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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

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INTRODUCTION

1. By resolution 1289 (XIII) of 5 December 1958, the General Assembly requested the International Law Commission to give consideration to the question of relations between States and inter-governmental organizations. At its fourteenth session in 1962 the Commission appointed a Special Rapporteur on the topic, who submitted a first report^{1/} to the Commission in 1963. At its sixteenth session in 1964, the Commission considered the first report and examined a list of questions submitted by the Special Rapporteur.
2. In order to assist the work of the Commission, the United Nations Secretariat has prepared the four studies listed below relating to the status, privileges and immunities of the representatives of Member States to the United Nations, the specialized agencies and the International Atomic Energy Agency, and to the status, privileges and immunities of those organizations themselves. The material relating to the specialized agencies and the International Atomic Energy Agency has been prepared on the basis of the replies of those organizations to two questionnaires sent by the United Nations Secretariat.

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- A. Summary of Practice relating to the Status, Privileges and Immunities of the Representatives of Member States to the United Nations
- B. Summary of Practice relating to the Status, Privileges and Immunities of the Representatives of Member States to the Specialized Agencies and the International Atomic Energy Agency

Part Two: The Organizations

- A. Summary of Practice relating to the Status, Privileges and Immunities of the United Nations
- B. Summary of Practice relating to the Status, Privileges and Immunities of the Specialized Agencies and of the International Atomic Energy Agency

^{1/} A/CN.4/161 and Add.1, Yearbook of the International Law Commission, 1963, Vol. II, p. 159.

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

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

5. All international agreements and national enactments mentioned in the studies are contained in United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations, vols. I and II, except where a reference is given to another source. In the studies relating to the specialized agencies and the International Atomic Energy Agency the expression "Headquarters Agreement" is used for ease of reference to denote the principal agreement between the specialized agency concerned and the State in which its headquarters are situated. In the United Nations studies the same expression is used to refer to the Agreement between the United Nations and the United States regarding the Headquarters of the United Nations, signed on

26 June 1947; references to the "Agreement with Switzerland" or to the "1946 Agreement" are to the instrument concluded between the Secretary-General and the Swiss Federal Council in 1946, originally under the title "Interim Arrangement on Privileges and Immunities of the United Nations". The terms "ECA Agreement", "ECAFE Agreement" and "ECLA Agreement", refer to the agreement in respect of each of these regional economic commissions with its respective host country. Similarly in the case of United Nations peace-keeping forces, the expressions "UNEF Agreement", "ONUC Agreement"^{1/} and "UNFICYP Agreement"^{2/} refer to the Status of Forces Agreements concluded by the United Nations with the respective host State regarding the particular force concerned. Lastly, it should be noted that, for the sake of uniformity and convenience, memoranda or communications prepared by the legal staff of the United Nations Secretariat are referred to as having been prepared either by the Office of Legal Affairs or by the Legal Counsel, even in respect of earlier periods in the history of the Organization when different terms were used to describe that office or the official in charge of that office.

^{1/} United Nations Treaty Series, vol. 414, p. 229.

^{2/} Ibid., vol. 492, p. 57.

LIST OF ABBREVIATIONS

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

PART ONE: THE REPRESENTATIVES OF MEMBER STATES

- A. SUMMARY OF PRACTICE RELATING TO THE STATUS, PRIVILEGES AND IMMUNITIES OF THE REPRESENTATIVES OF MEMBER STATES TO THE UNITED NATIONS

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

1. INTERPRETATION OF THE TERM "REPRESENTATIVES"

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

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

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

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

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

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

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

In the case of the Security Council, Economic and Social Council and Trusteeship Council, each member may have one representative.^{1/}

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

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

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

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

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

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

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

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

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

2/ United Nations Conference on the Law of the Sea 1958, Official Records, vol. II, p. XXXI.

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

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

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

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

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

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

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

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

'Members of delegations' is not a desirable designation.

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

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

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

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

2. DISTINCTION BETWEEN PERMANENT AND TEMPORARY REPRESENTATIVES

(a) Position at United Nations Headquarters

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

"The General Assembly,

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

5/ Official Records of the Trusteeship Council, Sixth Session, 206th meeting, p.15.

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

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

Recommends

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

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

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

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

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

14. As indicated in paragraph 4, unless particular organs are specified accreditation as a permanent representative does not go beyond accreditation to the Secretariat.^{1/}

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

^{1/} The question of credentials is dealt with in Section 4 below.

Article V, Section 15

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

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

.....

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

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

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

(b) Position at United Nations Office at Geneva

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

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

(c) Position at Headquarters of Economic Commissions (other than ECE)

20. Neither the terms of reference of the Economic Commissions, nor any resolutions of the General Assembly, of the Economic and Social Council, or of the Commissions themselves, provide for resident representatives at the headquarters of the Commissions. Nevertheless, embassy or consulate staff which are present at the site may serve as liaison officers between their Governments and Commissions on a more or less permanent basis. This practice appears to have been especially followed in the case of ECAFE. The Agreement relating to ECA is the only headquarters agreement for an Economic Commission which expressly envisages resident representatives. Section 10 (b) provides that resident representatives are entitled to the same privileges and immunities as the Government of Ethiopia accords to diplomatic envoys accredited to it.

3. RELATIONSHIP BETWEEN FUNCTIONS AND COMPOSITION OF PERMANENT MISSIONS

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

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

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

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

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

In the case of delegations to the United Nations, no United Nations organ has been given the broad power of a receiving State vis-à-vis diplomatic agents. However, a distinction which is pertinent in this connexion

has been made between the official functions of representatives and other activities in which they may engage. Article 105 of the Charter limits the privileges and immunities of representatives to those 'necessary for the independent exercise of their functions in connexion with the Organization'. The provisions of the Convention on the Privileges and Immunities of the United Nations are based on this concept, and Section 14 of the Convention states that the privileges and immunities listed in the Convention 'are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the United Nations. Consequently, a Member... is under the duty to waive the immunity of its representative in any case where in the opinion of the Member, the immunity... can be waived without prejudice to the purpose for which the immunity is accorded'.

This distinction between the exercise of official functions and other activities of a member of a permanent mission is, in our opinion, of basic importance. Activities pertaining to the exercise of the functions of a permanent mission, while performed in accordance with the rules and procedures established by United Nations organs, are subject to the control and supervision only of the Government which the mission represents; no interference can take place in this respect by outside entities and the composition of a permanent mission cannot be questioned on that account. Activities undertaken by individual members of the mission which do not pertain to the functions of official representation of the Member State concerned are not, however, similarly protected and, if they constitute an abuse of the status of a representative of the United Nations, there would be warrant for intervention by the United Nations. 1/

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

Another such situation might arise as a result of activities of a political nature undertaken by a member of a permanent mission, particularly at United Nations Headquarters, when such activities are not exercised on

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

behalf of the permanent mission itself or the Member State which it represents, but rather for a separate entity or group which is not part of the government of that Member State. This situation would obviously have a special gravity where the member of the permanent mission carries on activities on behalf of a party or group located in another Member State. Not only would this go beyond the function of representatives, which is the basis of the institution of the permanent missions, but it would introduce an element of disorder and confusion which would be contrary to the purposes of the permanent missions and the standards which a diplomatic corps may be expected to maintain.

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

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

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

23. Although no provision appears to exist specifically delimiting the size of a mission it has been generally assumed that some upper limit did exist. When negotiations were held with the United States authorities concerning the Headquarters Agreement, the United States representative, while accepting the principle of the proposed Article V dealing with permanent representatives, "felt that there should be some safeguard against too extensive an application". The text thereupon suggested (which, with only slight modification, was finally adopted as Article V) was considered by the Secretary-General and the Negotiating Committee to be a possible compromise.^{2/}

^{2/} Joint Report by the Secretary-General and the Negotiating Committee on the negotiations with the authorities of the United States of America concerning the arrangements required as a result of the establishment of the seat of the United Nations in the United States of America, A/67 and A/67/Add.1, 4 September 1946. Reproduced in Handbook on the Legal Status, Privileges and Immunities of the United Nations, ST/LEG/2, p. 441. The relevant portion of Article V is reproduced in Section 7 (a) below.

4. CREDENTIALS

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

(a) The General Assembly

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

"IV. CREDENTIALS

Submission of credentials

Rule 27

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

Credentials Committee

Rule 28

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

Provisional admission to a session

Rule 29

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

At the Assembly's second session^{1/} in 1947 a proposal that credentials might be signed by resident representatives failed of adoption; it was agreed, however, that credentials might be signed by the Head of Government, as well as by the Head of State or Minister for Foreign Affairs. It may also be noted that in practice cablegrams are considered as provisional credentials until superseded by full credentials, submitted by Governments in accordance with rule 27 of the rules of procedure.

26. At various sessions of the Assembly there has been discussion regarding the representation of particular Member States,^{2/} but no resolutions have been adopted of general application with regard to credentials. It may be noted that in resolution 1618 (XV), the General Assembly called the attention of Member States to the necessity of complying with the requirements of rule 27.

(b) The Security Council

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

"CHAPTER III - REPRESENTATION AND CREDENTIALS

Rule 13

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

Rule 14

Any Member of the United Nations not a member of the Security Council and any State not a Member of the United Nations, if invited to participate in a meeting or meetings of the Security Council, shall submit credentials

^{1/} See Repertory of Practice of United Nations Organs, Vol. 1, p. 248.

^{2/} Ibid., vol. 1, p. 249, et seq.; Suppl. No. 1, p. 111, et seq.; Suppl. 2, vol. 2, p. 7, et seq.

for the representative appointed by it for this purpose. The credentials of such a representative shall be communicated to the Secretary-General not less than twenty-four hours before the first meeting which he is invited to attend.

Rule 15

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

Rule 16

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

Rule 17

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

18. The third sentence of rule 13 ("the credentials shall be issued either by the Head of the State or the Government concerned or by its Minister of Foreign Affairs") was adopted by the Security Council at its 468th meeting on 28 February 1950.^{3/} At the same meeting the Council determined not to make any amendment to rule 17. The Indian representative suggested that where the right of any person to represent a State in the Security Council had been called in question, the President should place the views of all other Member States before the Council, so that these could be taken into consideration in deciding what attitude the Council should adopt. This proposal was not endorsed however, by a Committee of Experts which was established to consider the question.^{4/}

29. An account of the discussion relating to the representation of particular States is given in the Repertoire of the Practice of the Security Council.^{5/}

^{3/} See Repertoire of the Practice of the Security Council, 1946-1951, p. 12, et seq.

