District Court, District of Columbia, 17 March 1953, 111 F. Supp. 223 and Court of Appeals, District of Columbia Circuit, 26 August 1954, 218 F 2d 843.

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trial on the ground that the answer sought by the Sub-Committee, in so far as it depended upon data in United Nations files or upon information derived from those files, was rendered privileged by the Charter and the staff rules and could not legally be revealed by an official. One of the Judges of the Court stated that the question posed,

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

71. The latter quotation was from Staff Rule 7 of the United Nations (now Staff regulation 1.5), requiring staff members not to communicate unpublished information, "except in the course of their duties or by authorization of the Secretary-General". It was also stated that the privilege of non-disclosure as it applied to officials was "necessary for the independent exercise of their functions in connexion with the Organization".

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

13. Immunity from currency controls

73. The basic provisions of the General Convention are as follows:

"Section 5. Without being restricted by financial controls, regulations or moratoria of any kind,

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

(b) the United Nations shall be free to transfer its funds, gold or currency from one country to another or within any other country and to convert any currency held by it into any currency.

Section 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representation made by the Government of any Member in so far as it is considered that effect can be given to such representations without detriment to the interests of the United Nations."

Similar articles are contained in a number of other instruments.[1/]

74. Problems have arisen involving the interpretation of these provisions in various spheres of United Nations activities. One issue has concerned the payment by a Member State of contributions in a particular currency or the requirement that all goods purchased in that country should be paid for in a specified currency. In 1950, following discussion in the Administrative Committee on Co-ordination, the Office of Legal Affairs gave an opinion to the administrative and financial services of the Secretariat regarding some of the matters raised. The opinion considered in particular

"... the application of the Convention on the Privileges and Immunities of the United Nations should a government, whose regulations provide that all goods exported must be paid for in dollars, require that these regulations be applied to purchase made by the United Nations.

In relation to the subject of maximum utilization of soft currencies and the methods for collecting and disbursing soft currencies, it appears that the Consultative Committee on Administrative Questions had recommended to the ACC that the plan for the soft currencies to be collected by international organizations to be practicable, should be limited to a few currencies, the contributing governments to agree to the convertibility of such currencies into their own soft currencies within a given area.

1/ Section 4 of the Agreement with Switzerland, Section 1 of the ECAFE Agreement and Section 11 (a) (i), ECLA Agreement.

The relevant clauses of the Convention on the Privileges and Immunities of the United Nations are Sections 5 and 6 of Article II on Property, Funds and Assets, which read as follows: (the Sections are then cited).

The equivalent provisions of the Convention on the Privileges and Immunities of the Specialized Agencies, Section 7 and 8 in Article III, contains similar language, substituting the term 'specialized agencies' where 'United Nations' appears above, and requiring due regard to the representations of any State party to the Specialized Agencies Convention.

These provisions unquestionably establish the basic privilege of the United Nations, or of any appropriate specialized agency, to transfer soft currency in which collections are made into a country within the area chosen for the use of that currency, and to operate a bank account in that soft currency regardless of whether it is the currency of the country in which the account is operated. These provisions also, of course, safeguard the ability to withdraw the selected soft currency from the country in which the account is operated, unrestricted by financial controls or regulations, in the form in which it was transferred into that country.

It naturally follows from the purposes of each of the two Conventions that a given government is strictly obligated to recognize these privileges only if it has acceded to the United Nations Convention or has agreed to apply to any given specialized agency the Specialized Agencies Convention. Nevertheless, the provisions of the Convention on the Privileges and Immunities of the United Nations would be entitled to great weight in a negotiation with a Member Government which had not yet acceded thereto, since the General Assembly in its Resolution No. 93 (I) has recommended that Members, pending their accession to the Convention, should follow, so far as possible, the provisions of the Convention in their relations with the United Nations.

It is clear, however, that the binding effect of the Conventions is in no sense a prerequisite to a negotiation which is in any case to take place, since the recommendations of the Consultative Committee on Administrative Questions contemplated 'a definite agreement on the convertibility of the currencies' to be selected, this agreement to be concluded between the governments and the Secretary-General acting also on behalf of all the agencies. It is perfectly open to the Secretary-General to obtain from governments (in exchange for the benefits they would derive from soft currency contributions) their consent to currency convertibility quite apart from the terms of either Convention. Nevertheless, it is the opinion of the Legal Department that reference to the Convention can effectively be made during the negotiations in order to establish that a given government would in any case already be expected to recognize the convertibility and transferability of currencies, either by reason of the Conventions or by reason of the General Assembly's recommendation. Accordingly, so much of the prospective negotiations as concern the operation of bank accounts could be treated as merely an administrative arrangement to give effect to the broad legal obligations already established by the Conventions.

There is one proviso, as a consequence of Section 6 of the United Nations Convention and Section 7 of the Specialized Agencies Convention. Although the authority to transfer accounts and convert currencies would for the most part be unqualified as between equally soft currencies within a given area, it would be necessary to pay due regard to any representations made by a government if a right exercised under the convertibility clause of the Conventions were likely to have a substantially adverse effect on that government's balance of payments. But since the recommended negotiations would in the first place have as their very purpose the easing of such problems by the use of soft currencies, and since the negotiations themselves would constitute the appropriate channel for any governmental representations as contemplated by the Conventions, it may be assumed that this proviso is not a practical limitation on efforts to establish convertibility. The fact that a so-called 'soft' currency in one country within a given area is not necessarily soft in another country within that area would merely be a factor to which due regard would have to be paid in the course of the negotiations, and would not in itself alter the basic obligation established by the convertibility in the Convention.

Finally, in view of the proviso in the Conventions as to government representations, it is natural that the convertibility clause should never have been considered tantamount to an authorization to convert unlimited soft currency holdings into dollars. This should not, however, prevent the adoption by the negotiators, should it prove desirable, of a clause designed to retain a residual right to convert into dollars portions of soft currency accounts which for special reasons might prove not to be utilisable. That is, dollar conversion might at least be possible up to the total amounts for which the converting government would in any case be liable for its regular contributions were the soft currency plan not to be adopted.

You have then raised the further question as to the force of the Convention on the Privileges and Immunities of the United Nations should a government apply to United Nations purchases its regulations requiring exported goods to be paid for in dollars. This subject is not covered by express language in any section of the Convention, but it would be difficult to conclude that the Convention did not protect the essential privilege of the United Nations to make purchases of goods against local currency, even where such a purchase might by legal definition constitute a dollar export. The capacity of the Organization to acquire any form of movable property is fixed by Section 1; by Section 3 its property and assets wherever located are immune from any form of interference, whether by executive, administrative, judicial or legislative action. And Section 7 then makes the United Nations assets and other property exempt from prohibitions and restrictions on exports in respect of articles for its official use. As these sections, read together, clearly authorize procurement followed by export, it could hardly be thought reasonable for regulations of the type under reference to create any absolute obstacle

to this form of procurement. Moreover, since by Section 5 the currency itself, with which goods might be procured, would be convertible into any other currency - subject only to any governmental representations under Section 6 to which effect can be given 'without detriment to the interests of the United Nations' - it is only logical that it should be open to the United Nations to attain the identical result - no doubt subject to the same regard for representations by the government concerned - in the form of goods rather than in currency."

75. Although the arrangements envisaged in this memorandum have been generally observed, individual countries have on occasions interfered with the exercise by the United Nations of its freedom to transfer currencies and to make payments in furtherance of particular programmes undertaken by the Organization. The most serious difficulties which arose were in respect of activities undertaken under the Expanded Programme of Technical Assistance in a Member State following a number of financial decisions taken by the Government concerned in 1959. The Government sought to impose a 20 per cent tax on foreign exchange transactions made by the Technical Assistance Board, introduced a new exchange rate, froze bank deposits, and reduced the value of large denomination bank notes. The Executive Chairman of the Technical Assistance Board protested to the Government regarding the application of these measures to the Technical Assistance programme. He pointed out the United States dollars used to buy local currency were not the product of a sale of goods or service but were part of the contributions of other Governments participating in the Expanded Programme. Moreover, once local currency had been purchased with dollars, it was not transferred out of the country. Application of the new exchange rate would reduce the value of the technical assistance services which could be provided. The Government was therefore requested to exempt technical assistance funds and transactions from the new regulations and to free the bank deposits held by the United Nations and the specialized agencies, in accordance with Section 5 of the General Convention and Section 7 of the Specialized Agencies Convention. The action of the Government in reducing the value of large-denomination bank notes to one-tenth of their respective face values was described as amounting to an outright confiscation of the property and assets of the United Nations and the specialized agencies, in contravention of Section 3 of the General Convention and Section 5 of the Specialized Agencies Convention. It was pointed out in this connexion that under the Technical Assistance Agreement which the Government had concluded earlier, the Government had undertaken to meet certain costs, including that for the

provision of local personnel services and 50 per cent of the daily subsistence allowances of the technical assistance experts. These contributions were made by the Government in local currency and all large-denomination notes held, either by the Organizations or by their employees, were derived from these payments. It was suggested that it could scarcely have been the Government's intention to make or to apply its regulations in such a manner as to contribute its currency at one value and then to reduce the purchasing power by 90 per cent.

76. Following this correspondence arrangements were made by the Government to exempt the United Nations from the regulations which had been introduced. In 1961, when the Government introduced a new exchange rate for tourists, the United Nations pointed out that this rate was also applicable, under the terms of the pertinent Technical Assistance Agreement, to the United Nations and its officials. The Government eventually agreed to grant this exchange rate to the United Nations in respect of the technical assistance programme conducted in the country concerned.

77. Besides enjoying immunity from currency controls as regards sums it has received, it may be noted that the United Nations may also determine the currency in which its contributions are to be paid.

78. Under the Financial Regulations and Rules of the United Nations, adopted by the General Assembly, the annual contributions of Member States may only be assessed and paid in United States dollars, except to the extent that the General Assembly may authorize the Secretary-General to accept payment in other currencies.[2/] Certain States, however, have offered to make payments of their shares of the appropriations for technical assistance, as provided for in part V of the United Nations budget, in the equivalent amount of their national currencies and not, as required under Regulation 5.5 and Rule 105.2 of the Financial Regulations and Rules, in United States currency. Since the Secretary-General has not so far been able to use these currencies, he has not credited the amounts deposited in national currencies against the assessments of the States concerned. The total amount involved is about $1.1 million a year.[3/]

2/ Regulation 5.5 and Rule 105.2, Financial Regulations and Rules of the United Nations (ST/SGB/Financial Rules/1).

3/ Report of the Ad Hoc Committee of Experts the Finances of the United Nations and Specialized Agencies, A/6289, para. 38. See also the discussion regarding inconvertible currencies in the Report of the Ad Hoc Committee of Experts to Examine the Finances of the United Nations and the Specialized Agencies, A/6289/Add.1, Annex V, pp. 11-12.

14. Direct taxes

(a) Definition of direct taxes

79. Section 7 of the General Convention provides that:

"The United Nations, its assets, income and other property shall be:

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

80. The ECLA and ECAFE Agreements contain the same clause.[1/] The Agreement with Switzerland supplements the provision as follows:

"Section 5. The United Nations, its assets, income and other property shall be:

a) Exempt from all direct and indirect taxes whether federal, cantonal or communal. It is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

b) Exempt from the droit de timbre on coupons instituted by the Federal Law of 25 June 1921, and from the impôt anticipé introduced by the Federal Council decree, 1 September 1943, and supplemented by the Federal Council decree of 31 October 1944. The exemption shall be effected by the repayment to the United Nations of the amount of tax levied on its assets".

81. In view of the fact that the General Convention was drawn up for uniform application in all Member States of the United Nations, the meaning to be given to the term "direct taxes" cannot depend on the particular meaning given to that expression by the fiscal laws of a particular State. Thus, whilst the term "direct" and "indirect" taxes are interpreted differently in the various national

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1/ Section 10 (a), ECLA Agreement, Section 8 (a), ECAFE Agreement. See also Section 9 of the ECAFE Agreement.

legal systems of Member States, according to the tax system or administration adopted, the meaning to be given to those terms in relation to the application of the General Convention must be found by reference to the nature of that instrument and to the incidence of the tax in question, that is to say, according to the party upon whom the burden of payment directly falls. Moreover, in interpreting the Convention, the United Nations and its Members must be guided by the overlying principles of the Charter, and in particular Article 105 thereof, which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfillment of its purposes. In accordance with that provision, no Member State can hinder the working of the Organization or take any measure which might increase its financial or other burdens.[2/] Under Article IV of the Convention, therefore, the Organization is relieved of the burden of all direct taxes, and is to be granted the remission or return of indirect taxes where the amount involved is important enough to make this administratively possible.

82. As regards the actual incidence of direct and indirect taxes, the Legal Counsel summarized the position as follows in the course of a statement made to the Fifth Committee in 1963.

> "Now, as the Committee knows, the Convention is categorical in the matter of direct taxes on the United Nations. Direct taxes may not be assessed against the United Nations, and no office of this Organization would have authority to pay them. While I would be foolish to pretend that there could never have been a slip, in some office somewhere, the fact is that we are simply not addressing ourselves to a serious practical problem if we worry about payment of direct taxes in United Nations offices around the world. Member States honour the Convention. Information Centres and other offices are expected to consult Headquarters whenever they are in doubt as to whether a given charge represents a tax against the Organization. Even in the minority of Member States not yet bound by the Convention, we know of no direct taxation of the United Nations. Indeed (even in the absence of adherence to the Convention) we would firmly oppose it as clearly prohibited by the well documented intent of the drafters of Article 105 of the Charter.
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> "Therefore, if we do not pay direct taxes, there remains only the question of indirect taxes. Again, let me emphasize how limited is this problem. For our immediate purposes, an indirect tax is one which is not assessed directly against the purchaser but is paid by the manufacturer or

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2/ See the opinion expressed at the United Nations Conference on International Organization, San Francisco, 1945, quoted in paragraph 6 of the memorandum cited in paragraph 95 below.

vendor and then merely passed on to the purchaser as a part of the price to be paid. I remind the Committee, therefore, that the Convention does not pretend to accord to the Organization an outright exemption from such taxes. It merely states, in its section 8, that 'when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax'. It follows that even this question can arise, in any of our offices around the world, only when an important purchase is being made. I believe that relatively few important purchases are made by small offices such as Information Centres - for the obvious reason that they have no significant procurement function and that even if they did, reasons of economy would militate in favour of concentrated purchases at other larger and more central offices. Moreover, apart from Headquarters, the Governments which are hosts to all of our regional offices and to our major operating agencies are all either party to the Convention or have otherwise bound themselves to a provision equivalent to the section 8 of the Convention which I have just quoted.

"From this review, I must conclude - again leaving aside for the moment the question of the situation at Headquarters - that I fail to see any significant savings to be made by the Organization out of taxes, either direct or indirect, payable at United Nations offices in general, and this for the simple reason that we do not pay direct taxes and there are refund procedures where we have made important purchases subject to indirect taxes.

"On earlier occasions, when this question was raised in the Committee, it had been suggested that the Secretariat should undertake a study of the application of taxes to the Organization anywhere in the world. Since it will be evident, I am sure, from what I have said, that the only taxes payable are by definition hidden taxes - those which are stated in the price of a commodity - such a study would require a detailed review of the excise tax laws in all the host countries of the world, and that study would have to be related to the particular types of purchases that might, in one year or another, be made in any such territory in the world. Even this would not provide us with definite information about the savings to be made, because we could not obtain remission of the taxes so found until we determined that a specific purchase was 'important' within the interpretation of Section 8 of the Convention. For such an enterprise it is my own professional opinion that we would have to employ expert consultants familiar with the laws and tax systems in the many countries concerned. I have not the slightest doubt that we would have to pay more by way of stipends to the experts than we could save from the remittance of the few taxes which they might discover which had escaped our notice. For again, I ask leave to repeat that such indirect taxes, even when located, would not be subject to an exemption; we could claim their refund, by special administrative arrangements, only where the purchase was substantial.

"Finally, I therefore return to what I have indicated in previous exchanges with the Fifth Committee. The more substantial problem arises only in the United States of America - because it is host to the Headquarters, because significant procurement naturally takes place here, and because the United States has not yet acceded to the Convention. Even here, however, I must once more emphasize that basically we are not dealing with a question of direct taxes. By federal statute the Organization is exempt from customs duties and from income, social security, transportation and other direct taxes; by New York law it is exempted from taxation on real property, sales, income and the like. As I have had occasion to mention to the Committee in earlier sessions, the only significant financial impact results from the absence in United States law of any equivalent of Section 8 of the Convention or of administrative procedures for the remission of substantial indirect excise taxes. These can affect a number of commodities which from time to time are the object of United Nations procurement. Of course, when, for example, typewriters, required for Headquarters, are less expensive abroad - and even the United States excise tax can contribute to making them less expensive abroad - we import them. The purchase is then free of tax, because, as I said, we are exempt from United States duties on imports.

"If the amount of United States excises in any given year is not usually very considerable, the principle remains important. As I have previously reported to the Committee, the Secretary-General has proposed to the United States Government two main ways of providing relief. The preference of the Organization must always be for the solution which is both the simpler one and the one more completely in accord with the frequently expressed desires of the General Assembly. I refer, of course, to accession by the United States to the Convention. The alternative which we have suggested, however, based on various United States precedents, involves a number of measures - administrative in nature but not necessarily easy of application - which would serve to put the Organization in a position not less favourable, as to excise taxes, than the missions accredited to it. We know that each alternative has received serious consideration by the United States Government, and we remain hopeful. But there is a limit to what a Secretariat can accomplish in dealing with a Member State, and I accordingly conclude by saying that we very much appreciate the advice, interest and support which we receive from the Fifth Committee." 3/

83. The summary of United Nations practice given below is subdivided under the following headings:

3/ Payment of taxes by the United Nations, Official Records of the General Assembly, Eighteenth Session, Annexes, Agenda item 58, document A/C.5/1005. For further detail as to the position in the United States see Section 17 (a) below.

(i) Stamp taxes

(ii) Transport taxes, including taxes on tickets

(iii) Taxes on United Nations Financial Assets

(iv) Taxes in respect of the occupation or construction of United Nations premises.

(i) Stamp taxes[4/]

84. The United Nations has distinguished, in this as in other connexions, between governmental charges for services rendered and charges which are in the nature of a tax. As a test whether a stamp affixed to a legal document represents a tax or not, the United Nations has usually looked to see whether the amount was nominal and related to a clerical function or whether it related to the value of the document, or whether it was known that the government was in fact using the particular requirement as a revenue-raising measure.

85. In 1951 the United Nations declined to pay a stamp tax on its lease of premises for an Information Centre, the tax being computed on the amount of the rent. The United Nations claim was accepted by the local authorities. In 1953 the Legal Department requested the Minister for External Relations of a Member State to give effect, in accordance with Section 7 of the Convention, to the exemption to which the United Nations Technical Assistance Operations bank account was entitled, from the provisions of a tax on receipts, stamp tax on payment orders, and tax on commissions. The request was granted. In 1954 a draft lease for the premises of a United Nations subsidiary organ provided for payment by the United Nations, as tenant, of registration fees in respect of the lease, stamp duties for copies thereof, and charges for delivery and consignment. United Nations Headquarters gave instructions for re-negotiation of the clause concerned to eliminate whatever could be shown to involve an actual tax.

86. Several Governments, however, argued that stamp taxes were indirect taxes and as such did not come within the purview of the General Convention. Extracts from an exchange of correspondence in 1959 between the Legal Counsel and the Permanent Representative of a Member State regarding this issue is given below; the first extract is from the letter of the Legal Counsel.

4/ For stamp taxes in relation to United Nations financial assets, see sub-section (a) (iii) below.

"...It is generally accepted that a direct tax is one that is assessed against the person intended to pay it. An indirect tax is, on the other hand, one that is demanded from one person in the expectation that he shall indemnify himself at the expense of another. (See, for instance, Wharton's Law Lexicon, 14th edition, page 978.) One element indicative of an indirect tax is that the tax forms part of the price to be paid. Such a tax is referred to in Section 8 of the Convention, according to which the United Nations 'will not, as a general rule, claim exemption' but Member States will, under certain conditions, 'make appropriate administrative arrangements for the remission or return of the amount of tax or duty'. In the case of the fiscal stamp taxes here under consideration, the United Nations is directly required to pay for the stamps and to affix them in prescribed amounts to letters and forms required as a part of the procedure of importation of supplies for its own use. The burden of the charges is directly borne by the United Nations. There is no other party on whom the tax could fall. Hence the fiscal stamp taxes are direct taxes within the preview of Section 7 (a) of the Convention on the Privileges and Immunities of the United Nations..."

87. The reply of the Government concerned included the following:

"...the recent theory in the distinction between the direct and indirect taxes is that the direct tax is imposed upon assets or at least continual sources such as property and profession; the performance of a profession, or exercising of an artisanship constitutes the basic elements that could be pursued by the Taxation Department, in other words direct tax is imposed on the wealth itself, whether gained or in the process of being gained, for example taxes on capital including income tax and different taxes on different incomes as the tax on profits, tax on non-commercial profession (as taxes on labour), but the indirect taxes are not related to quality or property or profession, that is to say not related to continual elements but imposed on specific acts or uncontinuous or casual actions as consumption or circulation, in other words the indirect taxes are imposed on transaction and movements related to wealth in its movements and utilization, for example, taxes on legal or material circulation, or taxes on action as fees of transportation or juridical fees, fees of transfer of property, fiscal stamps duties, taxes on consumer goods and custom duties.

"Hence the fiscal stamp taxes are indirect taxes, and therefore the United Nations is subject to them."

The matter has remained under discussion with the authorities of the Member State in question.

88. A Member State which levied a substantial stamp tax on insurance policies, payable by the purchaser at the time that the policy was issued, imposed this tax on a United Nations subsidiary organ operating within its territory. By 1 January 1966, these taxes had amounted to over $80,000 and were increasing at

the rate of approximately $14,000 a year. During discussions the Ministry of Foreign Affairs took the position that the organ was not entitled under Section 7 (a) of the General Convention to recovery of the money already paid, but indicated that steps would be taken to relieve the organ in respect of future payments. In the course of correspondence the United Nations dealt with an argument raised regarding the meaning of the term "impôt direct" within the French legal system, which was in force in the State in question.

> "It is understood, however, that because the French text uses the term 'impôt direct' which in the French legal system has a narrower meaning than the term 'direct taxes' in the English text, it has been argued that Section 7 (a) does not cover stamp taxes. The characterization given to a tax in a particular municipal law system cannot be controlling in the application of the provisions of the Convention on the Privileges and Immunities of the United Nations which must be interpreted uniformly in respect of all Member States. Otherwise there would be inequality of treatment between Members."

The United Nations has been exempt from stamp duty on contracts and other official documents in Switzerland.

(ii) Transport taxes, including taxes on tickets

89. The United Nations has consistently sought exemption from taxes of this nature on the ground that they were direct taxes from which the Organization was exempt.

90. In 1947 the United States Internal Revenue Service replied to an inquiry made by the United Nations regarding the conditions under which the Revenue Service recognized exemption from transportation tax. The operative portion of the reply is given below.

> "...Inasmuch as the United Nations was designated in Executive Order 9698 as a public international organization entitled to enjoy the privileges, exemptions and immunities conferred by the International Organization Immunities Act, amounts paid on or after December 29, 1945, for the transportation of property to or from the United Nations are exempt from the tax imposed by section 3475 of the Internal Revenue Code, as amended. Accordingly, the designation of the United Nations as consignor or as consignee of the shipping papers is sufficient to establish the right of exemption in those cases where property is shipped to or by the United Nations. However, in any case where the shipment is made to or by an official of the United Nations in connexion with its official business, and payment

will be made by the United Nations through reimbursement of the official, the shipping papers must show by an appropriate reference that the shipment is made on behalf of the United Nations and, therefore, exempt from the tax. No particular form has been prescribed for this purpose, and all that is required is sufficient explanation of the transaction as will clearly show its exempt character and justify the noncollection of tax by the carrier."

91. In 1954 the Legal Counsel wrote to the Ministry of Foreign Relations of Argentina, seeking exemption from a 10 per cent tax on steamship passages between Argentina and foreign ports. Following further correspondence, the Government of Argentina acceded to this request in Decree No. 9307 of 7 September 1962.

92. A request made to the Government of a Member State by the Secretary-General in respect of a "surcharge" on tickets was denied on the ground that the additional charge arose from the fact that the foreign transportation companies operating in the State concerned calculated the fares in question according to a rate of exchange higher than the official rate. The United Nations did not therefore pursue its claim. In the case of another Member State a travel tax was imposed on transportation tickets purchased for United Nations officials of the nationality in question, together with an exit permit fee. The United Nations protested, pointing out that the fact that the persons involved were citizens could not prevail as against the terms of the General Convention. The matter remains under consideration.

93. The United Nations obtained exemption from airport terminal tax imposed on several national contingents flown from their home State for service with United Nations forces on the ground that this fee was in the nature of a direct tax on the Organization.

94. A Technical Assistance Board Representative reported in 1962 that the Government of the Member State in which he was stationed had required all Technical Assistance Board personnel to pay tolls at booths which had been set up on the roads in that country. It was stated that the tolls were a means of raising funds. The Office of Legal Affairs advised that the United Nations was exempt from such tolls as regards its own vehicles and in respect of journeys on official business undertaken by United Nations personnel.

95. The United Nations also experienced certain difficulties in 1964 in respect of a tax on circulation which the tax authorities of a Member State sought to impose on United Nations vehicles operating in that country. The Legal Counsel wrote to the Permanent Representative as follows:

"1. We have the honour to bring to your urgent attention a question concerning the exemption of the United Nations from the tax on circulation with respect to the official vehicles operated by the United Nations, in connexion with operations of a United Nations organ in your country.

2. Under section 7 of the Convention on the Privileges and Immunities of the United Nations, it is provided that 'The United Nations, its assets, income and other property shall be: (a) exempt from all direct taxes'. The aforementioned tax on circulation, insofar as it is directly imposed on the United Nations is, within the meaning of the above-mentioned provision of the Convention, a direct tax. This view, we are gratified to learn, has also been supported by your Ministry of Foreign Affairs.

3. The United Nations organ has, however, been advised by the Customs District Office that the Head Office of Taxes and Indirect Taxation maintains that the tax on circulation (which applies to the circulation of vehicles on roads and public areas) was an indirect tax and that the United Nations could not therefore be exempt from it. In view of this, the Customs Office has informed the United Nations organ that it should make payment of the tax as soon as possible and should notify customs of the details of payment, and has indicated that the import licenses would not be renewed and the vehicles would be considered as operating illegally until the taxes are paid.

4. We are deeply grateful for the intervention of the Foreign Ministry in behalf of the United Nations in this matter. I should like to take this opportunity to present in more detail the view of the Organization, and to request your assistance in obtaining a further consideration of the question by all competent authorities of your Government so as to accord exemption to the United Nations from the 'tax on circulation' with respect to the official vehicles of the United Nations.

5. The difference of opinion in this matter appears to hinge on the meaning of the expression 'direct taxes' as used in section 7 (a) of the Convention on the Privileges and Immunities of the United Nations. It is true that the term 'direct' and 'indirect' taxes, etc. are interpreted differently in the various national legal systems of Member States, varying according to tradition, usage or tax system or administration. It should be pointed out to the tax authorities, however, that the above-mentioned Convention was drawn up for application in all Member States of the United Nations and its terms were conceived and have to be applied uniformly in all countries in accordance with their generally-understood reference to its nature and to its incidence, that is to say, according to upon whom

the burden of payment directly falls. You will understand that in respect to a Convention intended for application in all Member States, its interpretation cannot be made to depend upon the technical meaning of a term in varying tax systems of each Member. Since the tax on circulation is levied directly upon the United Nations, it is, within the meaning of the Convention, a 'direct tax' and the United Nations should be accorded exemption from it. This is the consistent position and practice of the United Nations in asserting its immunity in all States to which the provisions of the Convention apply.

6. Moreover, in interpreting the Convention, the United Nations and its Members must be guided by the overlying principles of the United Nations Charter, and in particular Article 105 which provides that the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes. The Report of the Committee of the San Francisco Conference responsible for the drafting of Article 105 pointed out that 'if there is one principle certain it is that no Member State may hinder in any way the working of the Organization or take any measure the effect of which might be to increase its burdens financial or otherwise'* (underlining added). With this principle in view, the economy of the Convention which was adopted by the General Assembly in implementation of Article 105 of the Charter is quite clear. The Organization was to be relieved of the burden of all taxes - Article 7 providing an exemption for those taxes to be paid directly by the United Nations, and Article 8 providing for remission or return of indirect taxes where the amount involved is important enough to make it administratively possible.

7. Apart from the application of the Convention, I should like to refer to the fact that a Specialized Agency is granted exemption by your Government in respect to that Agency's official automobiles. This exemption is expressly provided for in an agreement between your Government and the specialized agency. As this was an agreement with your Government alone, it was of course possible to take notice of the particular terminology of the tax system employed in your country. Obviously this was not possible in the General Convention applicable to all Member States.

8. Since a United Nations specialized agency has been granted exemption from the tax on circulation, it is hoped that your Government will also find it possible to extend a similar exemption to the United Nations itself.

9. We shall therefore be very grateful if you would be good enough to request the Ministry of Foreign Affairs to intercede again with the competent authorities to authorize the exemption of United Nations official vehicles operating in your country from the tax on circulation.

10. Should there be any delay involved in obtaining the agreement of the tax authorities I am confident that no unilateral steps will be taken by any Government authority which would in any way impede or interfere with

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* Documents of the United Nations Conference on International Organization, San Francisco, 1945, vol. XIII, pp. 705 and 780.

the operation of the United Nations vehicles, and we are certain that the Foreign Ministry will, if it deems it necessary, call this to the attention of the appropriate officials concerned. May we again express our appreciation for your assistance and that of the Ministry of Foreign Affairs in this matter."

96. Whilst the matter remained under consideration the United Nations officials in the country in question received a further request for payment of the tax on circulation. It further appeared that the local customs authorities were using the payment of the road tax as a precondition for the renewal of the "importation licences" for United Nations vehicles. The Legal Council stated that this precondition was not in accordance with Section 7 (b) of the General Convention. In an internal memorandum he commented,

"In virtue of this provision the right of the United Nations to import vehicles for its official use may not be denied or abridged on the ground that the Organization has failed to pay a tax which falls due subsequent to the importation of such vehicles. If, on the other hand, the road tax is imposed as a condition-precedent for the importation of United Nations official vehicles, such tax would be in the nature of customs duties, and the same Section 7 (b) of the Convention exempts the United Nations from such levies".

(iii) Taxes on United Nations Financial Assets

97. The exemption from direct taxes extends to cover taxes levied on financial assets and interests held by the United Nations.

98. The Agreement with Switzerland deals expressly with this aspect in Section 5 (b) whereby the United Nations, its assets, income and other property are declared

"(b) Except from the droit de timbre on coupons instituted by the Swiss Federal Law of 25 June 1921, and from the impôt anticipé introduced by the Federal Council decree, 1 September 1943, and supplemented by the Federal Council decree of 31 October 1944. The exemption shall be effected by the repayment to the United Nations of the amount of tax levied on its assets".

The reference to "coupons" includes bonds, shares, mortgages, transfers of title, certain cheques, bills of exchange, insurance premiums and similar documents.

99. In 1961 a bank in Geneva holding a United Nations interest-bearing account withheld a federal tax of 27 per cent on the interest earned. In response to a

United Nations request for exemption, the Swiss Permanent Observer stated that the tax in question was the impôt anticipé referred to in Section 5 (b) and that the bank had behaved correctly. Upon request by the United Nations to the federal authorities a reimbursement would be obtained.

100. Under the more general provisions of Section 5 of the Agreement with Switzerland, the Office of Legal Affairs advised in 1959 that the High Commissioner for Refugees was exempt from paying cantonal tax on a legacy bequeathed to him for refugee purposes.

101. As regards the position in the United States, in 1960 negotiations were undertaken with the United States Permanent Representative on the exemption of the United Nations from certain customs duties and excise taxes, including the federal documentary stamp taxes upon sales and transfers by the United Nations of capital stock and certificates of indebtedness. These negotiations were undertaken in pursuance of a decision of the Fifth Committee of the General Assembly taken during the thirteenth session in 1958. With regard to the documentary stamp taxes, the position of the United Nations was given by means of the following quotation from a letter from the Secretary-General to the Permanent Representative of the United States, dated 9 September 1959.

> "They constitute direct taxes on the United Nations, impinging to some extent on operations of the United Nations Joint Staff Pension Fund...If the United States were a party to the Convention on the Privileges and Immunities of the United Nations, the Organization would be exempt by its Section 7 (a), as it is in other States Members of the Organization. The tax constitutes a direct burden on the Organization to the advantage of a single Member. Moreover,...it is illogical that the members of Missions should enjoy an exemption by reason of their accreditation to the United Nations when the Organization is denied the exemption on its own official transactions." 5/

102. In Canada and the United Kingdom the United Nations obtained exemption from a withholding tax otherwise levied on cash dividends paid on securities, including securities forming part of the assets of the United Nations Joint Staff Pension Fund.

(iv) Taxes in respect of the occupation or construction of United Nations premises

103. A memorandum of law was prepared by the Office of Legal Affairs in 1953 setting forth the grounds for the immunity of the United Nations from real property tax

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5/ See also Section 38 below.

in respect of its ownership and occupation of the Headquarters District. The study was drawn up following a claim by the company which had sold the land that, under the tax law of New York, the United Nations was taxable for the portion of the first year of its ownership following the date on which it had gained title.

"Memorandum of Law
United Nations Immunity from Real Property Tax

1. Question

The United Nations owns and occupies property in the City of New York known as the United Nations Headquarters District, acquired under the authority of the Acts of 27 February 1947 (Laws of New York 1947) which among other things amended the Administrative Code of the City of New York and declared as a matter of legislative determination that a public purpose was served and that the interests of the State and City of New York were promoted by this acquisition.

The United Nations Headquarters District is exempt from real property taxation. The New York Tax Law, Section 4, subdivision 20, provides: 'Real property of United Nations... shall be exempt from taxation and assessment...'

The question has been raised, however, whether the real property of the United Nations in its Headquarters District might nevertheless be taxable, despite the outright exemption under the Tax Law, for the portion of the first year of United Nations ownership following the date on which title vested. This would be on the grounds that title had not vested until after that year's taxable status date.

It is not necessary for present purposes to consider whether real property of an institution enjoying exemption under Section 4 of the Tax Law may nevertheless be taxed for the period between the date on which title vests and the first subsequent taxable status date. In so far as concerns the United Nations, its property is exempt from taxation even without the benefit of the declaration made by the legislature in Section 4, subdivision 20 of the Tax Law.

2. Immunity from taxation is conferred by the United Nations Charter

Paragraph 1 of Article 105 of the United Nations Charter provides:

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

It cannot be doubted that immunity from taxation is one of such 'immunities as are necessary for the fulfilment of its purposes', conferred on the United Nations by Article 105 of the Charter. The necessity of

immunity from taxation is too universally recognized by international law to require the citation of authorities. Without this immunity the independent functioning of the Organization would be compromised by the ability of Member Governments, or political subdivisions thereof, to impose taxes on the essential assets of the Organization. This would not only constitute enrichment of one Member Government at the expense of all others but (even as a power not exercised but only held in reserve) it would give the taxing authority a measure of indirect control over the workings of the Organization. 'But if there is one certain principle', said the United Nations Conference on International Organization at San Francisco in 1945, in recommending that Article 105 be included in the Charter, 'it is that no Member State may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other.' (Report of Commission IV on Judicial Organization, UNCIO, Documents, Volume 13, p. 705).

3. The Charter supersedes inconsistent state and local law

The Charter of the United Nations is a multilateral treaty entered into by the United States with other nations in the execution of the federal treaty power. As a treaty 'under the Authority of the United States' the Charter is 'the supreme Law of the Land;... anything in the Constitution or Laws of any State to the Contrary notwithstanding.' U.S. Const., Art. 6, Cl. 2.

As a treaty of the United States the Charter supersedes and overrides inconsistent state or local policy or law without exception, even on questions normally within state or local authority, such as, for example, matters relating to local real property. Hauenstein v. Lynham, 100 U.S. 483, and cases there cited. The Charter provision granting the United Nations tax immunity is therefore 'as much a part of the law of every State as its own local laws and Constitution.' Ibid.

4. Article 105 of the Charter is self-executing

This tax immunity was conferred upon the United Nations by the operation and force of the treaty (i.e., the Charter) itself. 'No special legislation in the United States was necessary to make it effective.' Bacardi Corp v. Domenech, 311 U.S. 150, 161 and cases cited.

Moreover, the legislative history of the Charter makes it clear that the requirement of Article 105 of the Charter is directly binding upon Member Governments and their political subdivisions, from the date on which the Charter became effective, and that the essential immunities which it provides are in no way dependent upon accession by a Member State to the Convention on the Privileges and Immunities of the United Nations. The Report of the Committee (of which the United States was a member) which drafted Article 105 of the Charter, as adopted by Commission IV on Judicial Organization and subsequently by the Plenary of the United Nations Conference on International Organization at San Francisco in 1945, stated that the first paragraph of Article 105, as already quoted,

'sets forth a rule obligatory for all members as soon as the Charter becomes operative...

'The terms privileges and immunities indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, to the free functioning of its organs and to the independent exercise of the functions and duties of their officials: exemption from tax...', etc. (UNCIO, Documents, Volume 13, Doc. 933 (English) IV/2/42(2), June 12, 1945).

The judicial and executive authorities of the United States have consistently given effect to Article 105 of the Charter.