^{4/} Idem.

^{5/} Ibid., p. 14, et seq.; Suppl. 1952-1955, p. 4, et seq.; Suppl. 1956-1958, p. 4, et seq.

(c) The Economic and Social Council

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

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

At each session of the Council the credentials received by the Secretary-General have been examined by the President and the Vice-Presidents, who submit a report on credentials to the Council. In practice, credentials are accepted from permanent missions and representatives, as well as when issued by the Head of the State, the Head of the Government, or by the Minister of Foreign Affairs.^{6/}

(d) The Trusteeship Council

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

Rule 14

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

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

Rule 15

1. Any member of the United Nations not a member of the Trusteeship Council, when invited to participate in a meeting or meetings of the Council, shall submit credentials for the representative appointed by it for this

^{6/} For details of discussion on the representation of a Member State see Repertory of Practice of United Nations Organs, Suppl. No. 1, vol. II, p. 68, et seq.

purpose in the same manner as provided in rule 14. The credentials of such a representative shall be communicated to the Secretary-General not less than twenty-four hours before the first meeting which he is to attend.

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

Rule 17

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

Rule 18

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

32. At various sessions of the Council there has been discussion regarding the representation of particular Member States.^{7/}

(e) Subsidiary Organs and United Nations Conferences

33. The position with respect to the credentials of representatives attending meetings of subsidiary organs and United Nations Conferences is governed by the rules of procedure of the organ or conference concerned. Where, as is often the case, a person has been authorized to represent his Government in all United Nations organs, this authorization necessarily extends to all subsidiary organs which may be established. Where, on the other hand, the representative is specially sent from his home State to represent his Government before an ad hoc subsidiary organ, specific credentials are required. In the case of the regional Economic Commissions, credentials must be submitted in advance to the Executive Secretary, for examination by the Chairman and Vice-Chairman, who submit a report to the Commission. At United Nations conferences, a procedure similar to that of

^{7/} See, Repertory of Practice of United Nations Organs, vol. IV, p. 321, et seq.; ibid., Suppl. No. 1, vol. II, p. 271, et seq.

sessions of the General Assembly is observed; credentials must be submitted to the Secretary-General, or the official acting in his stead, for examination by a credentials committee or by the Secretariat, which reports to the plenary body of the conference.

(f) Permanent Representatives

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

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

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

".....

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

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

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

36. The annex to the report submitted by the Secretary-General to the General Assembly at its fourth session on permanent missions to the United Nations^{8/} gave a standard form of credentials, as a guide to the drafting of such instruments:

8/ Official Records of the General Assembly, Fourth Session, Annex to the Summary Records of the Sixth Committee, p. 17.

"Standard Form of Credentials

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

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

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

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

Signature
(title)

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

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

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

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

5. FULL POWERS AND ACTION IN RESPECT OF TREATIES^{1/}

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

"Sir,

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

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

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

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

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

^{1/} Further information as to United Nations practice may be found in Summary of the Practice of the Secretary-General as Depository of Multilateral Agreements, ST/LEG/7, paras. 28-36.

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

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

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

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

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

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

Further, as to the deposit of formal instruments of ratification or accession from governments to agreements and conventions concluded under the auspices of the United Nations, it has not been the practice to require permanent representatives to produce full powers authorizing them to present

instruments for deposit. In most cases instruments of ratification or accession are accompanied by a letter from the permanent representative informing the Secretary-General that he is acting under instructions from his Government in depositing the instrument.

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

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

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

6. APPOINTMENT OF A REPRESENTATIVE TO MORE THAN ONE ORGANIZATION OR POST;
REPRESENTATION OF MORE THAN ONE STATE BY THE SAME REPRESENTATIVE

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

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

45. The question of representation of more than one Government or State by a single delegate has been raised on several occasions in United Nations bodies. It has been the consistent position of the Secretariat and of the organs concerned that such representation is not permissible unless clearly envisaged in the rules of procedure of the particular body. The practice, which has sometimes been followed, of accrediting the official of one Government as the representative of another, has not been considered legally objectionable, provided the official concerned was not simultaneously acting as the representative of two countries. A distinction should be drawn between these cases and that in which more than one delegation may be sent by the same State (e.g. as in the case of commodity conferences).^{1/}

^{1/} See the letter sent regarding participation of dependent territories in the United Nations Coffee Conference of 1962, United Nations Juridical Yearbook, 1962, (ST/LEG/8), p. 258.

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

7. SCOPE OF PRIVILEGES AND IMMUNITIES DERIVED FROM ARTICLE 105^{1/}

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

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

47. At the San Francisco Conference the Committee on Legal Problems stated that Article 105 "sets forth a rule obligatory for all members as soon as the Charter becomes operative";^{2/} similarly, the Preparatory Commission on the United Nations reported in 1945 that Article 105 is "applicable even before the General Assembly has made the recommendations referred to in paragraph (3) of the Article or the conventions therein mentioned have been concluded".^{3/}

48. As regards the nature of the privileges and immunities granted under Article 105, at the San Francisco Conference the Committee on Legal Problems declared that the terms "privileges and immunities" used in that Article "indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization and to the free functioning of its organs... exemption from tax, immunity from jurisdiction, facilities for communication, inviolability of buildings, properties, and archives etc".^{4/} The Committee stated expressly that it had seen fit to avoid the term "diplomatic" in describing the nature of the privileges and immunities conferred under Article 105, and had "preferred to substitute a more appropriate standard based... in the case of representatives... on providing for the independent exercise of their functions".

^{1/} See also section 25 below, regarding the right of transit and of access to meetings, which is also derived from Article 105 of the Charter.

^{2/} Report of the Committee on Legal Problems, United Nations Conference on International Organization, San Francisco, 12 June 1949, doc. 933, IV/2/42/(2), U.N.C.I.O. vol. 13, pp. 703-5.

^{3/} Report by the Executive Committee to the Preparatory Commission of the United Nations (PC/EX/113/Rev.1, 12 November 1945), chapter V, section 5, paragraph 2.

^{4/} Reference note 1, above.

49. The General Convention is based on a similar rationale; although in several instances the facilities afforded are declared to be the same as those accorded to diplomatic envoys, there is no general assimilation of the position of representatives to that of diplomatic representatives. Article IV, section 14, states that the privileges and immunities of representatives are accorded

"not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the United Nations".

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

51. It would appear that, for the most part, permanent representatives have been granted diplomatic privileges and immunities whilst temporary representatives, even if of equal or higher rank, have continued to receive privileges and immunities of a more restricted character. The following survey, though not exhaustive, gives details of the agreements, or enactments under which the representatives of Member States have been granted diplomatic privileges and immunities, and of certain problems which have arisen, in particular at United Nations Headquarters, as to the extent of control resting with the host State over the grant of such privileges. The survey is divided into the following sections: (i) Position at

United Nations Headquarters; (ii) Position at the United Nations Office at Geneva; (iii) Meetings of United Nations Organs held other than at Headquarters or at the Geneva Office; (iv) Conferences held under United Nations Auspices; (v) United Nations Regional Economic Commissions; and (vi) Other United Nations Subsidiary Bodies.

(a) Position at United Nations Headquarters

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

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

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

53. After the conclusion of the Headquarters Agreement, however, and the adoption of the Joint Resolution authorizing the President of the United States to bring the Agreement into effect (Public Law 357), resident representatives were granted the same privileges and immunities as diplomatic envoys accredited to the United States.^{5/}

54. The pertinent provisions of Article V, Section 15, of the Headquarters Agreement read as follows:

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

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

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

.....

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

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

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

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

57. The Secretariat wrote to Member States in December 1947 informing them that the Headquarters Agreement had come into effect and recalling the terms of resolution 169 (II); Member States were requested to communicate the name and rank of all persons who, in the opinion of the State concerned, came within the categories of persons covered by sub-sections (1) or (2) of section 15. In February 1948, the United States representative transmitted to the Secretary-General a list of resident representatives and others recognized by the

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

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

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

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

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

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

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

60. In addition to the cases mentioned by the United States representative in his initial letter of February 1948, in 1958 the United States authorities notified all missions that in future they would refuse to recognize in a consular capacity, or in any other non-diplomatic capacity, any person who was entitled to diplomatic immunity pursuant to section 15. In 1959 the United States Mission further informed missions that acceptance of regular employment in the United States by a member of a permanent mission, or by his spouse, was generally incompatible with diplomatic status. These rulings were apparently not contested. On the other hand, in a number of cases in which the United States has declined to grant diplomatic privileges and immunities on the grounds that the individuals concerned were not of the nationality of the State concerned, both the State concerned and the Secretariat have objected to the stand taken.^{6/} It may also be noted that in

^{6/} See section 8 below.

one instance where a United Nations staff member was married to a member of the permanent mission of a Member State, the United Nations declined to register the staff member concerned with the United States Mission as being entitled to diplomatic privileges and immunities on the ground that, in the circumstances, the functional status of staff member should override that of being a spouse.

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

62. In discussions with the United States authorities, the United Nations contended that the wording of section 15 (2) and the arrangements which had been previously established did not support the contention, made by the United States authorities, that the agreement of all three parties involved (viz. of the Secretary-General, the United States and of the Member States), extended to requiring the consent of all three to each individual resident member of a State's mission to the United Nations. As had been shown by subsequent practice, the necessary agreement of the parties had been settled in principle by the original establishment of the diplomatic list, specifying the categories of mission staff (as opposed to lists of individuals) who were entitled to privileges and immunities under section 15. Such cases as had arisen in the past related to the eligibility of the person or

persons concerned as mission staff rather than to the question of whether the United States could decline to grant diplomatic privileges to an admittedly eligible person. Moreover, any argument that the immunity in question was not available until the notification procedure had been completed would place all members of missions in an entirely exposed position in the period between their arrival and the completion of their "processing" by the United States.

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

64. Whilst the matter was still being considered between the United States Mission and the United Nations, Mr. Santiesteban sought release from custody on a writ of habeas corpus, contending that he was entitled to diplomatic immunity from arrest and prosecution under the United Nations Charter, the Headquarters Agreement and international law; his petition also referred to the original jurisdiction of the Supreme Court of the United States.^{7/} By a judgement of 16 January 1963, the United States District Court, Southern District of New York, denied the writ, principally on the ground that under section 15 of the Headquarters Agreement the consent of the United States was required to the grant of diplomatic privileges and immunities to individual members of permanent missions, which had not been given in the case of Mr. Santiesteban.^{8/} This judgement was in the process of appeal to a higher court when Mr. Santiesteban was exchanged for a United States national, following direct negotiations between the two Governments concerned.

^{7/} Article III, section 2 of the Constitution of the United States gives the Supreme Court original jurisdiction in "all cases affecting Ambassadors, other public Ministers and Consuls".

^{8/} A more extensive account of the judgement is contained in United Nations Juridical Yearbook 1963, p. 200.

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

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

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

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

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

(b) Position at the United Nations Office at Geneva

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

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

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

2. Les chefs de délégations permanentes bénéficient de privilèges et immunités analogues à ceux qui sont accordés aux chefs de missions diplomatiques à Berne, à condition toutefois qu'ils aient un titre équivalent.

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

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

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

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

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

68. Since the position of diplomatic missions at Berne is based on reciprocity, the privileges and immunities of permanent missions (other than customs privileges)

may vary from one mission to another, although this appears to be decreasingly the case. Details of the position of both permanent and non-permanent representatives as regards customs privileges are contained in chapters VI and VII of the Customs Regulations adopted by the Swiss Federal Council on 23 April 1952.

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

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

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

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

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

(d) Conferences held under United Nations auspices

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

73. The Agreement signed on 27 February 1961, between the United Nations and Austria regarding the Vienna Conference on Diplomatic Intercourse and Immunities,^{9/} provides in article VI:

- "(1) The Convention on the Privileges and Immunities of the United Nations, to which the Republic of Austria is a party, shall be applicable with respect to the Conference.
- (2) The Government will accord representatives attending the Conference... the same privileges and immunities as are accorded to representatives to... the International Atomic Energy Agency, under the Headquarters Agreement between the Republic of Austria and the IAEA."

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

75. The Agreement^{10/} of 23 August 1961, between the United Nations and Italy regarding the arrangements for the United Nations Conference on New Sources of Energy, provided in article X for the application of the General Convention.

76. The Exchange of Letters dated 24 July 1962, between the United Nations and the Federal Republic of Germany regarding the privileges and immunities to be accorded to those attending the United Nations Conference on the International Map of the World on the Millionth Scale,^{11/} provided for the provision by the Federal Republic of Germany of privileges and immunities "no less favourable than she accords with respect to any Specialized Agency" under the Specialized Agencies Convention. In particular it was agreed that:

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

77. The Agreement signed on 26 July 1963, between the United Nations and Italy regarding arrangements for the United Nations Conference on International Travel

^{9/} United Nations Treaty Series, vol. 394, p. 27.

^{10/} Ibid., vol. 405, p. 3.

^{11/} Ibid., vol. 434, p. 249.

and Tourism,^{12/} provided in article VI, paragraph 1, for the application of the General Convention. In addition, paragraph 2 of article VI specified that representatives of non-Member States attending the Conference should enjoy the same privileges and immunities as were accorded to the representatives of Member States by the Convention.

(e) United Nations regional economic commissions

78. Apart from ECE, which is governed by the provisions of the more general agreements between the United Nations and Switzerland considered above, the position of the economic commissions is determined by the terms of the particular agreements entered into with the various host Governments, and, where those agreements are silent, by the provisions of the General Convention. Thus, since Chile was a party to the General Convention, the Agreement between Chile and ECLA makes no specific mention of the privileges and immunities of representatives; persons who are members of missions established by the Economic Commission, or who are invited by the Commission for official purposes, are granted functional privileges and immunities. In the Exchange of Letters between the Government of Uruguay and the Secretary-General regarding the session of the Commission held in Montevideo in May 1950, however, it was provided expressly that diplomatic privileges and immunities would be accorded to the representatives of member States. In the case of ECAFE, under article VI, section 15 of the Agreement between the United Nations and Thailand, representatives are granted the same privileges and immunities as the Government of Thailand accords to members of diplomatic missions of comparable rank. The Agreement between the United Nations and Ethiopia regarding ECA draws a distinction between resident representatives and others; the former are granted the same privileges and immunities as the Government accords to the diplomatic envoys accredited to Ethiopia (article V, section 10 (b)), while non-permanent representatives receive the same privileges and immunities "as are accorded to diplomatic envoys of comparable rank under international law".

^{12/} Ibid., vol. 472, p. 173.

(f) Other United Nations subsidiary bodies^{13/}

United Nations Commission for Indonesia

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

United Nations Relief and Works Agency for Palestine Refugees

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

Advisory Council for Somaliland

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

United Nations bodies in the Republic of Korea

82. In article IV, paragraph 4 of the Exchange of Letters of 21 September 1951, between the United Nations and the Republic of Korea, it was provided:

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

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

.....

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

United Nations Bodies in Japan

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

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

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

(c) Representatives of organs of the United Nations

...

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

Commission on the Status of Women

84. The Exchange of Letters between the Secretary-General and Lebanon regarding the 1949 Session of the above Commission, held at Beirut, provided that the representatives of Member States should be granted the privileges and immunities, exemptions and facilities specified in Article IV of the General Convention.

A similar provision was contained in the Agreement between the United Nations and Iran, concluded on 16 February 1965^{14/} regarding the Session of the Commission held in Teheran in March 1965.

Sub-Commission on Freedom of Information and of the Press

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

Technical Assistance Committee

86. The Agreement signed on 11 June 1964, between the United Nations and Austria concerning arrangements for the meeting of the Technical Assistance Committee^{15/}

^{14/} United Nations Registration Number 7593.

^{15/} United Nations Treaty Series, vol. 500, p. 85.

held in Vienna, provided in Article V for the application of the General Convention; in addition, representatives of non-member States were granted the same privileges as those accorded to the representatives of Member States by the Convention.

8. NATIONALITY OF REPRESENTATIVES AND THE GRANT OF PRIVILEGES AND IMMUNITIES

87. In a number of instances a host State has refused to grant diplomatic privileges and immunities to representatives on the ground that the person concerned did not possess the nationality of the State he was representing but that of a third State.

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

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

89. In correspondence regarding a further case in 1964, the United Nations drew attention to the fact that, although under Article 8 of the Vienna Convention on

Diplomatic Relations^{1/} and Article 22 of the Vienna Convention on Consular Relations,^{2/} a receiving State might object to the appointment by the sending State of a non-national, no restriction could be placed on the immunities enjoyed once the appointment had been made. The United States was not a receiving State, nor apparently had it objected to the appointment as such of the person concerned.

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

91. Lastly, it may be noted that Section 15 of the General Convention provides that the provisions of Sections 11, 12 and 13 of the Convention are not applicable as between a representative and the State of which he is a national or of which he is or was the representative.

1/ United Nations Conference on Diplomatic Intercourse and Immunities, Official Records, Vol. II, p.86.

2/ United Nations Conference on Consular Relations, Official Records, vol. II, p. 186.

9. COMMENCEMENT AND DURATION OF PRIVILEGES AND IMMUNITIES

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

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

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

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

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

93. In accordance with this interpretation it may be stated that the privileges and immunities granted to representatives under the General Convention and under the 1946 Agreement with Switzerland become operative at the moment the representative concerned leaves his own country or duty station en route to a meeting of a United Nations organ or to a conference convened by the United Nations. In order to secure the smooth application of the privileges and immunities it is common for Member States to inform the Secretariat of the arrival and departure of representatives and of their families. Besides recording this information for the benefit of other representatives, the United Nations notifies the host State so that, subject to adequate notice being given, arrangements can be made to enable the host authorities to receive representatives in an appropriate manner from the time of their arrival.^{1/}

94. As regards permanent representatives at the Geneva Office, a practice has developed in recent years whereby information of the arrival and departure of members of permanent delegations is supplied to the Federal authorities by the Geneva Office, rather than by the diplomatic mission at Berne, as envisaged in paragraph 4 of the decision of the Federal Council of 31 March 1948. The "carte de légitimation", referred to in paragraph 4 of the Federal Council's decision, is given only after the Geneva Office has informed the Federal authorities that credentials have been accepted in respect of the permanent representative in question, and his name entered in the official list maintained

^{1/} As regards the practice at United Nations Headquarters, see Section 7 (a) above.

by the Geneva Office. In the case of B.v.M^{2/} the appellant, an Iranian national, argued against the decisions of two lower courts in a private suit on the grounds, inter alia, that he had diplomatic privileges and immunities as a member of the Permanent Mission of Iran at the Geneva Office. A certificate from the head of the Mission saying that he was so employed was produced before the Federal Tribunal. The appeal was dismissed by the Tribunal in view of the fact that previous notification of the appellant's appointment had not been given to the competent Swiss authorities nor appropriate recognition shown by those authorities to the appointment. Although the element of previous notification had been met, it will be recalled that in the Santiesteban case^{3/} the United States court denied the application for release from custody principally on the ground that the consent of the United States authorities had not been given to the grant of diplomatic privileges and immunities to the individual concerned.

95. The effect, if any, of the grant of diplomatic privileges and immunities following the commencement of a suit was at issue in the New York case of Arcaya v. Paez.^{4/} In March 1956 a Venezuelan national began an action for libel against the Venezuelan Consul in New York on the ground that he had written articles defamatory of the plaintiff's character and had caused them to be distributed in the United States. On 10 April 1956, the Venezuelan Ambassador requested the United States Secretary of State to dismiss the case because of the defendant's immunity as a Consul. The Secretary of State forwarded the request to the Court without comment. On 13 April 1956, the defendant was made Alternate Representative of Venezuela to the United Nations, with the rank of Ambassador. In a statement to the Court the State Department declared that the defendant had diplomatic privileges and immunities as a result of his appointment but that his earlier status was not affected. It was held that the jurisdiction

2/ Arrêts du Tribunal fédéral suisse, 85, 1959, II, p. 153.

3/ See Section 7 (a) above.

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

granted to District Courts over Consuls was not ousted by the defendant's appointment as a representative but that a stay of proceedings should be ordered for so long as he held ambassadorial rank.

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

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

97. One important occasion when considerations relating to the temporal duration of privileges and immunities was raised was in connexion with the decision of

Indonesia, communicated in a letter dated 20 January 1965,^{5/} "at this stage and under present circumstances to withdraw from the United Nations". The concluding paragraph of this letter read:

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

In his reply of 26 February 1965,^{6/} the Secretary-General declared,

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

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

^{5/} Letter dated 20 January 1965 from the First Deputy Prime Minister and Minister for Foreign Affairs of Indonesia addressed to the Secretary-General, A/5857.