In Curran v. City of New York, 77 N.Y.S. 2d 206 (1947) the Court, referring to the immunities clauses of the Charter in particular Article 105, held:

'That these provisions, in a Treaty made under the Authority of the United States, are the law of the land, needs no argument...

'Also that without further action by Congress or the State, the immunities "necessary for the fulfilment of its purposes", conferred upon the United Nations by Article 105, includes immunity from taxation.' Id. at page 212.

In Balfour, Guthrie and Co., Ltd. v. United States 90 F. Supp. 831 (USDC, ND, Cal. 1950) the Federal Court had before it the related question as to whether Article 104 of the Charter, conferring legal capacity on the United Nations was self-executing. It held:

'As a treaty ratified by the United States, the Charter is part of the supreme law of the land. No implemental legislation would appear to be necessary to endow the United Nations with legal capacity in the United States.'

The Attorney-General of New York, in an opinion of 26 October 1951 addressed to the State Liquor Authority, found that

'the conviction is inescapable that... the jurisdiction of the State may not be so exercised or its laws so enforced as to deny or interfere with the enjoyment by the United Nations within the headquarters district of any privilege or immunity necessary for the unhampered exercise of its functions or fulfilment of its purposes. This limitation upon the State in the exercise of its right of sovereignty or by the consent of the State, given by its ratification on July 26, 1788, of the Constitution of the United States; for the privileges and immunities and the powers of the United Nations in the premises flow from and have their fountainhead in the multilateral treaty known as the United Nations Charter which, by express provision of the Federal Constitution, is declared to be the supreme law of the land, anything in the Constitution or laws of any State to the contrary notwithstanding.

'I think it is self-evident that any attempt to assert the applicability of the State Alcoholic Beverage Control Law as against the United Nations within its headquarters district would tend to embarrass it in the exercise of its functions and would interfere with the enjoyment by it of privileges and immunities necessary for the fulfilment of its purposes; would be contrary to its Charter and to measures taken by the United States and the United Nations to give practical effect to the provisions thereof; and that, therefore, such State Law is not applicable as against the United Nations within its headquarters district in the Borough of Manhattan.'

5. Conclusion

It must be concluded from the foregoing that the United Nations Charter, as a part of the supreme law of the land, confers upon the United Nations the immunities necessary for the fulfilment of its purposes, without the requirement of any state legislation; that these immunities include exemption from real property taxes; and that the tax exemption became operative from the effective date of the Charter, without regard to the taxable status date under ordinary local practice.

Nothing in this conclusion is, in any case, inconsistent with the express terms of Section 4, subdivision 20 of the Tax Law. Indeed, the latter must to this extent be considered to be declaratory legislation enacted to provide administrative certainty for the assistance of state and city officials. For the Attorney-General, by an opinion of 29 January 1946, advised the Governor of New York that Article 105 of the Charter would be recognized in New York even before the proposed convention was executed, and that it would not be necessary to enact state legislation to implement the federal treaty unless the Governor thought it desirable for reasons of clarity or otherwise."

104. The United Nations is believed not to have paid real property taxes, as distinct from charges for public utilities, on any of the premises it has occupied.

105. In 1962 the Syrian Council of State (Advisory Section) gave the following opinion regarding the exemption of UNRWA from municipal construction licence fees:

"The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) asked leave of the municipality of Homs to build within the municipal limits, and the municipality demanded payment of the construction licence fee payable under Act No. 151 of 8 January 1938 concerning municipal taxation. The Agency objected, citing the Convention on the Privileges and Immunities of the United Nations, applied to Syria by Legislative Decree No. 12 of 5 August 1953, as amended by Act. No. 196 of 13 June 1960. The Ministry of Municipal and Rural Affairs sought the opinion of the Council of State. The Council, in an opinion of 16 December 1962 delivered by the plenary assembly of its advisory section, held that the fee was one of the 'direct taxes' referred to in Article II, Section 7 (a), of the Convention, and that the Agency was therefore exempt. The Council pointed out that this term should not be

interpreted according to Syrian law only but that account must also be taken of the meaning which the United Nations had attributed to it in drafting the Convention, since otherwise the text might be interpreted differently in different States Parties. Syrian legislation itself did not always draw a very clear distinction between a tax and a fee, and the municipal construction licence fee was a direct tax because it was levied directly for the benefit of the public funds, and the payer could not recover it from a third person. The draftsmen of the Convention on the Privileges and Immunities of the United Nations had intended to treat fees as, in principle, identical with direct taxes; since, after stipulating in Article II, Section 7 (a), that the United Nations and its property should be 'exempt from all direct taxes', they had added: 'it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services'. Even if under Syrian Law the construction licence fee was not a direct tax, the term at issue must be interpreted in accordance with international law." 6/

(b) Practice in Relation to "Charges for Public Utility Services"

106. As noted in sub-section (a) above, United Nations exemption from direct taxes does not extend to exemption from charges for public utility services. In addition to the treaty provisions referred to earlier, a number of international agreements specify that the premises of the United Nations shall be supplied "on equitable terms" with the necessary public services. In Section 17 (a) of the Headquarters Agreement these services are defined as including "electricity, water, gas, post, telephone, telegraph, transportation, drainage, collection of refuse, fire protection, et cetera". Section 24 of the ECAFE Agreement provides that, whilst ECAFE will be supplied "on equitable terms" with public services of this nature, the Government will be responsible for all charges in respect of their installation, maintenance and repair. No serious difficulty appears to have arisen over the interpretation of these provisions.

107. In 1958 a United Nations subsidiary organ reported that the host Government was seeking to obtain mubicipal taxes on premises leased to the organ. The local authorities stated that the taxes were applied towards the furnishing of municipal services, including street lighting, street cleaning, fire protection, anti-malaria measures, the removal of waste, and general services. In reply to the argument of the United Nations organ that it was exempt from the taxes since they were directly imposed and not a charge for public utilities, such as water or electricity, the local authorities declared that water and electricity were mere commodities, not public utility services, and that accordingly the non-exemption from public utility

6/ United Nations Judicial Yearbook 1962, p. 291.

charges contained in the Convention implied that the Organization should pay for the whole of the services listed above. The Legal Counsel wrote to the Legal Adviser of the organ concerned, examining the distinction between real property taxes (qua direct taxes) and public utility charges.

"... The notion that water and electricity are not public utility services is wholly erroneous. Water and electricity are the types par excellence of public utility services, precisely those had in mind by the General Assembly in adopting the Convention. As you know, a public utility is a corporation, very often privately owned, though sometimes owned or controlled by a municipality or other governmental unit, but in either case impressed with a public interest which causes a close statutory supervision of the production and sale of the service or commodity in question. This supervision is ordinarily carried out by Public Utilities Commissions; I am sure it is not necessary to refer to the fact that the public utilities supervised by such governmental bodies in any of a large number of countries are principally gas and electricity, water and transport. For example, Quemner, Dictionnaire Juridique gives the following entry:

'Public utilities, public services corporation - services publics concédés (transports, gaz, électricité, etc.).'

I think it is clear that the Convention had specifically in mind the payment by the United Nations of water and electricity charges on the grounds that the costs as billed are no more than the quid pro quo for commodities or services received; since these would be payable to a private corporation like the price of any other sale made, it was logical that there should not be an exemption merely because the same service happened to be rendered by a municipality or municipally owned company.

A different situation prevails when we come to examine the other municipal services listed above. Whatever may be the advantage to the individual householder of the rendering of such services, it seems clear that these represent normal functions commonly thought of as falling within the responsibilities of municipal government. They are usually carried out by the municipality itself or at least paid for by the municipality out of its own budgeted funds obtained from real property taxation and not from prices charged in respect of the specific amounts of each separate service rendered. It is important to note that water and electricity services are charged for on the basis of units of measurement, such as the kilowatt hour in the latter case. The contrary is true in the case of the various services now under examination. The authorities in international law generally seem to make a distinction as to whether the services rendered by a municipality or other public agency are special ones for which a special charge is made, with definite rates payable by the individual in his character as a consumer and not as a general taxpayer according to fixed principles of real property taxation. (Thus, municipal taxation is normally by area and valuation of real property, not by the amount of street lighting furnished to a given frontage. In this manner, a leading international law

case on the subject makes the distinction that 'taxes and rates imposed by statute in general terms in respect of the occupation or the ownership of real property are not recoverable from diplomatic agents'. In the Matter of a Reference as to the Powers of the Corporation of the City of Ottawa to Levy Rates on Foreign Legations, Supreme Court of Canada, 1943.)...".

108. The major problem which has arisen regarding public utility charges has been in respect of United Nations use of transport facilities, in particular of airport facilities. The following extract from a note sent in 1963 by the Secretary-General to the Government of Member State which had sought to levy fees for various airport facilities provided to United Nations aircraft, describes the legal position taken by the United Nations.

"... In the view of the Secretariat of the United Nations, charges exacted by a Government upon aircraft for landing or parking at its airport constitute a direct tax, in respect of which the United Nations is exempt pursuant to Section 7 (a) of the Convention on the Privileges and Immunities of the United Nations. That section provides that the United Nations shall be 'exempt from all direct taxes'. Such charges are levied for the mere fact of calling or stopping at an airport. They cannot be considered as 'charges for public utility services' from which the United Nations, by the terms of the same Section 7 (a) of the Convention, will not claim exemption.

The term 'public utility' has a restricted connotation applying to particular supplies or services rendered by a government or a corporation under government regulation for which charges are made at a fixed rate according to the amount of supplies furnished or services rendered. The 'handling charges' actually levied at .... Airport would fall into this category and, as may have been noted, the Secretariat has consistently refrained from claiming exemption from such handling charges. Similarly, the Secretariat will not claim exemption, for example, from payment of rental for hangar storage space or for electricity charges for the lighting of runways during night landing or take-off; these are in the realm of public utility charges.

The above-stated position of the Secretariat has been generally accepted by governments. For instance, in connexion with the operations of the United Nations Truce Supervision Organization, the United Nations had reached an agreement with the Government of Lebanon whereby Lebanon exempts the United Nations, in respect of its aircraft, from landing fees at the Beirut Airport while the Organization undertakes to pay storage-rental and night-lighting costs. The same principle was specifically acknowledged in the Agreement of 8 February 1957 between the United Nations and Egypt concerning the Status of the United Nations Emergency Force in Egypt. Paragraph 33 of this Agreement recognized the right of the Force to use the airfields in its area of operation 'without the payment of dues, tolls or charges, ... except for charges that are related directly to services rendered'. (United Nations Treaty Series, Vol. 260, at pages 78-80). A similar provision may be found in the Agreement

of 27 November 1961 between the United Nations and the Republic of the Congo paragraph 31 states: "L'Organization des Nations Unies a le droit d'utiliser les ... aérodromes, sans acquitter le droits, de péages ou taxes, que ce soit aux fins d'enregistrement ou pour tout autre motif, à l'exception des taxes perçues directement en rémunérations de services spécifiés.' (A/4986, page 11).

As concerns the feeling of the Government that the payments made were for actual services rendered, the Secretary-General wishes to emphasize that, both as a matter of principle and as a matter of obvious practical necessity, charges for actual services rendered must relate to services which can be specifically identified, described and itemized. Moreover, it follows that the charge would then differ for each aircraft or each landing according to some predetermined unit (such as a day, a night, the mere act of landing on the runway or parking on the apron, or the type of aircraft), then clearly the Organization is being subjected to a standard rate of assessment in the nature of a tax.

If, therefore, the Government, in the light of these criteria, should adhere to the views that the payments in question were for actual services, the Secretary-General would ask to be furnished (and the auditors would no doubt eventually require) an itemized account showing the specific services provided on each occasion, the cost of each service, and how the total was arrived at. The Secretary-General is satisfied that the submission of such a voucher would be normal practice wherever a party is billed for specific services. Thus, labour is normally charged by hours of work provided, electricity by kilowatt-hour, etc. On the other hand, if the charges have been established by fixed statutory or regulatory fee, it would seem evident that Section 7 (a) is applicable.

In the light of these considerations of legal principles and of the practice of States, the Secretary-General hopes that the Government will be good enough to give the matter further sympathetic consideration and will be able to see its way clear to accepting the position that the United Nations should be exempt from landing fees, parking fees and user charges at airports in its territory in respect of aircraft in United Nations service."

109. Paragraph 33 of the UNFICYP Agreement[7/] provides that the Force shall have the right to use airfields and other transport facilities "without the payment of dues, tolls and charges, either by way of registration or otherwise". Section 8(b) of the ECA Agreement states that:

"Aircraft operated by or for the United Nations shall be exempt from all charges, except those for actual service rendered, and from fees or taxes incidental to the landing at, parking on or taking off from any aerodrome in Ethiopia. Except as limited by the preceding sentence, nothing herein shall

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7/ United Nations Treaty Series, vol. 492, p. 76.

be construed as exempting such aircraft from full compliance with all applicable rules and regulations governing the operation of flights into, within, or out of the territory of the Empire of Ethiopia."

110. In the case of aircraft under commercial charter, the United Nations does not request exemption from landing or housing fees where, under the terms of the charter agreement, the amount of tax would not be passed on to the United Nations and any exemption would only accrue to the financial advantage of the private company. In all instances where there is a direct burden on the United Nations, however, it has claimed exemption. While the entitlement of the United Nations to this exemption has been challenged on occasions, the United Nations has not paid landing fees in any Member State.

15. Customs duties

(a) Imports and exports by the United Nations "for its official use"

111. Under section 7 (b) of the General Convention the United Nations is declared

> "Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use."

Section 10 (b) of the ECLA Agreement, section 8 (b) of the ECA Agreement and section 5 (c) of the Agreement with Switzerland provide similarly. In Switzerland a printed form has been established by the Swiss authorities on which persons specifically authorized by the United Nations certify that a particular import is for official use; this certification is accepted as conclusive by the Swiss authorities.

112. In paragraph 23 of the UNEF Agreement the Government of Egypt recognized "the right of the Force to import free of duty equipment for the Force and provisions, supplies and other goods for the exclusive use of members of the Force" and of members of the Secretariat serving with the Force. A similar provision was contained in the corresponding agreements relating to ONUC and UNFICYP.1/

113. Provisions contained in two of the agreements concluded by UNRWA may also be noted. Article III of the Agreement between UNRWA and Egypt of 12 September 1950 states that:

> "1) Les fournitures, approvisionnements, produits et équipements y compris les produits pétroliers destinés aux réfugiés en Palestine du Sud sous contrôle égyptien seront exemptés de tous droits de douane, taxes ou frais d'importation et d'exportation hatibuellement perçus par l'Etat ou par des administrations publiques.
>
> 2) Sous réserve des mesures concernant la sécurité et l'ordre public, seront exemptés de la visite et de la vérification les fournitures, approvisionnements, produits et équipements ci-dessus mentionnés.

1/ Paragraph 16 (b), ONUC Agreement, United Nations Treaty Series, vol. 414, p. 239, and paragraph 23, UNFICYP Agreement, ibid., vol. 492, p. 70.

Cette exemption pourra être retirés si la Douane constate qu'il en est fait abus.

De plus l'Office est exempté de la nécessité d'obtenir des permis d'importation en Egypte, des permis d'entrée en Palestine du Sud ou des autorisations de change pour ce qui concerne les matières ci-dessus."

In article V of the Agreement between UNRWA and Jordan, signed on 14 March and 20 August 1951, exemption is granted in similar terms.

114. Government authorities have, in the great majority of cases, accepted without question that any goods being transported were for the official use of the Organization. Such problems as have arisen have been mostly over comestible articles such as food and drink. Thus an opinion from the Attorney-General of the State of New York was required in 1946 to enable the United Nations to import liquor, free of duty, for purposes of official hospitality. After citing Article 105 of the Charter and section 2 (d) of United States Public Law 291, the Attorney-General continued:

"I am informed that, upon request from the United Nations to the Secretary of State, a shipment of liquor from Canada, consigned to United Nations in New York City, has been cleared for admittance without payment of customs duties or internal revenue taxes, but that it is being held in Warehouse pending the issuance of a release by the State Liquor Authority, and that the State Liquor Authority is unwilling to act without a ruling by me.

It appears also that the State Liquor Authority has permitted the entry of liquor imported by ambassadors for their personal use. Under the terms of Public Law 291 it appears that the United Nations is entitled to the same rights and immunities as a foreign government. If an ambassador, the representative of a foreign government, is entitled to import liquor free from State restrictions, United Nations would appear to have the same privileges.

Restricting this ruling to imports by the United Nations itself, to be used only for purposes of its own official hospitality, it is my opinion that the State Liquor Authority should recognize the rights conferred by Public Law 291 of the United States Congress, and permit the delivery of such liquor to the United Nations, upon request by the United Nations specifying the amount and nature of the shipment."

115. In 1959 the question was raised as to the right or privilege of information centre directors to import duty-free liquor for hospitality purposes. The Office of Legal Affairs advised the Office of Public Information as follows:

"Under the Convention on the Privileges and Immunities of the United Nations, the directors of information centres, as officials of the United Nations, are of course not legally entitled to duty-free importation of liquor, which the General Assembly, in adopting the Convention, did not treat as necessary for the independent exercise of their functions in connexion with the Organization.

.... A distinction, however, should be made between imports by the Information Centre for the official use of the Organization. Imports of liquor for official receptions, for example, should, by the terms of Section 7 (b) of the Convention on the Privileges and Immunities of the United Nations, be exempt from customs duties. This applies also to gasoline, whenever it is 'for official use'. As to what constitutes 'official use', we believe it a matter for administrative regulation, which should conform to the restrictions prevailing at Headquarters. When the information centre imports such articles for such official use, it may itself properly request the Government for exemption from customs duties on the basis of Section 7 (b) of the Convention, and no request from Headquarters would be necessary."

116. The distinction referred to, namely that between the right of individual officials to import goods and the right of the Organization (or of officials on behalf of the Organization) to import goods, has been raised on a number of other occasions in connexion with the import of consumable articles.

117. In 1952 a host Government sought to confine the exemption from customs duties enjoyed by UNRWA to objects and materials required for administrative purposes only, as opposed to imports destined for its refugee programme in general. The opinion of the Office of Legal Affairs was given as follows, in a letter to the Legal Adviser of UNRWA.

"We are not of the opinion that the contention of the Government that the provisions of Section 7 (b) of the Convention on the Privileges and Immunities of the United Nations are restricted to imports required for administrative purposes only, can be legally justified. It is our view that the phrase 'for its official use' in Section 7 (b) must be interpreted to include the importation of any goods, materials, foodstuffs or otherwise, which are used in and forms a part of the official programme of UNRWA. The fact that such goods imported by the United Nations are thereafter distributed to individuals within the country in accordance with the purpose and aims of the programme instituted by UNRWA can hardly be regarded as negating the purposes of the exemption under this Section, when the very reason for the existence of UNRWA is to perform such functions, and not merely to consume administrative supplies.

The Government might be assisted by a reminder as to the motives of the General Assembly in recognizing the necessity of the customs exemption for the United Nations. First of all, any special charge upon the resources

of the Organization or a subsidiary organ are a burden reducing its ability to carry out its international function. Secondly, all other Member States contributing to the budget of the programme will have the strongest grounds for complaint, because the payment of customs by the Agency merely constitutes an indirect payment by the other Member Governments into the treasury of a single State, which thus enriches itself not only to the detriment of the programme but from the resources of the other contributing States. Obviously, the work of UNRWA in itself provides assistance to States having refugees on their territory, and could hardly afford a basis for further payments directly to a single Government.

For this reason, any discussion with the Government on the meaning of Section 7 of the Convention must relate back to the criterion of necessity set up in Article 105 of the Charter, which the Convention merely implements. It should likewise be borne in mind that the General Assembly, in paragraph 17 of its Resolution 302 (IV), called upon the Governments concerned to accord to the UNRWA the privileges, immunities, exemptions and facilities which had been granted to its predecessor, United Nations Relief for Palestine Refugees, together with all other privileges, immunities, exemptions and facilities necessary for the fulfilment of its functions."

118. It may be noted that, speaking before the Fifth Committee at its 982nd meeting, the Legal Counsel referred to another problem which had arisen in interpreting the meaning of the term "official use".

"Now, if the United Nations sent a film or recording produced by it as a part of its public information operations to a distributing agent for distribution in a Member State, is the film so imported into the territory of that Member State for the 'official use' of the United Nations? The Secretariat took the affirmative view and the Member concerned, I am glad to report, graciously agreed." 1/

119. Lastly, on the grounds that the goods are not for official use, the United Nations pays duty in respect of all items imported for sale in the Gift Shop maintained by the United Nations in the Headquarters district.2/ The Co-operative Shops run at New York and Geneva for the benefit of staff and accredited representatives, are also not exempt from customs or excise taxes.

(b) Imposition of "Customs Duties..... Prohibitions and Restrictions"

120. As regards the position at United Nations Headquarters, under Section 2 (d) of the United States International Organizations Immunities Act the United Nations is granted "in so far as concerns customs duties and internal revenue taxes imposed upon or by reason of importation, and the procedures in connexion therewith",

1/ Statement by the Legal Counsel before the Fifth Committee, A/C.5/972.

2/ See also Section 17 (a) below.

the privileges, exemptions and immunities which are accorded under similar circumstances to foreign Governments. In accordance with the terms of this provision the United Nations imports goods for official use at Headquarters without restriction and without paying customs or internal revenue taxes. As regards exports, in a few cases (chiefly certain medical supplies, narcotic drugs, and some items of technical equipment) the United Nations has to obtain a special licence from the United States Department of Commerce; such licences have been obtained without serious difficulty.3/ In 1962, however, an export restriction was introduced whereby the United Nations was required to obtain a licence from the Office of Export Control of the Bureau of International Programmes of the Department of Commerce, in respect of public information materials sent from the United States to certain countries. The United Nations protested against this requirement, pointing out that the restriction might cripple its information activities in the States concerned. Reference was made to the provisions of Article 105 of the Charter and to Section 7 (b) of the General Convention. The United States authorities agreed to exempt the United Nations from the requirement that a licence be obtained in respect of the articles in question.

121. The United Nations has experienced relatively little difficulty as regards the grant of exemption from "customs duties..... prohibitions and restrictions", in accordance with the Convention, in the case of imports and exports made other than at Headquarters. On such occasions as problems have been presented (e.g. owing to an official embargo on goods originating from certain countries) the matter has usually been satisfactorily resolved in the United Nations favour, following representations made by the Organization to the responsible national authorities.

122. When customs duties have been paid by the importer, from whom the United Nations has then bought the goods, the United Nations has sought to obtain a refund, either directly, by means of a request to the Government concerned, or indirectly, by supplying suitable proof to the importer to enable him to do so, in cases where the Organization has bought at the duty-free price.

3/ For further details of the position in relation to United States customs and excise duties see Section 17 (a) below, in particular the list of taxes annexed to the letter from the Legal Counsel to the United States Mission of 10 April 1959.

(c) Sales of articles imported by the United Nations

123. Section 7 (b) of the General Convention provides that articles granted exemption from customs duties by virtue of their importation by the United Nations "will not be sold in the country into which they were imported except under conditions agreed with the Government of that country".

124. Relatively little practice appears to have emerged under this provision. Most sales of articles imported by the United Nations have been of used office equipment or of used vehicles. The United Nations has usually made the satisfaction, by the purchaser, of any customs or similar obligation, a condition of the contract of purchase. This practice has usually been followed by operational bodies, such as UNRWA, which have on occasions disposed of sizable quantities of surplus or used articles. In Switzerland, under the Réglement Douanier of 23 April 1952, articles imported duty-free may not be sold within five years, except on payment of duty. Cars belonging to the Geneva Office may be sold after three years without payment of duty.

125. In 1964 the Legal Counsel advised the Legal Adviser of a United Nations subsidiary organ concerning the duty-free importation and sale on the local market of personal effects belonging to staff members. After referring to Section 7 (b) the memorandum continued:

> "It can never have been the intention of the Convention on the Privileges and Immunities of the United Nations or of the agreement with the host country that conditions should be more severe than those for a private person in the country. Of course, a staff member should not place himself in a position of appearing to deal in imported articles even where he pays the customs, but where as in the present case there was a legitimate explanation for the importation of the article, it seems to us that you were perfectly correct in supporting the staff member's case with the host Government.
>
> The procedure requested by the host Government, under which individual authorization of each sale would be required without reference to any objective standards, is not the type of condition which was envisaged. Such condition has not been imposed in any other country. The conditions which have been agreed are those necessary to ensure that taxes are paid and otherwise that relevant laws and regulations are applied. Such conditions should not put the staff member in a position less favourable than that of a private person, nor should they be such as to negate the privilege of imported personal effects which is accorded by the Convention on the Privileges and Immunities of the United Nations and by the Status Agreement.

> While conditions for sale must be agreed with the host country, it was not intended that such conditions should be unilaterally and arbitrarily established but that they should be negotiated with the purpose of protecting the legitimate interests of both parties, that is, to ensure the host country against the abuse of import privileges and to ensure the United Nations and its staff effective use of such privileges for the purposes that they were intended."

The question of the sale of official publications and of UNICEF greeting cards is considered in Section 16 (a) below.

126. In the case of the UNEF, ONUC and UNFICYP Agreements, provision is made for the establishment of service institutes which may sell duty-free consumable goods to members of the Force concerned and to members of the Secretariat serving with the Force. Paragraph 23 of the UNFICYP Agreements[4/] states that:

> "The Commander shall take all necessary measures to prevent any abuse of the exemption and to prevent the sale or resale of the goods to persons other than those aforesaid. Sympathetic consideration shall be given by the Commander to the observations or requests of the Government concerning the operation of service institutes."

127. Paragraph 23 of the UNEF Agreement is closely similar. Paragraph 16 of the ONUC Agreement[5/] provided that goods imported duty-free including those for sale to persons serving with the Force, might not be resold to third parties except under conditions approved by the Host Government.

4/ United Nations Treaty Series, vol. 492, p. 70.

5/ Ibid., vol. 414, p. 238.

16. Publications

(a) Interpretation of the term "publications" and problems relating to the distribution of publications

128. Under Section 7 (c) of the General Convention the United Nations is declared,

> "Exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications."

Similar provisions are contained in a number of other agreements.[1/]

129. The term "publications" has been widely interpreted to cover films and recording prepared by or at the request of the United Nations, as well as in printed matter.[2/] In an internal memorandum prepared by the Office of Legal Affairs in 1952 it was stated that,

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

130. It may be noted that the Agreement on the Importation of Educational, Scientific and Cultural Materials,[3/] which entered into force on 21 May 1952, provides in Article 1, paragraph 1, that:

> "The contracting Status undertake not to apply customs duties or other charges on, or in connection with, the importation of:
>
> .....
>
> (b) Educational, scientific and cultural materials, listed in annexes B, C, D and E to this Agreement, which are the products of another contracting State, subject to the conditions laid down in those annexes."

Annex C (iv) reads as follows:

> "Films, filmstrips, microfilms and sound recordings of an educational, scientific or cultural character produced by the United Nations or any of its specialized agencies."

1/ Section 5 (c). Agreement with Switzerland, Section 10 (c) ECLA Agreement, Section 8 (c) ECAFE Agreement.

2/ See e.g., the statement by the Legal Counsel before the Fifth Committee at its 982nd meeting, quoted in Section 15 (a) above.

3/ United Nations Treaty Series, vol. 131, p. 25.

Thus both United Nations films and those produced by specialized agencies are expressly excluded from customs duties and other charges imposed in connexion with their importation.

131. In a memorandum prepared in 1953 the Office of Legal Affairs advised the Office of Public Information regarding certain aspects of the importation of films for distribution and sale in a Member State. After restating that films were to be considered as "publications" within Section 7 (c) of the General Convention and that their importation for distribution constituted an "official use", the memorandum then dealt with the fact that some of the films were to be shown under rental agreements whilst others were to be sold.

> "... With regard to the rental agreements, the proviso in paragraph (b) of Section 7 will have no application, since it is our understanding that the United Nations retains title to films imported under such agreements throughout their duration.
>
> With regard to the sale agreements we have the following comments to make. Firstly, notwithstanding the fact that under such agreements a transfer of title takes place, we do not think that they are of the nature contemplated by the proviso in paragraph (b) of Section 7. Thus, the transaction which is effected by these sale agreements, the subject matter of which is the United Nations films, is clearly distinguishable from an ordinary commercial transaction. The controlling objective of the United Nations film distribution programme, which is to disseminate knowledge of United Nations activities within the territory of the country concerned, remains unchanged notwithstanding the fact that the United Nations' agent in the country is necessarily compensated for the importation of the films. In this connexion it is the purposes for which the agreement is concluded which are the essential factor. Furthermore, in our understanding the present method of importing and distributing United Nations films is the only way of getting them on to the various circuits. The fact that the films must go through the ordinary and usual commercial channels in order to gain a place on the screens does not of itself change the official United Nations character of the transaction involved in the sale agreements. For the sale proviso in the Convention plainly applies after use by the United Nations has ended, whereas the sale in this case is merely a first step in bringing about the official use...".

132. As regards the importation "for resale" of United Nations publications, the Legal Counsel gave the following opinion in an internal memorandum prepared in 1959; the particular case concerned the sale of the printed volumes of the United Nations Conference on the Peaceful Uses of Atomic Energy, which had been printed outside the United States.

"...As a general proposition, I do not believe that the United Nations can acquiesce in exaction of customs duties on its publications by any Member Government. Since this is true as to all of the routine publications of the Organization, it would be particularly anomalous if the proceedings of so important a conference as that on Peaceful Uses of Atomic Energy were to encounter obstacles in their world distribution, directly contrary to the purposes for which the Conference was convened, simply because the special demand for the volumes brought them to the attention of governments.

The question of resale in the case of publications has no legal significance. It was assumed from the beginning that the normal channels of distribution of the printed publications of the United Nations would be through resale by sales agents."

133. After referring to section 7, paragraphs (a) and (b), of the General Convention, the opinion continued:

"I do not consider that the mere fact that the sales agent may sell at a mark-up, or that our sales price may in some way take into account the agent's commission or profit, in any way affects the assumptions on which the exemption was based. I therefore leave aside for the present the question of any mark-up reasonably related to the distribution services rendered the Organization by booksellers or other commercial channels.

In addition to our own Convention, our publications are also protected from customs duties or other charges by the numerous States parties to the UNESCO Agreement on the Importation of Educational, Scientific and Cultural Materials, which in addition provides special facilities for the importation of the books and publications of the United Nations or of any of its specialized agencies (including licences and foreign exchange)((article II((c)).

In so far as the position in the United States is concerned, section 2 (d) of the International Organization Immunities Act accords the Organization the same exemptions in respect of customs duties as are 'accorded under similar circumstances to foreign governments'. I would suggest that we treat this section, as interpreted by more than a decade of official practice, as conferring upon the United Nations as importer no less an exemption than that intended by the General Assembly in section 7 (c) of the Convention."

134. One of the most regular, as well as the largest, sale of United Nations publications is the annual sale of UNICEF greeting cards. The great majority of the hundred or more countries in which these cards are now sold permit their entry and sale without imposing any duty. The following is the list of countries which imposed customs duties on UNICEF cards in 1964: Argentina, Australia, Ceylon, Chile, Denmark, Gambia, India, Japan, Kenya, New Zealand, Spain, Sweden, Tanzania and the United States. Purchase tax was paid in the United Kingdom.

135. Distinct from the question of customs and similar restrictions placed on the import of United Nations publications is that of the possibility of more direct forms of control by way of governmental censorship or licensing.[4/] A Member State requested the United Nations Information Centre situated in its territory to stop showing United Nations films until these had been cleared with the Board of Censors. Following discussions with the host authorities, the United Nations Secretariat wrote to the Permanent Mission of the State concerned in 1966, setting out the basis on which exemption was claimed from this requirement.

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

136. After citing these provisions of the Convention, the letter continued:

> "As you will appreciate, a demand to censor United Nations films would constitute interference as prohibited in section 3 of the Convention. As regards section 4, United Nations films are part of United Nations documentation, and censorship therefore would be in violation of this section which provides for inviolability of documentation 'wherever located'. United Nations films are also covered by the exemption under section 7 (c) since they are a part of United Nations publications.
>
> Furthermore, if a government were to demand, in particular, the right to censor United Nations material and if that demand were complied with, the question would arise of a contravention of Article 100 of the Charter, under which a Member State is required to refrain from influencing the Secretariat in the discharge of its responsibilities and the latter is prohibited from receiving instructions from any authority external to the Organization."

The matter remains under discussion with the Government concerned.

137. It may be noted that in section 6 of the ECLA Agreement the freedom from censorship enjoyed in respect of correspondence and other communications is expressly extended "without limitation by reason of this enumeration, to printed matter, still and moving pictures, films and sound recordings". Section 6 (a) of the ECA Agreement and section 13 (a) of the ECAFE Agreement contain similar provision

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4/ In 1962, the United States sought to require the United Nations to obtain a licence in respect of the export of public information materials to certain States. Following correspondence the United States acknowledged the United Nations exemption from this requirement; see section 15 (b) above.

(b) United Nations copyright and patents

138. The United Nations has obtained copyright protection, in cases where it has considered such protection desirable, through the registration of its publications and other works with the appropriate national authorities. In 1950-51 there was an exchange of correspondence with the United States Copyright Office regarding the legal capacity of the United Nations to affect copyright registration. The letter sent on behalf of the United Nations included the following passage:

> "With regard to the status of the United Nations and the specialized agencies under the United States Copyright Law (17 USC), there seems to be no doubt that these Organizations may be either authors or proprietors of works to copyright. They are legal entities capable of acquiring property, and may be 'authors' under the definition in section 26, which includes employers in the case of works made for hire. When the United Nations or a specialized agency is 'the author or proprietor of any work made the subject of copyright', it would appear to be entitled to copyright protection under the terms of the first sentence of section 9 and would not be subject to the proviso which is applicable only to citizens or subjects of foreign States or nations. The United Nations being an international person sui generis is not a citizen or a subject of a foreign State or Nations. Likewise the raison d'être for the reciprocity requirement in the proviso does not exist since the United Nations and the specialized agencies do not grant copyright protection of any kind.
>
> While there should be no implication that the United Nations and the apecialized agencies are to be considered 'stateless persons', the reasoning of the Circuit Court of Appeals in Houghton Mifflin Co. v. Stackpole Sons, Inc. (104 F. 21 306) does, as you suggest, apply equally to them. If, as was held by the Court in that case, a stateless person may be granted copyright protection without being subject to the reciprocity provision, then it would seem to me that a fortiori the requirement of reciprocity would not be applicable to the United Nations and specialized agencies.
>
> This conclusion is further supported, as you suggest, by Public Law 291. The capacity to acquire property, which is broadly applicable to the right to copyright protection, is a privilege recognized by section 2, and under section 9 its grant is not to be conditioned upon any requirement of reciprocity which might exist in case of foreign governments."

139. During the preparation of the Universal Copyright Convention in 1951, it was proposed that an article should be incorporated expressly permitting the United Nations to receive copyright protection in all contracting States. Although a proposal in this sense was not included in the Convention, the entry into force of the Convention in 1955, and its ratification by the United States, reduced some of the procedural and technical difficulties which the United Nations had previously experienced in connexion with copyright registration.

140. In 1956 the Office of Legal Affairs wrote to the Office of General Services setting out a number of general considerations with respect to the possible patenting of inventions developed by or for the United Nations.

"... It should be noted first of all that a patent right is a property right. There are no United Nations regulations or rules in existence specifically applying to the administration of patent rights belonging to the United Nations, but the Financial Regulations and Rules include provisions dealing with the management and disposal of United Nations property in general. In the absence of any regulations or rules specifically relating to patents, those general provisions must be deemed applicable to the administration of patent right belonging to the United Nations.

"Moreover, it is entirely possible that the United Nations might on future occasions wish to take out patents covering inventions belonging to it. This might be the case not only with respect to inventions which could constitute a significant source of revenue for the United Nations and which could thus reduce the contributions of member states, but also as regards inventions the exploitation of which the United Nations might wish to control for one reason or another.

"The question thus arises as to whether it is necessary or desirable to adopt a general policy making inventions belonging to the United Nations generally available to the public. It will readily be seen that this may be desirable in some cases but not in others. It would thus appear that each case should be considered on its own merits."

17. Excise duties and taxes on sales, important purchases

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

141. Section 8 of the General Convention provides that,

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

Section 6 of the Agreement with Switzerland establishes a similar rule.[1/]

142. In the case of the United States, the Headquarters Agreement does not deal with the exemption of the United Nations from excise duties and sales taxes. All exemptions are therefore dependent on enactments of either the federal, state or city authorities, except in so far as the terms of the Charter and of the General Convention represent obligations upon the United States under international law. In 1958 the question of the tax position of the United Nations was discussed in the Fifth Committee with particular relation to United States taxes affecting the United Nations. Both the United States representative and the Legal Counsel, speaking on behalf of the Secretary-General, made statements at the 704th meeting of the Fifth Committee during the thirteenth session of the General Assembly; in the light of those statements it was decided that further consideration should be deferred until the Secretariat and the United States Mission had had an opportunity to discuss outstanding issues. Accordingly, the Legal Counsel wrote[2/] to the Legal Adviser of the United States Mission on 10 April 1959, inter alia listing the various taxes applicable to the United Nations.

1/ In the case of the economic commissions only the ECAFE Agreement contains a specific provision. Section 9 of that Agreement states: "The United Nations shall be exempt from excise duties, sales, and luxury taxes and all other indirect taxes when it is making important purchases for official use by the ECAFE of property on which such duties or taxes are normally chargeable. However, the ECAFE will not as a general rule claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, and cannot be identified separately from the sales price."