On 19 September 1966, the Ambassador of Indonesia in Washington transmitted a message (A/6419) to the Secretary-General from his Government, stating that it had decided "to resume full co-operation with the United Nations and to resume participation in its activities starting with the twenty-first session of the General Assembly". At the 1420th plenary meeting of the General Assembly on 28 September 1966, the President, having read this communication, declared:

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

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

^{6/} Letter dated 26 February 1965 from the Secretary-General to the First Deputy Prime Minister and Minister for Foreign Affairs of Indonesia, A/5899.

10. RESTRICTIONS PLACED BY THE HOST STATE ON THE PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES ON THE GROUND OF RECIPROCITY

99. As in the case of Section 15 of the Headquarters Agreement, the privileges and immunities granted to permanent representatives may be expressed to be the same "and subject to corresponding conditions and obligations", as the host State accords to diplomatic envoys accredited to the host State.^{1/} If, in such instances therefore, the host State reduces the privileges and immunities enjoyed by representatives accredited to it, it may be asserted that the privileges and immunities enjoyed by representatives to the United Nations should be similarly reduced. Thus in the instance referred to in Section 16 below, the United States authorities imposed the same restrictions on the representatives of certain Member States as regards inspection of unaccompanied baggage as were imposed on representatives of those countries accredited to Washington, in view of similar restrictions placed on United States representatives in the countries concerned. On similar grounds the United States has imposed limits on the movement of the

^{1/} In the case of the United States it should be noted that Section 9 of the International Organizations Immunities Act provides as follows:

"The privileges, exemptions and immunities of international organizations and of their officers and employees, and members of their families, suites, and servants, provided for in this title, shall be granted notwithstanding the fact that the similar privileges, exemptions, and immunities granted to a foreign government, its officers, or employees, may be conditioned upon the existence of reciprocity by that foreign government: Provided, that nothing contained in this title shall be construed as precluding the Secretary of State from withdrawing the privileges, exemptions, and immunities herein provided from persons who are nationals of any foreign country on the ground that such country is failing to accord corresponding privileges, exemptions, and immunities to citizens of the United States."

The effect of this provision in relation to the Headquarters Agreement and the Charter was referred to by the Legal Adviser of the United States Department of State in the legal opinion cited at the end of the present Section.

representatives of those countries.^{2/} The Member States concerned have protested at these restrictions and the matter has remained a current issue.^{3/}

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

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

^{2/} It may be noted that in 1960 when the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics attended the fifteenth session of the General Assembly, the United States declared that he should reside "in the closest proximity to the Headquarters of the United Nations" and that his movements, other than his arrival and departure, should be confined to Manhattan Island. The main reason given for this restriction was the need to ensure his safety. The Soviet Union denied the authority of the United States to impose these restrictions and asked the Secretary-General to take up the matter. The Secretary-General requested the United States to reconsider its position, drawing attention to the terms of Section 11 of the Headquarters Agreement and to the interest of the United Nations as a whole that heads of governments should participate in persons in its deliberations. The Chairman of the Council of Ministers was eventually permitted to travel to the premises maintained by the USSR Mission on Long Island.

^{3/} The question of reciprocity in respect of taxation on real property at United Nations Headquarters is referred to in Section 18 (b) below.

missions of particular states. This interpretation is supported by an early official interpretation of the position by the Legal Adviser of the United States Department of State, which held it to be

"clear that the Charter of the United Nations does not permit the imposition of conditions of reciprocity on the granting of privileges and immunities under article 105. Indeed the purpose of the Charter in respect of article 105 is to provide for the granting unconditionally by Member States of certain privileges and immunities to the United Nations so that it may function effectively as a world organization untrammelled in its operation by national requirements of reciprocity or national measures of retaliation among States." ^{4/}

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

"The background in the negotiation of section 15 of the headquarters agreement indicates that the phrase 'subject to corresponding conditions and obligations' was inserted by way of compromise to meet a desire on the part of the United States that persons covered by section 15 were not to receive privileges and immunities broader than those accorded to diplomatic envoys accredited to the President of the United States, and that, like diplomatic envoys, such persons might be found personae non gratae and made subject to recall. The negotiating background does not indicate that the quoted phrase was inserted for the purpose of permitting the United States to make the privileges and immunities provided for in Section 15 dependent upon reciprocity. In the case of representatives of members, and resident members of their staffs, the United States may be authorized under the headquarters agreement to bring about expulsion of

^{4/} Letter to the Chairman of the Sub-Committee on International Organizations and International Law of the Committee on Foreign Affairs, House of Representatives, 29 April 1946; reprinted in Structure of the United Nations and the Relations of the United States to the United Nations. Hearings before the Committee on Foreign Affairs, House of Representatives Eightieth Congress, Second Session, p. 508.

personnel in cases where such action appears to be required. Except for this drastic weapon which the United States may under some circumstances use, the headquarters agreement does not provide for the cancelling of privileges and immunities." 5/

He therefore concluded that even the International Organizations Immunities Act, which has an express authority on reciprocity in its Section 9, is not to be interpreted as requiring the United States Secretary of State to enforce any conditions of reciprocity in conflict with the Charter and the Headquarters Agreement, but only as not precluding him from enforcing reciprocity, where otherwise authorized to do so, merely because a foreign national happens to be connected with an international organization. In addition, he acknowledged that the Headquarters Agreement established its own procedure for requiring a representative to leave the United States in case of abuse of his privileges of residence in activities outside his official capacity, beyond which there exists no grant of authority to withdraw privileges on any grounds determined by the Host State.^{6/}

5/ Ibid., p. 511. See Summary of Practice relating to the Status, Privileges and Immunities of the United Nations, Section 37, concerning the inapplicability of the persona non grata doctrine in respect of United Nations officials; the same reasoning applies, it is submitted, in the case of representatives.

6/ The question of the departure of representatives at the request of the host State is considered in Section 13 below.

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

11. PERSONAL INVIOABILITY AND IMMUNITY FROM ARREST^{1/}

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

104. In an opinion of 1 March 1948, the Attorney-General of New York gave an opinion^{2/} holding that privileges and immunities from arrest and conviction for crimes and traffic infractions within New York State were to be accorded to persons listed by the Department of State as being entitled to diplomatic privileges and immunities.

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

106. The question of the arrest of a member of the staff of a permanent mission was amongst the issues raised in the Santiesteban case.^{3/}

^{1/} The question of the departure of representatives at the request of the host State is considered in Section 13 below.

^{2/} United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations, vol. 1, p. 160.

^{3/} See Section 7 (a) above.

The Cuban authorities protested to the United States authorities and to the Secretary-General on the grounds that the arrest was in violation of the diplomatic immunities conferred upon the diplomatic staff of permanent missions under Section 15 (2) of the Headquarters Agreement.

The subsequent discussion with the United States dealt mainly, however, with the question of whether or not Mr. Santiesteban already enjoyed diplomatic privileges and immunities at the time of his arrest.

109. In 1964, following an attack by a group of boys upon the First Secretary of the Mauritanian Mission, the representatives of fifty-five Member States sent a joint letter to the Secretary-General expressing their grave concern. It was stated that the First Secretary had been attacked "because he was a diplomat and because he was coloured". The signatories declared that the continued repetition of such incidents was the cause of "serious misgivings" as to the conditions required in order for them to live normal lives and to carry out their work as diplomats. The United States Representative wrote to the Secretary-General, recalling that United States officials had already expressed regrets and apologies to the Mauritanian Mission and Government. The New York City police authorities had acted promptly on being informed of the incident and had located and arrested four boys, aged 16 to 19, who were believed to have been guilty of the attack in question. The District Attorney was prepared to prosecute if the First Secretary (who was the principal available witness) would agree to testify, so as to satisfy the requirements of local law. From statements given to the police by the arrested boys it appeared that the identity of the First Secretary had been unknown to them and that he was in fact believed, on account of language unfamiliarities, to be a member of a group with whom the arrested boys had been engaged in a dispute.

12. IMMUNITY FROM LEGAL PROCESS AND WAIVER OF IMMUNITY

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

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

109. Section 7 (b) of the International Organization Immunities Act specifies that representatives

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

110. If an employee of a foreign mission, not of United States nationality, wishes to become a permanent resident of the United States (a step normally required preparatory to acquiring United States citizenship), he is required under Section 247 of the Immigration and Nationality Act to file a waiver of privileges and immunities accruing to him under any United States law or executive order,^{1/} such a waiver includes a waiver of the exemption otherwise enjoyed from federal income taxation, but does not extend to waiver of immunity from suit and legal process for official acts under Section 7 (b) of the International Organization Immunities Act, or of privileges and immunities derived from treaties. Immunity from New York State income tax is also waived on acquiring permanent residence status, preparatory to becoming a United States citizen.

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

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

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

112. The following cases, relating to the jurisdiction of local courts, may be noted.^{2/}

(a) Traffic offences

(i) Friedberg v. Santa Cruz^{3/}

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

^{2/} See also the Santiesteban case, referred to in Section 7 (a) above.

^{3/} Supreme Court of the State of New York, Special Term, Nassau County, Part II, 5 November 1948 (84 N.Y.S. 2d 148). Appellate Division of the Supreme Court of the State of New York. 31 January 1947. 274 App. Div., 1072, (86 N.Y.S. 2d. 369).

(ii) City of New Rochelle v. Page-Sharp^{4/}

114. The Third Secretary of the Australian Mission received a summons for speeding. He returned the summons through the United States Mission, claiming diplomatic privileges and immunities. His claim was upheld by virtue of the Headquarters Agreement and the recognition of his position under the Agreement given by the United States Mission. However, since it was not clear if United States diplomats in Australia were granted immunity in respect of traffic offences, the case was adjourned to enable Mr. Page-Sharp to consider what further steps needed to be taken. The case was subsequently dismissed after the United States Mission to the United Nations indicated that it was not customary international practice to request waiver of immunity in such a case but that diplomatic action would be taken wherever necessary to prevent the recurrence of any abuse.^{5/}

(iii) People v. von Otter^{6/}

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

(iv) People v. Roy^{7/}

116. The defendant, the chauffeur of the Indonesian Ambassador to Canada, was served with a summons for exceeding the speed limit when driving the Ambassador from the United Nations (where he had been acting as Vice-Chairman of his country's delegation) to Canada.

^{4/} City Court of New Rochelle, New York, 29 August 1949. 91 N.Y.S. 2d. 290.

^{5/} C.M. Croswell, The Protection of International Personnel Abroad, pp. 84-86.

^{6/} City Court of New Rochelle, New York, 30 July 1952 114 N.Y.S. 2d. 295.

^{7/} Court of Special Sessions, Herkimer County, New York, 2 December 1959. 200 N.Y.S. 2d. 612.

The Ambassador informed the Court that, pursuant to Section 335 of the New York Code of Civil Procedure, the defendant would file an application and waiver, pleading guilty and waiving the right to trial in open court. The Court, having in its discretion accepted the application and waiver, found the defendant guilty. It was held that no immunity existed in respect of the acts of diplomatic envoys or their servants outside the country to which the envoy was accredited; moreover the Ambassador had not been acting as an official or on behalf of the United Nations at the time in question.

(b) Actions in respect of Premises

(i) Agostini v. De Antueno^{8/}

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

(ii) De Miglio v. Paez^{9/}

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

^{8/} Municipal Court of the City of New York, Borough of Manhattan, Third District, 5 June 1950, 99 N.Y.S. 2d 245.

^{9/} Supreme Court of the State of New York, Appellate Term, Second Dept., 16 June 1959, 189 N.Y.S. 2d 593.

(iii) Knocklong Corporation v. Kingdom of Afghanistan, A.H. Aziz^{10/}

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

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

(c) Private Suits^{11/}Tsiang v. Tsiang^{12/}

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

^{10/} Nassau County Court, New York, 25 March 1959, 167. N.Y.S. 2d 285.

^{11/} See also the cases of B. v. M and Arcaya v. Paez referred to in Section 9 above.

^{12/} Supreme Court of New York County, New York (Special Term) 7 February 1949. 86 N.Y.S. 2d 556.

13. ABUSE OF PRIVILEGES AND THE DEPARTURE OF REPRESENTATIVES AT THE REQUEST OF THE HOST STATE

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

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

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

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

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

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

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

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

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

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

(e) The Secretary-General shall, at the request of the appropriate American authorities, enter into discussions with such authorities, with a view to making arrangements for registering the arrival and departure of persons who have been granted visas 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." ^{1/}

125. It may be recalled that in the Santiesteban case,^{2/} Mr. Santiesteban was accused of having entered into a conspiracy to commit sabotage with two members of the Cuban Mission whose prompt removal was requested by the United States.

126. In agreements with other host countries the matter has been dealt with more shortly. In the Exchange of Letters in 1949 between the Secretary-General and the Lebanese Foreign Minister regarding the privileges and immunities to be accorded to the 1949 session of the Commission on the Status of Women, it was

^{1/} The interpretation of this and related sections was considered during the discussions held following the refusal by the United States to grant entry visas to certain representatives of non-governmental organizations; see Summary of Practice relating to the Status, Privileges and Immunities of the United Nations, section 35.

^{2/} See section 7 (a) above.

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

14. IMMIGRATION RESTRICTIONS, ALIEN REGISTRATION AND NATIONAL SERVICE OBLIGATIONS

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

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

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

129. In the case of United Nations Headquarters, section 13 (a) of the Headquarters Agreement provides that the "Laws and regulations in force in the United States regarding the entry of aliens shall not be applied in such manner as to interfere" with the transit to or from the headquarters district of representatives. It is also provided that when visas are required for persons referred to in section 11 they shall be granted without charge and as promptly as possible. Section 13 (b) specifies that the pertinent laws and regulations shall not be applied in such a manner to require any representative to leave the United States on account of any activities performed by him in his official capacity.^{1/}

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

^{1/} See also section 7 (a), (c) and (d), International Organizations Immunities Act.

15. CURRENCY OR EXCHANGE RESTRICTIONS

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

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

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

"... It is our view that it is not permissible for the host Government to interfere with the legitimate activities of the permanent missions to the United Nations by preventing these missions or their personnel from using funds on deposit in this country. From the legal standpoint, this is a matter covered by paragraph 2 of article 105 of the Charter, which provides that representatives of Members shall enjoy in the territory of each Member such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization. It is also relevant that in resolution 257 (III) the General Assembly recognized that the presence at the seat of the Organization of permanent missions serves to assist in the realization of the purposes and principles of the United Nations ...". 1/

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

1/ United Nations Juridical Yearbook 1963, p. 168.

16. PERSONAL BAGGAGE AND EFFECTS

134. Section 11 (a) of the General Convention specified that representatives enjoy "immunity from seizure of their personnel baggage". Section 11 (f) of the Convention provides more widely that representatives have

"the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys".

135. Identical provisions are contained in section 9 (a) and section 9 (f) of the 1946 Agreement with Switzerland. Under article 19 of the Swiss Customs Regulation of 23 April 1952, members of non-permanent delegations are expressly accorded "une vérification de leurs bagages personnels réduite au strict minimum".

136. At United Nations Headquarters the matter is chiefly regulated by the provisions of section 15 of the Headquarters Agreement.^{1/} The United States customs authorities have on occasions inspected the unaccompanied outgoing baggage and effects of the representatives of certain States on the grounds that such inspections were also made of the baggage and effects of diplomatic representatives of the countries concerned in Washington, after United States representatives of those countries had been subject to similar treatment. The invocation of the principle of reciprocity in this connexion was rejected by the States affected in the course of correspondence with the United States authorities. It is believed that the matter was eventually largely regulated following direct negotiations between the States concerned.

^{1/} Section 3 of the International Organizations Immunities Act merely provides that the baggage and effects of the representatives of foreign Governments shall be admitted free of customs duties and of internal revenue taxes.

17. CUSTOMS AND EXCISE DUTIES

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

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

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

"(b) Pursuant to sections 2 (d) and 3 of the act,^{1/} property of the organizations named in paragraph (a) of this section and the baggage and effects of the alien officers and employees thereof, of aliens designated by foreign Governments to serve as their representatives in or to such organizations, or of the families, suites, and servants of such officers, employees, or representatives, shall be admitted free of duties and internal revenue taxes imposed upon or by reason of importation, but such exemption shall be granted only upon the receipt in each instance of the Department's instructions which will be issued only upon the request of the Department of State.

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

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

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

139. Section 10.30 b, paragraph (b) provides that resident representatives and members of their staffs may import "... without entry and free of duty and internal-revenue tax articles for their personal or family use."^{2/}

^{1/} The International Organizations Immunities Act.

^{2/} Details of the position in respect of the various federal and state taxes in New York are given in section 18 (iii) below.

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

141. In the case of Switzerland the matter is dealt with largely in the Customs Regulation of 23 April 1952. Briefly, permanent missions may import all articles for official use and belonging to the Government they represent (article 15). Representatives with a title equivalent to that of the head of a diplomatic mission and who have a "carte de légitimation" may import free of duty all articles destined for their own use or that of their family (article 16, paragraph 1).

Representatives, including heads of delegations, with a title equivalent to members of a diplomatic mission and who have a "carte de légitimation", have a similar privilege except that the importation of furniture may only be made once (article 16, paragraph 2).

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

18. TAXATION

(a) Assets of Member States

143. The General Convention contains no express provision providing for the exemption from taxation of the assets of member States, although article IV specifies that the representatives of member States may themselves be afforded certain privileges in respect of taxation. In the case of the Headquarters Agreement with the United States, reference is made only to resident representatives who, in section 15, are granted privileges and immunities equal to those granted to diplomatic envoys accredited to the United States Government. In the case of the United States therefore, the immunity from taxation of member States is dependent on the terms of article 105, the position under general international law and internal legislation. Under the International Organizations Immunities Act, section 4 (a),^{1/} income of foreign Governments received from United States investments and securities, and interest on bank deposits, is exempt from taxation.

(b) Premises

144. The main treaty provision which has been referred to in connexion with the liability to taxation of premises occupied by member States for the purposes of their representation at United Nations Headquarters has been section 15 of the Headquarters Agreement. The relevant legislation of the State of New York at the present time, is contained in an enactment which came into effect on 14 April 1960, whereby subdivision one of section 418 of the real property tax law of the State was amended to read as follows:^{2/}

"Real property of a foreign government which is a member of the United Nations or of any world-wide international organization as defined in section four hundred sixteen of this chapter, the legal title to which

^{1/} See also Code of Federal Regulations, Title 26 - Internal Revenue, United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations, vol. I, p. 137.

^{2/} Chapter 554, McKinney's 1960 Session Laws of New York, p. 931

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

145. As enacted in 1955^{3/} the exemption extended only to real property situated within twelve miles of United Nations Headquarters; in 1957 this radius was extended to fifteen miles;^{4/} in 1960, in the provision quoted above, the geographical limitation was removed entirely. The dispute which had previously existed as to the liability to taxation of premises situated further than twelve miles, and then fifteen miles, from United Nations Headquarters was accordingly ended. The question of arrears of taxation in respect of such premises has remained in issue however. The Secretary-General has used his good offices in an effort to arrive at a satisfactory solution to these problems. In the course of correspondence the United States authorities have pointed out, inter alia, that in Washington exemption from real property taxation is granted, not on the basis of general principles of international law, but by virtue of United States Statutes and that property lying outside the District of Columbia is exempt from taxation only if there are in existence treaties between the United States and the government in question providing for such exemption. The United States has therefore contended that, in the absence of such treaties, States occupying premises beyond the geographical limits set by New York law had no foundation for exemption under the terms of Section 15 of the Headquarters Agreement.

^{3/} Chapter 700, McKinney's 1955 Session Laws of New York, p. 1018.

^{4/} Chapter 541, McKinney's 1957 Session Laws of New York, p. 581.

146. As regards the question of arrears, the only issue now outstanding, it may be noted that in December 1964, the City of New Rochelle brought a suit to foreclose tax liens of \$24,000 each for 1958 and 1959 on the residences of the Permanent Representatives of Ghana, Indonesia and Liberia, situated more than fifteen miles from Headquarters. The Westchester County Judge dismissed the case "most reluctantly", in view of the possible hardship on other persons living in the area, after the State Department had intervened on the grounds of the jurisdictional immunity of the defendants.^{5/} The United States Attorney did not plead that the defendants were immune from taxation; in his written submission to the Court he declared that the City of New Rochelle would be able to recover its taxes only through diplomatic channels or by allowing the tax liens to remain on the properties until such time as the foreign Governments concerned decided to sell them.