2/ This letter, and that sent by the Secretary-General on 9 September 1959, wh is quoted below, effectively reproduce the substance of the statement made the Legal Counsel at the 704th meeting of the Fifth Committee.

"... I should like to refer to our several discussions of the numerous questions relating to the application to the United Nations of excise taxes in the United States as raised by the Fifth Committee of the General Assembly at its 667th meeting. You will recall that, in accordance with statements which each of us made to the Committee at its 704th meeting, it was decided that the Advisory Committee and General Assembly consideration of these questions might best be deferred pending discussions to take place between the Secretariat and the United States Mission to the United Nations.

"I have had prepared a list of various taxes affecting the United Nations in the United States, which does not purport, at least in any technical sense, to be complete but which might nevertheless serve informally as agenda items for our discussions. Accordingly, I should now like to suggest that you examine the enclosed list, make any additions or other proposals which you wish, and that we then arrange a meeting with a view to determining whether we cannot arrive at a common understanding as to the conclusions which could be reported, or the possible legal measures suggested, to the General Assembly...

"Meanwhile, the following observations may be of interest. Tax provisions are listed either because of the specific interest in their application shown by members of the Fifth Committee or because they may have application to the United Nations in ways which might have been precluded by a United States accession to the Convention on the Privileges and Immunities of the United Nations. In a number of cases certain of the existing exemptions are noted, not because they have any direct bearing on the United Nations but because of their interest in indicating the policy of the tax or the degree of scope available to United States authorities in adjusting the application of the tax.

"As pointed out in my statement to the Fifth Committee, the most appropriate legal technique for modifying the incidence on the United Nations of any given tax will vary according to its nature. Subject to settlement of any anterior policy considerations, agreed action could conceivably be taken by any of a number of means: simply by United States accession to the Convention, by amendment to the Headquarters agreement, by Headquarters Regulation, by state or federal legislation, or (most conveniently perhaps, in some cases) by common understanding, official interpretation or written ruling. I take it that it will be our natural desire to seek the most effective measures appropriate to the needs of the Organization by the simplest available legal devices. In this connexion you will recall that just prior to these points being raised in the Fifth Committee, the Secretary-General had asked me to take up with your Mission the particular question of the importation of liquor by the United Nations for service in the Delegates' bars as an official use of the Organization. This would, of course, need to be done under proper safeguards and at appropriate prices, as has now been suggested by some representatives on the Fifth Committee. Under none of the taxes set out in the enclosure, however, has any attempt been made to suggest the type of act which could or should be taken; this is on the theory that the list offers agenda items and not a brief to argue points in advance of our discussions..."

"INDICENCE OF TAXATION IN THE UNITED STATES
AFFECTING THE UNITED NATIONS

I. Excise Taxes

A. Federal

1. Manufacturers excise taxes on articles sold by manufacturer, producer or importer (Chapter 32, Internal Revenue Code of 1954; Part II, Excise Tax Technical Changes Act of 1958, 72 Stat. 1275).

   (a) Relevant examples:

   Motor vehicles, parts and accessories, tires and tubes; gasoline and lubricating oils; various household-type appliances, electric light bulbs; photographic equipment, parts and accessories; business machines.

   (b) Present exemptions:

   (i) Statute (Excise Tax Technical Charges Act, Section 4221): sale for export to a state or local government, or to a nonprofit educational organization for its exclusive use.

   (ii) Revenue Ruling: accredited diplomatic personnel, irrespective of treaty, who purchase from the manufacturer (Rev. Rul. 296, 1953-2 CB 325).

2. Retailers excise taxes

   (a) Application: 10 per cent, of sales price of numerous types of articles sold by United Nations Gift Centre or Souvenir Shop (Chapter 31, 1954 Internal Revenue Code; Part I, Excise Tax Technical Changes Act).

   (b) Present exemptions.

   (i) As under 1 (b) (i) above, as to the vendee.

   (ii) As under 1 (b) (ii) above, for accredited diplomatic personnel on purchases from a retailer otherwise taxed.

   (iii) No exemption as to sales by United States (or by a United States agency unless a statute specifically exempts it).

3. Alcohol

(a) Imposed on all distilled spirits and compounds (including perfumes) and wines and wine compounds in bond or produced or imported, or beer produced and removed or imported, within the United States (1954 Internal Revenue Code Chapter 51 as amended by Excise Tax Technical Changes Act)

(b) Exemptions

(i) Withdrawal for use of United States (Internal Revenue Code, Section 7510, 26 CFR 225.890).

(ii) Withdrawal for export (Excise Tax Technical Changes Act, Sections 5053, 5062, 5247; 'exportation' defined: 26 CFR 252.18).

(iii) Miscellaneous technical, manufacturing and non-beverage exemptions (see, e.g. Excise Tax Technical Changes Act, Sections 5003, 5214).

4. Occupational tax: retail dealers in liquors and beer (Excise Tax Technical Changes Act, Section 5121: $54 per year - including organizations selling to their members: 26 CFR 194.37).

5. Tobacco

(a) Imposed on tobacco (at 10¢ per pound), cigars (at 75¢ to $20 per thousand), cigarettes (at $3.50 - $8.40 per thousand) etc. manufactured in or imported into the United States (Excise Tax Technical Changes Act, Section 5701, 26 CFR 270.60-62), the manufacturer or importer being liable for the taxes (Excise Tax Technical Changes Act, Section 5703), and each affixing the stamps before removal subject to tax (26 CFR 270.149 and .193, 275.138 and .182).

(b) Exemptions

(i) Shipment for consumption beyond the jurisdiction of the internal revenue laws of the United States (Excise Tax Technical Changes Act, Section 5704).

(ii) Cigars and cigarettes imported by appropriate consular officers or staff for personal or official use (26 CFR 270.196, 275.185).

(iii) Federal agencies and institutions for gratuitous distribution in the United States (26 CFR 295.50).

6. Documentary stamp taxes. Internal Revenue Code, Chapter 34 as amended by Excise Tax Technical Changes Act.

(a) Imposition (principally affecting Joint Staff Pension Fund).

(i) Sales and transfers of capital stock (4 to 8¢ per $100. of actual share value: Section 4321) and certificates of indebtedness (at 11¢ on transfer: Sections 4311 and 4331).

(ii) Specific exemptions: fiduciaries and custodians (Section 4342), transfers by operation of law (Section 4343).

(iii) Policies and indemnity bonds issued by foreign insurers (at 1 to 4¢ per premium dollar: Section 4371).

(iv) Specific exemptions: policies signed or countersigned by agent of insurer in the state where insurer is authorized to do business (Section 4373).

(b) General exemptions.

(i) Instruments issued by federal, foreign, state or local government and certain domestic associations (Section 4382).

(ii) United States and its agencies are not liable for stamp tax on instruments to which it is a party, but tax may be assessed against any other party liable therefor (Section 4384).

(iii) Diplomatic personnel are exempted from documentary stamp taxes as taxes the legal incidence of which would otherwise fall to them (Rev. Rul. 296, 1953-2 CE 325).

B. New York State

1. Exemption: United Nations not required to pay 'excise and sales taxes imposed by the State upon the sale of tangible personal property' acquired for its official use New York Tax Law, Section 5-e).

2. Deferred applications: exemption inoperative until U.S. shall accede to Convention on Privileges and Immunities of United Nations (Laws 1948, e.745, Section 2).

3. State taxes on such sales of tangible personal property.

(a) Gasoline tax:

(i) Imposition: on excise tax of 6¢ per gallon on sales within the State by any distributor (New York Tax Law, Section 284); payable by the distributor but borne by the purchaser (Section 289-c).

(ii) Exemption: Sales 'under circumstances which preclude the collection of such tax by reason of the United States Constitution and of laws of the United States enacted pursuant thereto.' (Section 284); consular officers (1938, Op. Atty. Gen. 336); state, municipalities, public bodies, federal instrumentalities (various Attorney General opinions).

(b) Cigarette tax:

(i) Imposition:

(1) 'A tax on all cigarettes possessed in the State by any person for sale', whereby the 'sales of cigarettes are subject to tax' and the stamp-affixing agents as 'liable as taxpayers' (New York Tax Law, Section 471) at 5¢ per pack; and other tobacco products at 15% of wholesale price.

(2) Alternative use tax 'on all cigarettes used in the State by any person' (Section 471-b).

(ii) Exemption: sales to United States or 'under circumstances that this State is without power to impose such tax' (Section 471).

4. State taxes otherwise exempted.

(a) Alcoholic beverage tax (New York Tax Law Section 424): subject to refund (under Section 434) to the United Nations pursuant to opinion of Counsel of State Department of Taxation and Finance dated 19 August 1952 as to alcoholic beverages sold in restricted bars and restaurants in the Headquarters District, on the ground that such sales are for official purposes and the Organization is exempt from taxes incurred in connexion with its official functions.

(b) Alcoholic beverage retail licence fees (New York Alcoholic Beverage Control Law, Sections 56, 66, 83): exemption established by Opinion of Attorney General of 26 October 1951 on the basis of Article 105 of the Charter.

5. Additional State tax not specifically exempted: stock transfer tax

(a) Imposition: on all sales or transfers of stock, at one to 4¢ per share (New York Tax Law, Section 270).

(b) Exemptions: technical exemptions similar to the federal (Sections 270, 270-b, 270-c).

C. New York City

1. Cigarettes.

(a) Imposition on sale and use in the City in terms similar to the State cigarette tax, supra, (New York City Administrative Code, Section D 46-2.0).

2. Cigars and tobacco: new: Presumably in preparation.

3. Retail liquor licensee tax.

(a) Imposition: on privilege of licensee of State Liquor Authority to sell liquor, wine or beer at retail within the City, annually, at 25% of State licence fees (Administrative Code, Section 46-2.0).

(b) Exemption: United Nations (Administrative Code, Section F 46-3.0, para. 3).

II. Customs Duties

A. Imposition: 'Except as otherwise specially provided...upon all articles when imported from any foreign country into the United States' (Tariff Act of 1930, 19 USC 1001): Dutiable list being too extensive for specific examination, the following can be noted:

1. Tobacco products (Schedule 6).

2. Spirits, wine and other beverage (Schedule 8).

3. Gift Centre or Souvenir Shop merchandise in general.

B. Exemptions

1. United Nations

(a) Statute: 'As concerns customs duties and internal revenue taxes imposed upon or by reason of importation' the exemptions 'accorded under similar circumstances to foreign governments.' (International Organizations Immunities Act Section 2d, 22 USC 288a (d)).

(b) Regulations: The statutory 'free entry privileges' are further defined as covering 'property' of the Organization 'upon the receipt in each instance of the Department's instructions which will be issued only upon the request of the Department of State.' (19 CFR 10.30a(b).)

(c) Practice: Certification by the United Nations for the purposes of the departmental instruction required in the above regulation has always extended to alcoholic beverages under the phrase 'for the official use of the United Nations', but the Organization has limited its application of this term to use in its official entertainment.

(d) Ruling: The exemption of the Organization does not include articles manufactured abroad, imported by a domestic corporation and sold to the United Nations, the former being liable for the excise tax on the sale (Special Ruling of 17 February 1955, CCH Standard Federal Tax Reporter, Supplemental Volume, paragraph 48, 274.)

2. Permanent Representatives of Member States and agreed resident members of their staffs (per Headquarters Agreement, Section 15): 'The privileges of importing without entry and free of duty and internal revenue tax articles for their personal or family use' (19 CFR 10.30b (b).

3. Special merchandising situations (e.g. United Nations Gift Centre, Souvenir Shop).

a. Exemption from customs duties or internal revenue taxes on importation does not extend to importation by an entity not itself forming part of the United Nations (e.g. United Nations Cooperative, WFUNA).

b. United Nations has not had occasion to claim the privilege on importation by the Organization of its property if intended for resale."

143. This letter was followed by one dated 9 September 1959, from the Secretary-General to the Permanent Representative of the United States.

"...I have the honour to refer to the 667th meeting of the Fifth Committee of the General Assembly in which a variety of questions were raised concerning the application to the United Nations or in the United Nations Headquarters District of United States excise taxes or, in certain situations, customs duties. It will be recalled that, in accordance with statements made to the Committee by the representative of the Secretary-General and the representative of the United States at the 704th meeting, it was decided that the legal, financial and policy questions involved should first be the subject

of discussions between the United Nations Secretariat and the United States Mission to the United Nations, prior to the submission of recommendation to the Advisory Committee on Administrative and Budgetary Questions and the General Assembly.

"After preliminary study by both parties, all specific points raised, and the incidence in general of United States excise taxes on the United Nations, were thoroughly examined in the course of joint meetings held at the United Nations on 11 and 12 June 1959. The following brief survey will summarize the problems reviewed and the conclusions I have reached as a result of this review. It has seemed best to submit my views on all points to you in the first instance, in order that any report made to the Advisory Committee may take into account any conclusions, legal problems, or practical prospects which their consideration by your Government may permit.

"A. Manufacturers excise taxes

"1. Federal manufacturers excise taxes apply to a considerable variety of articles regularly purchased by the United Nations (Chapter 32, Internal Revenue Code of 1954; Part II, Excise Tax Technical Changes Act of 1958, 72 Stat. 1275). Examples would be motor vehicles, parts and accessories, tires and tubes; gasoline and lubricating oils; certain appliances and electric light bulbs; photographic equipment; and business machines (including rentals). As a technical matter there is no specific legislative provision for the exemption of international organizations (apart from the general abatement of the tax on all sales for export) and, since the tax is assessed against the manufacturer and thereafter forms a part of the price to be paid, it would not be automatically exempted either by regulation operative within the Headquarters District under the authority of Section 8 of the Headquarters Agreement between the United Nations and the United States of America or by United States accession to the Convention on the Privileges and Immunities of the United Nations, Section 7 of which exempts the Organization from all direct taxes.

"2. On the other hand, it is my conclusion from the joint discussions that there is a strong case for urging some appropriate form of action to extend the exemption to the United Nations. The following reasons seem persuasive:

"(a) In determining the details of the application of Article 105 of the Charter, as authorized by that article, the General Assembly has established the policy that, while the United Nations will not, as a general rule, claim exemption from excise and sales taxes which form part of the price to be paid, nevertheless, when it is making important purchases for official use of property on which such taxes have been charged, Members will whenever possible, make appropriate administrative arrangements for the remission or return of the amount of the tax. This principle has been set out in Section 8 of the Convention on the Privileges and Immunities of the United Nations and has become a regular element in the customary practice of the States parties.

At the time of the adoption by the General Assembly of this Convention there already existed United States legislation which information placed before the General Assembly described as containing '95 per cent', of the substance of the Convention. Unfortunately, however, the International Organizations Immunities Act (59 Stat. 669) has no provision equivalent to Section 8 of the Convention. Considering the number and value of important purchases which the Organization must make in the country of its Headquarters, this omission is of consequence. Pending accession by the United States to the Convention, it therefore seems desirable that means be found for the host Government to be placed on the same footing in respect of the remission of excise taxes as other States Members. The United Nations attaches great importance to the principle of remission because it is an equitable one designed to equalize the procurement costs of the Organization throughout the world, and the consequent charges upon Members.

"(b) Diplomatic personnel of the Permanent Missions of Member States to the United Nations who purchase from the manufacturer are exempted from the payment of these federal excise taxes. (Rev. Rul. 296, 1953-2 CB 325). It would not seem logical for the United Nations to pay United States taxes, the financial burden of which falls on all Members, where the same purchases would not be taxed if made by a resident representative of a Member, and that by reason of his accreditation to the United Nations. (It may also be permissible to observe that the existence of the revenue ruling testifies to the power to exempt such transactions.)

"B. Retailers excise taxes

"3. These taxes are assessed against the retailer on the sales price of a variety of articles, some of which are sold by the United Nations Gift Centre or Souvenir Shop (Chapter 31, 1954 IRC; Part I, Excise Tax Technical Changes Act). Diplomatic staff of missions to the United Nations enjoy the exemption under the same ruling as that cited immediately above, but there is no exemption for sales by the United Nations. The Legal Counsel of the United Nations believes that in certain circumstances a regulation authorized by Section 8 of the Headquarters Agreement, being operative within the Headquarters District where such transactions take place, could bring about the exemption of these taxes. On the other hand, representatives of the United States have pointed out that a large majority of the purchasers are members of the American public who themselves have no claim to the exemption of a tax they would pay on a similar purchase made outside of the Headquarters District, while the diplomatic staff of missions can already obtain the exemption when purchasing here; and that a question of public relations and of competition with local merchandising might at some point arise. In reply to these considerations some representatives on the Fifth Committee have felt that an element of principle militating against tax collection on behalf of one Member State within the Headquarters District was involved.

"4. I have reached the conclusion that for the present no recommendation should be made as to exemption of retailers excise taxes. This view is based not only on the difficulty of weighing the competing considerations mentioned in paragraph 3 above but also and specially because the United Nations still has under review the question whether these services in the public areas of the General Assembly building should be operated by the Organization itself or by another entity, as well as the degree of emphasis to be placed on the various functions fulfilled by these services (whether revenue, the introduction of products and handicrafts from less developed areas of the world, or other official considerations). The same conclusion and reasoning apply to customs duties on articles imported for sale by the Gift Centre or Souvenir Shop.

"C. Sale of alcoholic beverages within the Headquarters

"5. When the United Nations purchases alcoholic beverages on the United States market there has already attached to them an internal revenue tax, and no relevant exemption is provided by statute (Chapter 51, Internal Revenue Code of 1954, as amended by Excise Tax Technical Changes Act of 1958). On the other hand, when the Organization imports such supplies for its 'official use', it is exempted from 'customs duties and internal revenue taxes imposed upon or by reason of importation' (International Organizations Immunities Act, Section 2 (d); 19 C.F.R. 10.30). It has never been doubted that the official entertainment of the United Nations, such as a reception given by the Secretary-General, constitutes official use, and for this purpose the Organization imports alcoholic beverages free of duty, certifying, in accordance with a long-standing arrangement with the United States, that they are for official use. The question was posed in the Fifth Committee, however, as to why the United Nations was not entitled to the same benefits with regard to the alcoholic beverages which it uses in operating the bars in the Delegates' Lounges and the Delegates' Dining Room. A resale by the United Nations is, of course, involved, but this takes place in restricted facilities operated for the convenience of delegations whose resident members are themselves entitled to customs privileges.

"6. I have concluded on the basis of the joint discussions that the existing arrangement could and should be extended to cover the importation by the United Nations of alcoholic beverages which it uses for the operation of these official facilities, and that the United States should therefore be asked to acquiesce in the Organization's henceforward certifying such imports as being for its official use. The following arguments and advantages give strong support to this procedure. The facilities in question were installed in the United Nations Headquarters District as an essential service to which delegations rightly consider themselves entitled, and one which greatly assists them in the convenient conduct of their work within the Headquarters. Their operation is therefore in name and in fact an official use by the United Nations. The installations are not only confined to the Headquarters District but

also are within the restricted delegates area. While it is not claimed that members of the public do not have an opportunity, within relatively narrow limitations and close controls, to use these facilities, there is no question but that the great majority of purchasers of alcoholic beverages are delegates and others in official relation with the Organization. Security guards maintain a strict surveillance at all doors giving entry to the delegates area in order to prevent public access; visitors to the bar must be guests of delegates; those to the Dining Room must either be guests or specifically admitted on visits officially authorized by the United Nations. Guards also maintain a watch within the reserved areas as well as at the entrances.

"(b) The recommended procedure would have the advantage of merely extending an existing arrangement - by which the United Nations already certifies to the Department of State the official use intended for the supplies it imports - to this additional branch of its operations. Because the proposal would be confined to imported supplies within Section 2 (d) of the International Organizations Immunities Act, no exemption would now be requested from the excise taxes on domestic production of alcoholic beverages, which presumably would require legislative action.

"(c) The result would be conducive to the achievement of a basic principle of the General Assembly in tax matters, that of equity among the Member States. The sale of alcoholic beverages in the delegates' service facilities would continue at present prices, the more so as the Organization would neither desire to establish a competitive position disadvantageous to similar commercial facilities in the vicinity nor to increase its own security requirements by tempting members of the general public to seek an entry. The equivalent of the present United States taxes would therefore, as an incidental revenue advantage, rebound to the benefit of all Members proportionately to their contribution to the expenses of the Organization and not, as some representatives have pointed out, to the host Government alone by virtue solely of the Headquarters' happening to be on its territory.

"(d) The procedure would to a considerable extent eliminate a legal anomaly, the State and federal positions having been heretofore inconsistent. On the basis of its Attorney General's opinion of 26 October 1951, firmly recognizing the official nature of these facilities, the State of New York has for many years remitted to the Organization the State taxes imposed upon the alcoholic beverage sold in the Headquarters District. For the same reason the State does not apply its licensing laws to these facilities nor New York City its sales tax on the transactions here.

"(e) The result would likewise be generally consistent with the procedure at UNESCO Headquarters in Paris, where the French Government has authorized the tax-free resale of domestic alcoholic beverages in the restaurant, cafeteria and bars operated by UNESCO within its Headquarters and restricted to UNESCO and other international organization personnel, delegates and other representatives of organizations in official relation with UNESCO.

"(f) The arrangement would simplify and perfect the control and audit procedures by which the United Nations at present assures that no portion of its liquor stocks departs from authorized channels. Invoices are kept at Headquarters in such form that an audit can at any time establish the amounts purchased, the amount consumed, and the amounts on hand. As a special measure under Section 9 of the Headquarters Agreement, the entry of New York State alcoholic beverage control inspectors into the Headquarters District is invited in order that they too may verify that there is no diversion of the supplies on which the State reimburses its taxes. Heretofore, however, the Organization has had to maintain two separate stocks, that for its official functions and therefore exempted from federal duties on the one hand, and on the other hand that for resale in its Delegates' bars and restaurant. This has resulted not only in administrative complexity but also in the necessity on the part of the delegations, when giving receptions at Headquarters through the use of the United Nations' catering facilities, to deliver to the United Nations their own duty-free liquor supplies and later pick up the left-overs. The new procedure would centralize the United Nations stocks and therefore tighten controls, to the advantage both of the Organization and presumably of the host Government as well. In substituting a single bulk purchaser and a simple billing transaction for the present large number of purchasers, and eliminating the physical movement back and forth of duty-free supplies (with the present risk of losses or diversions in transit), the new procedure would offer the host Government a stricter enforcement situation without any corresponding reduction in revenue, since the present large number of Delegation purchasers enjoy the customs exemption in any case.

"D. Tobacco

"7. The tax position on cigars, cigarettes and tobacco is not dissimilar to that of alcoholic beverages, as stated in paragraph 5 above (Internal Revenue Code of 1954, Chapter 52, as amended by Excise Tax Technical Changes Act of 1958). A number of key factual elements do differ, however. Sales in the Headquarters District are not confined to the delegates' facilities but are in large proportion also made at the counter at the entrance to the general staff cafeteria. Thus, either the exemption would have to extend to any sales within the Headquarters District, or, if confined to the delegates' facilities, would require the Organization to maintain and control two separate stocks of tobacco products. There is also a difference in relation to the argument, very relevant in the case of alcoholic beverages, that members of Missions to the United Nations are entitled to the duty-free privilege in any case and ought also to be able to enjoy it at the Headquarters of the Organization: cigars and cigarettes are by nature portable and the delegates can carry their own duty-free supplies when they come to the Headquarters. Moreover, if no amending legislation were to be requested, the exemption would apply only to imported tobacco products and therefore the many popular domestic brands of cigarettes would in any case be excluded. I have therefore decided to refrain from making any request looking to a tobacco tax exemption in the Headquarters District at the present time.

"E. Documentary stamp taxes

"8. These taxes are imposed upon the sales and transfers of capital stock and certificates of indebtedness (Internal Revenue Code of 1954, Chapter 34, as amended by Excise Tax Technical Changes Act). They constitute direct taxes on the United Nations, impinging to some extent on the United Nations Treasury and to a considerable extent on the operations of the United Nations Joint Staff Pension Fund. On the basis of the Joint discussions I have concluded that the transactions of the Organization should be exempted from the documentary stamp taxes. If the United States were a party to the Convention on the Privileges and Immunities of the United Nations, the Organization would be exempted by its Section 7 (a), as it is in other States Members of the Organization. The tax constitutes a direct burden on the Organization to the advantage of a single Member. Moreover, the objection stated in paragraph 2 (b) above applies equally to these taxes: it is illogical that the members of Missions should enjoy an exemption by reason of their accreditation to the United Nations when that Organization is denied the exemption on its own official transactions.

"F. Conclusion

"9. I should be grateful to receive from you an indication of the action which your Government might contemplate on each of the above proposals in order that I may report to the Advisory Committee on Administrative and Budgetary Questions, which in turn will wish to report to the fourteenth session of the General Assembly in accordance with the procedure suggested in the 704th meeting of the Fifth Committee..."

144. At the fourteenth session of the General Assembly the Legal Counsel informed the Fifth Committee of the steps taken; in 1960 and in 1962 he spoke again, noting that, although negotiations had been conducted in a spirit of mutual goodwill no substantive results had been achieved.3/ Except that the United Nations has now been accorded exemption from New York State and City tobacco tax, the position in regard to excise and similar taxes in the United States thus remains as stated in the two letters quoted above.

145. The position in other countries has, in general, been less complicated than in the United States and has usually involved the application of a single tax in respect of a particular transaction. In Switzerland all articles imported for official use are exempt from turnover taxes and statistical charges; in addition the United Nations is exempt from stamp duty on official documents and from taxes on its financial assets or on any income derived from them.

3/ The statements by the Legal Counsel were made at the 748th, 778th and 982nd meetings of the Fifth Committee at the fourteenth, fifteenth and seventeenth sessions of the General Assembly respectively.

(b) Important purchases

146. The question of whether particular purchases are "important" within the meaning of section 8 of the General Convention has usually been determined by reference either to the quantity of goods purchased (or on occasions, to the fact that the goods were purchased regularly, thus forming a large purchase in the aggregate) or to the large amount paid. In 1953 the Office of Legal Affairs summarized its interpretation in a memorandum sent to a United Nations subsidiary organ, in the following terms:

> "... Purchases may be said to be important when they are made on a recurring basis or involve considerable quantities of goods, commodities or materials. Moreover, any item in question may well constitute an 'important' purchase where the expenditure to be made is considerable. Further, in all such cases weight is to be attached to the intent of the General Assembly in unanimously adopting the section, together with the rest of the Convention. Thus it was felt on the one hand, that the Organization should not seek exemption with regard to purchases which were both irregular and of minor importance. On the other hand, it was intended that Section 8 should protect the assets of the Organization from such taxes whose incidence would be specially heavy and constitute an undue burden upon it."

147. A Special Fund project was required to pay customs duties and taxes on gasoline used for the operation of its vehicles and other equipment. The Office of Legal Affairs advised that:

> "... Since the vehicles, generators and pumps appear, according to the letter of the Project Manager, to be operated for the project, the gasoline imported for their operation would obviously be for the official use of the Special Fund and therefore of the United Nations. It should be exempt from customs duties and taxes levied on it. If the amount of the tax figures on the invoice separately from the price, it is a "direct tax' on the Special Fund within the meaning of Section 7 (a) of the Convention. If, on the other hand, the tax forms a part of the price to be paid, the Special Fund would be entitled to claim remission or return (or exemption) in virtue of section 8 of the Convention. Since the Project consumes a large amount of gasoline in proportion to its scope, and since the base price is estimated to total $14,000-, with excise taxes at $15,000,-, there can be little doubt that the requirement that the purchases be 'important' is fully met."

In Switzerland a purchase is regarded as "important" if the total purchase price is over 100 Swiss francs.

(c) Remission or return of taxes paid

148. A number of arrangements have been made, in some cases culminating in legislative or administrative enactments on the part of national authorities, to enable the United Nations to obtain the remission or return of taxes paid in accordance with section 8 of the General Convention. Thus the Canadian Order in Council, P.C. 3766 of 25 August 1948, for example, grants authority

> "for the refund or remission of sales and excise taxes imposed under the Excise Tax Act on goods supplied to, and services performed, in Canada for the United Nations when the charges for such goods and services are made directly to the United Nations and not to individuals."

149. In the case of the United Kingdom, the United Nations was notified in 1953 that certain government departments had been specially authorized to supply goods required by the United Nations and the specialized agencies for official use, without the addition of purchase tax to the selling price.

150. In the case of the United Nations Office at Geneva, the procedures adopted were described by the Deputy-Director of that Office as follows:

> "... The arrangement we have with the Swiss authorities is a simple one. In the first instance we pay the tax (impôt sur le chiffre d'affaires) where it is included in the purchase price charged in the invoice, or, shown as a separate item therein. Periodically, about once each month, we claim reimbursement of the tax from the Swiss authorities by sending them copies of all our payment vouchers where tax has been paid. If the tax has not been shown as a separate item in the invoice, but is known to be included, the Swiss authorities themselves calculate the amount of the tax. In practice, we do not claim refund of the small amount of tax included in purchases of less than 100 Swiss francs.
>
> "Of course, in the direct importation by the United Nations of supplies, etc. for its official use, we do not pay customs duties or the 'impôt sur le chiffre d'affaires'."

151. In an exchange of notes dated 26 November 1954, Lebanon undertook to reimburse UNRWA in respect of all duties and taxes paid for fuels, alcohol and cement. The provision in question reads as follows:

> "1. Les mesures appropriées seront adoptées par le Ministère compétent pour que soient remboursés à l'Office, selon une procédure simplifiée, tous les droits et taxes afférents à la consommation de carburants liquides, d'alcool et de ciment (Article II, Section 8 de la Convention

sur les privileges et immunités des Nations Unies). Au besoin et dans le même esprit, cette réglementation pourra être appliquée à d'autres produits dans le cadre de la Convention.

"2. Les sommes afférentes à la consommation passée desdits produits seront remboursées à l'Office sur la base des pièces comptables nécessaires, dont la plupart ont déjà été déposées auprès des Autorités compétentes."

152. In Presidential Decree No. 698, dated 15 May 1954, the Syrian Government also agreed to grant the United Nations exemption from taxes on inflammable materials on the basis of Section 8 of the General Convention.

CHAPTER III. PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS IN RESPECT OF COMMUNICATION FACILITIES

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

1. Section 9 of the General Convention declares that:

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

Similar articles are contained in other international agreements.[1/]

2. The provisions of section 9 have in general been well observed. It may be noted that in three Latin American countries, Bolivia, El Salvador and Mexico, the United Nations has received the benefit of special postage rates or franchise in respect of official mail posted in those countries. In Bolivia the United Nations Information Centre is allowed free postage within the country. In Mexico the matter is governed by an official decree, published in the "Diario Oficial" No. 19 of 24 September 1963, whereby the Mexican Government granted postal and telegraphic franchise to the organizations participating in the Technical Assistance Board programme for the duration of the Basic Agreement on Technical Assistance between Mexico and the United Nations, signed on 23 July 1963.

3. In El Salvador a similar franking privilege was given in 1961; in the official notification sent by Director-General of Posts express mention was made of the Convention of the Postal Union of the Americas and Spain, under which members of the diplomatic corps in San Salvador of the countries of the Union were entitled to this privilege.

1/ Article III, ECLA Agreement, sections 11-13 ECAFE Agreement, sections 5-6, ECA Agreement. It may be noted that in section 7 of the Agreement with Switzerland the words "in conformity with the International Convention on Telecommunications" are added at the end of the first sentence.

4. The International Telecommunication Convention which was adopted at Atlantic City in 1947 provided that telegrams and telephone calls sent by the United Nations should be treated as though sent by a Government. The assimilation to Government telegrams and telephone calls was made in the following terms:

> "Article 36
>
> "Subject to the provisions of Article 45, Government telegrams shall enjoy priority over other telegrams when priority is requested for them by the sender. Government telephone calls may also be accorded priority, upon specific request and to the extent practicable, over other telephone calls."
>
> Article 45 gives "absolute priority" to "distress calls and messages".

Annex 2, giving a definition of terms used in the Convention, includes the following clause:

> "Government Telegrams and Government Telephone Calls: These are telegrams or telephone calls originating with any of the authorities specified below:
>
> .....
>
> f) the Secretary-General of the United Nations and the Heads of the subsidiary organs of the United Nations."

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

> "to keep up to date the list of the subsidiary organs of the United Nations and to forward to the Members and Associated Members of the Union a copy of this List and to advise them of any modifications therein."

Difficulties arose, however, over the question of which bodies or offices constituted subsidiary organs of the United Nations. Following a refusal to grant governmental treatment to a particular United Nations Information Centre the United Nations wrote to the ITU in 1951, pointing out that Information Centres formed part of the Secretariat and were not subsidiary organs; telegrams and telephone calls made by them were therefore entitled to governmental treatment, as having been made on behalf of the Secretary-General, without being specially listed. In the Buenos Aires Convention, adopted by the ITU in 1952, the earlier definitions clause was amended so as to include under "Government Telegrams and Government Telephone Calls" those sent by:

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

6. However, in the Geneva Convention of 1959 this definition was changed again to refer to telegrams and telephone calls originating with "the Secretary-General of the United Nations; Heads of the principal organs of the United Nations". Nevertheless, apart from this problem of definition, it is believed that United Nations telegrams and telephone calls (unlike those of the specialized agencies) now receive treatment at least as favourable as that given to government telegrams and telephone calls. As regards priority (the only aspect covered expressly in the Telecommunication Convention) it may be noted that, under the provisions of chapter XVII, article 62, paragraph 7, of the Telegraph Regulations, as revised at Geneva in 1959, a special priority, over and above that afforded to Government telegrams, is granted to United Nations telegrams which are sent by the Secretary-General, the President of the Security Council and the General Assembly, and by certain other officials, in connexion with the application of the provisions of Chapters VI, VII and VIII of the United Nations Charter. In addition to receiving priority for its telecommunications on terms at least as favourable as those afforded to Governments, the United Nations has also been granted the benefit of the same rates as are enjoyed by Governments in respect of their intercommunications. Where, in a particular case, no government rate applies in the case of telegrams sent between two countries, the United Nations has accordingly paid the normal rate; it appears that in no case has it paid taxes in respect of its telecommunications.

7. The United Nations is not aware of any acts of censorship being applied by national authorities to its official correspondence and other communications. Questions relating to restrictions on United Nations publications are dealt with in section 16 (a) above.

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

8. As stated in section 10 of the General Convention, the United Nations has the right,

> "..... to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags".

The United Nations has used codes in cases where it considered this advisable. No legal problems appear to have risen from this usage.

9. Although the United Nations has used couriers, the dispatch of communications in bags has been much more frequent; in each case the United Nations has received full diplomatic privileges and immunities. A few incidents have occurred, however, when government officials (usually minor officials, acting in error) have opened United Nations bags. Writing to the Legal Adviser of a United Nations subsidiary organ after an incident in which customs authorities had opened a sealed pouch which was being carried in a United Nations vehicle, the Legal Counsel summarized the legal position as follows:

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

10. In 1962 a Member State granted permission for the establishment of a pouch service between its capital and United Nations Headquarters on the condition, that, in case of doubt, the Government might open the pouch in the presence of a United Nations official. The Government based its position on the ground that it had not signed the General Convention. The United Nations stated that it found the condition unacceptable. It also pointed out that, under the standard Technical Assistance Agreement which the Member State had concluded earlier, the State had agreed to apply the General Convention in respect of technical assistance operations for which the pouch service was required. The Government subsequently withdrew the restriction and granted the United Nations the right to use the diplomatic bag unconditionally.

11. It may be noted that in the case of the economic commissions (other than ECE) the relevant agreements expressly provide that the correspondence which may be sent by courier or in sealed bags includes "publications, documents, still and moving pictures, films and sound recordings".[1]

1/ Section 13 (b) ECAFE Agreement, see also section 6 ECLA Agreement and section 6, ECA Agreement.

20. United Nations postal services

12. The United Nations has entered into special agreements with the United States[1] and with Switzerland[2] regarding the operation of postal facilities in United Nations premises situated in those countries. By and large these agreements have worked smoothly. After the Agreement with the United States had been signed on 28 March 1951, it proved necessary to examine the exact division of functions between the United States Post Office Department and the United Nations Postal Administration with particular reference to the sale and cancellation of stamps for philatelic purposes. The following memorandum was sent by the Office of Legal Affairs to the United Nations Postal Administration in September 1951.

> "..... In your memorandum of 20 August 1951 you have raised the problem of the legal relationship between the United Nations Postal Administration and the United States Post Office Department which operates the United Nations Post Office Station.
>
> Neither the Headquarters Agreement, which authorizes the United Nations to organize 'its own postal service' nor the Postal Agreement itself, which recites the language in its preamble, leaves any doubt that the United Nations Postal Administration, together with the United Nations Post Office Station which forms but one operating element of the former, is a United Nations activity. It is well known that it was for the convenience of both parties that the United States Post Office Department became the agent of the United Nations to operate the United Nations Post Office Station; the Station, however, is not directly incorporated into the Post Office Department but merely provides the same services at the same rates as would any United States Post Office 'having comparable operations'. It could hardly be otherwise since certain essential functions normally pertaining to a national government are retained by the United Nations under the Agreement, in particular the supply of postage stamps, postmarking stamps and, of course, the Post Office Station premises.
>
> On the other hand, it naturally does not follow that the United States Post Office Department, in carrying out the specific functions assigned to it under the Agreement, is subject to detailed control or directions from the United Nations. Section 1 (i) makes clear that the United Nations Post Office Station 'shall be operated by the United States Post Office Department',

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1/ United Nations Treaty Series, vol. 108, p. 231, amended in United Nations Treaty Series, vol. 149, p. 414.