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

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

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

The problem raised in this situation, so far as international law is concerned, was considered by the International Law Commission during its

^{5/} 255 N.Y. Suppl. 2d 178.

preparation of the text which became Article 23 of the Vienna Convention on Diplomatic Relations. The International Law Commission recognized an exemption from 'national, regional and municipal dues or taxes in respect of the premises of a mission, whether owned or leased'. However, in the Commentary to this Article, the Commission stated;

'The provision does not apply to the case where the owner of leased premises specifies in the lease that such taxes are to be defrayed by the mission. This liability becomes part of the consideration given for the use of the premises and usually involves, in effect, not the payment of taxes as such, but an increase in the rental payable'. (Yearbook of the International Law Commission, 1958, Vol. II, p. 96)

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

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

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

148. In the case of Switzerland, exemption from real property taxation is granted for premises used by missions for their official business.

(c) Representatives

(i) Income and Fiscal Taxes

149. In the case of representatives, the rule contained in Section 13 of the General Convention,^{6/} that periods spent on official missions should not count as "residence" for taxation purposes, appears to have been widely accepted, even where full diplomatic privileges and immunities are not granted.

150. At United Nations Headquarters, Section 4 (b) of the International Immunities Act provides that wages, fees or salary received as compensation for official services by employees of a foreign Government shall be exempt from federal income

^{6/} The rule is also contained in Section 11 of the 1946 Agreement with Switzerland.

tax. This exemption does not apply in the case of United States citizens (unless they are also citizens of the Philippines), and is made subject to the condition that the services must be of a similar character to those performed by United States employees in foreign countries, and than an equivalent exemption is granted to those employees. Representatives who are not United States citizens have also been granted exemption from the tax laws of the State of New York.^{7/}

151. At the Geneva Office permanent representatives are treated in the same way as diplomatic envoys at Berne, in accordance with the decision of the Swiss Federal Council of 31 March 1948. Exemption from taxation on income and capital is granted, except that there is no exemption from taxation on income from investment in Swiss commercial companies or from other private income derived from Swiss sources. Interest on deposits in savings banks or from bonds or savings certificates is subject to an automatic deduction of a 27 per cent impôt fédéral anticipé. Reimbursement of this deduction may be claimed later, however, from the income tax administration. Permanent representatives are not exempt from succession duties on estates of which they are the beneficiaries.

(ii) Articles and Services

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

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

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

^{7/} See United Nations Legislative Series, Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations, vol. I, at p. 156 and p. 171.

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

The various forms attached relate to Federal and State taxes:

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

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

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

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

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

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

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

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

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

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

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

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

153. At the Geneva Office permanent representatives are treated in the same way as diplomatic envoys at Berne, in accordance with the decision of the Swiss Federal Council of 31 March 1948. All representatives are entitled to buy gasoline free of

duty and are granted tax exemption in respect of driving licences and car registration fees. In addition exemption is granted from sales tax (ICHA) on duty free goods (including liquors and tobacco), and from insurance and dog tax; exemption is not granted, however, from indirect taxes incorporated in the price of goods (turnover tax). There is no exemption from radio or television tax, either in respect of radio or television sets belonging to missions or to individual representatives. Missions and representatives are exempt from paying the employers' contribution under the Federal Law on Old Age and Survivors Insurance in respect of local employees subject to the scheme; it is understood that the employers' contribution has been paid in some instances on a voluntary basis.

19. DIPLOMATIC LICENCE PLATES, PARKING OFFENCES AND TRAFFIC REGULATIONS

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

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

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

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

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

157. In Geneva cars belonging to representatives are registered in the special 40.000 series and bear a C.D. sign. No fine is imposed on representatives for parking offences or other traffic violations.

158. The following judicial decisions, referred to in Section 12 (a) above, relate to traffic offences: Friedberg v. Santa Cruz, People v. Page-Sharp, People v. von Otter, and People v. Roy.

CHAPTER IV. IMMUNITY OF PREMISES

20. DIPLOMATIC STATUS AND LOCATION OF PREMISES^{1/}

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

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

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

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

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

^{1/} Questions relating to the immunity from taxation of premises are dealt with in Section 18 (b) above.

21. INVIOABILITY OF MISSION PREMISES AND OF PRIVATE RESIDENCES

161. The requirement that the host State should ensure, so far as reasonably possible, the inviolability of mission premises and of the private residences of representatives, has been generally recognized. United Nations records deal chiefly with the question of hostile demonstrations outside mission premises; when such demonstrations have taken place the Member State concerned has usually drawn the matter to the attention of the Secretary-General and requested his assistance in ensuring that necessary measures be taken by the United States authorities, in accordance with the Headquarters Agreement, to prevent their recurrence. Reference has also been made to Article 105 of the Charter when the demonstration or other activity (e.g., use of loudspeakers outside the mission premises) has placed difficulties in the way of the performance of the functions of the mission. In discussions and correspondence with the United States authorities, the Secretary-General has suggested that, since under section 15 of the Headquarters Agreement resident representatives are entitled at their missions to the same privileges and immunities as the United States accords to diplomatic envoys accredited to it, consideration should be given to the adoption of a law similar to the Joint Resolution of the United States Congress (52 Stat. 30) which makes it unlawful to conduct demonstrations or other activities directed against foreign Governments within 500 feet of any building or premises in the District of Washington used by foreign government representatives. The Secretary-General has also pointed out that under section 16 (a) of the Headquarters Agreement the United States authorities are under an obligation to exercise due diligence to ensure that the tranquillity of the headquarters district is not disturbed.

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

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

22. NATIONAL FLAG

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

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

23. FREEDOM OF COMMUNICATION AND INVIOABILITY OF CORRESPONDENCE, ARCHIVES
AND DOCUMENTS

165. Missions to the United Nations and representatives attending conferences convened by the United Nations enjoy in general freedom of communication on the same terms as those enjoyed by diplomatic personnel present in the host State on official business in connexion with that State. The inviolability of papers and correspondence, which is specified in Section 11 (b) of the General Convention, appears to have been respected. United Nations records show only one case in which a complaint was received from the mission of a Member State, that coded messages sent by cable to the home Government had not been received; it is possible, however, that this failure was due to an error in transmission.

24. USE OF CODES, DIPLOMATIC BAG AND COURIER

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

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

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

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

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

"Correspondance Officielle Expédiés par Valise Scellée

Article 33

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

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

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

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

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

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

With reference to immunity, an employee of a permanent mission in transit between the office and the airport is entitled only to such immunity as he normally is accorded, that is, a duly accredited diplomatic officer on the Blue List would have diplomatic immunity in accordance with Public Law 357 and a nondiplomatic or clerical employee to such immunity as provided by Public Law 291.

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

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

25. RIGHT OF TRANSIT AND OF ACCESS TO MEETING

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

169. The position at United Nations Headquarters is chiefly regulated by Sections 11,^{1/} 12 and 13 (a) of the Headquarters Agreement, the relevant positions of which are as follows:

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

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

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

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

^{1/} Section 11 of the Headquarters Agreement was referred to by the Secretary-General in his communications with the United States authorities regarding the restrictions placed on the movements of the Chairman of the Council of Ministers of the Union of Soviet Socialist Republics when he attended the fifteenth session of the General Assembly in 1960; see section 10 above, foot-note (2).

paragraph 9 of the Commission's terms of reference and requested his assistance in obtaining the necessary visa. The Government of Pakistan indicated to the Secretary-General that it was not disposed to issue a visa to the representative of Israel for the purpose of attending the meeting. The Secretary-General therefore took steps, in consultation with the Chairman of the Commission and the Interim Committee on the Programme of Conferences of the Economic and Social Council, to change the venue of the session to one where access by all Member States was ensured. The following extract from a note to Correspondents (No. 2099) of 19 January 1960, summarizes the action taken and the grounds relied on.

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

171. In 1963 the fifth session of ECA had before it a draft resolution inviting all African States to refuse to grant visas to representatives of South Africa and Portugal so as to prevent them from attending conferences and meetings. The Secretary-General sent the following cable^{2/} to the Executive Secretary of the Commission:

^{2/} Message from the Secretary-General of the United Nations on draft resolution E/CN.14/L.172 on Portugal and South Africa, E/CN.14/LNF.13, 2 March 1963.

"Please circulate the following message quote I have been informed that the submission of a draft resolution is under consideration by certain delegations which would invite all African States, members of the Economic Commission for Africa, to refuse to grant visas to representatives of the Republic of South Africa and Portugal to prevent them from attending conferences and meetings. I must respectfully draw attention to the fact that such resolution would invite action in violation of Article 105 of the Charter and Article IV of the Convention on the Privileges and Immunities of the United Nations. Such action would also be contrary to the established practice of the United Nations, based on the Charter principle of sovereign equality of all its Members, that all Members of the United Nations are entitled to attend meetings of its organs wherever they may be held. Any derogation from this fundamental principle and from the universally recognized practice would not only be legally unacceptable but would create a dangerous precedent which might be copied by other host States. Action such as that contemplated in a draft resolution of this kind would be disruptive to the functioning of United Nations organs. Moreover consideration of such a draft resolution is without question outside the terms of reference of the Commission."

172. In 1963 the Office of Legal Affairs sent the following note^{3/} to the Under-Secretary for Economic and Social Affairs, asserting the right of access to United Nations meetings and offices of the representatives of all Member States.

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

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

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

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

In implementation of these basic principles, the Convention on the Privileges and Immunities of the United Nations accords to representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations an exemption (in respect of

^{3/} United Nations Juridical Yearbook, 1963, p. 167.

them and their spouses) from immigration restrictions in the State they are visiting or through which they are passing in the exercise of their functions (Section 11. d). A similar exemption is accorded to officials of the Organization (Section 18. d). In addition, a number of 'site' agreements have been entered into by the United Nations with host governments which stipulate in more detail the extent and definition of the right of access. Such agreements have been concluded, for example, with the United States in regard to the Headquarters and with the governments which act as hosts of the regional economic commissions and sub-regional offices.

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

The Secretary-General has on several occasions emphasized the importance of compliance with the foregoing principles of access. He has noted that any derogation from these principles would be disruptive to the functioning of United Nations organs and contrary to the clear obligations of Member States under the Charter."

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

CHAPTER VI. OBSERVERS OF NON-MEMBER STATES

26. PERMANENT OBSERVERS

174. Permanent observers have been sent by non-member States only to United Nations Headquarters and to the Geneva Office. The position as regards permanent observers appointed by non-Member States to United Nations Headquarters was summarized in the following memorandum,^{1/} dated 22 August 1962, sent by the Legal Counsel to the then Acting Secretary-General. Since the preparation of that memorandum, the Holy See has appointed Permanent Observers, both at New York and at Geneva.

"Policy of the Organization regarding Permanent Observers"

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

Legal basis for the institution of Permanent Observers

2. There are no specific provisions relating to Permanent Observers of non-member States in the United Nations Charter, in the Headquarters Agreement with the United States Government or in General Assembly resolution 257 (III) of 3 December 1948 relating to Permanent Missions of Member States. The Secretary-General referred to Permanent Observers of non-members in his report to the fourth session of the Assembly on Permanent Missions (A/939), but no specific action was taken by the Assembly either at that time or later to provide an express legal basis for the institutions of Permanent Observers. It therefore rests purely on practice as so far followed.

^{1/} United Nations Juridical Yearbook 1962, (ST/LEG/8), fascicle 2, p. 236.

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

Facilities accorded to Permanent Observers

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

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

Permanent Observers and the question of privileges and immunities

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

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

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

27. FACILITIES AFFORDED BY THE UNITED NATIONS TO OBSERVERS

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

178. If the Government of a non-member State is invited to attend a meeting of a United Nations organ or subsidiary organ, or a conference under United Nations auspices, it frequently appoints its observer to represent it. In such a case the observer must have special credentials since he does not sit at the conference table as an observer but as the plenipotentiary of his Government. This principle is applied, for example, when the Swiss Observer represents his country at the General Assembly for the election of Judges to the International Court of Justice.

28. GRANT OF PRIVILEGES AND IMMUNITIES TO OBSERVERS

179. The position as regards diplomatic privileges and immunities for Permanent Observers at United Nations Headquarters is summarized in paragraph 5 of the memorandum cited in Section 26 above. In Papas v. Francini^{1/} a claim by a member of the staff of the then Italian Observer to the United Nations to full diplomatic

^{1/} Supreme Court of the State of New York, Special Term, King's County, Part V, 6 February 1953, 119 NYS 2d.69.

immunity was rejected since the State Department had not recognized the defendant as an official with diplomatic status. The benefits of the International Organizations Immunities Act, however, (i.e. functional privileges and immunities) are granted to persons designated by foreign Governments to serve as their representatives "in or to" international organizations; this phrase has been interpreted as applying to permanent observers.

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

B. SUMMARY OF PRACTICE RELATING TO THE STATUS, PRIVILEGES AND IMMUNITIES
OF THE REPRESENTATIVES OF MEMBER STATES TO THE SPECIALIZED AGENCIES
AND THE INTERNATIONAL ATOMIC ENERGY AGENCY

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CHAPTER I. GENERAL ASPECTS: THE POSITION OF REPRESENTATIVES IN RELATION TO
THE SPECIALIZED AGENCIES AND IAEA 1/

1. INTERPRETATION OF THE TERM "REPRESENTATIVES"

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

"... the expression 'representatives of members' shall be deemed to include all representatives; alternates, advisers, technical experts and secretaries of delegations." 2/

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

3. In addition to the IMF and IBRD, which are dealt with in a separate annex, three other Specialized Agencies drew attention to the fact that individual members of the executive or similar body of their institution enjoyed a special status. In the case of WHO the members of the Executive Board are persons technically qualified in the field of health, who, although designated by Member States, sit as members of the Board in an individual capacity. Whilst not representatives of Governments, under paragraph 1 of Annex vii to the Specialized Agencies Convention, they are granted the same privileges and immunities, together

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

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

with their alternates and advisers, as the representatives of Member States, and waiver of their immunity may be made only by the Executive Board. In the case of IAEA, Article XV B of its Statute provides that Governors appointed to the Board of the Agency enjoy, together with their alternates and advisers, such privileges and immunities as are necessary for the independent exercise of their functions. Members of the IAEA Board of Governors remain, however, national representatives and may indeed also act as the permanent representative of the Member State concerned.

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

2. DISTINCTION BETWEEN PERMANENT AND TEMPORARY REPRESENTATIVES

5. The appointment of permanent representatives, as opposed to those sent to represent Member States solely at conferences or ad hoc meetings held by the Agency concerned, is widely followed by Member States. In the case of Specialized Agencies having their headquarters in Geneva,^{1/} it is customary for the accreditation of permanent representatives to be along the following lines:

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

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

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

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

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

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

^{1/} See also Summary of Practice relating to the Status, Privileges and Immunities of the Representatives of Member States to the United Nations, Section 2 (ii).

No State has a permanent representative at any regional office of a Specialized Agency.

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

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

if they wished to appoint resident representatives,

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

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

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

3. ATTENDANCE AT DIFFERENT ORGANS OR MEETINGS OF THE SAME ORGANIZATION

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

(i) FAO

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

(ii) IAEA

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

(iii) ICAO

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

(iv) ILO

Accreditation to the ILO does not by itself entitle a permanent representative to participate in the work of an organ of the Organization as a delegate, nor is appointment to a particular organ valid for others. Except in the case of employers' and workers' members of the Governing Body, who are elected at the ILO General Conference for a period of three years, credentials are needed to permit a person to act as a representative at any ILO meeting.

(v) IMCO

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

(vi) ITU

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

(vii) UNESCO

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

(viii) UPU

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

(ix) WHO

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

4. CREDENTIALS

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

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

(i) FAO

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

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

(ii) IAEA

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

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

(iii) ICAO

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

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

(iv) ILO

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

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

(v) IMCO

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

(vi) ITU

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

(b) Chapter 5 of the General Regulations annexed to the International Telecommunication Convention (Montreux 1965) regulates the question of credentials for conferences in some detail; the Convention came into force for States parties on 1 January 1967. At plenipotentiary conferences

delegations must be accredited by instruments signed by the Head of State or Government or by the Minister for Foreign Affairs; however, they may be provisionally accredited by the head of the diplomatic mission accredited to the Government of the country in which the conference is held. In the event that the United Nations accedes to the ITU Convention on behalf of a Trust Territory placed under its administration, any delegation sent on behalf of that Territory must be accredited by the Secretary-General of the United Nations. The same arrangements apply in the case of administrative conferences except that the Minister responsible for the particular topic may accredit a delegation.

(vii) UNESCO

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

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

(viii) UPU

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

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

(ix) WHO

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

(b) In the case of delegates, the rules of procedure of the World Health Assembly provide that each Member State communicate to the Director-General, if possible fifteen days before the opening date, the names of its representatives. In accordance with rule 22 (b), credentials must be issued by the Head of State, the Minister for Foreign Affairs, or by the Minister of Health or by any other appropriate authority. In practice the term "appropriate authority" has been considered to include government departments responsible for dealing with public health, ministries of health, heads of diplomatic missions and permanent missions.

II. Practice regarding inspection of credentials

(i) FAO

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

(ii) IAEA

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

(iii) ICAO

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

(iv) ILO

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

(v) IMCO

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

(vi) ITU

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

(vii) UNESCO

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

(viii) UPU

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

(ix) WHO

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

5. FULL POWERS AND ACTION IN RESPECT OF TREATIES

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

(i) FAO

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

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

(ii) IAEA

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

representatives, including Governors and resident representatives, are required to have full powers.

(iii) ICAO

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

(iv) ILO

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

(v) IMCO

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

(vi) ITU

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

(vii) UNESCO

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

(viii) UFU

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

(ix) WHO

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

6. APPOINTMENT OF A REPRESENTATIVE TO MORE THAN ONE ORGANIZATION OR POST;
REPRESENTATION OF MORE THAN ONE STATE BY THE SAME REPRESENTATIVE

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

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

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

7. SCOPE OF PRIVILEGES AND IMMUNITIES DERIVED FROM THE CONSTITUTIONAL INSTRUMENTS OF THE SPECIALIZED AGENCIES AND IAEA

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

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

Provisions incorporating the same principle are to be found in the constitutional instruments of most of the specialized agencies.^{1/}

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

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

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

^{1/} Article 40, para. 2, of the ILO Constitution, article XII of the UNESCO Constitution; article 67 of the WHO Constitution; and article 27 (b) (ii) of the WMO Constitution.

17. Except in the case of ICAO, where representatives on the ICAO Council other than the President are granted only the same privileges and immunities as representatives to meetings, it appears that all permanent representatives have been granted privileges and immunities on a par with those granted to diplomats. In the case of Switzerland,^{2/} this is provided in the Decision of the Swiss Federal Council of 31 March 1948.^{3/}

Similar provisions are contained in the headquarters agreements concluded by other specialized agencies, other than ICAO.^{4/}

^{2/} Under agreements between Switzerland and ITU, UFU and WMO respectively, non-permanent representatives to those organizations are granted privileges and immunities analogous to those granted to non-permanent representatives to the United Nations by virtue of the 1946 Agreement between the United Nations and Switzerland; the latter Agreement provides the same privileges and immunities as are contained in the Convention on the Privileges and Immunities of the United Nations.

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

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

^{3/} See Summary of Practice relating to the Status, Privileges and Immunities of the Representatives of Member States to the United Nations, Section 7 (b).

^{4/} See Article XI FAO Headquarters Agreement, Article XIII IAEA Headquarters Agreement, Article 18 UNESCO Headquarters Agreement.

8. NATIONALITY OF REPRESENTATIVES AND THE GRANT OF PRIVILEGES AND IMMUNITIES

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

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

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

19. Where the person appointed as a representative was a national of another State, no objection has normally been raised by the Organization or by the host State to the appointment as such. In such instances, which have usually been cases of the appointment of permanent representatives, the host State has granted the individual concerned the same privileges and immunities as other representatives. Where, however, the representative so appointed was a national of the host State itself, the latter, usually acting under specific treaty provisions,^{1/} has declined to grant more than functional privileges and immunities.

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

^{1/} For examples of such provisions see article XI, section 24 (c), FAO Headquarters Agreement, article XVIII, section 48 (c), IAEA Headquarters Agreement, article III, sections 17 and 18 ICAO Headquarters Agreement.

9. COMMENCEMENT AND DURATION OF PRIVILEGES AND IMMUNITIES

21. Section 13 of the Specialized Agencies Convention provides that representatives enjoy the privileges and immunities listed in that section "during their journeys to and from the place of meeting".^{1/} No requirement is made that transit or host States must be notified of the journey of representatives (although normally such States are notified, if only by the presentation to the appropriate authorities of a passport or other means of identification by the representative himself), or that the consent of such States must be obtained as a condition for the grant of the privileges and immunities in individual cases. Where, therefore, States have adhered to the Specialized Agencies Convention or have accepted provisions worded in similar language, whether in bilateral agreements with an agency or by other means, the privileges and immunities concerned are assumed to commence at the moment the representative leaves his home State or his regular post, if stationed outside his home country.