2/ Ibid., vol. 43, p. 320.

while Sections 5 and 6 divide between the parties the responsibility for furnishing the various services and equipment necessary to enable the United States Post Office Department to operate the United Nations Post Office Station".

By the same token, however, it is equally clear that the United States Post Office Department has an obligation to see that its operation of the Post Office Station does not interfere with the operation by the United Nations of a function retained solely by the latter, the maintenance of a separate agency for philatelic purposes. The problem of interpretation raised by the issue of first day covers accordingly seems to derive less from the question of the extent to which the Post Office Department is acting as the agent of the United Nations than from the formula tentatively established by the Agreement for the division of revenues. Where functions which in a national administration would be performed by a single agency are here split between two separate authorities, it is natural and reasonable that every effort should be made by both parties to arrive at a co-operative result which would conform with the basic intent of the Postal Agreement. In the matter of first day covers both their preparation and the cancellation of the stamps would normally be performed by the same authority. Since first day covers represent purely philatelic sales, it follows from the plain language of the Agreement and the intent of all governments represented in the General Assembly including the United States, that the revenue from all first day covers not posted like ordinary mail matter is to be retained by the United Nations for its own use. Moreover, both the broad language of Section 3*

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* "Section 3, Sale of United Nations Postage Stamps: (i) The United Nations Post Office Section shall sell only United Nations postage stamps which shall be provided by the United Nations free of charge in such quantities as may be necessary to fulfil all reasonable needs of the United Nations Post Office Station. All revenue derived from such sales of United Nations postage stamps and from other services rendered by the United Nations Post Office Station shall be retained by the United States Post Office Department as full and complete compensation for performance of its obligations under the terms of this Agreement, except, however, that the United States Post Office Department shall be reimbursed for performance of any postal services resulting from use of United Nations postage stamps sold for philatelic purposes under the provisions of paragraph (ii) of this section which are used as postage on mail matter posted at the United Nations Post Office Station by being paid an amount equal to the face value of any such stamps so used as postage.

(ii) The United Nations may maintain a separate agency for the sale of United Nations postage stamps for philatelic purposes in response to orders received by mail. Subject to the provisions of paragraph (i) of this section all revenue derived from such philatelic sales of United Nations postage stamps shall be retained by the United Nations for its own use."

of the Agreement and the entire documentary background of the Agreement makes clear that the postal services entitling the United States Post Office Department to reimbursement of the value of 'postage on mail matter posted at the United Nations Post Office Station' did not include incidental post services but only the complete services involved in the receipt, transmission and delivery of mail matter so posted.

Applying these considerations to the problem of the act of cancellation of stamps on first day covers which are then delivered otherwise than by posting at the United Nations Post Office Station, it seems clear that this function could be performed by either party without any inconsistency with the terms of the Agreement. Since cancellation in this case is merely ancillary to the philatelic purpose of preparing and selling a first day cover, it would be normal to think that the Post Office Department would prefer to leave it to the United Nations philatelic agency to perform that labour - the more so because the revenue accrues to the United Nations. If, however, as a matter of operational preference, the Post Office Department wishes to accept the onus of carrying out the cancellation, this would not seem in any way to contradict the terms of the Agreement. By contrast, it would clearly contradict the Agreement if the Post Office Department were to ask for the operational advantage of retaining sole control of cancellation and at the same time claiming the purely philatelic revenues from first day cover stamps so cancelled on envelopes which are not then posted.

It does not seem reasonable to suppose that the United States Government will insist on this last position when the formula for the division of revenue was made so public an element of the terms which permitted the Agreement to be concluded in its present form. The history of the preparation of the Agreement is such that the United States is clearly party to the understandings of the General Assembly as to philatelic revenue, and United States representatives were careful to emphasize the fact that the revenue formula was worked out subject to adjustment in the course of practical experience...."

13. After discussions with the United States Post Office Department, section 3 (ii) of the Agreement was amended[3/] by the deletion of the words "in response to orders received by mail".

14. Under the Agreement with Switzerland, the United Nations agrees to use exclusively Swiss postage stamps for the statutory franking of postal dispatches sent by the Geneva Office. The Swiss Postal Administration issues special postage stamps (timbres de service) for use by the Geneva Office, staff members and

3/ Ibid., vol. 149, p. 414.

visitors. United Nations stamps as such are sold solely for non-franking purposes. The Swiss postal authorities cede to the United Nations 50 per cent of the net proceeds obtained from the sale of stamps to private persons for philatelic purposes.

15. Special postal arrangements have been made in respect of mail sent to or by United Nations peace-keeping forces. Paragraph 31 of the UNEF Agreement provides as follows:

> "31. The Government of Egypt recognizes the right of the Force to make arrangements through its own facilities for the processing and transport of private mail addressed to or emanating from members of the Force. The Government of Egypt will be informed of the nature of such arrangements. No interference shall take place with, and no censorship shall be applied to, the mail of the Force by the Government of Egypt. In the event postal arrangements applying to private mail of members of the Force are extended to operations involving transfer of currency, or transport of packages or parcels from Egypt, the conditions under which such operations shall be conducted in Egypt will be agreed upon between the Government of Egypt and the Commander."

An Agreement was also made with Lebanon regarding the establishment of a UNEF Base Post Office at Beirut.

16. Provisions similar to the paragraph 31 of the UNEF Agreement were included in the Agreements relating to ONUC and UNFICYP.[4/]

4/ Paragraph 35 of the ONUC Agreement, ibid., vol. 414, p. 245, and paragraph 31 of the UNFICYP Agreement, ibid., vol. 492, p. 74.

21. United Nations Radio Administration

17. A number of agreements entered into by the United Nations make provision for the operation of a United Nations radio system. The Headquarters Agreement regulates the matter in some detail.

"Section 4. (a) The United Nations may establish and operate in the headquarters district:

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

(2) one point-to-point circuit between the headquarters district and the office of the United Nations in Geneva (using single sideband equipment) to be used exclusively for the exchange of broadcasting programs and inter-office communications;

(3) low power, micro-wave, low or medium frequency facilities for communication within headquarters buildings only, or such other buildings as may temporarily be used by the United Nations;

(4) facilities for point-to-point communications to the same extent and subject to the same conditions as permitted under applicable rules and regulations for amateur operators in the United States, except that such rules and regulations shall not be applied in a manner inconsistent with the inviolability of the headquarters district provided by section 9 (a);

(5) such other radio facilities as may be specified by supplemental agreement between the United Nations and the appropriate American authorities.

(b) The United Nations shall make arrangements for the operation of the services referred to in this section with the International Telecommunication Union, the appropriate agencies of the Government of the United States and the appropriate agencies of other affected Governments with regard to all frequencies and similar matters.

(c) The facilities provided for in this section may, to the extent necessary for efficient operation, be established and operated outside the headquarters district. The appropriate American authorities will, on request of the United Nations, make arrangements, on such terms and in such manner as may be agreed upon by supplemental agreement, for the acquisition or use by the United Nations of appropriate premises for such purposes and the inclusion of such premises in the headquarters district."

Similar arrangements have been made with the Swiss Government.[1] Section 14 of the ECAFE Agreement also provides for the operation of telecommunication circuits and of radio facilities.

18. In addition to these provisions contained in general host agreements, arrangements have been made, usually on the basis of an exchange of letters, for the operation of United Nations radio stations in a number of countries around the world. In 1955 an aide-memoire was prepared by the Office of Legal Affairs setting out the essential legal points which needed to be considered before telecommunication operations or negotiations could be undertaken in any given country.

"AIDE MEMOIRE
OF POINTS FOR GUIDANCE IN PREPARING, OR IN INSTRUCTING
UNITED NATIONS REPRESENTATIVES TO NEGOTIATE AGREEMENTS
WITH NATIONAL AUTHORITIES FOR THE INSTALLATION OF
UNITED NATIONS RADIO STATIONS

I. Rights of the United Nations under the International Telecommunication Convention (Buenos Aires 1952)

Under Article 26 of this Convention and in accordance with the provisions of Article XVI of the UN/ITU Agreement annexed thereto, the telecommunication operating services of the UN are entitled to the rights and bound by the obligations of the Convention and the Regulations annexed to it. The ITU recognizes that it is important that the UN shall benefit by the same rights as the members of the Union for operating telecommunication services (Article XVI). The precise arrangements for implementing Article XVI are to be dealt with separately.

The only 'precise arrangement', if it can be called such, which has been made is contained in Resolution No. 26 of the Buenos Aires Telecommunication Conference (1952), in which the ITU decided that in normal circumstances the UN network should not carry the telegraph traffic of the specialized agencies in competition with existing public channels or commercial networks. Such traffic may, however, be carried, in cases of emergency, free or at normal commercial rates.

Thus, as far as the ITU is concerned, the UN has the rights of a member Administration including, as to radio, that of registering the frequencies, for protection against interference, with the International Frequency

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1/ See the Exchange of Letters dated 22 October and 4 November 1946.

Registration Board (IFRB) of the ITU. The UN, however, from the nature of its circumstances, can only operate as an Administration on the territory of a host government (except in rare circumstances such as apply to the present station at Government house, Jerusalem), by virtue of arrangements reached with that Government. In seeking such arrangements with governments the Organization is in a position to invoke strong support for any request based upon its communication needs. Especially - though not exclusively - in political functions (such as truce supervision) it is essential that the United Nations have direct point-to-point contacts which cannot be effectively established (as regards in particular speed, location, and security) by ordinary channels. Such support includes:

(i) Article 105, paragraph 1 of the Charter providing that the 'Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes'.

(ii) Resolutions 240 (III) and 460 (V) of the General Assembly approving the establishment and operation of the UN telecommunications system, including in particular the reaffirmation in the former resolution of the United Nations position as an operating agency in the field of international telecommunications, and calling upon all Member Governments to support at all international telecommunications conferences the requirements of the United Nations for frequencies and services.

(iii) The relevant provisions of the Convention on the Privileges and Immunities of the United Nations as noted under appropriate headings below.

(iv) Precedents relating to the UN network established by bilateral agreements between the UN and other host governments. At the moment the only formal agreements are contained in the Headquarters Agreement between the UN and the USA; in the Agreement for the ECAFE Headquarters in Bangkok (still subject to ratification by the Thai Government), and the exchange of letters with the Government of the Republic of Korea concerning privileges and immunities.

(v) Article 41 of the Telecommunication Convention which permits Administrations 'to make special arrangements on telecommunication matters which do not concern Members and Associate Members (of the ITU) in general'. Such arrangements must not be in conflict with the terms of the Convention and the Regulations as regards harmful interference to the radio services of other countries.

II. Premises and Necessary Privileges

Where technical considerations permit, it is desirable that the United Nations radio station or any part of it be established on existing UN premises. Apart from the advantages of administrative concentration,

this establishes the inviolability of the station and the equipment under Section 3 of the Convention on the Privileges and Immunities of the United Nations. Where any or all of the radio equipment requires installation outside of established UN premises, it is desirable that the installation represent a separate and identifiable unit, even if no more than a radio room, in order that it may be designated as separate UN premises immune from search or entry or other governmental interference under Section 3 of the Convention. Should the Host Government not yet have acceded to the Convention, the terms of Section 3 should be expressly inserted in the Agreement with reference to the radio facilities.

In all cases the equivalent of Section 4 (c) of the Headquarters Agreement should be inserted in the local agreement, even though it is not assumed that facilities will need to be installed outside of the local UN premises. It is necessary that in the event of a needful enlargement of the facilities, the discovery of interference or like technical considerations, the Government be committed in principle to the installation of separate facilities to be operated away from UN offices, to the negotiation of the supplemental agreement necessary to that end, and to giving assistance in obtaining appropriate premises. Provision should also be made for Government guarantee of any tie-lines that may prove necessary between the UN radio facilities and the regular UN premises.

The right to exchange traffic in code or cipher is guaranteed by Section 10 of the Convention, but should be expressly inserted in any arrangement with a government not a party thereto. Similarly, Section 9 provides that no censorship may be applied to the official communications of the UN, but this requires express coverage in the case of a non-party.

III. Traffic

Under Article 1 of the Convention on the Privileges and Immunities of the United Nations the United Nations is a single international personality and it therefore operates its network as a single agency in the telecommunications field. The UN network is accordingly entitled to carry traffic emanating from or destined for all UN organs. Each radio station is therefore a 'UN station' and the local authorities should not regard it as belonging to any single UN subsidiary organ. A representative of the UN should be instructed to make it plain that he negotiates on behalf of the Organization as a whole and as agent of the Secretary-General.

'UN traffic' includes messages concerning United Nations programmes in which the specialized agencies are participating and exchanged between the agencies (or their representatives in the fields) and the appropriate UN organs or the TAB, provided that they are paid for by the UN or TAB.

IV. Communications

Consideration should be given to the desirability or necessity of seeking the right to establish connection and exchange traffic with other stations in the UN network, including the right to act as a relay station. Governments may not, of course, be willing to concede such wide powers in all instances.

In the light of local conditions it may be advisable to secure permission to deal with traffic 'forwarded' from the territory of another administration. The consent of all administrations concerned would have to be obtained.

V. Frequencies

Administrations protect their frequencies by registering them with the IFRB. The Extraordinary Administrative Radio Conference (EABC), Geneva 1951, adopted an opinion (Resolution No. 10) that 'unless it is specifically stipulated otherwise by special arrangements communicated to the Union by the parties concerned', assignments of or notifications of frequencies should be communicated by the Government on whose territory the station is installed. Administrations were invited to adopt this procedure. The host government should be invited to agree that the frequencies to be used by the UN station be notified to the IFRB by the UN.

Where the local use of the frequency spectrum is heavy it may be advisable to get the host government to agree to help in a search for suitable frequencies for the UN station. It may also be necessary to provide some machinery whereby mutual interference can be reported and eliminated.

VI. Security

United Nations representatives negotiating telecommunication arrangements with a host government should be instructed to report back to the Secretary-General promptly for further instructions in the event that the Government proposes that the UN station must comply with any special security measures.'

Paragraphs 29 and 30 of the UNEF Agreement provide as follows:

"29. The Force enjoys the facilities in respect to communications provided in Article III of the Convention on the Privileges and Immunities of the United Nations. The Commander shall have authority to install and operate a radio sending and receiving station or stations to connect at appropriate points and exchange traffic with the United Nations radio network, subject to the provisions of Article 45 of the International Telecommunication Convention relating to harmful interference. The frequencies on which any such station may be operated will be duly communicated by the United Nations

to the appropriate Egyptian authorities and to the International Frequency Registration Board. The right of the Commander is likewise recognized to enjoy the priorities of government telegrams and telephone calls as provided for the United Nations in Article 37 and Annex 3 of the latter Convention and in Article 83 of the Telegraph Regulations annexed thereto.

30. The Force shall also enjoy, within its area of operations, the right of unrestricted communication by radio, telephone, telegraph or any other means, and of establishing the necessary facilities for maintaining such communications within and between premises of the Force, including the laying of cables and land lines and the establishment of fixed and mobile radio sending and receiving stations. It is understood that the telegraph and telephone cables and lines herein referred to will be situated within or directly between the premises of the Force and the area of operations, and that connexion with the Egyptian system of telegraphs and telephones will be made in accordance with arrangements with the appropriate Egyptian authorities." 2/

20. The standard text which has been designed for use in the case of agreements relating to United Nations Administrative Centres is set out below:

"The United Nations shall have the authority to install and operate a radio sending and receiving station or stations to connect at appropriate points and exchange traffic with the United Nations radio network. The United Nations as a telecommunications administration will operate its telecommunications services in accordance with the International Telecommunication Convention and the Regulations annexed thereto. The frequencies used by these stations will be communicated by the United Nations to the Government and to the International Frequency Registration Board."

21. The substance of this text is used in article II, section 4, of the Agreement between the United Nations and Austria regarding the headquarters of the United Nations Industrial Development Organization.

"(a) The United Nations shall for official purposes have the authority to install and operate a radio sending and receiving station or stations to connect at appropriate points and exchange traffic with the United Nations radio network. The United Nations as a telecommunications administration will operate its telecommunications services in accordance with the International Telecommunication Convention and the Regulations

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2/ Similar provisions are contained in paragraphs 35 and 36 of the ONUC Agreement, United Nations Treaty Series, vol. 414, p. 245, and paragraphs 30 and 31 of the UNFICYP Agreement, ibid., vol. 492, p. 74.

annexed thereto. The frequencies used by these stations will be communicated by the United Nations to the Government and to the International Frequency Registration Board.

(b) The Government shall, upon request, grant to the UNIDO for official purposes appropriate radio and other telecommunications facilities in conformity with technical arrangements to be made with the International Telecommunication Union." 3/

22. A different wording is used in the ECA Agreement, section 7 (a) of which provides as follows:

"Section 7. (a) The ECA shall have the authority to install and operate at the Headquarters for its exclusive official use a radio sending and receiving station or stations to exchange traffic with the United Nations radio network, subject to the provisions of Article 45 of the International Telecommunications Convention relating to harmful interference. The frequencies on which any such station may be operated will be agreed between the ECA and the Imperial Telecommunications Board of Ethiopia and will be duly communicated by the ECA to the International Frequency Registration Board."

3/ United Nations Industrial Development Organization, ID/B/6/Add.1, 3 April 1967. The Agreement was signed on 13 April 1967.

CHAPTER IV. PRIVILEGES AND IMMUNITIES OF OFFICIALS

22. Categories of officials to which the provisions of article V and article VII apply

1. Section 17 of article V of the General Convention states:

> "The Secretary-General will specify the categories of officials to which the provisions of this article and article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members." 1/

2. On the basis of a proposal made by the Secretary-General, the General Assembly adopted resolution 76 (1) on 7 December 1946. Entitled "Privileges and Immunities of the Staff of the Secretariat of the United Nations", the resolution,

> "Approves the granting of the privileges and immunities referred to in articles V and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, to all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates.

3. The categories established in resolution 76 (1) have remained unchanged. The Secretary-General has accordingly maintained that the determination made by the General Assembly in that resolution precludes any distinction being drawn (e.g. on grounds of nationality or rank) so as to exclude a given category of staff from the benefit of the privileges and immunities referred to in articles V and VII, except in the case of locally recruited staff employed at hourly rates. In this position the United Nations has enjoyed the understanding and co-operation of practically all Member States. 2/

1/ Section 14 of the Agreement with Switzerland provides that the Secretary-General shall inform the Swiss Federal Council of the names of officials in the same manner as the Governments of Member States.

2/ On questions relating to the attempt of certain Governments to levy taxation on locally-recruited officials, employed at other than hourly rates, see Section 24 (d) below.

4. After the introduction of technical assistance programmes it proved necessary to draw the attention of Governments to the status of technical assistance experts and, in particular, to the fact that although called "experts" as a description of their function, they are not "Experts on Missions for the United Nations" within the meaning of article VI of the General Convention (which expressly envisages experts who are officials), except possibly when employed on short-term contracts. The following circular note was sent by the Secretary-General to all interested Governments on 9 May 1951.

"... I have the honour, at the request of the Technical Assistance Board, to refer to the status of the technical assistance experts who are engaged by the United Nations and by the participating specialized agencies to carry out functions under the expanded programme of technical assistance in accordance with resolution 304 (IV) of the General Assembly.

"With particular reference to article V, section 17 of the Convention on the Privileges and Immunities of the United Nations, I wish to invite your attention to the fact that technical assistance experts recruited by the United Nations fall within the categories of officials heretofore specified by the Secretary-General and approved by the General Assembly in its resolution 76 (I), namely all members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates. Thus, technical assistance experts are engaged on substantially similar terms and serve under the same conditions as other members of the staff. Upon accepting appointment they subscribe to the same oath, as required by the Staff Regulations, as other staff members. They are subject to the authority of the Organization and are responsible to it in the exercise of their functions, and they receive no instructions from any authority external to the Organization. For tax equalization purposes, the gross salary paid to them by the United Nations is subjected, under the Staff Assessment Plan, to direct assessment comparable to national income taxes, in the same manner as the gross salary of any other staff member, as required by resolutions 239 (III) and 359 (IV) of the General Assembly. It will therefore be appreciated that they are entitled to the privileges and immunities of officials of the United Nations provided for by articles V and VII of the Convention on Privileges and Immunities of the United Nations.

"I am also requested by the specialized agencies participating in the technical assistance programme to specify on their behalf, in accordance with Section 18 of the Convention on the Privileges and Immunities of the Specialized Agencies, that technical assistance experts appointed by them are serving as members of their respective staffs and are therefore within the categories of officials to which the provisions of articles VI and VIII of that Convention apply.

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"The names of the technical assistance experts included in the categories of officials of the several participating organizations will from time to time be made known to your Government in accordance with regular practice and as provided by Section 17 of the Convention on the Privileges and Immunities of the United Nations and Section 18 of the Convention on the Privileges and Immunities of the Specialized Agencies.

"Finally, it is understood that short-term experts engaged under such conditions as would differentiate them from members of the staff may qualify not as officials of any of the organizations but either as experts on missions for the United Nations under article VI of the Convention on the Privileges and Immunities of the United Nations or as experts travelling on the business of the specialized agencies. In such cases these experts on missions will be so identified in the appropriate certificate to be issued under the provisions, as the case may be, of Section 26 of the Convention on the Privileges and Immunities of the United Nations or Section 29 of the Convention on the Privileges and Immunities of the Specialized Agencies."

5. Despite the despatch of this letter, Governments have on occasions attempted to impose income tax on the salaries of technical assistance experts on the grounds that these persons were not "officials" within the scope of article V. In the Revised Standard Technical Assistance Agreement reference is made to "officials including technical assistance experts" and to "experts and other officials", in order to emphasize that technical assistance experts are "officials" within the ambit of both the General Convention and the Specialized Agencies Convention.

6. In accordance with the requirement contained in the last sentence of Section 17, that "the names of the officials" included in the categories of officials to which articles V and VII apply "shall from time to time be made known to the Governments of Members", the Secretary-General has prepared annual lists of the United Nations officials concerned. Up to 1956 the list sent to each Member State contained only the names of those officials who were its nationals. Since 1956 the list has included the names of officials of all nationalities. This list is not identical with that furnished by the Secretary-General to the Fifth Committee for budgetary purposes each year. The Secretariat has been unable, owing to the administrative difficulties involved, to include in the lists prepared in pursuance of Section 17 the names of the locally engaged employees of all field offices; the host Government or Governments concerned have been separately informed of the names of such staff. In the case of UNRWA, which employs a large locally recruited staff, special lists are prepared and sent to each of the Governments in whose territor UNRWA operates.

7. The notifications contained in the lists sent to Member States do not constitute the legal basis or condition for application of the Convention. If this were to be the case it would be impossible, for example, for an official to receive the benefit of articles V and VI if his contract began just after a list had been compiled and ended before the next one were issued, or even if he were to change duty station in the meantime. The parties to the General Convention are bound to apply its terms in all cases without any such precondition: the annual lists merely constitute an administrative device to assist in the practical application of the Convention.

23. Immunity of officials in respect of official acts

8. Section 18 of the General Convention provides that officials of the United Nations shall:

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

The same provision is contained in Section 15 (b) of the Agreement with Switzerland and in virtually all the other agreements concluded by the United Nations relating to privileges and immunities. In the opinion of the Secretariat this provision arises directly under Article 105 of the Charter and constitutes an essential condition for the conduct of all United Nations activities.

9. Although there is a considerable overlap between the matters covered, for purposes of presentation the Section is divided as follows:

(a) General
(b) Judicial decisions
(c) Cases of detention or questioning of United Nations officials; testifying before public bodies
(d) Cases arising out of driving accidents
(e) Cases involving attempted application of Official Secrets Acts
(f) Duration of immunity

(a) General[1/]

10. In a memorandum dated 11 July 1963, addressed to the Deputy Chef de Cabinet,[2/] the Legal Counsel briefly summarized the attitude taken by the Secretary-General in relation to alleged illegal acts not constituting part of official duties.

> "... we should like to confirm that the Secretary-General has, on a number of occasions, informed delegations that United Nations personnel do not enjoy immunity from arrest or prosecution for alleged acts which are not related to official duties. ... Needless to say, this position has been taken on

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1/ See also Section 45 below, regarding a proposed reservation to the General Convention inter alia denying to nationals of the State concerned immunity in respect of official acts.

2/ United Nations Juridical Yearbook 1963, p. 188.

many occasions and in a number of countries in which United Nations personnel work. For example, we are attaching a copy of a press release dated 24 June 1949, containing a statement by the Secretary-General on this point raised as a result of a case in regard to which the Secretary-General ... considered that he could not assert immunity from arrest or interrogation where the alleged acts were not connected with the staff member's official duties..."

11. The press release is given below:

"STATEMENT BY SECRETARY-GENERAL TRYGVE LIE
ON IMMUNITIES

"In connexion with the case of the Prague Information Center, I should like to explain a bit further the situation with respect to immunities. United Nations Secretariat personnel enjoy immunity from arrest or questioning in connexion with any of their official duties or acts written or spoken.

"United Nations personnel do not enjoy immunity from arrest or interrogation for alleged acts unrelated to their official duties which are unlawful in the Member State where they are committed, or alleged to have been committed.

"There has been some confusion about the immunities of United Nations personnel.

"Under the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, in Section 15, a limited number of persons are granted the same diplomatic privileges and immunities as are granted to diplomats accredited to the United States Government. These persons have the official status of ambassadors or ministers in their own country for the main part, except for those persons who are put on the diplomatic list because they have been agreed upon by the United States Government, the United Nations and the member country concerned as entitled to such a status because they are resident members of staff and need such immunities in order to carry on necessary work for their own countries in connexion with the United Nations. These diplomatic functionaries are not put on this diplomatic list unless they hold a status at least as high as diplomatic secretary of delegation.

"The privileges and immunities granted to this small number of persons are exactly similar to those granted in Washington to diplomatic representatives of foreign governments there. The same privileges and immunities are granted to American diplomats serving in foreign countries.

"They were not invented especially for the United Nations since, for at least three centuries in every civilized country, ambassadors and ministers

serving abroad have enjoyed diplomatic privileges and immunities under international law as a necessary facility for their work.

"That refers to delegations. The Secretary-General and the eight assistant Secretaries-General have diplomatic immunity in those countries which have acceded to the Convention on Privileges and Immunities. Other Secretariat members do not have diplomatic immunity outside of performance of their official duties. If there is any infringement of any laws, traffic violations for example, a Secretariat member is in the same group - unless on official business - as the average citizen who may pass a red light or step on the gas too hard. He just pays his fine, and many already have."

12. The expression "legal process" has been interpreted by the United Nations in accordance with the standard definition as comprising the entire judicial proceedings, including the writ, mandate, summons or act by which the court assumes jurisdiction and compels the appearance of the defendant and witnesses and acts of execution, as well as other acts on the part of public authorities, such as arrest and detention in custody, in connexion with legal proceedings.

13. Following the arrest of a United Nations staff member on charges of espionage in 1963, the United Nations successfully claimed the right to visit him while he was in custody. In an internal memorandum prepared by the Office of Legal Affairs, the basis of the United Nations right to do so was expressed as follows:

"1. In connexion with the recent arrest of a staff member, the question has arisen of the extent of the right of the United Nations to visit and converse with staff members held in custody or detention by the authorities of a State.

"2. It is established by the advisory opinion of the International Court of Justice of 11 April 1949, on reparation for injuries suffered in the service of the United Nations (I.C.J. Reports, 1949, p. 174), that in the event of an agent of the United Nations in the performance of his duties suffering injury in circumstances involving the responsibility of a State, the United Nations has the capacity to bring an international claim against the responsible State (whether it is or not a member of the Organization), with a view to obtaining the reparation due in respect of the damage caused both to the United Nations and to the victim or to persons entitled through him. The United Nations therefore has, beyond any doubt, a right of diplomatic protection of its staff, at least within the limits of the questions put to the Court in the request for the advisory opinion.

"3. The right to visit and converse with the person in respect of whom a State may possibly have violated its international obligations is a

necessary consequence of a right of diplomatic protection. The State or organization having such a right of protection cannot exercise it unless there is an adequate opportunity to find out the facts of a case, and where the person concerned is in custody or detention, the only such opportunity is through access to that person. This is recognized, for example, in the Vienna Convention on Consular Relations of 24 April 1963 (A/CONF.25/12). Consuls are the usual channel through which States ascertain the facts about persons to whom they are in a position to afford diplomatic protection. Consequently the Convention provides in article 36:

'1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

'...

'(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in purusance of a judgement...'.

"4. It is therefore clear that the United Nations has the right to visit and converse with one of its staff members in custody or detention whenever there is any possibility that the United Nations or the staff member in the performance of his duties may have been injured through the violation by a State of any of its obligations either toward the United Nations or toward the person concerned. During such visits and conversations the United Nations representatives must have the right to pursue any line of discussion which would clarify the questions both whether an injury has occurred, and whether it was incurred in connexion with performance of the staff member's duties. The mere fact that there is no obvious connexion between the reason given for the detention by the State and the staff member's duties is insufficient to nullify the right of the United Nations to visit. If that were so, the right of protection of the United Nations would be made entirely dependent upon the reasons given by the detaining State, and that would make the right practically ineffective.

"5. Even if in fact there is no connexion between the staff member's duties and the reason for the detention, the United Nations should nevertheless be allowed to visit a staff member under detention, and to ascertain through all appropriate discussions not only whether there has been any legal injury but also whether the person is being treated with humanity and with full observance of an international standard of human rights. This is particularly true when the presence of the staff member in what is to him a foreign country is due to his employment by the United Nations. In such cases it is inappropriate to apply narrowly the text of connexion with official duty, since the person's very presence in the country is the result of, and a necessary condition for, the performance of that duty, and hence, in a sense, is connected with it. This broader scope of protection by the United Nations follows from the undesirability - stressed by the International Court of

Justice in its advisory opinion on Reparations for injuries - that staff members should have to rely on protection by their own States. The Court said (ICJ Reports, 1949, p. 183-184):

> 'In order that the agent (of the United Nations) may perform his duties satisfactorily, he must feel that this protection is assured to him by the Organization, and that he may count on it. To ensure the independence of the agent, and consequently, the independent action of the Organization itself, it is essential that in performing his duties he need not have to rely on any other protection than that of the Organization (save of course for the more direct and immediate protection due from the State in whose territory he may be). In particular, he should not have to rely on the protection of his own State. If he had to rely on that State, his independence might well be compromised, contrary to the principle applied by Article 100 of the Charter. And lastly, it is essential that - whether the agent belongs to a powerful or to a weak State; to one more affected or less affected by the complications of international life; to one in sympathy or not in sympathy with the mission of the agent - he should know that in the performance of his duties he is under the protection of the Organization. This assurance is even more necessary when the agent is stateless.'

> "6. It follows from the foregoing that, when a United Nations staff member is arrested or detained by the authorities of a State, the Organization always has a right to send representatives to visit and converse with him with a view to ascertaining whether or not an injury has occurred to the United Nations or to him through non-observance by the State concerned of its international obligations, and whether or not such injury is connected with the performance of his duties. Furthermore, at least when the staff member is not a national of the detaining State, there are reasons for recognizing a broader interest of the United Nations in the matter, so that the staff member will not have to rely exclusively on the protection of his own State." 3/

14. It may be noted that Staff Rule 104.4, promulgated on 8 March 1954, provides as follows:

> "A staff member who is arrested, charged with an offence other than a minor traffic violation, or summoned before a Court as a defendant in a criminal proceeding, or convicted, fined or imprisoned for any offence other than a minor traffic violation, shall immediately report the fact to the Secretary-General."

15. In view of the various cases which have arisen involving driving accidents, it may be recalled that, in accordance with General Assembly resolution 22 (I) (E), Staff Rule 112.4 requires staff members to carry public liability and property damage insurance in an amount adequate to insure them against claims arising from injury or death to other persons, or from damage to the property of others, caused by their cars.

(b) Judicial decisions

(i) Westchester County on Complaint of Donnelly v. Ranollo[4/]

16. The defendant was charged with having driven a car at an excessive speed. He pleaded that he was immune from jurisdiction since he was driving the vehicle as a United Nations official, whilst acting as the chauffeur of the Secretary-General. The claim to immunity was based on Article 105 of the Charter and on the International Organizations Immunities Act, Section 7 (b) of which provides that:

> "Representatives of foreign governments in or to international organizations and officers and employees of such organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such representatives, officers, or employees, except in so far as such immunity may be waived by the foreign government or international organization concerned."

17. It was held that the defendant was not entitled to immunity as a matter of law without a trial of the issue of fact. A distinction was drawn by the Court between those personnel whose activities were such as to be necessary to the actual execution of the purposes and deliberations of the United Nations and others. Since the defendant's responsibilities did not cause him to come within the former category, he did not enjoy the immunity claimed. The Secretariat does not accept this case as properly decided, nor does it represent current United States practice.

(ii) United States v. Coplon[5/]

18. Judith Coplon and Valentine Gubitchev were indicted on charges of violation of espionage laws. Mr. Gubitchev was a United Nations official, of USSR nationality. He claimed diplomatic immunity on the ground that he had entered the United States as Third Secretary of the Soviet delegation to the United Nations, and still retained a post with the Foreign Ministry of the USSR.

19. The Court rejected the arguments advanced in behalf of Mr. Gubitchev. Referring to the defendant's position as a member of the staff of the Secretariat, the Court declared:

> "Such status does not per se confer diplomatic immunity under generally accepted principles of international law... Nor does the defendant, by reason

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4/ City Court of New Rochelle, 8 November 1946, 67 N.Y.S. 2d 31. Although spelt "Ranollo" in the report, the defendant's name was in fact "Ranallo".

5/ District Court, Southern District, New York, 10 May 1949, 84 F. Suppl. 472.

of such employment, possess immunity from prosecution for the offense charged by virtue of any law or treaty of the United States...

"It seems clear that unlawful espionage is not a function of the defendant as an employee of the United Nations. Freedom from arrest for such conduct, it would seem, is not a privilege or immunity necessary for the independent exercise of the defendant's function in connexion with the United Nations."

As regards the Headquarters Agreement, the Court stated:

"Suffice it to say at this point that this agreement does not, by virtue of his employment relationship to the United Nations alone, confer any immunity upon the defendant. It follows from the foregoing that the defendant's status as an employee of the United Nations conferred upon him no privilege or immunity which should constitute an obstacle to his apprehension, trial or conviction for the offense charged in the indictment."

20. The Court dismissed the defendant's claim of diplomatic immunity as a Third Secretary of the USSR Ministry of Foreign Affairs in the light of the views expressed by the Department of State.

"Even if we assume that at the time of his arrest defendant was still a Third Secretary of the Soviet Ministry of Foreign Affairs it is clear that he is not thereby clothed with diplomatic immunity. The dispositive fact is that the State Department has declared to the Soviet Embassy by aide-mémoire of March 24, 1949, and aide-mémoire of April 29, 1949, that defendant does not enjoy diplomatic status. That is a political decision which courts do not review.

"...even if we assume that he is a foreign emissary and that he entered as such, it is clear that he was not so received."

21. As regards the claim to immunity derived from the defendant's alleged position as a member of the USSR delegation to the United Nations, the Judge declared that, even assuming that he was, or had been, a member, he derived no benefit from this fact.

"The State Department informs me that it has consistently drawn a distinction between representatives of a foreign government and representatives or members of an international organization. It has never recognized the latter as possessed of diplomatic status ipso facto even if the United States is a party to the particular international organization. See 4 Hackworth, Digest of International Law, 419-423. The Government argues that by virtue of Article 100 of the United Nations Charter, one may not simultaneously be an employee of the United Nations and a member

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of one of the national delegations and that defendant's acceptance of employment in the UN Secretariat terminated any membership he may have had in the Soviet Delegation."

The Judge found that he did not need to pass on this question. The defendant was not entitled to diplomatic immunities under the Headquarters Agreement since he did not satisfy the conditions of Section 15 of that Agreement, being neither a principal resident representative nor "a person agreed upon by the United States, the United Nations and the Soviet Government".

22. Lastly, the Court held that the case was not one falling within the original jurisdiction of the Supreme Court since the defendant was not a "public minister" within the meaning of the term. It may be noted that the defendant Gubitchev was later permitted to return to the USSR.

(iii) Essayan v. Jouve[6/]

23. In an action relating to the occupation of a private dwelling the defendant, a French national and a representative of the United Nations High Commissioner for Refugees, had contested the jurisdiction of the Court on the ground that, as a diplomatic agent in France of an international body, he enjoyed diplomatic immunity which he could not waive and which according to judicial authority even covered acts done by an agent as a private person. He cited in particular an agreement of 18 February 1953 between the French Government and the United Nations High Commissioner for Refugees in which the Government had granted to the High Commissioner's representatives in France the benefits and immunities conferred by the Convention on the Privileges and Immunities of the United Nations.

24. In its judgement the Court rejected this plea, pointing out that the immunity from legal process granted to representatives of the High Commissioner by article V, section 18 (a), of that Convention, which had been ratified by France, was expressly restricted to their official acts and thus clearly differed from the total immunity granted to the envoys of foreign governments by the decree of 13 Ventose, year II. The court stated further that the granting of a special immunity to United Nations officials obviously implied that they could not, simply as such, be equated with

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6/ Lower Court of the Seine. 1 October 1962. Gazette du Palais, 16-19 February 1963. (United Nations Juridical Yearbook 1962, p. 290).

envoys of foreign governments, and that such equality of treatment was also precluded by the fact that the United Nations was constituted quite differently from a foreign government.

(iv) People of the State of New York v. Coumatos[7/]

25. The defendant, an American citizen employed at the United Nations Headquarters as an inventory clerk on the payroll of the United Nations, was arrested by the New York City Police outside the United Nations Headquarters and indicted for grand larceny committed in the United Nations Headquarters. He objected to the proceeding on the ground that the Court lacked jurisdiction by virtue of his position as a United Nations employee and in view of the fact that the alleged crime had taken place on the United Nations premises.

26. By a judgement of 19 January 1962, the Court of General Sessions sustained the indictment and found the defendant guilty. The Court pointed out that, while diplomatic immunity was extended to some categories of resident representatives of Member States to the United Nations under article V of the Headquarters Agreement of 26 June 1947, between the United States and the United Nations, officers and employees of the United Nations could rely on the International Organizations Immunities Act of 1945, whose provisions on immunity from suit and legal process (section 7 (b)), are limited to acts performed by them in their official capacity.

(c) Cases of detention or questioning of United Nations officials; testifying before public bodies

27. In 1949 the authorities of a Member State sought to interrogate an employee of a United Nations Information Centre. National officials entered the premises of the Centre and asked the employee to accompany them, which he declined to do.[8/] The Chief of Diplomatic Protocol informed the Director of the Centre that the official concerned "was suspected of contact with a group engaged in anti-state activities" and requested the delivery of the official for interrogation. With reference to this request, the Secretary-General instructed the Director,

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7/ Court of General Sessions, New York County, 19 January 1962. 224 N.Y.S. 2d. 507. (United Nations Juridical Yearbook 1962, p. 294). See also section 9 above.

8/ Regarding the violation of United Nations premises, see section 9 (a) above.

"to ask, in accordance with the general practice of United Nations, for written confirmation of the subject of the interrogation including specific assurance that the matters upon which the official will be questioned do not refer to United Nations activities or to words spoken or written and acts performed by him in his written capacity."

28. This assurance was given by the Ministry of Foreign Affairs. The Permanent Representative of the Member State subsequently informed the Legal Counsel that the official had been convicted for acts which had no connexion with his work at the United Nations Information Centre, and provided a copy of the judgement given.

29. In 1952 a subpoena was served on three United Nations officials, including the Director of the Bureau of Personnel, in connexion with the case of the United States v. Keeney.[9] The Secretary-General wrote to the United States Permanent Representative, requesting the Secretary of State to inform the court that each subpoena was addressed to the officer in question in his official capacity and that the process on its face related to matters falling within their functions as United Nations officials. They therefore enjoyed immunity in respect of the acts in question under the International Organizations Immunities Act and by virtue of Article 105 of the Charter. The officials concerned were not required to appear before the court.

30. In 1956 military police violated the premises of a United Nations subsidiary organ,[10] arrested two United Nations officials and, after a period of confinement, expelled them from the country. The Secretary-General entered a vigorous protest to the Government of the Member State concerned regarding this action. One of the two officials was charged with lighting a match in the inner staircase of the United Nations premises at the time of an air alarm during office hours. In fact, a match had been struck, but not by either of the two officials, and, in any case, it could not be seen except by persons in the yard of the building. The second official was charged with inciting the workers against the Government, though no evidence in support of this charge was presented. Since the Government had broken off diplomatic relations with the countries of the nationality of the two officials, the United Nations had previously obtained an unconditional guarantee of the safety

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9/ See also section 10 above and section 31 below.

10/ Regarding the violation of United Nations premises, see section 9 (a) above.

of all such officials from the Foreign Ministry of the State concerned. The Secretary-General accordingly sought an appropriate apology for the arrest, expulsion and indignities suffered by the United Nations officials and for the violation of United Nations premises.

31. In January 1957 a further incident occurred in the same Member State when a security officer entered United Nations premises and sought to take into custody for questioning a United Nations official. The official did not accompany the security officer; the latter stated that in view of this refusal the official would have to leave the country immediately. The Secretary-General protested to the Foreign Ministry of the State regarding this incident and sought assurances that the official concerned would have the right of unmolested entry into the country in future, in order that official functions on behalf of the United Nations might be fulfilled.

32. A United Nations aircraft carrying, amongst others, officials of a United Nations subsidiary organ, made an emergency landing in a Member State in December 1963. The authorities of the Member State forcibly separated those officials who had been recruited in an adjoining territory from the others, interrogated and searched them, and placed them in temporary imprisonment. In answer to the protest made by the United Nations, the Ministry of Foreign Affairs of the State concerned based its action on grounds of national security. The United Nations declared in reply that this ground did not affect the international obligation of the Member State to ensure the immunity of the United Nations and its officials in respect of official acts; the senior United Nations official present had fully explained the circumstances of the landing before the arrest and interrogation took place. Since that landing whilst in the course of an official journey was the result of force majeure, the entry of the officials was an act in an official United Nations capacity and not an act undertaken in a private capacity. Accordingly, it had been incumbent on the Government to treat their entry as an official one and to comply scrupulously with the terms of the Convention.

(d) Cases arising out of driving accidents

33. In a number of cases United Nations officials have been arrested, detained in custody, or charged, following driving accidents in which they were involved. Where the journey was one taken solely for private purposes, the United Nations has not intervened unless, at the least, it appeared that the nature of the measures taken were such as to affect the independent operations of the United Nations itself. This consideration has also been of central importance in deciding whether or not immunity should be waived in cases where a criminal charge was laid against an official who was driving on official business.[11/] In deciding this question the Secretary-General has needed to consider whether, in the light of the over-all factors, the exercise of punitive measures by the Government concerned might undermine the independent exercise of official functions. It must be emphasized, however, that the facts of each case have been carefully considered by the Secretary-General and the claims of the municipal court to exercise jurisdiction weighed against the interests of the Organization before final decision has been reached. The issue of the personal convenience of the individual staff member has not entered into the matter.

(e) Cases involving attempted application of Official Secrets Acts

34. In several cases Governments have requested that United Nations technical assistance experts serving in their countries should sign a declaration, binding themselves not to divulge any information derived from their employment, in accordance with national Official Secrets Acts. In reply the United Nations has pointed out that the proposed declaration was repugnant to section 18 (a) of the General Convention and might be interpreted as a submission to local jurisdiction. The attention of the Government has been drawn also to the provisions of Staff Regulation 1.5 under which staff members are placed under an obligation not to communicate to any person any information made known to them by reason of their official position which has not been made public except in the course of their duties or by authorization of the Secretary-General. This obligation does not cease upon separation from the Secretariat.

11/ Regarding the question of waiver see also section 31 below.

(f) Duration of immunity

35. In an internal memorandum prepared by the Office of Legal Affairs in 1952, consideration was given to the question whether the immunity from legal process of a United Nations official in respect of official acts survived after the termination of his functions. Unlike section 12, in relation to representatives, section 18 of the General Convention is not specific on the point. The opinion was expressed that, on the functional basis of the immunities of both diplomats and officials, international officials should be immune in respect of official acts after ceasing to be officials. In the course of preparing the Specialized Agencies Convention, paragraph 22 of the Rapporteur's Final Report on the work of Sub-Committee 7 to the Sixth Committee, declared:

> "In connexion with Section 19 (a) which (following the General Convention) prescribes that officials shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity, it was agreed that, to fulfil the purpose of the provision (namely that officials should pursue their official duties, feeling confident that they are protected from all personal liability in regard thereto before municipal tribunals unless immunity is waived), it was necessary that this immunity should continue after the officials had ceased to be officials. It was thought, further, that this interpretation in fact followed from the wording of the Section as a whole and it was pointed out that paragraph (6), dealing with exemption from official salaries from taxation, required a similar interpretation if it was to receive its proper effect."

36. The conclusion reached in the memorandum was that the immunity survived by virtue of Article 105 of the Charter, the functional analogy between United Nations officials and diplomatic representatives, and the relationship between the General and Specialized Agencies Conventions.

24. Exemption from taxation of salaries and emoluments

37. A number of questions have arisen during the history of the United Nations involving the interpretation of the tax laws of various Member States in the light of the circumstances affecting individual United Nations officials. Since it would not be practical to give a complete account of all such cases which often turned on the particular facts and provisions involved, the present section is divided under the following headings which deal with some of the topics which have arisen most frequently with respect to the immunity of officials from taxation.

(a) General; Tax Equalization Fund;

(b) Position in the United States;

(c) Position in Switzerland;

(d) Locally recruited staff;

(e) National taxation in respect of United Nations Pension Benefits; Estate or Succession Duties.

(a) General; Tax Equalization Fund

38. Section 18 of the General Convention provides that

> "Officials of the United Nations shall:
>
> ...
>
> "(b) Be exempt from taxation on the salaries and emoluments paid to them by the United Nations."

The United Nations has interpreted this provision as requiring exemption to be given in respect of all forms of national taxation (e.g., social security contributions, as well as income tax) levied on salaries and emoluments received from the Organization.

39. In resolution 239 (III) C of 18 November 1948, the General Assembly requested that:

> "Members which have not acceded to the Convention on Privileges and Immunities of the United Nations or which have acceded to it with reservations as to its section 18 (b), take the necessary action, legislative or other, to exempt their nationals, employed by the United Nations from national income taxation with respect to their salaries and emoluments paid to them by the United Nations, or in any other manner to grant relief from double taxation to such nationals."

40. With a few exceptions, of which the United States is the most notable, all Member States have either acceded to the General Convention or taken the necessary action to exempt from national taxation the official income of their nationals employed by the United Nations. The inequality nevertheless produced where one or more States do not grant exemption from national taxation led the General Assembly to adopt resolution 13 (I) of 13 February 1946, in which the General Assembly resolved that:

> "Pending the necessary action being taken by Members to exempt from national taxation salaries and allowances paid out of the budget of the Organization, the Secretary-General is authorized to reimburse staff members who are required to pay taxation on salaries and wages received from the Organization."

In resolution 239 (III) D, the General Assembly authorized the Secretary-General to reimburse the members of the staff for national income taxes paid by them in respect of salaries received during 1949, and in subsequent years the Assembly has continued this authority, although by budgetary action rather than by resolution. The Assembly also directed the Secretary-General, by paragraph 2 of resolution 239 (III) B, not to include in any future personnel contracts a provision undertaking to reimburse national income taxes. Accordingly, reimbursements of taxes required to be paid by staff on their official salaries was made only from year to year.

41. In the hope of encouraging legislative measures for the relief of double taxation on official salaries, the General Assembly imposed a direct assessment on United Nations staff members comparable to national income taxes; the relevant text is contained in resolution 239 (III) as amended by resolution 359 (IV). The revenue derived from this staff assessment plan was applied as an appropriation-in-aid of the budget.

42. This scheme still left the principle of equality among Member States unachieved. As the Secretary-General, on the instructions of the General Assembly, reported:

> "A Member State which has not granted either tax exemption or relief from double taxation to its nationals who are staff members benefits twice: first from national taxes and levies on such nationals, and secondly from the income derived from the Staff Assessment Plan. On

the other hand, a Member State which has granted tax exemption or relief from double taxation to its nationals who are staff members shoulders an additional burden in contributing to the budget appropriation for reimbursement of national income tax levied by other Member State." 1/

43. The General Assembly accordingly adopted resolutions 973 (X) and 1099 (XI), establishing a tax equalization fund in which revenue from the staff assessment plan is now credited in sub-accounts for each Member State as a credit against, and in the proportion of, its annual contribution to the budget. Where any staff members are subject both to staff assessment and to national (including local and state) income taxation in respect of their official salaries, the Secretary-General is authorized to refund to them out of the staff assessment collected from them, the amount of the income taxes on their United Nations income. There is then charged against the credit of the Member State taxing them all amounts refunded such staff, by way of double taxation relief in respect of national income taxes. Thus, in effect, the Member State taxing the official United Nations income of any of the staff of the Organization sees its annual contribution to the Organization increase (or, at least, fail of a reduction) in the amount of the taxes so assessed. The United Nations has not yet been able to devise a method of ensuring tax equalization in the case of programmes financed by voluntary contributions however.

44. Except in the case where special agreements have been negotiated, the benefits of section 18 (b) are confined to the "categories of officials" referred to in section 17 of the General Convention. Thus amongst these excluded from the exemption given in section 18 (b) are independent contractors, technical assistance fellowship holders and teachers and student receiving fees or cash grants in connexion with UNICEF training projects, as well as locally recruited staff employed at hourly rates.

(b) Position in the United States

45. The United States has not acceded to the General Convention, nor has it adopted legislation granting exemption from taxation to its nationals in respect of salaries and emoluments received from the United Nations. This question constituted,

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1/ Report of the Secretary-General on the use of income derived from the Staff Assessment Plan (A/C.5/584), para. 9.

indeed, one of the main reasons why the United States declined to accede to the General Convention. The Report of the Senate Committee on Foreign Relations stated:

> "The main issue raised in the committee hearings with respect to the general convention on privileges and immunities centred about section 18 (b) which provides that officials of the United Nations shall be immune from taxation on the salaries and emoluments paid to them by the United Nations. The committee recognize that certain inequalities in the salary scales within the United Nations would inevitably result if the nationals of different states employed as members of the Secretariat are subjected to widely divergent rates of taxation by their own governments. This might lead to difficult problems of morale within the Secretariat. On the other hand, the committee considered it undesirable to create within the United States a group of nationals not subject to the normal responsibilities of citizenship. Even though American members of the Secretariat have obligations to the United Nations, they still retain their citizenship and they derive many benefits from the United States. As such, the committee members believe they should be called upon to contribute in the form of taxes to the work of our Government as other American citizens.
>
> "While the committee agreed that there could be no objection to any arrangement which might be made within the United Nations Secretariat to equalize the tax burden imposed upon staff members, it was believed that the United States should reserve its position with respect to section 18 (b) relating to tax immunity. The committee recommends that the terms of the resolution be revised accordingly." 2/

46. It was chiefly owing to United States policy with respect to tax exemption that the General Assembly came to adopt the staff assessment scheme described in sub-section (a) above, and also to authorize the Secretary-General to reimburse to United States citizens the amount of the income taxes which they pay on their United Nations salaries and emoluments. As regards this reimbursement, staff members subject to federal, state or local income tax are informed by the Secretariat administration that the reimbursement is not represented as equivalent to exemption from taxation on United Nations earnings. In calculating the actual amount of reimbursement, the Organization applies the available income-splitting benefit, personal exemptions and optional standard deduction to the United Nations salary as if there were no outside income. In certain limited circumstances additional benefits available are left to be applied to actual outside income, as, for instance,

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2/ Committee on Foreign Relations, United Nations Senate, Report No. 559, 80th Congress, First session, pp. 6-7.

itemized deductions over and above the amount of the optional standard deductions. Where, however, a United States citizen established to the satisfaction of his District Director of Internal Revenue that he has been a bona fide resident abroad for an uninterrupted period which includes an entire taxable year, he may exclude his foreign earnings (within specified limits) for the entire period during which he has been a bona fide resident abroad; his unearned income is thus taxable at the lower rate. The same result obtains in the case of presence in a foreign country or countries during at least 510 full days in any period of eighteen consecutive months. Under United Nations reimbursement procedures, the staff member is under an obligation to co-operate in lawfully minimizing his taxes, including seeking the exemption of a bona fide resident abroad, where applicable.

47. It may be noted that officials who are United States citizens and serving in the United States are required to pay social security contributions in accordance with Public Law 86-778, approved 13 September 1960. Under the provisions of that Law United States citizens are taxed on earnings received from the United Nations as if they are self-employed. The United Nations did not formerly reimburse staff members from the tax equalization found in respect of the social security contributions which were paid.[3/] In 1966, however, the General Assembly approved[4/] the reimbursement to the staff members concerned of the difference between the social security tax each staff member is required to pay as a United Nations employee and the amount he would have had to pay as the employee of a taxable employer. This approval, which was concurred in by the United States Government, came into effect on 1 January 1967 and covers reimbursements in respect of 1966 and subsequent years.

(c) Position in Switzerland

48. Under Swiss law responsibility for taxation is divided between the Federation, the cantons and the various communes; liability to taxation therefore depends in part on where the official lives.

3/ See the decision of the United Nations Administrative Tribunal in Davidson v. the Secretary-General, Judgement No. 88, 3 October 1963.

4/ At its 1501st plenary meeting on 20 December 1966, the General Assembly took note of the relevant decision of the Fifth Committee contained in paragraph 35 of its report. Official Records of the General Assembly, Twenty-First Session, Annexes, agenda item 81, document A/6605.

49. All officials, including those of Swiss nationality, are exempt from federal, cantonal and communal taxes on the salary and indemnities they received from the United Nations, including lump sum payments received from the United Nations Pension Fund. As regards payments received from non-United Nations sources, officials (other than Swiss nationals) may claim exemption from taxes on personal property (biens mobiliers) including tax on capital (l'impôt sur la fortune), other than taxes on Swiss shares. Dividend withholding tax (l'impôt fédéral anticipé) is levied on dividends and interest received from savings accounts and bonds. However reimbursement of the amount withheld may be claimed from the tax administration. There is no exemption from taxes on real property or on income derived from such property, nor from indirect taxes in general (e.g., on insurance premiums or radio and television licenses), whether levied by federal, cantonal or communal authorities. In addition to the above, officials of grade P.2 and above are not required to pay a fee for a driving license and are not subject to automobile tax.

50. In the canton of Geneva, non-Swiss staff members with taxable income have the choice between a special rate of taxation (article 32 ter of the loi genevoise sur les contributions publiques), with no deductions allowed for dependants, or the application of the normal system of taxation, which takes into account the salary paid by the United Nations but allows deductions to be made.

51. Officials of Swiss nationality are exempt from social security contributions (Assurance Vieillesse et Survivants) if they are full participants in the United Nations Pension Fund, and from contributions to the unemployment fund (caisse d'assurance contre le chômage).

(d) Locally recruited staff[5/]

52. A number of States have sought to tax the salaries of their citizens who are employed by the United Nations and stationed in the home country. In so far as these officials, though locally recruited, have not been assigned to hourly rates, the United Nations has protested against such attempt on the grounds that the officials concerned were exempt from taxation in respect to their United Nations

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5/ Other than United States or Swiss nationals who are dealt with in the two preceding sub-sections.

salary and emoluments by virtue of the terms of resolution 76 (I) and of the General Convention. In a letter sent to the representative of one such State in 1964, the matter was summarized as follows:

"...The position of your Government is at variance with the consistent practice of all Member States which have acceded to the General Convention without reservation as to its provision on income tax exemption and with that of all other States which, though not a Member of the United Nations, or a Member of the United Nations but not a party to the Convention, have undertaken to apply the Convention. All these Governments have invariably recognized that staff members of the United Nations, including those who are their own nationals, are entitled to the same income tax exemptions as accorded non-nationals. Among the eighty-six States Members of the United Nations which have acceded to the Convention, only four States have made a reservation at the time of accession so as to deny income tax exemption to officials, whether internationally or locally recruited, of the United Nations who are her own nationals; these States are: Canada, Laos, Mexico and Turkey. But even among these reserving States, only Turkey has actually required their nationals on the staff of the United Nations office in her territory to pay income tax. Laos has waived the tax; Mexico has not so far actually collected the tax and is at present considering administrative measures whereby collection will be 'indefinitely deferred'; while no practical difficulty has arisen in Canada, the United Nations having no office in that country.

"Of the Member States which have not acceded to the Convention, all those which participate in the Technical Assistance or Special Fund programme have, as has your country, by uniform standard agreements with the United Nations assumed a legal obligation to apply the Convention insofar as concerned those programmes. Among the handful of countries which have neither acceded to the Convention nor otherwise undertaken to apply the Convention since they do not partake in Technical Assistance or the Special Fund, only the United States of America is host to a United Nations office. And the United States has co-operated with the United Nations in establishing the Tax Equalization Fund, through which she returns to the United Nations practically all the income tax she collected from her nationals on the staff of the United Nations. Your country, should she persist in her present position, would be the sole country which has, by agreements with the United Nations, assumed a legal obligation to accord income tax exemption to United Nations officials irrespective of nationality but refused to do so.

"We have taken pains to explain these arrangements in order to show that immunity from income taxation on United Nations salaries and emoluments for officials of the United Nations, irrespective of nationality or rank, is a well-established principle steadfastly adhered

to by the Organization and that it has in fact been universally recognized or indirectly applied. This immunity is granted United Nations officials, as are other privileges and immunities provided for in the Convention, 'in the interests of the United Nations and not for the personal benefit of the individuals themselves', to quote section 20 of the Convention. Thus, if your Government, in concert with all other States, recognizes the immunity from income taxation of its nationals on the staff of the United Nations, it would do so in the interest of the Organization and not for the benefit of those nationals as individuals."

53. In a case which arose later in 1964, the Member State concerned sought to tax nationals, residents and clerical staff regardless of nationality. In a letter to the Permanent Representative, the Legal Counsel described the position as follows:

"...According to information from the United Nations Technical Assistance Board Representative, the tax authorities of your country have taken the position that members of the staff in the office of the Representative who are nationals or residents are not entitled to exemption from taxation on their United Nations salaries. They have also taken the position that the immunity does not extend to clerical staff regardless of nationality. The tax authorities recognize that under Section 18 (b) of the Convention on the Privileges and Immunities of the United Nations officials shall ... (b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations. They, however, expressed doubts that nationals and residents of your country, or clerical staff stationed there, could be considered as 'officials of the United Nations'. The question having been referred to me, I should like to submit for your consideration the correct legal position.

"The Convention on the Privileges and Immunities of the United Nations provides for a procedure for the definition of the term 'officials of the United Nations', and, by the definition established by that procedure, no distinction is maintained among the staff members of the United Nations as to nationality or residence. All members of the staff of the United Nations, with the exception of those who are recruited locally and are assigned to hourly rates are officials of the United Nations and enjoy the same privileges and immunities provided in the Convention, including the right to exemption from income taxation."

54. After citing section 17 of the General Convention and resolution 76 (I) and referring to the list of staff members sent to each Member Government each year, the letter continued:

"From the above, it will be seen that, under the decision of the General Assembly taken in pursuance of the Convention on the Privileges and Immunities of the United Nations, all staff members in the Office of the Representative of the United Nations Technical Assistance Board in your country, irrespective of nationality or residence, are in the status of 'officials of the United Nations' and, as such, are entitled to all privileges and immunities appertaining to such officials. The only exception to this rule is in the case of staff members 'who are recruited locally and are assigned to hourly rates.' None of the staff members in the said office of the Representative fulfil these conditions, the clerical staff not being assigned to hourly rates. All of them, therefore, are entitled to income tax exemption, including those who are nationals or residents."

55. Following representations by the United Nations, the tax authorities of the States concerned have, in the majority of cases, given appropriate recognition to the immunity from taxation provided under the terms of the General Convention. Where such recognition has not been given, the United Nations has where possible applied the provisions of the tax equalization fund so as to reduce that country's credit in the fund by the amount of any reimbursement made by the United Nations to the staff member concerned.

(e) National taxation in respect of United Nations pension benefits; estate or succession duties

56. Whereas section 18 (b) of the General Convention provides that United Nations officials shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations, no express provision was made to cover the payment of pension benefits. When the Convention was being prepared during the first part of the first session of the General Assembly, the question was briefly considered by the Sub-Committee on Privileges and Immunities. The second report (A/C.6/31) of the Sub-Committee contains the following statement:

"The Sub-Committee on privileges and immunities examined another proposal submitted by the Advisory Group of Experts on administrative and budgetary matters, made with a view to exempting all members of the staff of the Organization from taxation on retirement benefits and exempting their beneficiaries from taxation on death benefits, either in the form of a lump sum or benefits paid by the Organization to widows and orphans.

"The Sub-Committee decided, without prejudice to this question being taken up and considered separately at a later stage, that a provision to this effect should not be included in the General Convention."

No subsequent action was taken by the General Assembly to afford such exemption. Consequently the United Nations has not been in a position to require Member States to grant exemption from national income tax on pensions received from the United Nations Joint Staff Pension Fund. Many countries do not, however, tax United Nations pensions. It may also be noted that the Headquarters Agreement for the United Nations Industrial Development Organization provides expressly in section 27 (d) that the officials of the organization shall be accorded,

"Exemption from taxation in respect of the salaries, emoluments, indemnities and pensions paid to them by the UNIDO for services past or present or in connexion with their services with the UNIDO." 6/

57. As regards estate and succession duties, in 1963 the Office of Legal Affairs advised the secretariat of the Technical Assistance Board as follows:

"It has been the usual position that the estates of international organizations' staff are taxable in accordance with general rules of private international law and the provisions of any Convention for the Avoidance of Double Taxation on Estates which may exist between the country of duty station and the country of nationality or permanent residence of the staff member. While the fact of such taxability may cause an additional administrative burden to the estate of a staff member and even on occasion involve unfortunate delays, the financial position of the heirs is not ordinarily affected in any significant degree. Legislation or a convention commonly provides for taxation of the whole estate in the country of settled residence, with taxation in other countries of so much of the decedent's property as is situated within the taxing jurisdiction, the principal taxing State then giving some form of deduction or credit for estate duties paid abroad."

58. In Switzerland no succession duties or taxes on gifts are payable if the deceased or donor is an official, other than a Swiss national, above the rank of an Associate Officer (P.2). In such cases the deceased is not considered as domiciled de jure in Switzerland. Officials of below the rank of Associate Officer or who are of Swiss nationality are obliged to pay succession duties or taxes on gifts or property they receive. All officials are obliged to pay duties or taxes in respect of property received from a person legally domiciled in Switzerland.

6/ United Nations Industrial Development Organization, ID/B/6/Add.1, 3 April 1967.

25. Immunity from national service obligations

59. Under section 18 (c) United Nations officials are declared "immune from national service obligations". Four Member States have made reservations or declarations regarding the application of this provision when acceding to the General Convention. Laos and Thailand declared that their nationals should not be exempt from national service obligations by virtue of their employment as United Nations officials. In the case of Mexico, the grant of privileges and immunities to United Nations officials who are of Mexican nationality and exercising their functions in Mexican territory is confined to certain provisions of section 18, not including section 18 (c). Turkey acceded to the Convention subject to the following reservation:

> "The deferment, during service with the United Nations, of the second period of military service of Turkish nationals who occupy posts with the said Organization, will be arranged in accordance with the procedures provided in Military Law No. 1111, account being taken of their position as reserve officers or private soldiers, provided that they complete their previous military service as required under Article 6 of the above-mentioned law, as reserve officers or private soldiers."

60. Under appendix C to the United Nations Staff Rules, entitled "Provisional Arrangements relating to Military Service", detailed provision has been made for cases in which staff members perform military service, with the consent of the Secretary-General. The appendix is reproduced below.

> "(a) In accordance with section 18 (c) of the Convention on Privileges and Immunities of the United Nations, staff members who are nationals of those Member States which have acceded to that Convention shall be 'immune from national service obligations' in the armed services of the country of their nationality.
>
> "(b) Any requests to Governments which have not acceded to the Convention to defer or exempt staff members from military service by reason of their employment with the United Nations shall be made by the Secretary-General and not by the staff member concerned.
>
> "(c) Staff members who have completed one year of satisfactory probationary service or who have a Permanent or Regular Appointment, may, if called by a Member Government for military service, whether for training or active duty, be placed on special leave without pay for the duration of their required military service. Other staff members, if called for military service, shall be separated from the Secretariat according to the terms of their appointments.

"(d) A staff member called for military service who is placed on special leave without pay shall have the terms of his appointment maintained as they were on the last day of service before he went on leave without pay. His re-employment in the Secretariat shall be guaranteed, subject only to the normal rules governing necessary reductions in force or abolition of posts.

"(e) In the interpretation of Rule 105.2 (b), the period of special leave without pay for military service shall be counted for the purpose of establishing seniority.

"(f) A staff member on special leave without pay for military service shall be required to advise the Secretary-General within 90 days after his release from military service if he wishes to be restored to active duty with the Secretariat. He shall also be required to submit a certificate of completion of military service.

"(g) If a staff member, after the period of required military service, elects to continue such service or if he fails to obtain a certified release therefrom, the Secretary-General will determine on the merits of the particular case whether further special leave without pay will be granted, and whether re-employment rights shall be maintained.

"(h) If the staff member's absence on special leave without pay appears likely to last six months or more, United Nations will pay, if so requested, for transporting the staff member's wife and dependent children to his place of entitlement and for their return travel after the staff member's return to active duty with the Secretariat, provided that the expenses involved will be counted as travel expenses related to the next home leave entitlement of the staff member.

"(i) The Secretary-General shall not continue his contribution to the Joint Staff Pension Fund on behalf of the staff member during the staff member's absence on special leave without pay for military service.

"(j) The provisions of Rule 106.4 relating to illness, accident or death attributable to the performance of official duties on behalf of the United Nations shall not be applicable during periods of military service.

"(k) The Secretary-General may, if the circumstances of the military service appear to warrant it, credit the staff member's period on special leave without pay for military service in fixing the salary step upon the staff member's return to active duty with the Secretariat.

"(l) The Secretary-General may apply such of the foregoing provisions as he deems appropriate in the case of a staff member who with the advance approval of the Secretary-General volunteers for military service or requests a waiver of his immunity under Section 18 (c) of the Convention on Privileges and Immunities of the United Nations."

61. In the case of States which have acceded to the General Convention, relatively few difficulties have occurred regarding the application of section 18 (c). It is believed that scarcely any Governments which are parties to that instrument have requested the Secretary-General to permit officials of the nationality in question to perform national service. United Nations officials of a certain nationality have been required to apply for a release from military reserve service, together with certain other official formalities, such as exit permit, and income tax clearance, before leaving the country after spending their home leave there. The United Nations has sought to obtain the waiver or simplification of these requirements in respect of officials.

62. Several States have sought to apply military service provisions to locally recruited officials of United Nations subsidiary organs. Apart from a few isolated cases it is believed that such local employees have not in fact been called upon to perform full military service.

63. In 1962 a staff member informed the Office of Legal Affairs that when he left his home country in 1957, on recruitment by the United Nations to serve as an official at Headquarters, he had been required to furnish two guarantees, each of approximately $1,200; one was to ensure his eventual return to the country and the other was to ensure that he would eventually fulfil his military service obligations. The Office of Legal Affairs gave the opinion that the first guarantee was a restriction on the movement and exclusively international character of an official of the United Nations which was inconsistent with the authority of the Secretary-General, under Articles 97, 100 and 107 of the Charter, to appoint, deploy and direct the staff of the Organization. The second guarantee was declared incompatible with section 18 (c) as constituting a form of national service obligation.

64. As regards States which have not become parties to the General Convention, under Executive Order No. 10292 amending the Selective Service Regulations, as amended by Executive Order No. 10659, a male alien admitted other than for permanent residence in the United States is not required to register for military service provided, inter alia, he is a United Nations official or a member of the family of an official.

/...

65. In the case of Switzerland, special provision was made in the Annex to the Agreement with Switzerland concerning officials of Swiss nationality. The Annex provides that the Secretary-General will communicate to the Swiss Federal Council a list of officials of Swiss nationality liable for military service; that the Secretary-General and the Council will agree upon the list of such officials who shall be granted dispensation in view of the office which they hold; and that, if other officials of Swiss nationality are called up, the Secretariat may ask for postponement or some other appropriate measure. In practice the preparation of a list has been dispensed with; cases are now treated separately as they arise. Swiss nationals are frequently called for short periods of two or three weeks of military service. In some instances the United Nations has successfully requested a deferment. In one case, involving a Swiss official of director rank, a general deferment (congé pour l'étranger) was requested.

66. The Swiss authorities have contended that, under Swiss law, a military tax is payable by officials of Swiss nationality in lieu of military service. The following extract from a letter sent by the Office of Legal Affairs in 1958, in answer to a query raised by a specialized agency, broadly summarizes the United Nations position in regard to this tax. After referring to the provisions of the annex, the letter continued:

> "...The Swiss Government thereafter took the position that the tax in lieu of military service was payable by any Swiss national enjoying this exemption on the grounds that the Federal Constitution (Article 18) itself not only provides for universal military service but also requires the Confederation to prescribe a uniform tax on exemption from military service. The United Nations seems to some extent to have acceded to this position after discussions late in 1947. Apart from the constitutional basis for the tax, there is an argument in favour of the Swiss position in that the federal law on the tax on exemption from military service (28 June 1878, as amended) treats the tax as one by way of 'compensation' for the non-performance of military service more or less regardless of the reason of the non-fulfilment. Thus, neither unavoidable absence or residence abroad nor even medical disqualification appears to confer any exemption from the tax and, apart from a few very narrow classes of exemption, the tax seems to be levied on the mere fact of non-performance of military service without consideration of the reasons.
>
> "Accordingly, the Swiss authorities are understood to have continued to assess the tax against United Nations officials exempted from service. The United Nations, however, does not reimburse the officials so taxed.

This is on the grounds that the reimbursement authority of the Secretary-General extends only to income taxes, and the military exemption tax is not properly an income tax. It is assessed on a compound basis, only one element of which is calculated on income, and this is not, in our opinion, sufficient to characterize it as an income tax for reimbursement purposes. The tax consists of a personal tax of 6 francs plus a supplementary tax of 1.5 per cent on income and 1.5 per mill on net worth and expectancy.

"The above is the position as we know it and to the best of our knowledge does not differ in the case of the Specialized Agencies, a number of whom have the same provision in their agreements with Switzerland as that cited in the Annex mentioned above."

26. Immunity from immigration restrictions and alien registration

67. Officials of the United Nations, together with their spouses and dependent relatives, are declared immune "from immigration restrictions and alien registration" in section 18 (d) of the General Convention. A similar provision is contained in many of the international agreements concluded by the United Nations dealing with the privileges and immunities of the Organization and its officials.[1/] It may be noted that a number of countries issue special identity cards for United Nations personnel serving in their territory.

(a) Practice in respect of countries other than the United States

68. In Geneva, the names of all United Nations officials and their dependents living with them (together with the names of minors studying abroad) are communicated to the "Contrôle de l'Habitant". United Nations officials and their dependents (provided the latter are not working in Switzerland) receive from the Federal Political Department an identity card, called a carte de légitimation, the colour of which varies according to the rank of the official. Other members of the family of the staff member do not receive a carte de légitimation but their passport is stamped "dispensé du permis de séjour", provided they do not work in Switzerland.

69. Two special cases which have occurred regarding residence visas or taxes may be noted. In 1961, the authorities of a Member State sought to impose the "taxe de résidence" on all locally recruited United Nations staff members serving in the country. Although the Technical Assistance Board Regional Representative protested against this imposition to the Foreign Ministry, the Ministry declined to change its position. In a memorandum to the Technical Assistance Board administration, the Office of Legal Affairs expressed the view of the United Nations as follows:

> "The purpose of section 18 (d) of the Convention is of course to ensure the freedom of the officials of the United Nations to enter and reside in any country for the exercise of their functions in connexion with the Organization. The imposition of an alien immigration fee would appear to derogate from such freedom, by making the residence of United Nations officials

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1/ See e.g., Section 15 (d) of the Agreement with Switzerland, section 17 (c), ECAFE Agreement, section 11 (f), ECA Agreement.

in the country in fact dependent upon the payment of a tax on aliens. The 'taxe de résidence' may thus be considered to be of the nature of an 'immigration restriction', the imposition of which is inconsistent with the letter and spirit of the Convention. Furthermore, the tax in question discriminates against officials in the country concerned as compared to officials in other States which do not impose such a tax. In such circumstances the Organization may feel obliged to reimburse the officials concerned in that State, the tax thus becoming, in fact, one upon the United Nations itself in a manner which would not accord with the letter and spirit of the Convention...".

70. The second case concerned "police residence" or "re-entry" visas. The following letter, which was sent by the Legal Counsel to the Permanent Representative of the State concerned in 1963, sets out the facts.

"It appears that the local authorities have taken the position that staff members of foreign nationality who remain more than three months are required to obtain a form of visa from the police and, furthermore, are required to pay a fee. This visa is variously referred to as a 'residence visa' or 're-entry' visa. Its text states that the alien can re-enter the country as often as he likes during a specific period. Repeated inquiries as to the nature of the visa in question elicit the fact that foreign staff members who are now being required, three months after entry, to obtain the visa, did not have to have an entry visa when they first entered the country to take up their duties there. No visa was indeed required for entering the country. It thus seems obvious that the visa that is now required, after a sojourn of three months, is one for the purpose of staying or residing in the country and not for entering it. Inasmuch as its possession is a requisite to sojourn in the country, the visa in question is therefore in the nature of a residence permit, or as it is often referred to, a 'residence visa'.

"Insofar as it concerns the United Nations, the mere requirement that a staff member assigned to your country must possess a visa or a residence permit in order to stay in that host country is in itself unobjectionable, so long as such visa or permit is no more than a friendly formality and is granted without charge or restriction. On the other hand, the fee levied for the visa appears to constitute a restriction on the right of the affected United Nations staff members to remain there for the independent exercise of their functions in connexion with the United Nations. In our considered view, its imposition would consequently appear to be inconsistent with section 18 (d) of the Convention on the Privileges and Immunities of the United Nations, which section provides: 'Officials of the United Nations shall ... (d) be immune, together with their spouses and relatives dependent on them from immigration restrictions...' So far as I am aware, no other State requires United Nations officials to pay any fee as a condition for remaining in its territory when on the official business of its Organization."

The authorities in question subsequently agreed to grant all United Nations officials exemption from the fee required for the special visa concerned.

71. On a number of occasions States Parties to the General Convention have taken actions which have affected the employment of United Nations officials. On one such occasion, in 1956, a Member State declined to renew the residence visa of a staff member on the ground that it was not necessary that the post be filled by an "international" official but could be occupied by a locally recruited official. The Secretary-General protested against this measure, and requested its reconsideration. The letter of the Secretary-General included the following passage:

> "... It is beyond question that any device by which a Member Government interposed its unilateral decision as to the continuance in a United Nations post of an international official would be in express contradiction to Articles 100 and 101 of the Charter. Likewise, the right of a Member Government to place its visa on the national passport or the United Nations laissez-passer of a member of the staff does not entail the exercise of any power of decision as to the acceptability of the international official; the right of entering to take up a post of duty, and the right to remain at that post for as long as the responsible authority considers necessary, are fully established by the Charter and under Section 18 (d) and 24 and 25 of the Convention on the Privileges and Immunities of the United Nations..."

(b) Practice in respect of the United States

72. United Nations practice concerning the exemption from immigration restrictions and alien registration of persons (other than representatives of States) required to attend United Nations Headquarters on official business, is chiefly governed by the terms of article IV of the Headquarters Agreement and of the pertinent United States legislation.

73. Article IV, section 11, of the Headquarters Agreement provides that United States authorities shall not impose any impediments to the transit to or from the Headquarters Districtof any persons having business there (including, in the case of officials, their families).[2/] Under section 12, the provisions of section 11 are deemed applicable irrespective of the relations between the Governments of the persons referred to in section 11 and the Government of the United States. Sections 13 and 14 provide:

2/ Questions relating to the right of transit are also considered in section 35 below.

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

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

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

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

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

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

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

"(e) The Secretary-General shall, at the request of the appropriate American authorities, enter into discussions with such authorities, with a view to making arrangements for registering the arrival and departure of persons who have been granted visas valid only for transit to and from the headquarters district and sojourn therein and in its immediate vicinity.

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

"Section 14. The Secretary-General and the appropriate American authorities shall, at the request of either of them, consult, as to methods of facilitating entrance into the United States, and the use of available means of transportation, by persons coming from abroad who wish to visit the headquarters district and do not enjoy the rights referred to in this Article."

74. Following the enactment of the United States Immigration and Naturalization Act of 1952, the United States Representative forwarded to the Secretary-General a copy of a letter from the United States Attorney-General to the Secretary of State concerning the legal effect to be given to the execution, by United Nations staff members amongst others, of waivers under section 247 of the Immigration and Nationality Act of 1952. It was stated that this opinion was addressed in part to the questions which had been raised by the Secretary-General in earlier correspondence. Extracts from the opinion[3/] are given below.

"... Under section 247, the Attorney General is required to adjust the status of an alien lawfully admitted for permanent residence, and thereby enjoying immigrant status, to that of a nonimmigrant in one of three specified classes under section 101 (a) of the Act (roughly, accredited foreign government official, representative to or official of an international organization, or treaty trader), if the alien at the time of entry or thereafter acquires an occupational status which, were he seeking admission to the United States, would entitle him to a non-immigrant status in one of the three classes. The Attorney General's order of adjustment terminates the alien's immigrant status.

"However, as provided in section 247 (b), the alien may avoid the loss of and retain his immigrant status, even though he is in one of the

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3/ See also the opinion of 5 January 1954, cited in United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations, vol. I, p. 150, where the United States Attorney-General held that a waiver under section 247 (b) did not apply to rights derived from treaties.

three classes of occupations, if he files with the Attorney General a written waiver of 'all rights, privileges, exemptions, and immunities under any law or any executive order' which would otherwise accrue to him because of his occupational status. The Attorney General's regulations (Title 8, Part 247, effective December 24, 1952, 17 F.R. 11520) and the prescribed waiver (Form I-508) follow the quoted language of the statute; and the general question is, what are the rights, privileges, exemptions and immunities surrendered by the immigrant alien who is in one of the three occupational classes and files a waiver? More specifically, as Ambassador Lodge's inquiry indicates, the chief concern, in the case of international organizations like the United Nations, is the effect of such waivers on the immunity of officials of the organization from legal process relating to acts performed by them in their official capacity, and the immunity of employees from income taxation on salaries paid by the organization.

"The Congress in drafting section 247, and in the legislative history of the Immigration and Nationality Act, made no attempt to list the rights, privileges, exemptions, and immunities it had in mind. However, it did leave in the legislative history, an indication of the kind of rights and privileges it felt should be and would be waived by the immigrant alien employed by an international organization or a foreign diplomatic mission if he wished to retain both his immigrant status and his occupation. Based upon these references, we are in a position to offer some general advice on the effect of a waiver under section 247 (b), but must leave to future administrative or judicial rulings the precise effect of individual waivers in the variety of situations that may arise.

"The bill which became the Immigration and Nationality Act (H.R. 5678, 82nd Cong.) was one of a number introduced as the result of an investigation and study of the entire immigration and naturalization system by the Senate Committee on the Judiciary, pursuant to Senate Resolution 137 of the 80th Congress. In its report on the investigation made to the 81st Congress, the Committee considered the status of the various classes of nonimmigrants and made five recommendations for changes in the immigration laws relating to accredited officials of foreign governments and representatives and officials of international organizations. These recommendations, it stated, would not 'in its opinion jeopardize the conduction (sic) of the foreign relations of the United States'. S. Report 1515, 81st Cong., page 523. The fifth of these recommendations read as follows:

> '5. It is also recommended that provision be made for the adjustment of the status of a lawfully admitted permanent alien resident to that of a nonimmigrant admitted under the foreign government official or international-organization category where the alien acquires an occupational status which would entitle him to such nonimmigrant status if he were applying for admission. The subcommittee recommends that since such persons acquire the wide privileges, exemptions and immunities applicable to such aliens under our laws, they should not have the privilege of acquiring citizenship while in that occupational status. S. Report 1515, 81st Cong., page 525.

"This recommendation might have been carried out by including a provision of law depriving of their immigrant status immigrants who acquired the privileges, exemptions, and immunities attaching to their occupations. Instead, the 82nd Congress took a less severe course and, in adopting section 247, gave immigrants in those occupations a choice of retaining privileges and surrendering immigrant status or of waiving privileges and keeping immigrant status.

"In so doing, both the House and Senate Committees said: 'In section 247, the Attorney General is required to adjust the status of immigrants who, subsequent to entry, acquire an occupational status which would entitle them to a nonimmigrant status... This is intended to cover the situation where aliens who have entered as immigrants obtain employment with foreign diplomatic missions or international organizations or carry on the activities of treaty traders. Normally, they would be classified as nonimmigrants and because of the nature of their occupation, would be entitled to certain privileges, immunities and exemptions. The committee feels that it is undesirable to have such aliens continue in the status of lawful permanent residents and thereby become eligible for citizenship, when, because of their occupational status they are entitled to certain privileges, immunities, and exemptions which are inconsistent with an assumption of the responsibilities of citizenship under our laws. Such an adjustment shall not be required if the alien executes an effective waiver of all rights, privileges, exemptions and immunities under any law or any Executive order which would otherwise accrue to him because of his occupational status.' H. Report 1965, 82nd Cong., pp. 63-64, S. Report 1137, 82nd Cong., page 26. (Underscoring supplied.)

"In other words, the concern was that the assertion of certain privileges and exemptions by immigrants, who were employed by international organizations and foreign missions but who entered this country ostensibly with the idea of becoming citizens, was inconsistent with their proposed assumption of the responsibilities of citizenship; accordingly, such privileges should not be available to them. At the same time, the Congress disclaimed any intention of jeopardizing conduct of the foreign relations of the United States (supra, S. Report 1515, 81st Cong., page 523), which includes not jeopardizing the lawful activities of the international organizations and foreign missions located here, who normally engage Americans as well as aliens to conduct their business. In some instances our laws, granting the necessary protections and privileges for these organizations and missions and their employees, draw no distinctions between American and alien employees, treating all alike; in other cases, the privileges granted are not available to Americans but only to the non-citizen employees. Hence it is clear that the Congress intended to deprive immigrant aliens employed in the international organizations and foreign missions of the privileges and exemptions resulting from the occupational status which would not be equally available to American citizens similarly situated. Conversely, it was not the intention of the Congress to require immigrants in these occupations to surrender privileges which American citizens similarly employed may assert. Obviously, if American citizens may lawfully exercise such privileges, the privileges would not appear to be inconsistent with the responsibilities of citizenship.

"The Congress might have discriminated entirely against immigrants in favour of citizens, but it did not do so. On the contrary it sought, by the election offered under section 247, to place immigrants and citizens in the specified categories of employment on an equal footing by denying to immigrants special privileges, exemptions, and immunities not available to citizens similarly employed.

"For example, section 116 (h) of the Internal Revenue Code, 26 U.S.C. 116 (h), exempts from federal income taxation the compensation of an employee of an international organization if the employee is not a citizen of the United States. Thus, under this section of the law, American citizen employees of international organizations do not enjoy exemption from federal income taxes. Hence, to the extent that the federal income tax exemptions of employees of an international organization rest upon section 116 (h) of the Internal Revenue Code, American citizen employees individually bear an obligation of citizenship (the payment of taxes) which immigrant employees, who are potential citizens, heretofore had no need to bear as individuals (disregarding any equalization of pay that the employer organization may attempt to work out). Therefore, the tax exemptions under section 116 (h) claimable by an immigrant alien in one of the specified occupations is an exemption which he waives when he files the waiver under section 247 of the Immigration and Nationality Act.

"A converse example, in the matter of legal process, is section 7 (b) of the International Organizations Immunities Act, 22 U.S.C. 288d, under which officers and employees of international organizations shall be immune from suit and legal process relating to acts performed by them in their official capacity and falling within their functions as such officers or employees, subject to waiver of the immunity by the international organization. In the case of the United Nations, these privileges together with the others in the Act became effective pursuant to Executive Order No. 9698 of February 19, 1946, 11 F.R. 1809. No distinction is made in the statute between citizen and non-citizen employees of the international organization. Hence it would appear that an immigrant alien employee of the United Nations who properly claims the immunity from suit and legal process for official acts allowed under section 7 (b) asserts no greater privilege than would an American citizen employee similarly situated. Accordingly, the waiver of immunities under section 247 of the Immigration and Nationality Act by the immigrant employee of the United Nations would not appear to be a waiver of the immunity from suit and legal process to which section 7 (b) of the International Organizations Immunities Act entitles him.

"Application of the foregoing principles in interpreting waivers under section 247, on a case-by-case basis as different situations arise, should accomplish the objective laid down by the Congress. It should result in placing the employee of an international organization or foreign mission, who happens to be an immigrant, in a position of parity with his fellow

American employee of the same organization by allowing the immigrant employee no greater privileges in connection with the employment than an American citizen similarly employed. In maintaining his immigrant status and preparing for American citizenship, the immigrant employee of the international organization or foreign mission will not be asserting privileges which he could not obtain and assert were he an American citizen in the same employment. Whatever rights remain and accrue to him as a result of the occupational status will be consistent with his 'assumption of the responsibilities of citizenship under our laws'."

27. Exchange facilities

75. Under section 18 (e) officials of the United Nations are

> "accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Governments concerned."

76. A similar provision is contained in section 15 (e) of the Agreement with Switzerland and in the ECAFE and ECA Agreements. In each of the latter two Agreements, however, an additional clause is provided similar to section 13 (g) of the ECLA Agreement, which grants

> "Freedom for officials of other than Chilean nationality to maintain within the territory of the Republic of Chile or elsewhere, foreign securities, foreign currency accounts and movable and immovable property, and on termination of their employment by ECLA, the right to take their funds out of Chile, without any restrictions or limitations, in the currencies and in the amounts brought by them into Chile through authorized channels."

77. A number of field offices reported difficulty in securing full implementation of this provision, in particular when officials sought to transfer their money into other currencies on completion of their assignment. In some instances, while imposing no restriction on the amount, the consent of the host authorities had to be obtained in order to convert local currency; in others limitations were placed on the total amount which might be transferred and an official permit was required. The procedures involved were frequently complex and lengthy. In a few cases it was said that there was no possibility to transfer local currency into that of the official's own country or into freely convertible currency.

78. It may be noted that in two cases which arose and on the basis of the particular facts, section 18 (e) was interpreted as applying only vis-à-vis a State Party to the General Convention in respect of officials resident within its territory. In the first of these cases in which the national Government of a Technical Assistance Board official froze the account which he maintained there, whilst stationed in another country, the Office of Legal Affairs stated that section 18 (e) was not generally deemed applicable as between an official and his national Government. Since the action was taken as part of a general measure and not aimed solely at the official, it was difficult to make representations to the

Government concerned. In a further case which occurred in 1964, the Office of Legal Affairs advised that, since section 18 (e) generally imposed an obligation on a State Party to the General Convention only in respect of officials resident there, no steps could be taken under that paragraph to request the removal of restrictions imposed on bank accounts maintained in one country by Technical Assistance Board officials stationed in another. The position would be different where accounts held by the United Nations itself were involved.

28. Repatriation facilities in time of international crisis

79. Section 18 (f) of the General Convention provides that United Nations officials shall

> "be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys."

It is believed that the United Nations has not on any occasion directly invoked this provision, or its equivalent in other agreements.[1/] United Nations officials have been evacuated from certain areas, however, both in the Congo, chiefly with the help of United Nations facilities and forces, and in the Middle East.

1/ Section 15 (f) Agreement with Switzerland, section 13 (a), ECLA Agreement, section 17 (e) ECAFE Agreement, section 11 (h) ECA Agreement.

29. Importation of furniture and effects

80. Under section 18 of the General Convention, reflected in parallel provisions contained in the majority of host agreements, officials of the United Nations

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

81. As regards the interpretation of the "effects" which may be imported free of duty, the United Nations has consistently maintained that these include an automobile. The following extract from a letter, sent to one of the specialized agencies in 1955, sets out the United Nations position.

> "We have consistently taken the position that the term 'effects' in the aforementioned section of the Convention includes automobiles and that a United Nations official should, therefore, have the right to import his automobile free of customs duty at the time of first taking up his post, whether at United Nations Headquarters or at any other United Nations duty station. This position is based upon logic and practical necessity. Under present-day conditions, the automobile has become so commonplace a possession among people in circumstances comparable to those of a United Nations official that, for such an official, it would no longer be considered a luxury but should be deemed to constitute a reasonable part of his personal effects. Indeed, the possession of it may facilitate the performance of his functions, wherever he is stationed.
>
> "This position of ours has been in accord with the practice of a number of States and we are not aware of any instance where a contrary interpretation had been sustained or, at any rate, where a United Nations official had been required to pay customs duty for the importation of his automobile at the time of first taking up his post. The United States, which has not yet acceded to the Convention but has, under its International Organizations Immunities Act, granted exemption from customs duties on 'baggage and effects of alien officers and employees of international organizations imported in connection with the arrival of the owner', has invariably extended that exemption to automobiles."

82. The majority of countries place no restriction on the type of personal belongings which may be imported duty free during the installation period. A minority require duty to be paid on certain articles (e.g., on consumer goods) or prohibit their importation altogether (e.g., firearms).

83. As regards the length of time during which staff members may import their furniture and effects, the Legal Counsel replied to an enquiry from a United Nations subsidiary organ in the following terms:

"In the consistent practice of the Secretariat, the expression 'at the time of first taking up their post in the country in question' in section 18 (g) of the Convention on the Privileges and Immunities of the General Convention has been interpreted as meaning during a reasonable period of time after the physical arrival of the official concerned. The length of time that is considered reasonable may well depend on the circumstances of each case, such as those arising out of air travel which necessitates the separate transfer of effects by surface means, the great distances often involved and consequently the length of time surface transport entails and, also, the inevitable changes in assignment of staff at the United Nations from one country to another, frequently at short notice, involving at times problems of housing and installation and other practical considerations. Thus we have avoided laying down a hard and fast limit on the period of duty-free importation, but have consistently based ourselves upon the rule of reasonableness."

It was stated that a period of three months would unquestionably be unreasonable. A considerable number of countries either impose no time-limit on the period when personal belongings may be imported duty free or permit additional articles to be imported free of duty even after the period of first installation has elapsed, at least in the case of certain categories of officials (for example, UNDP resident representatives).

84. Section 11 (j) of the ECA Agreement provides that officials may import their furniture and effects free of duty within twelve months of taking up their post in Ethiopia. Owing to cases where officials sought to import their furniture and effects after the expiry of this period (e.g., upon extension of a one-year contract), ECA has sometimes found it necessary to request the Ethiopian authorities to grant an extension beyond twelve months. In 1959 the Brazilian Minister of Finances published a circular granting officials of the United Nations and specialized agencies stationed in Brazil the same customs treatment as that afforded to members of diplomatic missions in Brazil. Officials of Brazilian nationality are also granted the right of duty-free importation of their furniture and effects on returning to Brazil after two years or more service with the United Nations.

85. As regards the position in the United States, the entry free of duty and internal revenue tax of the baggage and effects of United Nations staff holding G-4 visas (i.e., those recruited internationally and who are not United States citizens) is governed by section 3 of the International Organizations Immunities Act and section 10.30A of the Customs Regulations of 1943. These provisions are

interpreted and applied, on the basis of "reasonableness", broadly as described below. Baggage and effects may enter free only in connexion with the staff member's own entry into the United States, which may be either upon recruitment, upon change of duty station, or following official travel, including home leave. In the case of entry upon recruitment or following a change of duty station, the staff member may be required to furnish a detailed listing of his effects and the contents of baggage. One automobile and a reasonable amount of alcoholic beverages may be imported free of duty. In other cases newly acquired effects (including alcoholic beverages) may be imported in reasonable amount provided they have been in the staff member's possession abroad, i.e., purchased or shipped from a country which was visited by the staff member. In addition one automobile may be imported free of duty provided it has been at least one year since the previous importation of an automobile. All articles imported, irrespective of the time of entry, must be intended for the bona fide personal or household use of the staff member and may not be imported as an accommodation to others or for sale or other commercial use.

86. At the United Nations Office at Geneva the matter is governed in detail by the Règlement Douanier, adopted by the Federal Council on 23 April 1952; the privilege which is granted extends in some cases beyond that of the duty free importation solely of furniture and effects. Senior officials assimilated to heads of diplomatic missions in Switzerland[1/] have the right to import goods of any description from outside the country which are destined for their own use or that of their family without payment of duty. Officials of the rank immediately below this[2/] have the right to import furniture and effects on taking up the post and to import any other goods, other than furniture, at any time, provided these are solely for their own use or for that of their family, without payment of duty. Officials in these two categories are also entitled to purchase petrol, diesel oil and alcohol without payment of customs duty. Other officials have the right of duty-free importation of their furniture and effects at the time of taking up the post, together with foodstuffs and alcohol. Officials, other than those assimilated

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1/ This category comprises Under-Secretaries and above, together with a few officials of Director rank (D.2). See section 30 below.

2/ In effect, those holding Director (D.2), Principal Officer (D.1) and certain Senior Officer (P.5) posts.

to the heads of diplomatic missions, are not permitted to dispose of the goods imported by them within a period of less than five years unless the duty has been paid. Swiss nationals have no customs privileges, other than those granted to all persons resident in Switzerland, by virtue of their United Nations employment.

87. As regards the importation of cars into Switzerland the position in brief[3/] is that officials granted diplomatic status have the right to import a car for their own use, duty-free, every three years. Any official, (even a Swiss national), may import a car upon taking up his duties in Geneva, however, provided he has owned the car for at least a year; in this case, the official receives the same treatment as an immigrant. Non-Swiss nationals may later import a new car, duty free, as United Nations officials. As regards the conditions under which vehicles may be disposed of, in the case of officials not granted diplomatic status a car imported duty free cannot be sold before five years without paying duty. If the official leaves before the five years are up, the amount of customs duty varies according to the length of time he has owned the car.

3/ For details see Règlement Douanier, chap. X.

30. Diplomatic privileges and immunities of the Secretary-General and other senior officials

88. Section 19 of the General Convention provides that:

"In addition to the immunities and privileges specified in section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with International law."

89. This provision was repeated in section 16 of the Agreement with Switzerland. By a decision of 30 December 1947, the Swiss Federal Council further decided:

"...qu'à partir du 1er janvier 1948 les privilèges et immunités accordés aux collaborateurs diplomatiques des chefs des missions accrédités auprès de la Confédération suisse seront également accordés à certains fonctionnaires de rang élevé de l'Office européen des Nations Unies.

"En proportion de l'effectif actuel des fonctionnaires des Nations Unies à Genève, le nombre des bénéficiaires de cette décision ne devra pas dépasser trente-cinq.

"Le directeur de l'Office européen des Nations Unies établira une liste des fonctionnaires de rang élevé entrant en ligne de compte et la soumettra au département politique. La même procédure vaudra pour les désignations ultérieures.

"Les hauts fonctionnaires mis au bénéfice de la section 16 de l'Arrangement provisoire du 19 avril 1946 ne seront pas compris dans cette liste, étant donné qu'ils jouissent déjà des mêmes privilèges et immunités que les chefs de missions diplomatiques accrédités auprès de la Confédération suisse."

90. The arrangements indicated in the above decision have been followed in respect of the staff of the Geneva Office, subject to an exchange of letters, dated 5 and 11 April 1963, whereby section 16 of the 1946 Agreement was changed to read as follows:

"Section 16. The Secretary-General and the Assistant Secretaries-General and the officials assimilated to them, shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law and international usage.

"In addition, officials in the categories which are specified by the Secretary-General or by the person authorized by him, and which are agreed to by the Swiss Federal Council, shall be accorded the privileges and immunities, exemptions and facilities accorded to diplomatic agents who are not heads of mission."

91. Section 15 of the ECLA Agreement provides:

"The Government shall accord to the Executive Secretary and other senior officials of ECLA, recognized as such by the Ministry of Foreign Affairs, to the extent permitted under its constitutional precepts, the diplomatic immunities and privileges specified in Article 105, paragraph 2, of the United Nations Charter.

"For this purpose, the said officials of ECLA shall be incorporated by the Ministry of Foreign Affairs into the appropriate diplomatic categories and shall enjoy the customs exemptions provided in Section 1901 of the Customs Tariff."

Section 19 of the ECAFE Agreement and section 13 of the ECA Agreement contain similar provisions.

92. The staff of many of the missions sent by the United Nations have also been granted diplomatic privileges and immunities. Thus in the exchange of letters between the Secretary-General and the French and United Kingdom representatives in 1950 regarding the privileges and immunities of the United Nations Commissioner in Libya, the Secretary-General wrote:

"It is noted that the Convention on the Privileges and Immunities of the United Nations does not appear to contain any express provision specifically applicable to an office such as that of the Commissioner in Libya. Nevertheless, it is my considered opinion that, in view of the high office which the Commissioner in Libya holds as an agent of this Organization and of the important functions granted to him, it would be necessary for the independent exercise of these functions that the Commissioner in Libya enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys and which are accorded to the Secretary-General and the Assistant Secretaries-General of the United Nations under Section 19 of the Convention on the Privileges and Immunities of the United Nations."

The French and United Kingdom Governments agreed to this request.

93. In the case of the United Nations Commission for Indonesia, the Government of Indonesia granted the Principal Secretary and the members of the Secretariat th privileges and immunities accorded to members of the Diplomatic Corps of similar rank accredited in Indonesia.

94. Other examples of missions in which diplomatic privileges and immunities were granted include the United Nations Military Observer Group in Lebanon, the Subsidiary Organ of the United Nations under the Charge of a Special Representative of the Secretary-General stationed in Jordan; the Observation Operation along the Saudi Arabia-Yemen border; and the United Nations Mediator in Cyprus and his staff. In addition a number of the resident representatives of the United Nations Development Programme enjoy diplomatic privileges and immunities, together with certain members of their staff (e.g., deputy resident representatives), under arrangements made with the State concerned. A similar situation exists as regards the staff (usually the director and deputy director) of a number of United Nations Information Centres. In Presidential Decree No. 12991 of 10 June 1963, Lebanon granted diplomatic privileges and immunities to all Directors and Assistant Directors of UNRWA residing in Lebanon, and to all other United Nations officials in Lebanon with the rank of Director or above.

95. Following the abolition of the title "Assistant Secretary-General" and its replacement by "Under-Secretary", the Office of Legal Affairs prepared an aide-mémoire in 1959, reproduced below, covering United Nations practice under section 19 and its application to officials having the rank of Under-Secretaries.

> "1. Under Section 19 of the Convention on the Privileges and Immunities of the United Nations, 'the Secretary-General and the Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law'. As a result of the reorganization of the Secretariat, carried out with the approval of the General Assembly (resolution 886 (IX) of 17 December 1954 adopted at the Ninth Session), the rank of assistant secretaries-general, as well as that of principal directors, was abolished and, instead, a single top level immediately below the Secretary-General was created of under-secretaries and officials having the status of under-secretaries.* This top level, as conceived at the time, was to comprise under-secretaries, with or without departments, heads of offices, and deputy under-secretaries. At present, however, there are no deputy under-secretaries. A current list of the actual posts is appended hereto. The question now arises as

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* The scheme was first presented by the Secretary-General to the General Assembly at its eighth session in 1953. See Report of the Secretary-General, A/2554, paragraphs 21-24, Official Records of the General Assembly, Eighth Session, Annexes, Agenda item 48. It was further elaborated in a Report, A/2751, to the ninth session of the General Assembly, Official Records, Agenda item 53; see in particular paras. 13-14 and 28-32 of the Report.

to whether such top-level officials are entitled to the same privileges and immunities as accorded, under Section 19 of the Convention, to assistant secretaries-general.

"2. In the opinion of the Secretary-General, the foregoing question should be answered in the affirmative. In other words, officials having the status of under-secretaries should enjoy the privileges and immunities provided for under Section 19 of the Convention on the Privileges and Immunities of the United Nations. This position was submitted by the Secretary-General in his Report to the General Assembly as a part of the scheme of the re-organization of the Secretariat. Paragraph 31 of the Report states:

> '31. In presenting these new organizational arrangements, I have anticipated that the officials having the status of Under-Secretaries will be accorded the privileges specified in section 19 of the Convention on the Privileges and Immunities of the United Nations. That section, in providing that the Secretary-General and all Assistant Secretaries-General would be granted the privileges and immunities of diplomatic envoys, clearly contemplated that the highest level of officials immediately under the Secretary-General should be accorded the privileges appropriate to their functions. I trust that it will be found consistent with the intentions of that section that those who would now be the highest level of officials immediately under the Secretary-General should enjoy the privileges recognized as appropriate to that status and to the responsibility it carries.'**

"No objection was expressed to this view by the Fifth Committee or the Advisory Committee on Administrative and Budgetary Questions. Although the resolution adopted by the General Assembly does not specifically refer to the privileges and immunities aspect, it 'approves generally the measures adopted by the Secretary General'.***

"3. The principle that the officials ranking immediately below the executive head should be accorded diplomatic privileges and immunities has indeed been applied to a number of specialized agencies. This has been done, for instance, by extending the application of Section 21 of the standard clauses of the Convention on the Privileges and Immunities of the Specialized Agencies - a section corresponding to Section 19 of the Convention on the Privileges and Immunities of the United Nations. Thus, with respect to the International Labour Organization, Annex I to the Specialized Agencies Convention provides:

> 'The privileges, immunities, exemptions and facilities referred to in Section 21 of the standard clauses shall also be accorded to any Deputy Director-General of the International Labour Office and any Assistant Director-General of the International Labour Office.' (Paragraph 2 of Annex I.)

A/2731, op. cit., para. 31.

Resolution 886 (IX), 17 December 1954, para. 2.

Similar provisions in Annexes II and IV to the same Convention extend diplomatic privileges to 'any Deputy Director-General' of, respectively, the Food and Agriculture Organization and the United Nations Educational, Scientific and Cultural Organization (paragraph 3 of Annex II and paragraph 2 of Annex IV). Similarly, the Second Revised Annex VII to the same Convention, approved by the Second Revised Annex VII to the same Convention, approved by the Tenth World Health Assembly in 1957 extends diplomatic privileges to any Deputy Director-General' of the World Health Organization.**** It may be significant to note that the above-cited instruments have all been accepted by a number of States, including the United Kingdom.

"4. It is true that, under the re-organization, officials at the level immediately below the Secretary-General are more numerous than were the assistant secretaries-general. It may be pointed out, however, that these officials all have far-reaching responsibility for the conduct of activities within their respective fields. In principle the delegation from the Secretary-General of administrative responsibility is as great as, and their functions are no less than, in the case of the assistant secretaries-general before the re-organization. The fact is that the size, the scope of the responsibilities of the United Nations as a whole, and the number of programmes (including semi-independent subsidiary organs, major regional commisions, and the like) which the Organization has found necessary to establish, have all greatly expanded since the adoption of this Convention early in 1946. Thus, in the case of the heads of the subsidiary organs such as the Commander of the United Nations Emergency Force, the Executive Director of the United Nations Children's Fund, the United Nations High Commissioner for Refugees and the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, to name a few, it is obvious that the magnitude and importance of their operations are such that the privileges and immunities envisaged in Section 19 of the Convention may be said to be as necessary for the independent exercise of their functions as they were for the assistant secretaries-general. Indeed, their position and degree of responsibility are not dissimilar to that of an executive head of a specialized agency accorded diplomatic status by Section 21 of the companion Convention. Finally, it may be noted that in another important respect the under-secretaries occupy a station comparable to that of the former assistant secretaries-general and dissimilar to that of the regular Secretariat officials. Unlike the latter they are not given permanent contracts looking toward a career service. Not only are they selected on the personal judgement of the Secretary-General but their appointments are of limited duration, designed to be generally co-terminous with the Secretary-General's own term of office. This emphasizes the degree of their functional association with the chief administrative officer of the Organization, with the reasonable implication that their diplomatic status might be expected to be of a similar order.

**** United Nations Treaty Series, Vol. 275, at page 300.

"5. The next question then is: can the number of officials enjoying the privileges and immunities of Section 19 of the Convention be reduced by granting such privileges and immunities to some of the officials at the rank immediately below the Secretary-General, and not to others at the same level? This would involve a discrimination as among officials of the same level and the question would arise: What criteria are to be used for differentiating among these officials? They have been given the same status and voted the same salary by the General Assembly. Any attempt at dividing them into classes, as it were, could not fail to lead to invidious results. It is also to be noted that as a practical matter it will be rare for any number of these officials to sojourn at any one time in any one country, other than at the seat of the Organization.

"6. In its thirteen years of existence, there has been no case where the operation of Section 19 of the Convention on the Privileges and Immunities of the United Nations has given rise to difficulty with any Government. It is therefore with a view to the preservation of a principle consecrated in that Section rather than to securing any short-range advantage, that the Secretary-General has felt constrained to adhere to the position which he presented to the General Assembly and which has not given rise to objection on the part of any Member State."

The following is a list of the officials holding the rank of Under-Secretary:

Officials Holding the Rank of Under-Secretary at United Nations Headquarters

Administrator, United Nations Development Programme

Associate Administrator, United Nations Development Programme

Co-Administrator, United Nations Development Programme

Commissioner for Technical Co-operation

Executive Director, UNICEF

Executive Director, United Nations Training and Research Institute

Secretary-General's Special Representative to the Conference of the Eighteen-Nation Committee on Disarmament

Under-Secretary, Controller

Under-Secretary, Director of General Services

Under-Secretary, Director of Personnel

Under-Secretary for Conference Services

Under-Secretary for Economic and Social Affairs

Under-Secretary for General Assembly Affairs and Chef de Cabinet of the Secretary-General

Under-Secretary for Inter-Agency Affairs

Under-Secretary, Legal Counsel

Under-Secretary for Political and Security Council Affairs

Under-Secretary for Special Political Affairs*

Under-Secretary for Special Political Affairs*

Under-Secretary for Trusteeship and Non-Self-Governing Territories

Officials Holding the Rank of Under-Secretary at Established Offices Elsewhere

Commissioner-General, UNRWA

Executive Secretary, ECA

Executive Secretary, ECAFE

Executive Secretary, ECE

Executive Secretary, ECLA

Executive Director, United Nations Industrial Development Organization

Secretary-General, United Nations Conference on Trade and Development

Under-Secretary, Director-General of the United Nations Office at Geneva

United Nations High Commissioner for Refugees

Officials Holding the Rank of Under-Secretary in Charge of Missions or on Special Assignment

Chief of Staff, UNTSO

Chief Military Observer, UNMOGIP

Commander, UNEF

Commander, UNFICYP

Special Representative of the Secretary-General in Cyprus

United Nations Representative for India and Pakistan

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* One of the Under-Secretaries for Special Political Affairs is also in charge of the Office of Public Information.

31. Waiver of the privileges and immunities of officials[1/]

97. Section 20 of the General Convention provides as follows:

"Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where in his opinion the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity."

No instance has arisen in which the Security Council has been requested to waive the immunity of the Secretary-General.

98. The position in respect of the waiver of the privileges and immunities of officials was summarized in the following internal memorandum, dated 3 November 1964, prepared by the Office of Legal Affairs.[2/]

"With reference to the inquiry concerning section 18 (a) of the Convention on the Privileges and Immunities of the United Nations, we should like to make the following comment:

"1. The immunity from legal process in respect to official acts provided under section 18 (a) of the Convention applies vis-à-vis the home country of an official as well as vis-à-vis the country in which he is serving. Therefore, a question prior to the determination of what jurisdiction may try the case is whether the Secretary-General should waive the immunity of an official in a particular case.

"2. Section 20 of the Convention provides that privileges and immunities are granted to officials in the interest of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General has the right and duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interest of the United Nations. If the Secretary-General, in a particular case, decides that immunity would impede the course of justice and could be waived without prejudice to the interests of the Organization, then he will waive under this section.

1/ On the waiver of privileges and immunities in relation to United States immigrant status, see section 26 (b) above. The issue of the waiver of the immunity of officials in respect of official acts is also considered in section 23 above.

2/ United Nations Juridical Yearbook 1964, p. 263.

"3. Normally, in the case of automobile accidents, where a satisfactory settlement is not negotiated, a waiver will be made with respect to the civil claim and a civil action can be tried in the country where the accident occurred or where the staff member may be located. As an alternative, arrangements could be made for arbitration under section 29 (b). Such arrangements under section 29 (b) are usually made on an ad hoc basis permitting the choice of the most appropriate method for each case. In the past there have been few criminal cases in which the question of waiver arose and the Secretary-General's decision under section 20 has been taken in each case in the light of the particular circumstances."

99. Amongst more detailed aspects of United Nations practice in respect of waivers it may be noted that in 1955 the Office of Legal Affairs advised that a decision of the Secretary-General would be required before a United Nations official could testify in connexion with any matter of United Nations concern; it was stated that an official might, however, testify as to his name, title, job description and date of his appointment, without special waiver. In 1963 the Foreign Ministry of a Member State requested the waiver of the immunity of a member of the United Nations Field Service who was involved in a car accident whilst driving on official duty. The United Nations requested the Government to provide in support of its request, not a "bare statement" of the fact that an offence had been committed under the Penal Code, "but a motivated statement of reasoning indicating the manner in which the course of justice" might be impeded by the immunity, as well as any other facts which might help the Secretary-General to determine whether or not the waiver could be granted without prejudice to the interest of the United Nations.

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

100. Section 21 of the General Convention provides that:

> "The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article."

101. The United Nations has co-operated with national authorities on a number of occasions where it seemed appropriate for it to do so; some of these occasions concerned judicial actions brought against or concerning staff members, which have been considered above.[1/] The obligation to ensure that justice was done has operated as a major consideration in all cases involving requests for the waiver of the immunity of officials.[2/] The observance of police regulations and the prevention of abuse of any of the privileges granted to officials under article V, have been secured chiefly through administrative means e.g., by means of the United Nations staff rules and administrative instructions. To a large extent, moreover, since the official has enjoyed the privilege or immunity concerned only through the intermediary of the United Nations, the Organization has been able to control the manner and extent of the exercise of each privilege or immunity, and thereby prevent any abuse.

1/ See section 23 above.

2/ Ibid., and section 31 above.

CHAPTER V. PRIVILEGES AND IMMUNITIES OF EXPERTS ON MISSIONS FOR THE UNITED NATIONS AND OF PERSONS HAVING OFFICIAL BUSINESS WITH THE UNITED NATIONS

33. Persons falling within the category of "experts on missions for the United Nations"

1. Under article VI of the General Convention certain immunities, broadly similar to those accorded to officials under article V, are granted to "Experts (other than officials coming within the scope of article V) performing missions for the United Nations".

2. United Nations action at the time of appointment is conclusive in determining whether or not a given person has been appointed as a staff member, so as to be subject to the United Nations staff rules and regulations and to enjoy the benefits of article V of the Convention, or as an expert subject to different contractual conditions and falling under article VI of the Convention as regards privileges and immunities. As noted in sections 22 and 24 above, Governments have on occasions considered that technical assistance experts (who are employed as staff members) were to be classified as experts under article VI of the Convention, and not therefore immune from taxation. In correspondence with a Member State in 1956, the Legal Counsel described the distinction between officials, falling under article V and experts who come under article VI as follows:

> "... Owing to the similarity of the terms, it is understandable that there should arise a tendency to regard Technical Assistance experts as experts within the meaning of Article VI of the Convention on Privileges and Immunities of the United Nations, or as experts referred to in Section 29 and annexes I, II, III, IV, and VII of the Convention on the Privileges and Immunities of the Specialized Agencies. The resemblance is, however, fortuitous, and the two categories are legally and administratively quite distinct. The terms 'experts on missions for the United Nations' and 'experts serving on Committees or performing missions' for a Specialized Agency were intended to apply only to persons performing a mission for the United Nations or a Specialized Agency who, by reason of their status, are neither representatives of Governments nor officials of the Organization concerned but who, for the independent exercise of their functions in connection with their respective Organizations, must enjoy certain privileges and immunities. An example of such 'experts on missions' would be members of certain commissions and committees of the United Nations or of the Specialized Agencies who serve in their individual capacity and not as government representatives. Another example is the United Nations military observers at present serving in Palestine and Kashmir, whose salaries are paid by their own respective

Governments and to whom the United Nations pays only an allowance. In adopting Article VI of the United Nations Convention, the General Assembly had in mind peace missions in particular. It did not provide for the tax exemption of such experts (though it conferred upon them a quasi-diplomatic status not enjoyed by Secretariat officials), because they are commonly made available or even seconded by Governments, or else are designated to serve in a special status deliberately set apart from Secretariat staff. Therefore, whether a person is in the status of an 'official' or in that of an 'Expert on Mission' depends on the nature of his contractual relations, his terms of service, with the Organization concerned.

With regard to Technical Assistance experts engaged by the United Nations or by one of the Specialized Agencies, it is felt that, to enable the Executive Head concerned to exercise the responsibilities vested in him in the implementation of the Expanded Programme of Technical Assistance, it is necessary, as far as possible, to bring such experts under the authority of the Executive Head of the Organization with which they serve to a degree similar to staff members. Moreover, in view of the fact that such experts perform functions essentially similar in nature to those of staff members, it is important that there be equality of treatment between such experts and members of the staff - as well as the intended equality of treatment, as among themselves, regardless of nationality. For these reasons, Technical Assistance experts, with certain exceptions which will be explained in the next paragraph, are subject to obligations and accorded rights substantially the same as those of staff members. They subscribe to the same oath; they are similarly subject to the authority of and are responsible to their respective Executive Heads; and they receive a monthly salary, and this salary is subject to staff assessment (in Organizations in which such assessment is applied to the staff) in the same manner as other staff members. Such experts are therefore designated as being in the categories of officials and are entitled to the privileges and immunities appertaining to officials. The result is logical, since all the policies motivating the adoption by the General Assembly in the Conventions of the respective Articles on officials are thus seen to be equally applicable to those serving as Technical Assistance experts.

As an exception to the general rule stated in the preceding paragraph, a small number of technical assistance experts are engaged from time to time who are not brought under the authority of the Executive Head of the Organization with which they serve to a degree similar to staff members because circumstances which vary in every individual case render it unnecessary or inadvisable to do so. Such experts are not considered as falling in the categories of officials but rather as being in the status of 'experts on missions for the United Nations' or 'experts performing missions' for a Specialized Agency, as the case may be. An example might be the case of an individual whose sole responsibility is the production of a text book or a report for a fixed fee; another example might involve engagement of the services of an individual through contract with a third party such as a university or research institution, the contractual relationship being between the Executive Head and the institution on the one hand, and between the institution and the individual on the other. Such individuals are

engaged under special contractual arrangements which neither confer on them the privileges of staff membership nor require of them the obligations of members of the staff. They do not subscribe to the oath of office; their remuneration is normally paid on the basis of a fixed fee which is not related to the international salary scale; and the extent of the authority of the Executive Head over such individuals and of their responsibility to him is narrow in scope and limited to the terms set forth in the contractual agreement under which they are engaged. Many of these Technical Assistance experts are engaged on relatively short-term appointments although, in principle, it is not this fact which distinguishes them from staff members, since some staff members are also engaged on short terms...".

3. Examples of persons classified as "Experts on Missions for the United Nations" include UNTSO and UNMOGIP military observers, who are military officers, loaned by Government, and officers serving on the United Nations Command (The Commander's Headquarters Staff) of UNEF and UNFICYP,[1/] members of the Administrative Tribunal, of the Advisory Committee on Administrative and Budgetary Questions, of the International Civil Service Advisory Board, of the International Law Commission, of the Permanent Central Opium Board, and consultants.

1/ UNEF Agreement, para. 25, and UNFICYP Agreement, para. 25, United Nations Treaty Series, vol. 492, p. 72.

34. Privileges and immunities of "Experts on Missions for the United Nations"

4. Article VI of the General Convention provides as follows:

"Section 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connexion with their missions. In particular they shall be accorded:

"(a) Immunity from personal arrest or detention and from seizure of their personal baggage;

"(b) In respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

"(c) Inviolability for all papers and documents;

"(d) For the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

"(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

"(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

"Section 23. Privileges and Immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where, in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations."

5. In so far as the privileges and immunities listed are similar to those accorded to officials under article V, United Nations practice in respect of the latter may be considered relevant to the interpretation of the provisions of article VI; it may be noted that experts are given an express immunity from personal arrest. The difference between the two articles which has attracted most attention, however, is that in article VI no immunity is granted from national taxation. In the case of United Nations military observers, their only emoluments from the United Nations

are normally a per diem allowance which is regarded as a subsistence allowance during their period of duty. Members of the International Law Commission and of the Permanent Central Opium Board and Drug Supervisory Body, on the other hand, receive honoraria from the United Nations. The taxability of these payments is dependent on the appropriate national tax laws.

6. When acceding to the General Convention in 1962, Mexico did so subject to the reservation that experts of Mexican nationality, exercising their functions in Mexico, should enjoy the privileges of section 22 (a), (b), (c), (d) and (f) respectively, "on the understanding that the inviolability established in.... Section 22, paragraph (c), shall be granted only for official papers and documents".

7. It may be noted that in the case of military observers certain privileges and immunities, additional to those contained in article VI, and necessary for the performance of their functions, such as freedom of movement across armistice demarcation lines, have been established by custom, under Security Council resolutions, and by direct intendment of Article 105 of the Charter. Lastly, although article VI contains no provision for the grant of privileges and immunities to the dependents of experts on mission, such dependents have in practice been accorded certain limited privileges.

35. Privileges and immunities of persons having official business with the United Nations

8. In addition to United Nations officials and "Experts on Missions for the United Nations", a remaining category of persons (other than the representatives of Member States) who may enjoy certain privileges and immunities are those having official business with the United Nations. Examples of persons falling within this category are those invited to appear before United Nations bodies, whether in a representative capacity (e.g. on behalf of a non-governmental organization having consultative status) or as individuals able to supply information of interest to the United Nations body concerned, press representatives, and persons invited to participate in seminars or similar meetings held under United Nations auspices. The privileges and immunities of those attending United Nations proceedings in this way include all those necessary to enable them to perform the official business concerned, as well as the right of transit and of access.

9. A number of agreements contain provisions expressly granting such persons rights of transit to United Nations premises. Section 12 of the ECLA Agreement, for example, states that the Chilean authorities shall impose no impediment to transit to and from the Headquarters of ECLA of persons invited to the Headquarters on official business, as certified by the Executive Secretary of the Commission. The ECLA and ECAFE Agreements contain a similar provision. Section 17 of the ECLA Agreement further provides that persons invited on official business (other than those of Chilean nationality) shall enjoy the same privileges and immunities as are granted to officials under section 13 of the ECLA Agreement, with the exception of the right to import furniture and effects free of duty.

10. In the case of the United States, the matter is chiefly regulated by Article IV of the Headquarters Agreement; in particular section 11 of that Article provides:

> "The federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of ... (3) representatives of the press, or of radio, film or other information agencies, who have been accredited by the United Nations (or by such a specialized agency) in its discretion after consultation with the United States, (4) representatives of non-governmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter, or (5) other persons invited to the headquarters district by the United Nations or by such specialized agency on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the headquarters district. This section does not apply to general interruptions of transportation which are to be dealt with as provid in Section 17, and does not impair the effectiveness of generally applicable laws and regulations as to the operation of means of transportation."

11. The application of the provisions of article IV to the representatives of non-governmental organizations have been the subject of extensive discussion both in the Economic and Social Council and in the General Assembly[1/]. The first phase of the discussion centred on the question of access to the United Nations Headquarters of representatives of non-governmental organizations in consultative status for the purpose of attending the meetings of the General Assembly while their right of access for the purpose of attending the sessions of the Economic and Social Council was not disputed. The discussion resulted in the adoption by the General Assembly of resolution 606 (VI), the operative part of which reads as follows:

> "1. Authorizes the Secretary-General, upon the request of the Economic and Social Council or its Committee on Non-Governmental Organizations, to make arrangements to enable the representative designated by any non-governmental organization having consultative status to attend public meetings of the General Assembly whenever economic and social matters are discussed which are within the competence of the Council and of the Organization concerned;
>
> "2. Requests the Secretary-General to continue to give assistance to representatives of such non-governmental organizations in facilitating transit to or from sessions of the General Assembly and its Committees."

12. The question of the admission of representatives of non-governmental organizations to United Nations Headquarters arose again when the United States, in denying visas to certain representatives of non-governmental organizations, invoked section 6 of its Public Law 357, as assertedly constituting a reservation to the Headquarters Agreement. Section 6 of Public Law 357 provides that:

> "Nothing in the agreement shall be construed as in any way diminishing, abridging, or weakening the right of the United States to safeguard its own security and completely to control the entrance of aliens into any territory of the United States other than the headquarters district and the immediate vicinity, as to be defined and fixed in a supplementary agreement between the Government of the United States and the United Nations in pursuance of section 13 (3) (e) of the agreement, and such areas as it is reasonably necessary to traverse in transit between the same and foreign countries. Moreover, nothing in section 14 of the agreement with respect of facilitating entrance into the United States by persons who wish to visit the headquarters

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1/ The following account is taken from the Repertory of Practice of United Nations Organs, vol. V, pp. 343-4 and ibid, suppl. No. 1, vol. II, p. 423, where detailed references may be found.

district and do not enjoy the right of entry provided in Section 11 of the agreement shall be construed to amend or suspend in any way the immigration laws of the United States or to commit the United States in any way to effect any amendment or suspension of such laws."

13. The Secretary-General, having conducted a series of negotiations with the representatives of the United States, submitted a progress report to the Economic and Social Council in which he enumerated the rights of the United Nations and the United States under the Headquarters Agreement as follows:

(1) It had been recognized from the outset that the Headquarters Agreement should not be permitted to serve as a cover to enable persons in the United States to engage in activities outside the scope of their official functions;

(2) Subject to the purpose of the Headquarters Agreement, the United States could grant visas only for transit to and from the Headquarters district and sojourn in its immediate vicinity; it could make any reasonable definition of the "immediate vicinity" of the Headquarters district, of the necessary routes of transit, and of the time and manner of expiration of the visa following the completion of official business; and it could carry out deportation proceedings against persons who abused the privileges of residence by engaging in activities in the United States outside their official capacity;

(3) In the case of aliens in transit to the Headquarters district "exclusively on official business of, or before the United Nations", the rights of the United States were limited by the Headquarters Agreement to those mentioned.

On 1 August 1953, the Economic and Social Council adopted resolution 509 (XVI) in which it noted the oral and written reports made by the Secretary-General and expressed the hope that any remaining questions would be satisfactorily resolved within the provisions of the Headquarters Agreement.

14. The question of access was raised again at the twenty-first session of the Economic and Social Council. A representative designated by the World Federation of Trade Unions to attend that session of the Council was refused a visa by the United States authorities. In the Committee on Non-Governmental Organizations, it was alleged that such action on the part of the United States was contrary to the Headquarters Agreement and to the principles laid down in the Secretary-General's report on the subject; reference was also made to resolution 509 (XVI). In the United States representative maintained that his Government was well aware

the terms of the Headquarters Agreement and had applied them. However, the Agreement, in the form approved by the United States Senate, was open to different interpretations. He explained that the United States Government had refused the visa to the representative in question on the ground of the national security of the United States and interests of the United Nations. The Secretary-General requested consultations with the United States authorities in accordance with the arrangements agreed upon in 1953. It was announced to the Economic and Social Council on 3 May 1956 that, as a result of the consultations, the United States had authorized the issue of a visa to the representative and that negotiations were continuing to establish an effective and expeditious procedure in similar cases.

15. In 1963 the Legal Counsel was asked by the Fourth Committee to give an opinion on the question of the right of transit to the Headquarters District in connexion with the possible appearance before the Committee of Mr. Henrique Galvao. The opinion given is reproduced below.

"15 November 1963

"1. At its 1475th meeting, on 11 November 1963, the Fourth Committee requested an opinion as to the legal implications of the possible appearance before it of Mr. Henrique Galvao.

"2. The Committee will wish to take into account the limited character of the legal status of an individual invited to the Headquarters for the purpose of appearing before a Committee of the General Assembly or other organ of the United Nations.

"3. Section 11 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (General Assembly resolution 169 (II) provides that the federal, state or local authorities of the United States shall not impose any impediments to transit to or from the Headquarters district of (among other classes of persons) persons invited to the Headquarters district by the United Nations on official business. While such a person is in transit to or from the Headquarters district, the appropriate American authorities are required to accord him any necessary protection.

"4. Apart from police protection, therefore, the obligations imposed on the host Government by the Headquarters Agreement are limited to assuring the right of access to the Headquarters and an eventual right of departure. The Headquarters Agreement does not confer any diplomatic status upon an individual invited because of his status as such. He therefore cannot be said to be immune from suit or legal process during his sojourn in the United States and outside of the Headquarters district.

"5. Two other provisions of the Headquarters Agreement serve to reinforce the right of access to the Headquarters. Section 13 (a) specifies that the laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privilege of transit to the Headquarters district. This provision, however, clearly assures admission to the United States without conferring any other privilege or immunity during the sojourn. Similarly, section 13 (b) interposes certain limitations on the right of the host Government to require the departure of persons invited to the Headquarters district while they continue in their official capacity; but this plainly relates to restrictions on the power of deportation and not, conversely, on a duty to bring about departure. Moreover, section 13 (d) makes clear that, apart from the two foregoing restrictions, 'the United States retains full control and authority over the entry of persons or property into the territory of the United States and the conditions under which persons may remain or reside there.'

"6. It is thus clear that the United Nations would be in no position to offer general assurances to Mr. Galvao concerning immunity from legal process during his sojourn in the United States. It might be that individual citizens of the United States might have civil causes of action against him and could subject him to service of process. While the Federal Government might have no intention, and might lack jurisdiction, to initiate any criminal proceedings against him, it is a known fact that there are legal limitations on the powers of the Executive Branch of the United States Government to ensure against any type of proceeding by another branch of the Government, including the Judicial Branch.

"7. Moreover, apart from general restrictions in the Federal Regulations on the departure of an alien from the United States when he is needed in connexion with any proceeding to be conducted by any executive, legislative, or judicial agency in the United States, the attention of the Committee has already been invited to the possibility that extradition proceedings might be instituted against Mr. Galvao during his presence in this country. By an Extradition Convention of 1908 between Portugal and the United States */ persons may be delivered up who are charged, among other crimes, with piracy or with mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain of the vessel, or by fraud or violence taking possession of the vessel, or with assault on board ships upon the high seas with intent to do bodily harm, or with abduction or detention of persons for any unlawful end. The extradition is also to take place for the participation in any of such crimes as an accessory before or after the fact. The Convention contains the usual exception for any crime or offence of a political character, or for acts connected with such crimes or offences. (Articles II, III.)

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*/ See Treaties, Conventions, International Acts, Protocols and Agreements between the United States of America and other Powers, 1776-1909, William M. Malloy, compiler (Washington, Government Printing Office, 1910), vol. II, pp. 1469-1474.

"8. Whenever there is an extradition convention between the United States and any foreign Government, any federal or state judge of the United States may issue a warrant for the apprehension of any person found within his jurisdiction who is properly charged with having committed within the jurisdiction of any such foreign Government any of the crimes provided for by the Convention; if, after hearing and considering the evidence of criminality, the judge deems it sufficient to sustain the charge under the convention, he must certify this conclusion to the Secretary of State of the United States in order that a warrant may be issued upon the requisition of the proper authorities of the foreign Government for the surrender of the person according to the terms of the convention.*/

"9. There is no precedent in the history of the Headquarters Agreement which would indicate whether an application of Federal Regulations restricting departure of an alien, by reason of proceedings against him not related to his presence in the United Nations, would constitute an impediment to transit 'from the Headquarters district' within the meaning of section 11 of the Agreement. There is likewise no precedent which would indicate whether compliance by the Federal Government with the terms of an extradition treaty would conflict with the right of transit of an invitee from the Headquarters district. In this connexion it is important to note that what the United States Government has undertaken not to do, by the terms of section 11, is to 'impose' any impediment to transit from the Headquarters. To the extent that the presence of Mr. Galvao in the United States might in one manner or another give rise to proceedings against him by the operation of existing law in relation to pre-existing facts (such as previous activities on his part), it could be argued that this did not constitute an action taken by the Government to impose an impediment on his departure.

"10. The Legal Counsel is of course not in a position to pass upon the internal operations of United States law, much less upon the relations between the Executive and Judicial Branches of the Government. Even if it should prove possible that the Executive Branch could, in the exercise of its authority over foreign affairs, certify and allow to the Judicial Branch that the freedom of Mr. Galvao to depart without impediment should override the authority of the courts to detain him, it is not clear on what basis an advance assurance could be given him. Likewise, even if a dispute were to arise between the United Nations and the United States on such an issue, it might eventually require referral to a tribunal of arbitrators under the terms of section 21 of the Headquarters Agreement.

"11. In these circumstances, it must be recognized that a situation could arise by which the Fourth Committee was deprived of the advantage of receiving oral testimony from Mr. Galvao. Should he not be prepared to attend because of the inability of the host Government to confer upon him a general immunity, it is clear that his abstention from appearing would be his own, and not the

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*/ See United States Code, 1958 Edition (Washington, United States Government Printing Office, 1959), Vol. Four, Title 18, Sec. 3184.

affirmative imposition of an impediment to his transit. For it might only be at the moment of his attempted departure from the United States that an arbitrable dispute could arise as to whether he was entitled to depart notwithstanding proceedings which might in the meantime have been instituted against him.

"12. Two other points of law were raised in the 1475th meeting of the Committee. It was suggested that, in the event of a conflict between the obligations of the United States under its Extradition Treaty with Portugal and the Charter, the obligations under the Charter would prevail by virtue of its Article 103. The difficulty here is that such rights as inure to Mr. Galvao stem directly from the Headquarters Agreement and not from any provision of the Charter, which does not cover invitees. The question was also raised as to whether the Treaty could be invoked before the General Assembly under Article 102 of the Charter. The sanction in the second paragraph of that, however, relates to treaties required to be registered with the Secretariat under that Article. The Extradition Treaty in question dates from the year 1908, whereas the duty to register relates only to treaties entered into by a Member after the coming into force of the Charter. It is also true that, in the hypothetical situation dealt with above, the risk is that the Extradition Treaty would be invoked in the United States courts rather than in the General Assembly." 2/

16. In order to obtain assurance that Member States would not raise requests for extradition in respect of petitioners and others invited to United Nations Headquarters, or to regional or other major offices, the Secretary-General addressed an enquiry to all Member States; the majority of replies gave appropriate assurances. In those cases where the replies specifically referred only to United Nations Headquarters, the Secretary-General stated when acknowledging the assurance given that he was confident that the State concerned would be guided by the same principle with respect to persons invited by the United Nations to its offices other than its Headquarters, for example, the offices of the Regional Commissions, located in countries with which the particular State might have an extradition treaty.

17. As regards the immunity of persons giving evidence before United Nations inquiry bodies, the following paragraphs from the Report of the Commission of Investigation into the Conditions and Circumstances resulting in the Tragic Death of Mr. Dag Hammarskjöld and Members of the Party Accompanying Him may be noted.

2/ Official Records of the General Assembly, Eighteenth Session, Annexes, Agenda Item 23, document A/C.4/621. See also Section 38 below concerning the travel documents of petitioners.

"54. The Rhodesian authorities, in discussions with the Commission indicated that the laws of the Federation relating to the attendance of witnesses could not be made applicable to the hearing of the United Nations Commission without special legislation, which could not be enacted in time for the United Nations hearings. Consequently, it would not be possible for the United Nations Commission to subpoena witnesses, administer oaths, or commit for contempt. The authorities further expressed the view that it would not be possible to treat the statements of witnesses to the United Nations Commission as 'privileged'.

"55. With respect to the first three points no particular difficulties were envisaged. The Rhodesian authorities assured the Commission that all officials desired by the Commission would appear on request, and that assistance would be given in obtaining the voluntary appearance of witnesses. In fact, while attendance could not be compelled, there was not a single instance in which a witness requested by the Commission did not appear, and in some cases witnesses were brought many miles to be available to the Commission.

"56. The Commission was, however, concerned at the suggestion that the testimony of witnesses who appeared before it might not be privileged. In its view a witness appearing before a United Nations Commission must enjoy privilege against legal process as a result of such appearance. The view was expressed that such privilege was enjoyed under the general principles of law and in accordance with Article 105 of the Charter of the United Nations. Without prejudice to the legal position, the Rhodesian authorities gave assurances that there would be no governmental action against any person by reason of his appearance and for testimony before the United Nations Commission." 3/

3/ Official Records of the General Assembly, Seventeenth Session, Annexes, agenda item 22, document A/5069 and Add.1.

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

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

1. Article VII, section 24 of the General Convention provides that "The United Nations may issue United Nations laissez-passer to its officials"; and that "These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of Members", taking into account the provisions of section 25 dealing with applications for visas.

2. The United Nations has issued laissez-passer to officials travelling on official business (including travel on home leave, at official expense) including technical assistance experts, other than those classified as "experts on missions for the United Nations". It has declined to issue laissez-passer to OPEX officers, on the ground that these are servants of Governments and not officials.

3. The issue of laissez-passer has been carefully regulated. As regards the locally recruited staff of field missions, laissez-passer have been issued only after study of each individual case, solely for the purposes of official business, and subject to the condition that the document be returned to the administration after completion of the mission.

4. The position in respect of dependents was described as follows in a letter dated 13 September 1951, sent by the Office of Legal Affairs to the Legal Adviser of a permanent mission.

> "Section 24 of the Convention on the Privileges and Immunities of the United Nations provides that the United Nations may issue the laissez-passer 'to its officials'. For that reason it is our view that Member States parties to the Convention are required to accept it as a valid travel document only for the staff member who is technically its sole bearer and who is adequately identified by description and photograph on pages 1, 2 and 4. It would thus follow that an official could not use the laissez-passer as a means of obliging a Member Government to accept into its territory persons who claim to be members of his family.
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> As you have noted, there are nevertheless important reasons for identifying any members of his family who may accompany the bearer of the laissez-passer. For this purpose space is provided on page 6, although a photograph is not necessarily used. In our view, however, the identification on page 6 does not itself make the laissez-passer a valid travel document

for the family members but simply helps to identify for the convenience of Member Governments the persons most likely to be claiming the several derivative privileges under the Convention. For example, section 18 (d) and (f) specifically refer to 'spouses and relatives dependent' of officials of the United Nations in creating an immunity from immigration restrictions and alien registration and providing a privilege as to repatriation facilities in time of international crisis. Customs officers may likewise be assisted in granting privileges or courtesies by thus being informed as to the members of the immediate family.

At the same time, I might draw your attention to one occasional problem that can arise from this requirement of an additional travel document covering the members of the family of the official. There will be a few cases in which a member of the family will not have been able to obtain a valid passport. In such cases it has been customary for an affidavit of identity, with a photograph and other adequate description of the bearer, and with an indication of the reasons for the inability to have obtained a passport to be carried by the individual concerned. Visas have been entered directly on this affidavit of identity, including the so-called 3 (7) visas admitting persons to the United States under the terms of the Headquarters Agreement ... A visa would, of course, be required whether or not the issuing Government would require one if a valid passport of the nationality in question were presented."

5. The provision in the General Convention relating to the issue of laissez-passer was one of the obstacles to accession by the United States to the General Convention. After referring to section 24, the Committee on Foreign Relations of the United States Senate stated:

"The committee was assured that this language does not authorize or require the United Nations or any Member State to issue or accept a document which is a substitute for a passport or other documentation of nationality. It provides only for a certificate attesting to the United Nations affiliation of the bearer in respect to travel and will be accepted by the United States as such a document. Article VII, in other words, would not amend or modify existing provisions of the law with respect to the requirement of issuance of passports or of other documents evidencing nationality of citizens or aliens. To make this point perfectly clear, the committee approved a second amendment to the resolution." 1/

The proposed amendment was as follows:

"Nothing in article VII of the said convention with respect to laissez-passer shall be construed as in any way amending or modifying the existing or future provisions of the United States law with respect to the requirement

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1/ Committee on Foreign Relations, United States Senate, Report No. 559, 80th Congress, 1st session, p. 7.

or issuance of passports or of other documents evidencing nationality of citizens or agents, or the requirement that aliens visiting the United States obtain visas."

6. The possibility of Member States using their control over the issue of national passports as a means of regulating the selection of their nationals for employment with the United Nations was discounted by the Secretary-General in his report on personnel policy to the General Assembly at its seventh session.[2/] He declared that the assumption that this could be done was not in keeping with the actual legal position of the staff of the Organization. After recalling Articles 101 and 105 of the Charter and section 24 of the General Convention, the report stated:

"The Secretary-General has never treated this provision as in any way exempting staff from meeting normal travel and documentary requirements of the Governments concerned. On the other hand, it is clear that Member States should not, under the provisions of the Charter, seek to interpose their passport or visa requirements in such a manner as to prevent staff from taking up their post of duty with the United Nations or from travelling from country to country on its business."

7. In the course of discussions on this subject in plenary meeting at the seventh session of the General Assembly, there was disagreement with this interpretation of the General Convention. The view was expressed that when a Member State informed the Secretary-General that a passport had been refused to a staff member, he should immediately inquire into the circumstances of such a refusal and should refrain from issuing a laissez-passer to the official concerned pending the results of such an inquiry.

8. Member States have recognized the laissez-passer as a valid travel document. No precise information is available, however, as to the extent of this recognition, or how frequently State authorities also require the production of a national passport. To some extent those questions are answered in section 39 below, dealing with the issue of visas.

2/ Report of the Secretary-General on Personnel Policy, Official Records of the General Assembly, Seventh Session, Annexes, agenda item 75, document A/2364.

37. Freedom of movement of United Nations personnel[1]: inapplicability of the persona non grata doctrine

9. The United Nations has consistently maintained that its officials and others (e.g. experts on mission) travelling in order to fulfil their functions on behalf of the United Nations should be granted freedom of movement by all Member States. This right has been based on the necessary intendment of Member States in creating the Organization, on the range and nature of the responsibilities entrusted to the Organization, on the particular resolutions under which the officials concerned were dispatched, on the relevant provisions of the Charter, in particular of Article 105, and on various sections of the General Convention, including, in appropriate cases, section 24 requiring the recognition of the United Nations laissez-passer as a valid travel document. Member States have, on relatively rare occasions, sought to restrict this freedom of movement of United Nations personnel, either by denying their entry or, when the personnel were already present in the country, seeking to expel them on the grounds that they were persona non grata to the Government concerned; in a few instances travel within the country has been dependent on prior notice and approval. In cases of denial of entry, the United Nations has put forward the arguments referred to above, and also cited the provisions of article V, including section 18 (d) regarding immunity from immigration restrictions and alien registration.[2] Where arguments based on the persona non grata doctrine have been invoked, the United Nations has denied the application of the doctrine on the grounds that United Nations personnel are not sent and accredited to given States in a way which is analogous to the bilateral exchange and accreditation of diplomatic representatives following recognition on the part of two States: United Nations personnel are employed, as determined by the Secretary-General, on behalf of all Member States, for purposes chosen by those States as a result of action taken on a multilateral plane. Nevertheless, whilst upholding the independence and international character of United Nations

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1/ This subject is also dealt with in other sections, notably section 9 (c); section 23; and section 26. The position in respect of the United States is largely, though not exclusively, regulated by the provisions of the Headquarters Agreement, in particular article IV; see sections 9 and 26.

2/ See section 26 above.

personnel against any unilateral pressure or interference, the Secretary-General has made it clear that he will not tolerate such personnel engaging in subversive activities against any Government. These principles and the practice in implementation thereof have been set forth in several reports to the General Assembly, particularly at the seventh, eighth and twelfth sessions.[3/] The position in respect of the freedom of movement of United Nations personnel and their right of entry into a country when travelling on official business was summarized at the seventh session as follows:

> "... it is clear that Member States should not, under the provisions of the Charter, seek to interpose their passport or visa requirements in such a manner as to prevent staff from taking up their post of duty with the United Nations or from travelling from country to country on its business."

10. Whilst the right of entry of United Nations personnel travelling on official business is an unqualified one, the United Nations would not, however, insist on the entry of a person with respect to whom substantial evidence of improper activities was presented. Since the right belongs to the Organization, it is for the Organization to decide whether or not to forego the exercise of this right in a particular case and, consequently, it is the Organization which must evaluate the evidence of improper activities.

11. Apart from cases of alleged improper activities on the part of individual United Nations personnel, entry has on occasions been denied on the grounds of the nationality of the individuals concerned. In 1961, for example, a Member State refused entry to United Nations and specialized agency officials of certain nationalities owing to a political dispute with the countries concerned. The Secretary-General protested to the Government in 1961, and, after a further incident in 1963, wrote again. In the second letter the Secretary-General recalled the earlier communication, and continued:

> "... refusal of entry to United Nations and specialized agency personnel on official business presents a serious problem with respect to operations of the Organization and interference with the performance of the functions of

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3/ See Report of the Secretary-General on Personnel Policy, Official Records of the General Assembly, Seventh Session, Annexes, agenda item 75, doc. A/2364, (esp. paras. 4-10, 92-103 and 106-115); Report of the Secretary-General on Personnel Policy, Official Records of the General Assembly, Eighth Session, Annexes, agenda item 51, doc. A/2533, part I; and Official Records of the General Assembly, Twelfth Session, Fifth Committee, (A/C.5/726, paras. 15-16).

its officials. Such interference in the case of United Nations officials is contrary to Article 105 of the Charter and to article 24 of the Convention on the Privileges and Immunities of the United Nations to which your Government is a party. As was pointed out, freedom for officials to travel is one of the most essential privileges which is necessary for the independent exercise of their functions in connexion with the Organization, and for the fulfillment of the purposes of the Organization. The United Nations cannot accept the view that privileges and immunities of international officials are in any way affected by their nationality. ..."

12. The Government concerned undertook to exampt United Nations and specialized agency officials of the nationalities in question from the restrictions otherwise imposed on persons of their nationality.

13. In 1964 the Secretary-General entered into correspondence[4/] with various Member States regarding the status of military observers serving with UNTSO. In an aide-mémoire dated 23 January 1964, the Secretary-General declared:

"The principle of persona non grata which applies with respect to diplomats accredited to a Government has no application with respect to United Nations staff or military observers who are not accredited to a Government but must serve as independent and impartial international officials responsible to the United Nations. The United Nations military observers are recruited by the Secretary-General for service in pursuance of the four Armistice Agreements and the relevant Security Council resolutions from member countries of the United Nations. They are officers who are seconded by their Governments for service with the United Nations. They are responsible directly to the Chief of Staff of the United Nations Truce Supervision Organization (UNTSO) and through him to the Secretary-General, who is in turn responsible to their Governments for them.

These observers are carefully selected. At times their work is hazardous; indeed, some have given their lives in this service. As military men they would expect to be held strictly to account for any disobedience, disloyalty or dereliction of duty, and the Secretary-General would certainly insist that any observer guilty of such action should be severely dealt with. However, if any State party to any of the General Armistice Agreements were in a position to bring about the automatic recall of a military observer, the other Governments concerned would be placed in an invidious position and the functioning of UNTSO would be rendered ineffectual. Therefore, in order to fulfill the obligations and responsibilities of the Secretary-General in

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4/ United Nations Juridical Yearbook 1964, p. 261. Although dealing with military observers who are not "officials" within the meaning of the General Convention, the considerations advanced are equally applicable in the case of all United Nations personnel.

such matters, and particularly to ensure the independence of action of United Nations military observers, the Chief of Staff and the Secretary-General must have the right of decision in these cases following careful investigation of all relevant facts. Since they must themselves make the decision, any information which is supplied to them by Governments must be in sufficient detail to enable them to make their own judgement in the matter. Any other course would be contrary to the principles of the Charter of the United Nations and would seriously interfere with the performance of the functions of the Organization. The Secretary-General is certain that the Governments repose confidence in the Chief of Staff and in himself to act impartially in this regard. He would appreciate assurances that procedures consistent with the foregoing principles will be followed and that the competence of the Chief of Staff and himself in matters of this kind will be respected."

14. One of the Governments concerned replied to this communication in the following aide-mémoire, in which reference was made to the attempt by that Government to exclude or expel a particular military observer.

"... The Government wishes to make it clear at the outset that its invariable policy in its international relations, has been and will continue to be guided by the established principles of international law.

One such fundamental principle is the right of a State to expel aliens from its territory. This right rests upon the same foundation, and is justified by the same reasons as the power to exclude namely: the sovereignty of the State, its right of self-preservation, and its public interest.

In a case decided by the United States Supreme Court in 1952, considering the status of an alien the Court held that, to remain in the country is not his right, but is a matter of permission and tolerance, and the Government has the power to terminate its hospitality. Such power the Court went on to say is inherent in the United States, as a sovereign State.

It is admitted that in practice though not in theory, it should usually be shown in such cases, that the foreigner's presence in the State's territory, is detrimental to the welfare of such State. The fact remains, however, that the ultimate decision in this regard rests with the authorities of the State concerned.

Although Major ... has already completed his year's tour of duty as a United Nations military observer on ... and though it is not denied that as such, he was an international official responsible directly to the Chief of Staff of the UNTSO and through him to the Secretary-General, the Government ... maintains that it enjoys the right under international law to exclude or expel foreigners from its territory irrespective of any such consideration, and that its exercise of this right is not incompatible with its obligations under the Convention of the Privileges and Immunities of the United Nations or of the Armistice Agreement.

But while maintaining its ultimate competence in this matter, the ..... the Government would like to assure the Secretary-General that it will exercise this right in respect of United Nations officials, only after due consideration has been given to any representations he may wish to make in this regard."

15. The Secretary-General commented as follows on the arguments which the Government put forward.

"..... The Government refers to the right of a State to expel aliens from its territory. Without entering into a discussion of the principles of international law generally applicable to aliens having a private status, it is necessary to point out that United Nations officials and military observers serving on a United Nations mission are not in a position comparable to that of such private individuals. Your country, by becoming a Member of the United Nations, assumed certain obligations under the Charter vis-a-vis the Organization. Among these is the undertaking to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and the obligation to accord to the Organization such privileges and immunities as are necessary for the fulfillment of its purposes and to officials such privileges and immunities as are necessary for the independent exercise of their functions.

It of course is not denied that a United Nations official or military observer, by abusing his privileges, may place himself in a position where a Government may demand his withdrawal. But such demand can only be made for sufficient cause and the facts must be placed at the disposal of the Secretary-General, and in the case of the Truce Supervision Organization at the disposal of the Chief of Staff, in order that an independent decision can be made by the Organization.

We must therefore reiterate the principles set forth in the Secretary-General's aide-mémoire of 23 January 1964. We are certain that you will appreciate that any other course would impair the international status of the military observers which is essential for the independent exercise of their functions in connexion with the Organization." 5/

5/ Idem.

38. Travel documents of petitioners[1/]

16. A study of the above subject was made by the Secretary-General in 1956 following a request by the Fourth Committee that he should examine "what procedures could be taken" to enable petitioners, who had been refused passports or travel documents, to appear before the Committee. The memorandum[2/] by the Secretary-General, dated 20 November 1956, is reproduced below.

"Travel Documents of Petitioners

Memorandum by the Secretary-General

I

1. At its 510th meeting, held on 15 November 1955, the Fourth Committee adopted the following resolution:

'The Fourth Committee,

'Considering that some petitioners who have been granted oral hearings but have been refused passports or travel documents by some Administering Powers, have appealed to the United Nations to intervene to enable them to leave the Territory in which they are situated in order to appear before the General Assembly,

'Suggests that the Secretary-General should examine what measures could be taken to enable such petitioners to appear before the Fourth Committee of the General Assembly.'

2. It may be useful to recall the circumstances which led to the adoption of this resolution.

In the course of its 470th meeting, at the beginning of the tenth session of the General Assembly, the Fourth Committee was informed of the receipt of five requests for hearings emanating from organizations in Trust Territories. Three of these requests were contained in letters from the Political Section of the 'Union des Populations du Cameroun', the Political Section of the Central Board of the 'Union démocratique des Femmes camerounaises' and the Executive Committee of the 'Jeunesse démocratique du Cameroun', respectively (A/6.4/301). At its 471st meeting, the Committee decided to grant these

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1/ See also section 35 above concerning the privileges and immunities of persons having official business with the United Nations.

2/ A/C.4/333.

requests by 36 votes to 11, with 9 abstentions, after a discussion during which it was stated, inter alia, by various representatives who wished the hearings to take place, (i) that as the right of petitions was embodied in Article 87 of the Charter, it was the Fourth Committee's duty to examine petitions and grant requests for hearings; (ii) that the petitioners' statements were helpful to the Committee as giving it additional information on conditions in the Trust Territories; (iii) that the granting of hearings was an encouragement to politically-backward masses, and enhanced the prestige of the United Nations. Among the points made by representatives who objected to the hearings, were the following: (i) that a Visiting Mission of the Trusteeship Council was to visit shortly the Trust Territories concerned and would have the opportunity of hearing those who wished to express grievances; (ii) that the 'Union des Populations du Cameroun' and affiliated organizations had been dissolved during the previous year by the French Government and that the Fourth Committee should not hear representatives of those organizations, as such hearings would amount to an attempt to overrule a decision of a Government which under the Trusteeship Agreement had full powers of legislation and jurisdiction in the Trust Territory; (iii) that in considering requests for hearings, the Fourth Committee should be guided by the urgency of the subject matter and the consideration whether that subject matter had not already been studied by the Trusteeship Council and its subsidiary organs, which should not be bypassed.

3. At the 479th meeting of the Committee, the Chairman announced that in the absence of opposition he would circulate to the members of the Committee the texts of telegrams which had been received from the organizations concerned. In these telegrams, which were from the Cameroons under British administration, the three organizations communicated the names of their representatives and requested the United Nations to intervene with United Kingdom and United States authorities in order that these representatives might obtain passports and entry visas respectively. The 'Union des Populations du Cameroun' states in its telegram that the French Government had burned the passports of the appointed representatives during the May incidents in the Trust Territory (A/C.4/306).

4. The attention of the Fourth Committee having been drawn at the 496th meeting to these telegrams, the representative of the United States informed the Committee that, if the petitioners applied for United States visas, their applications would receive the treatment that the United States Government had always given in similar cases. The representative of the United Kingdom stated that as the petitioners were not British subjects or British protected persons, they could not be granted British passports; there was nothing, however, to prevent their departure from the Cameroons under British administration at any time. Answering a question of the representative of Indonesia, who wondered whether it would be possible for the Secretariat to give to the petitioners United Nations travel documents, the Under-Secretary for Trusteeship and Information from Non-Self-Governing Territories explained that in accordance with the provisions of the Convention on Privileges and Immunities of the United Nations the laissez-passer, the

official United Nations travel document, could be issued only to the officials of the Organization or of one of the specialized agencies on official mission outside the Headquarters area. A proposal by the representative of Liberia that further consideration of the matter should be postponed in order to give the Chairman the opportunity to explore every possibility of helping the petitioners to reach New York was then adopted.

5. At its 498th meeting, the Fourth Committee decided without objection to circulate a further telegram from the 'Union des Populations du Cameroun' in which the Political Bureau of that organization quoted the reply it had received from the Commissioner for the Cameroons under British administration, to its request for passports, similar in substance to the statement made by the representative of the United Kingdom in the Fourth Committee. It further requested the General Assembly to make representations to the United Kingdom Government on the ground that the petitioners were the victims of judicial proceedings instituted for political reasons by the French Authorities and that, as they resided in the Cameroons under British administration, they should have the benefit of the status of political refugees in conformity with the Universal Declaration of Human Rights (A/C.4/306/Add.1).

6. At its 510th meeting, the Fourth Committee had before it a draft resolution submitted for its consideration by the delegation of Liberia. In presenting the draft resolution, the representative of Liberia stated inter alia, that the Committee did not have the time to go fully into all the difficulties which had arisen in connexion with travel facilities for petitioners who had been granted oral hearings and that the Fourth Committee should therefore send the problem to the Secretary-General so that he could explore all possibilities and report on them to the Committee not later than the eleventh session of the General Assembly. The representative of Liberia stated in a later intervention that the purpose of the study of the whole matter should be to enable the Committee in the future to give an answer to petitioners who approached it for assistance in similar dilemmas. The Liberian draft resolution was adopted by the Committee in the text quoted in paragraph 1 of this report by 30 votes to 8, with 6 abstentions.

II

7. Following a study of the question which, as recalled above, has been referred to the Secretary-General by the Fourth Committee's resolution of 15 November 1955 in its general aspects, the Secretary-General wishes to bring to the attention of the Committee the following considerations and conclusions.

8. Under arrangements at present in effect, upon notification by the Secretary-General to the United States authorities that a hearing has been granted to a person by the Fourth Committee of the General Assembly, the United States authorities deliver an entry visa to that person, upon

application, pursuant to Section 11 and 13(a) of the Headquarters Agreement. Section 11 provides that 'the federal state or local authorities of the United States shall not impose any impediments to transit to or from the Headquarters district of ... 5) ... persons invited to the Headquarters district by the United Nations... on official business'. Section 13(a) provides that 'Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11. Where visas are required for persons referred to in that Section, they shall be granted without charge and as promptly as possible . After the hearings in the General Assembly have been completed, the United States authorities are entitled to require the petitioner to leave the United States for the country of his nationality or any other country willing to receive him.

9. In accordance with United States laws and administrative practices, United States entry visas may be affixed on national passports and also on other documents issued by a competent authority, showing the bearer's origin, identity and nationality, and valid for the entry of the bearer into a foreign country. In certain cases of waiver of the above requirements, United States visa stamps are impressed on an appropriate space on the reverse side of the visa application form.

10. The further question of a general nature which requires comments, under the Fourth Committee's resolution of 15 November 1955, is therefore that of the right of a petitioner to leave the territory in which he finds himself at the time his request for a hearing is granted, and the possibility which may exist for his return to that territory or to another country. It may be noted in this connexion that while it may be assumed by analogy with the rules of procedure of the Trusteeship Council (rule 77), that persons to whom a hearing may be granted by the Fourth Committee may be inhabitants of Trust Territories or other persons, not necessarily resident in Trust Territories, the Fourth Committee's resolution refers only to administrative action with respect to travel documents which may be taken by the Administering Authorities. It may be recalled in this connexion that the revelant agreements concluded in pursuance of the provisions of the United Nations Charter under which States administering Trust Territories have accepted obligations towards the United Nations, e.g. the Convention on Privileges and Immunities of the United Nations or the Trusteeship Agreements, contain no specific provisions obliging the Administering Authorities to grant travel documents or to authorize the departure from the territories under their administration of persons to whom hearings have been granted by United Nations organs. Most of the Trusteeship Agreements recognize the Administering Authorities' full powers of legislation, administration and jurisdiction in the Trust Territories within the framework of these agreements and of the Charter; these agreements also contain the undertaking by the Administering Authorities to collaborate with the Trusteeship Council and the General Assembly and to assist these organs in the discharge of their functions, as defined in Article 87 and 88 of the Charter. The question of the extent to which this undertaking to collaborate implies the obligation of the Administering Authority to authorize a resident

of a Trust Territory to leave the Territory for the purpose of a hearing before a United Nations organ has not, however, been considered by the General Assembly and there would seem, therefore, to be no present basis on which an over-all solution may be offered.

11. It is generally accepted in present international practice that the authorities exercising governmental functions with respect to a territory determine the conditions applicable to the departure of persons resident in that territory and, in the case of non-nationals who have not acquired a permanent right of residence, fix the conditions of re-entry. Under the system of passports, exit and entry visas, which has prevailed since the end of the first World War competent governmental authorities have reserved to themselves, in this respect, wide discretionary powers seldom defined with precision in their legislation. It may also be recalled in this connexion that national authorities have often invoked as grounds for refusal of the permission to travel abroad the fact that the prospective traveller is subject to judicial proceedings or may be fleeing from his obligations to pay taxes or personal debts or to perform military service, or that while abroad he may endanger the internal security of a foreign State or of his own State.

12. A great variety of rules and practices exist in this field. Some countries permit the departure from their territories of persons who do not hold a passport or a similar travel document. Others treat such a departure - at least by their own nationals - as a punishable offence. Various procedures are utilized by governmental authorities which grant documents necessary for travel to non-nationals and in limited situations international agreements might apply as, for example, for certain groups of refugees. Although in the case of direct travel to New York the question of the nature of the travel document of the petitioner on which a United States visa has been affixed may not normally be raised by the authorities of the countries through which the petitioner would pass in transit, certain problems may possibly arise in cases where transit visas are required or where the petitioner may have reasons to interrupt his travel.

13. In the course of his study of the question submitted to him by the Fourth Committee, the Secretary-General has sought the informal views of the Governments having responsibility for the administration of Trust Territories, as to the policy they would follow with respect to the issuance of passports or similar travel documents to persons resident in Territories under their jurisdiction who may be granted hearings by the General Assembly. It results from the replies received from all Administering Authorities of Territories from which petitioners have so far appeared before the Fourth Committee, that while remaining subject to rules and conditions generally applicable to foreign travel, persons to whom a hearing has been granted would not encounter special obstacles to their leaving the Territory for the purpose of travel to the Headquarters of the United Nations for the purpose of a hearing. It may be recalled in this respect that up to the present, with the exception of the petitioners referred to in Part I of this memorandum, no petitioners from Trust Territories have failed to reach the United Nations Headquarters.

14. In the light of the above-mentioned data and considerations it appears that in the present circumstances no general measures can be suggested which would provide an effective solution to the problem raised by the Fourth Committee's resolution. In view, in particular, of the variety of situations which may be encountered, and the special factors which would have to be taken into account in each case, depending on the nationality and residence status of the petitioners, the applicable legislation and administrative requirements, and the route and means of travel to be used, it is the opinion of the Secretary-General, based on the experience acquired by the Secretariat in the handling of similar situations in other organs of the United Nations, that it would be preferable for the present to continue to deal with individual cases which may arise, on an ad hoc basis, by taking up the actual issues of each case with the national authorities concerned. Any appropriate action could thus take fully into account the nature of the specific obstacles which would exist to the travel of the petitioner to the United Nations Headquarters and to his return to the territory of which he is a resident."

17. In resolution 1062 (XI), adopted on 26 February 1957, the General Assembly invited the Administering Members concerned to grant petitioners the necessary travel documents to enable them to appear before the proper United Nations organs for oral hearings and to return home.

39. Issue of visas for holders of United Nations laissez-passer[1/]

18. Section 25 of the General Convention provides that:

> "Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanited by a certificate that they are travelling on the business of the United Nations, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel."

19. All countries have issued visas for laissez-passer holders free of charge. In addition, a number of States, chiefly in Africa, have exempted holders of laissez-passer from visa requirements altogether. Most headquarters agreements and agreements relating to the holding of meetings provide specifically for the issue of visas without charge.

1/ See also Section 26 on the immunity of officials from immigration restrictions and alien registration.

40. United Nations Certificates: Family Certificates

20. Section 26 of the General Convention provides that:

> "Similar facilities to those specified in section 25 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations."

21. The certificate referred to has been used in the case of experts on mission and others who, whilst travelling on United Nations business, could not be classified as officials. The certificate consists of a document eighteen inches by twelve inches in size giving information about the bearer and certifying that he is travelling on United Nations business; the text of Article VI of the Convention is reproduced on the back of the certificate.

22. In 1960 the Legal Office advised the Technical Assistance Board administration that the certificate issued to OPEX officials should include the following wording:

> "This is to certify that Mr..... has been assigned by agreement with the United Nations to the Government of ..... under the Programme for the Provision of Operational, Executive and Administrative Personnel authorized by Resolution 1256 (XIII) of the General Assembly of the United Nations adopted on 14 November 1958. He is proceeding under the instructions of the United Nations to ... in transit to ... in order to take up his assignment. By Agreement of ..... (date) concluded with the United Nations, the Government of .... has agreed that Mr. ..... shall be granted certain privileges and immunities including the right to import free of duty furniture and effects at the time of first taking up his post in ....."

23. It was stated that the model agreements concluded with Governments regarding OPEX officials, and the contracts between the United Nations and the officials themselves, gave the Organization sufficient standing to issue a certificate for the purpose of facilitating travel to the place of assignment.

24. The United Nations also issues family certificates in respect of the family of a United Nations official. The position is described in the following letter, sent in 1963 by the United Nations in answer to a question raised by a permanent mission.

> "It is quite clear that the Certificate in question is not regarded by the United Nations as an official 'travel document'. The Family Certificate

is really intended to show that the holder or holders are dependents of a United Nations staff member. Normally, the staff member would carry a United Nations Laissez-Passer and this would serve as identification for the family as well, when a staff member and family were travelling together. When the family were travelling apart, the laissez-passer would, of course, have to remain in the keeping of the staff member, and the dependents would be given a Family Certificate for identification and to show their connection with the United Nations.

"Dependents travelling with a Family Certificate should at all times carry their national Passport as well. Formally, when requesting visas we in this office would submit both the national Passport and the Family Certificate to the Consulate concerned and it would be entirely up to the Consulate as to whether they put the visa on the national Passport or on the Family Certificate. For our own purposes it makes no matter which course is adopted by the Consulates; we must, of course, leave it to the Embassy or Consulate concerned to do as they think best.

"The 'United Nations Certificate' is quite distinct from the Family Certificate and serves the purpose of identifying someone who is travelling on some special assignment connected with the United Nations although not actually a staff member of the Organization. For instance, it might occur that some technician or special adviser was engaged by the United Nations on a short-term mission which would not involve the traveller in being taken on as a regular United Nations Secretariat member. In such cases, the passenger would travel on his national passport and would be given a United Nations Certificate merely to identify him as undertaking a project for the Organization. In certain countries this Certificate has proved very helpful in enabling the holder to carry out the purposes of his assignment. But, as stated earlier, the holders of this Certificate are not regular staff members. Once again, we would leave it to the Consulate or Embassy concerned as to whether they put any necessary visas in the Passport or on the Certificate. The last-named document, like the Family Certificate, is not considered by us as an official travel document."

41. Diplomatic facilities for the Secretary-General and other senior officials whilst travelling on official business

25. Section 27 of the General Convention provides that

"The Secretary-General, Assistant Secretary-General and Directors travelling On United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys."

26. The main implementation of this section has lain in the issue of red-backed (as opposed to the usual blue-backed) laissez-passer to the Secretary-General and the officials referred to in section 27. It has not been the practice of the United Nations to submit a specific request for a "diplomatic visa" for any of the United Nations' officials, even for the Secretary-General himself.

27. In 1955 the Secretary-General wrote to the Office of General Services listing the instructions for the issue of red-backed laissez-passer.

"Having in view the necessity of more precise rules concerning the red-backed laissez-passer which has been in use since 1948, and following consultation with the heads of the Specialized Agencies, I have decided that effective from the above date, red-backed laissez-passer should be issued in accordance with the following instructions.

Instructions for the issuance of red-backed laissez-passer

1. Red-backed laissez-passer shall be issued to officials of the United Nations of the following categories:

(a) The Secretary-General
(b) Under-Secretaries and officials of equivalent rank
(c) Directors (D-2)

2. Exceptionally, red-backed laissez-passer may also be issued to staff members below the rank of Director (D-2) who are specially designated by the Secretary-General and fall within the following categories:

(a) Persons on special mission having the title of Personal Representative of the Secretary-General

(b) Persons in charge of United Nations missions in the field

(c) Persons in charge of United Nations Offices away from Headquarters.

Red-backed laissez-passer issued pursuant to the present paragraph shall be withdrawn and cancelled on the completion of the assignment for which they are issued.

/...

3. Bearers of red-backed laissez-passer shall have in mind that its possession does not denote that the bearer is entitled to diplomatic privileges and immunities except when such entitlement is specifically indicated by a diplomatic stamp or notation on the laissez-passer. It shall be understood that the purpose of red-backed laissez-passer not having a diplomatic stampt or notation is only to draw the attention of the Government authorities to the special position of the bearer in order that he may be accorded courtesies commensurate with his position in addition to the functional privileges and immunities and facilities to which all officials of the United Nations are entitled under the Convention on the Privileges and Immunities of the United Nations.

4. Red-backed laissez-passer issued to officials entitled to diplomatic privileges and immunities under section 19 of Article V of the Convention on the Privileges and Immunities of the United Nations shall have a diplomatic stamp or notation as follows:

(a) Laissez-passer issued to the Secretary-General shall have the following stamp or notation:

Diplomatic

(b) Laissez-passer issued to Under-Secretaries and officials of equivalent rank shall have the following stamp or notation:

Diplomatic

The bearer of this laissez-passer is an official of the United Nations whose rank is assimilated to that of "Assistant Secretary-General". Under section 19 of Article V of the Convention on the Privileges and Immunities of the United Nations, an Assistant Secretary-General is entitled to the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law.

5. Laissez-passer issued to Directors (D-2) shall have the following stamp or notation:

The bearer of this laissez-passer is a Director and under section 27, Article VII, of the Convention on the Privileges and Immunities of the United Nations is entitled when travelling on the business of the United Nations to the same facilities as are accorded to diplomatic envoys.

The foregoing instructions may be applied mutatis mutandis to comparable officials of the Specialized Agencies."

In a subsequent memorandum it was stated:

"1. The following designation of the officials to whom red-backed laissez-passer should be issued in accordance with paragraph 2 of the Instructions for the Issuance of Red-backed Laissez-passer should be annexed to the instructions:

Annex 1

In accordance with paragraph 2 of the Instructions for the Issuance of Red-backed Laissez-passer, the following staff members who fall within the categories enumerated in that paragraph are hereby designated by the Secretary-General as officials to whom red-backed laissez-passer shall be issued:

(1) All Resident Representatives of the Technical Assistance Board

(2) All Principal Secretaries of United Nations Commissions.

(3) All Directors of United Nations Information Centres."

42. Agreements with specialized agencies regarding the issue of laissez-passer

28. Section 28 of Article VII of the General Convention provides that,

"The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide."

Article 63, paragraph 1, of the Charter is as follows:

"The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly."

29. In a note dated 5 November 1948, the Secretary-General informed Member States that in the Agreements which had been concluded with ITU, IBRD and WHO, special arrangements had been made so as to give officials of those Agencies the right to use the United Nations laissez-passer. A copy of the Agreement setting out the special arrangements was enclosed with the note.

"1. All members of the personnel of /the specialized agency/ will be considered as officials of /the specialized agency/ under the terms of these arrangements with the exception of those recruited locally and paid by the hour.

2. Requests for issuance of the laissez-passer shall be made by /the Director-General or the equivalent Executive Head of the specialized agency/ or by such person as he shall deputize. Such requests, which will state that the official is about to travel on official duty or home leave, must be accompanied by:

(a) a form, copy of which is attached, which shall be filled in and signed by the official for whom the laissez-passer is required and the contents of which shall be verified and certified as correct by /the Director-General or the equivalent Executive Head of the specialized agency/ or his designated representative;

(b) two photographs of the applicant.

3. Requests for the issue of laissez-passer shall be addressed to the Section of Passports and Visas (Transportation Service of the United Nations, 405 East 42nd Street, New York, N.Y.). However, in cases of urgency, such requests may be addressed to the European Office of the United Nations in Geneva which may, in such cases, issue the laissez-passer.

/...

4. /The Director-General or the equivalent Executive Head of the specialized agency/ shall forward to the Section of Passports and Visas (Transportation Service of the United Nations) specimens of the signatures of such officials as shall have received authority to certify as correct the information given on the application form under Section 2.

5. The issue of United Nations laissez-passer to officials of /the specialized agency/ shall also be subject to such other conditions as may apply to the issuance of the laissez-passer to officials of the United Nations.

The Secretary-General of the United Nations shall immediately notify these conditions to the /Director-General or the equivalent Executive Head of the specialized agency/.

6. The laissez-passer issued to officials of /the specialized agency/ shall make mention of the officials' rank. They shall contain a statement in the five official languages to the effect that the laissez-passer is issued to a member of a specialized agency, in accordance with Section 28 of the Convention on Privileges and Immunities of the United Nations and with the relevant section of the Agreement bringing the organization into relation with the United Nations.

7. Upon request of /the Director-General of the equivalent Executive Head of the specialized agency/ or such person as he shall deputize, the Secretariat of the United Nations shall, if this arrangement is still in force, renew such laissez-passer issued to officials of /the specialized agency/ as shall have expired.

8. The Secretariat of the United Nations shall transmit as quickly as possible the laissez-passer for which issue or renewal has been requested to the designated representative of /the specialized agency/ who shall acknowledge the receipt thereof.

9. /The specialized agency/ agrees to take all necessary administrative precautions to prevent the loss or theft of such laissez-passer. It shall immediately notify the Section of Passports and Visas in the event of any loss or theft of a laissez-passer, giving particulars of the conditions under which such loss or theft occurred.

10. Such laissez-passer shall, unless renewed, expire at the end of one year from the date of issuance. /The specialized agency/ agrees to return immediately to the United Nations all laissez-passer issued to its officials:

(a) on the expiration or the validity of the laissez-passer, unless renewal has been authorized;

(b) if the holder ceases to be an official of /the specialized agency/.

11. The present arrangement is made for a period of one year."

30. Similar special arrangements, which have now been placed on a permanent basis, have been made with each of the other Specialized Agencies and with IAEA. The ILO issues its own laissez-passer, however, under conditions closely analogous to those observed by the United Nations itself.[1/] The Directors-General and certain other senior staff of the Specialized Agencies receive red-backed laissez-passer in the same way as the Secretary-General and senior officials of the United Nations.[2/]

1/ Under an administrative arrangement concluded between the Secretary-General of the United Nations and the Director-General of the ILO, 7 June and 26 July 1950, United Nations Treaty Series, vol. 68, p. 213.

2/ See Section 41 above.

CHAPTER VII. SETTLEMENT OF DISPUTES

43. Settlement of disputes

1. Section 29 of the General Convention states that,

> "The United Nations shall make provision for appropriate modes of settlement of:
>
> (a) Disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;
>
> (b) Disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General."

2. In order to provide a suitable means of settlement of any disputes of a private law character, the United Nations has regularly made provision in its contracts for recourse to arbitration.[1/] In the case of officials, the position varies according to the facts of the case. If the dispute is of a private character, no question of the immunity of an official without diplomatic privileges is involved and the official is in the same position as any other resident in the country in question. Where the Secretary-General determines that the dispute involves the staff member in an official capacity and that the interests of the United Nations do not permit the waiver of the immunity,[2/] the usual method of settlement has been by means of discussions and correspondence with the Government concerned, in an effort to reach agreement. In some instances, whilst not agreeing to waive the immunity of the official concerned, the Secretary-General has taken steps, by administrative means, to ensure that the particular cause of the dispute did not reoccur and, where appropriate, has also taken disciplinary action against the offender.

1/ See Section 1 (b) above.

2/ See generally Section 31 above.

44. Reference to the International Court of Justice of differences arising out of the interpretation of the General Convention

3. Section 30 of the General Convention provides as follows:

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

4. All differences which have so far arisen regarding the interpretation or application of the General Convention have been settled by means of negotiation and discussion. Although there have been occasional suggestions that particular disputes should be referred to the International Court of Justice, these suggestions have not been carried into effect.

5. The following States have made reservations regarding the reference to the International Court of Justice of disputes as to the interpretation of the General Convention: Albania, Algeria, Bulgaria, Byelorussian SSR, Czechoslovakia, Hungary, Mongolia, Nepal, Romania, Ukrainian SSR, and the USSR. The United Kingdom notified the Secretary-General that it objects to the reservations made by Albania, Byelorussian SSR, Czechoslovakia, Hungary, Romania, Ukrainian SSR and the USSR. Lebanon notified the Secretary-General that it objects to the reservation of the USSR.

6. It may be noted that a number of other agreements contain provisions similar to Section 30[1/], or a reference to Section 30 as the mode of settlement to be used in the event of a dispute as to the interpretation of the agreement concerned.[2/] During its fifteenth session the Economic and Social Council considered at its 686th and 687th meetings a complaint concerning the application of the Headquarters Agreement. In the course of debate, the question was raised

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1/ E.g., Section 27, Agreement with Switzerland, Section 21, Headquarters Agreement, Section 21 ECA Agreement.

2/ E.g., Section 21 ECLA Agreement, Section 26, ECAFE Agreement.

whether the Secretary-General would proceed automatically to apply the arbitration procedure provided for in the Headquarters Agreement[3/] if negotiations for an amicable settlement proved fruitless, or whether he would first report to the Council or to the General Assembly. The opinion was expressed in the Council that it would be preferable, in the event of failure of the negotiations, that the Secretary-General should proceed to arbitration without further reference to the Council; the Council could be informed of the outcome of the settlement procedures in due course. No final action was taken by the Council, however.

3/ Section 21 of the Headquarters Agreement provides as follows:

"Section 21. (a) Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third then by the President of the International Court of Justice.

(b) The Secretary-General or the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court."

CHAPTER VIII. FINAL ARTICLE

45. Submission of the General Convention to Member States for accession

1. In accordance with section 31, the General Convention has been submitted to every Member State for its accession. Up to 1 May 1967, ninety-five Member States had submitted instruments of accession. A relatively small number have made declarations or reservations (which have been noted in the appropriate sections of this survey) as to the application of the Convention.

2. In 1963 the United Nations sent the following aide-mémoire[1/] to the Permanent Representative of a Member State regarding the proposed accession by the Member State concerned to the Convention, subject to a reservation denying to any United Nations official of that State's nationality any privileges or immunities under the Convention.

> "The first article of the Law approving accession by your country to the Convention on the Privileges and Immunities of the United Nations approves the Convention subject to the reservations set out in the second and third articles of the Law.
>
> The third article of the Law sets forth a reservation to the effect that the proviso contained in article IV, section 15, of the Convention shall also apply in respect of articles V and VI.
>
> Section 15 of the Convention on the Privileges and Immunities of the United Nations reads:
>
> > 'The Provisions of sections 11, 12 and 13 are not applicable as between a representative and the authorities of the State of which he is a national or of which he is or has been the representative.'
>
> Article IV of the Convention, in which not only section 15 is found but also the three sections cross-referenced therein, relates only to representatives which Member States delegate to represent them. Article V of the Convention. to which the proposed reservation seeks to apply the proviso contained in section 15, specifies the privileges and immunities of officials of the Organization and the limitations under which they are intended to be enjoyed. Article VI does the same for experts on missions for the United Nations.

1/ United Nations Juridical Yearbook 1963, p. 188.

As section 15 of the Convention expressly relates only to the provisions of sections 11, 12 and 13 which, being contained in article IV, have no legal relationship to articles V or VI, it will be assumed that the intent of the reservation in the third article of the Law is to state that the privileges and immunities specified in articles V and VI are not applicable as between an official (or an expert on mission for the United Nations) of your country's nationality and the Government of your country.

In the opinion of the Secretary-General, a closer examination of the true legal operation of this reservation, as so interpreted, will leave no doubt that it is incompatible with the United Nations Charter. It may therefore be that you would wish to consider the possibility of suggesting to your Government that the actual deposit of any instrument of accession intended to embody the foregoing reservation be delayed pending an urgent reconsideration of its legal consequences. In this connexion it may be borne in mind that, should an instrument containing this reservation be submitted to the Secretary-General he would be obliged to take action in two separate capacities, not merely as depositary of the Convention in question under its section 32, but also as the authority designated by section 36 for entering into negotiations with any Member Government as to any adjustments to the terms of the Convention so far as that Member is concerned.

In view of this dual responsibility the following analysis of the proposed reservation is offered for the consideration of your Government.

Numerous privileges and immunities specified in article V are not ordinarily understood to have practical application as between an official of the United Nations and his Government of nationality. Such an official will have no occasion, unless in rare circumstances, to require immunity from immigration restrictions in his own country, or privileges in respect of exchange facilities, or repatriation facilities in time of international crisis; he cannot by definition require immunity from alien registration, and it would be exceptional for him to have reason to claim duty-free entry for his personal effects on taking up his post in the country.

The situation is quite otherwise in the matter of his official acts, and it is here that the reservation cannot be reconciled with the Charter. Section 18 (a) in article V requires that officials of the United Nations be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity.' (Underscoring supplied.) It follows that your country, in proposing the reservation quoted above, has (no doubt unintentionally) reserved the right to prosecute United Nations officials of its nationality for words spoken or written or for any acts performed by them in their official capacity, indeed for actions which are in effect the acts of the Organization itself. It would equally be the consequence of the reservation that your country would be reserving jurisdiction to its national courts to entertain private lawsuits against its citizens for acts performed by them as officials of the United Nations.

/...

Article 105 of the Charter provides in its second paragraph that officials of the Organization shall 'enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.' Likewise, by the second paragraph of Article 100 each Member of the United Nations 'undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff'. It needs no argument to demonstrate that the reservation by a Member of the right, even in the abstract, to exercise jurisdiction over the official acts of United Nations staff, either through its courts or through other organs or authorities of the State, would be incompatible with the independent exercise and the exclusively international character of the responsibilities of such officials of the Organization. This derogation from the clear terms of the Charter would in no way be affected by the common nationality of the international official and the prosecuting authority. The Secretary-General cannot believe that the legal effect of the reservation in question, although indisputable when examined in this light, was consciously intended.

The situation is similar with regard to article VI of the Convention. Experts of your country's nationality would not normally perform their missions for the United Nations on national territory. On the other hand, the inevitable consequence of reserving article VI would be to permit the exercise over nationals of your country, who have performed or are performing official United Nations missions, of jurisdiction in respect of words spoken or written and acts done by them in the course of the performance of their mission. For example, an officer who might be seconded by your government for service abroad as a United Nations Military Observer would technically be subject on his return to inculpation or sanction for some aspects of his activity on behalf of the Organization. This is particularly evident from the fact that one of the provisions reserved states (in section 22(b) of the Convention):

> 'This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations.'

Papers and documents of the United Nations in his possession could likewise be deprived of their inviolability, while the confidential character of his communications with the United Nations could equally be overridden. In such circumstances the Organization itself could not be said to enjoy in the territory of the Member in question the privileges and immunities necessary for the fulfillment of its purposes, as required by Article 105, paragraph 1 of the Charter.

A comment may also be in order with respect to the effect on a Member Government of its reserving the application of section 18(b). That clause provides that officials of the United Nations shall 'be exempt from taxation on the salaries and emoluments paid to them by the United Nations'.

Officials of the Organization, having been intended by the General Assembly and the Convention to be exempt from national taxation on their official salaries, are already subject to a staff assessment by the United Nations equivalent to national taxation. By resolution 973(X), therefore, the General Assembly authorized the refund and reimbursement to the staff by the Secretary-General of the amount of any national income taxes to which they might be subjected on the same salary. At the same time, the General Assembly created by that resolution a Tax Equalization Fund and established thereby a procedure for charging against each Member State the total of any amounts which the Organization might thus be obliged to refund to the staff. It should accordingly be understood that the consequence of the reservation in question in so far as it reserves the right to tax nationals of your country on their United Nations salaries, will be to place upon the Organization the administrative burden of reimbursing the income taxes on official salaries while nevertheless increasing your government's annual contributions to the expenses of the Organization by the full amounts so reimbursed.

As article VI does not provide for tax exemption on any stipends paid to experts on missions for the United Nations, there is no tax implication for them in the proposed reservation.

In addition to the reservation stated in the third article of the Law, as examined above, the second article of the Law contains a reservation concerning the capacity of the United Nations under section 1 of the Convention to acquire immovable property. It subjects that capacity to the conditions established in the national Constitution and to any restrictions established in the Law therein provided for. According to the Constitution, the acquisition of real property by international organizations may be authorized only in accordance with conditions and restrictions established by law. The Secretariat of the United Nations has no information as to whether such a law has as yet been adopted.

It is unnecessary to re-emphasize the urgent desire of the United Nations to see an early accession by your country to the Convention on the Privileges and Immunities of the United Nations. The General Assembly itself has repeatedly stated in its resolutions on the subject that, if the United Nations is to achieve its purposes and perform its functions effectively, it is essential that the States Members should unanimously accede to the Convention at the earliest possible moment. The Secretary-General would only wish that the instrument of accession should not be subject to a reservation conflicting with the Charter, so as to avoid the necessity of placing the question before the General Assembly."

3. In a Decree Law adopted by another Member State providing for the internal implementation of the Convention, the application of the Convention to nationals of the State in question was reserved. No such reservation had been contained in the instrument of accession to the General Convention which the State had

deposited earlier. Following discussions with the Permanent Representative the Legal Counsel wrote to him as follows:

"You note that the preamble in your instrument of accession cited the Decree Law as the act under authority of which the accession was brought about. The difficulty is that this does not constitute a reservation. I believe we can agree that it is universally accepted that a reservation requires a formal declaration - either endorsed on the original of the treaty itself, or spread out in its full effect in a procès-verbal, or recorded in express terms in the instrument of accession - which sets out for the full notice of all other interested parties the precise nature and scope of the intended departure by the reserving government from the terms of the Convention. In the present case, however, even if the Secretariat had known of the intention to exclude nationals from the application of the Convention - which it did not - the other States Parties to the Convention never had an opportunity to receive notice of the restriction. Not only is the text of an instrument of accession not circulated to other States Parties but, as was the case with the Secretariat, all would assume that the reference to the Decree in the preamble merely indicated, according to the usual formula, the governmental authority for the accession, without suggesting in any way the intended reservation. Moreover, as you note in your letter, even within your country the Decree was published in the Official Journal considerably subsequent to the actual accession.

The crux of the difficulty is therefore that no matter how important the Decree may have been for providing the purely internal authority for accession to and implementation of the Convention, it did not affect the terms and conditions of the accession, and no mere mention of the Decree in the instrument of accession would have led to a contrary conclusion. Thus, however much I may be able to agree with your explanation that without the Decree the Convention could not have been made applicable in your State, it nevertheless follows that the Decree could not by itself have altered the terms of the Convention. For neither the date of the Decree nor the possible necessity under the Constitution of some internal disposition to give domestic effect to treaty obligations can serve to overcome that principle of international law and custom under which certain formal procedures must have been followed before an acceding State can be shown to have become a party to a Convention subject to a reservation - that is, under lesser terms than those which bind the other parties..."

The terms of the Decree Law were accordingly not accepted as constituting a reservation to the Convention.

46. Entry into force of the General Convention on the date of deposit of the instrument of accession

4. Section 32 states that:

> "Accession shall be effected by deposit of an instrument with the Secretary-General of the United Nations, and the convention shall come into force as regards each Member on the date of deposit of each instrument of accession".

No special problems have arisen in this connexion.

5. It may be noted that a number of Member States have declared that they considered themselves parties to the Convention, with effect from the date of their independence, by succession to the obligations assumed on their behalf by the State previously responsible for their international relations. Accordingly no instrument of accession was deposited in these cases.

47. Implementation of the General Convention under national law

6. Section 34 of the General Convention states:

> "It is understood that, when an instrument of accession is deposited on behalf of any Member, the Member will be in a position under its own law to give effect to the terms of this Convention."

The United Nations has relied on this provision on occasions when Member States have cited national law in explanation of why they were unable to comply with their obligations under the Convention.

48. Continuation of the General Convention

7. Section 35 of the General Convention provides:

> "This convention shall continue in force as between the United Nations and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the United Nations, or until a revised general convention has been approved by the General Assembly and that Member has become a party to this revised convention."

8. This Section was referred to expressly by the International Court of Justice in its Advisory Opinion on "Reparations for injuries suffered in the service of the United Nations", in support of the contention put forward by the United Nations Secretariat that the General Convention creates rights and duties between each of the States Parties and the Organization.1/

9. In answer to a query raised by a specialized agency in 1963, the Legal Counsel stated that the General Convention and the specialized agencies Convention did not contain a denunciation clause because Sections 35 and 47 (the equivalent provision of the specialized agencies Convention) effectively amounted to a non-denunciation clause. The basic reason for the inclusion of Sections 35 and 47 lay in Article 105, paragraph 1, of the Charter, which stated that privileges were "necessary" for the independent exercise of the functions of officials and representatives; if the privileges concerned were indeed "necessary" there could be no question of permitting denunciation. Provision had, in any case, been made in the two Conventions against the occurrence of any abuse.

1/ I.C.J. Reports 1949, p. 174 and p. 179. Cited in Section 6(a) above.

49. Supplementary agreements

10. In accordance with Section 36 the Secretary-General has concluded a number of supplementary agreements, referred to in the course of this survey, "adjusting the provisions of (the) Convention" so far as any particular Member or Members are concerned, chiefly in cases where the United Nations has established a permanent office in the country in question or otherwise undertaken any major programme or mission there.

11. For the period up to 1960, agreements concluded by the United Nations relating to its privileges and immunities, whether or not falling within the scope of Section 36 of the General Convention, are to be found in the United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations, vol. 1, and, for the period after 1962, in the successive issues of the United Nations Juridical Yearbook. The following agreements concerning United Nations privileges and immunities were concluded in the period between that covered in the United Nations Legislative Series and the start of the United Nations Juridical Yearbook.

Exchange of letters between United Nations and Mexico regarding arrangements for twenty-seventh session of Economic and Social Council at Mexico City, 3 and 7 April, 1959 (United Nations Treaty Series, vol. 381, p. 123).

Exchange of letters between United Nations and United Arab Republic concerning the settlement of claim between UNEF and the United Arab Republic arising out of traffic accidents, 14 October 1959 and 15 September and 17 October 1960 (United Nations Treaty Series, vol. 388, p. 143).

Agreement between United Nations and Austria regarding arrangements for Vienna Conference on Diplomatic Intercourse and Immunities, 27 February 1961 (United Nations Treaty Series, vol. 394, p. 27).

Agreement between United Nations and Ethiopia relating to the establishment of an International Statistical Training Centre, 14 June 1961 (United Nations Treaty Series, vol. 406, p. 81).

Agreement between United Nations and Mexico relating to human rights seminar to be held in Mexico City, 18 August 1961 (United Nations Treaty Series, vol. 404, p. 297).

Agreement between United Nations and Italy regarding arrangements for United Nations Conference on New Sources of Energy, 23 August 1961 (United Nations Treaty Series, vol. 405, p. 3).

Agreement between United Nations and Ghana relating to the establishment of a Statistical Training Centre, 29 August 1961 (United Nations Treaty Series, vol. 406, p. 117).

Agreement between the United Nations and the Republic of the Congo (Leopoldville) relating to the Legal Status, Privileges and Immunities of the United Nations Organization in the Congo, 27 November 1961 (United Nations Treaty Series, vol. 414, p. 229).

12. Reference may also be made to the general survey of the agreements concluded by the United Nations relating to its privileges and immunities contained in the Repertory of Practice of United Nations Organs, vol. V, p. 326 et seq., ibid., suppl. No. 1, vol, II, p. 415 et seq., and ibid., suppl. No. 2, vol. III, p. 512 et seq.