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

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

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

23. By contrast with the position as regards privileges and immunities under the Specialized Agencies Convention or under agreements cast in similar terms, where privileges and immunities analogous to those accorded to diplomats are concerned (chiefly in the case of permanent representatives), it would appear that the grant of such privileges and immunities has in most cases been made dependent

^{1/} The interpretation of this phrase in conjunction with the preceding words "while exercising their functions and" is considered in Summary of Practice relating to the Status, Privileges and Immunities of the Representatives of Member States to the United Nations, section 9.

upon notification to the host State. This summary of general practice must, however, be regarded in the light of the provisions of particular treaties and of national practice in respect of diplomatic representatives.

(i) FAO

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

(ii) IAEA

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

(iii) ICAO

Section 15 of the Headquarters Agreement provides expressly that no representative shall be entitled to the privileges and immunities listed in section 12 (which correspond largely to those set out in section 13 of the Specialized Agencies Convention) "unless and until" his name and status have been duly notified to the Secretary of State for External Affairs of the host country. In practice, the usual entry courtesies and facilities are accorded to arriving representatives before formal notification has been made.

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

(iv) ILO^{2/}

The decision of 31 March 1948, of the Swiss Federal Council, according to which permanent representatives enjoy diplomatic status, applies if the sending State informs the Swiss authority, the Federal Political Department, of the appointment and if that authority recognizes the newly appointed official.^{3/}

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

(v) IMCO

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

(vi) UNESCO

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

^{2/} Similar arrangements apply in the case of representatives to ITU, UPU, WHO and WMO respectively.

^{3/} Decision of the Swiss Federal Tribunal in the case of B. v. M., Arrêts du Tribunal fédéral suisse, 85, 1959 II, p. 153. See Summary of Practice relating to the Status, Privileges and Immunities of the Representatives of Member States to the United Nations, section 9.

10. RESTRICTIONS PLACED BY THE HOST STATE ON THE PRIVILEGES AND IMMUNITIES OF REPRESENTATIVES ON THE GROUND OF RECIPROCITY

24. There appears to be no case known to a specialized agency where the privileges and immunities granted to non-permanent representatives by the host State have been restricted on the grounds that corresponding privileges and immunities were denied or restricted to representatives of the host State stationed in the sending State.^{1/} Such instances have been infrequent in the case of permanent representatives, but have nonetheless occurred, chiefly under treaty provisions whereby privileges and immunities were granted to such representatives on the same terms as the State concerned granted to diplomats accredited to it. Thus in the case of FAO, while no instances of the type described above have actually occurred, there might be some scope for considerations of reciprocity on the basis of article XI, section 24 (a) of the Headquarters Agreement, which provides that resident representatives of Member States and members of their missions

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

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

25. A similar plea was accepted by the French Government in a case which arose in UNESCO. Although under the UNESCO Headquarters Agreement the enjoyment of

^{1/} See, however, the Order in Council of the Province of Quebec No. 172 of 26 January 1965, referred to at the end of this section.

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

26. Under the Decision of the Swiss Federal Council of 31 March 1948, permanent missions in Switzerland are granted privileges and immunities analogous to those accorded to diplomatic missions in Berne. Since the latter are based on reciprocity, some variation has existed in the privileges and immunities enjoyed by different permanent missions, although the extent of variation is believed to be decreasing.

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

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

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

11. PERSONAL INVIOIABILITY AND IMMUNITY FROM ARREST

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

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

This provision, which is also contained in the relevant headquarters agreements^{1/} has been generally respected. From the information supplied by the Specialized Agencies it appears that very few cases of the arrest of representatives have occurred^{2/} and that the personal inviolability of representatives has been well respected.

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

30. No Specialized Agency reported having any knowledge of restrictions having been placed on the movements of representatives.

^{1/} See e.g. Articles XI and XII, Section 25 (a), FAO Headquarters Agreement; Articles XIII and XIV, Section 33 (a), IAEA Headquarters Agreement; and Article III, Section 12 (a), ICAO Headquarters Agreement.

^{2/} For one case, the arrest of a representative following traffic accident, see Section 19 below.

12. IMMUNITY FROM LEGAL PROCESS AND WAIVER OF IMMUNITY

31. Article V, Section 13 (a), of the Specialized Agencies Convention provides that the representatives of Member States enjoy "immunity from legal process of every kind" in respect of "words spoken or written and all acts done by them in their official capacity". No instance appears to have arisen in which this immunity from legal process has not been accorded to a representative to a specialized agency. Where representatives have been granted diplomatic privileges and immunities, the immunity from process is wider in that it extends to private acts. The exact extent of the immunity so afforded varies from country to country; in some countries, for example, immunity from legal process does not extend to the case where diplomats are caught "en flagrant délit". Limitations of this kind are, of course, inapplicable where the immunity from legal process is confined to official acts.
32. As regards the waiver of immunity, the basic principle is that contained in Section 16 of the Specialized Agencies Convention, which states that:

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

33. Apart from this provision, which is repeated in a number of agreements entered into by the Specialized Agencies, no restriction exists on the exercise by a Member State of its discretion whether or not to waive immunity. The Specialized Agencies reported that no case had arisen in which a Member State had waived immunity from legal process in respect of an official act of a representative.^{1/} To the best of their knowledge, no representative had even been summoned before a court as a witness.

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

^{1/} See however, the case of an ICAO representative who pleaded guilty to a traffic offence, Section 19 below.

13. ABUSE OF PRIVILEGES AND THE DEPARTURE OF REPRESENTATIVES AT THE REQUEST OF THE HOST STATE

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

"ABUSE OF PRIVILEGE

Section 24

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

Section 25

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

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

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

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

14. IMMIGRATION RESTRICTIONS, ALIEN REGISTRATION AND NATIONAL SERVICE OBLIGATIONS

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

15. CURRENCY OR EXCHANGE RESTRICTIONS

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

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

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

16. PERSONAL BAGGAGE AND EFFECTS

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

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

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

17. CUSTOMS AND EXCISE DUTIES

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

42. The position in respect of representatives of Specialized Agencies having their headquarters in Switzerland is identical with that of representatives to the Geneva Office.^{1/} It may be noted, however, that at the request of the ILO the President of the General Conference and the Chairman of the Governing Body enjoy, during meetings of the organs in question, the same privileges in respect to customs and excise procedure as the heads of permanent missions, except that they may not import household effects and cars. In the case of FAO, the extent of the exemption of resident representatives depends on diplomatic status and is granted in accordance with the general rules relating to diplomatic envoys. Where the resident representative is not included in a diplomatic mission accredited to the Italian Government, customs free imports are limited, especially as regards cars, petrol and tobacco. Permanent representatives to UNESCO assimilated to heads of diplomatic missions can import goods at any time for their own use and for that of their mission free of duty. Other members of permanent missions may import their household goods and effects free of duty at the time of taking up their appointment and may also import a car free of duty under a customs certificate without deposit.

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

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

1/ See Summary of Practice relating to the Status, Privileges and Immunities of the Representatives of Member States to the United Nations, Section 17.

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

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

18. TAXATION

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

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

45. Except in the case of nationals of the host State, representatives enjoy extensive immunity from taxation. In ICAO^{1/} and UNESCO all representatives, and in FAO and IAEA resident representatives, are granted the same exemptions in respect of taxation as diplomats of the same rank accredited to the host State in question. In the case of IAEA, no taxes are imposed by the Host State on the premises used by missions or delegates, including rented premises and parts of buildings. Permanent missions to UNESCO pay taxes only for services rendered (sweeping, sanitation, etc.) and real property tax ("contribution foncière") when the permanent representative is the owner of the building. Permanent representatives are exempt from tax on movable property ("contribution mobilière"), a tax imposed in France on inhabitants of rented or occupied properties, in respect of their principal residence but not for any secondary residence.

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

^{1/} In Section 12(j) of the ICAO Headquarters Agreement representatives are granted the same exemption from federal income tax as the Government of Canada grants to diplomatic envoys. Section 18 of the Agreement provides that the Government shall not levy death taxes or succession duties on or in respect of property acquired in Canada for the purposes of residence. The Quebec Order in Council No. 172 of 26 January 1965, grants exemption in respect of income tax levied by the Province, succession duties, gasoline tax, retail sales tax and car registration fees.

19. DIPLOMATIC LICENCE PLATES, PARKING OFFENCES AND TRAFFIC REGULATIONS

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

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

CHAPTER IV. IMMUNITY OF PREMISES

20. DIPLOMATIC STATUS AND LOCATION OF PREMISES

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

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

21. INVIOABILITY OF MISSION PREMISES AND OF PRIVATE RESIDENCE

51. Recognition has been given by host States to the inviolability of the premises of permanent missions and, at least by implication, to the private residences of representatives. Few cases appear to have arisen regarding the latter point; the 1946 Agreement between Switzerland and the International Labour Organisation and the 1948 Agreement between Switzerland and the World Health Organization both specify, however, in Section 15 (a), the inviolability of the place of residence of representatives.

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

53. In 1966 a number of legal issues with respect to the inviolability of premises were raised in an incident which occurred regarding the premises of the Permanent Mission of the Republic of China to UNESCO. The facts are summarized below.^{1/} In a communication to the Director-General of UNESCO dated 13 March 1966, the Permanent Representative of the Republic of China stated that, following a request to vacate the premises made to him on 11 March by two French officials, on 12 March a party of French policemen, together with the two officials, entered the residential quarters and offices of the Representative and ordered him and his staff, together with the members of their families who were living there, to leave the premises concerned. Upon refusal, the Representative and his staff

^{1/} See UNESCO Executive Board, 72nd Session, Doc. 72 EX/11 and 72/EX/11 Add, dated 13 and 20 April 1966.

were physically removed. Members of the Mission were not allowed to communicate with the Director-General or with anyone outside the buildings except personnel of the French Ministry of Foreign Affairs. The archives, documents, furniture and personal effects remaining in the buildings were placed under seal by the French authorities. The Permanent Representative protested to the Director-General, who informed the Ministry of Foreign Affairs on 14 March that, in the light of the information supplied, it appeared to him that the measures taken by the French authorities constituted a breach of the inviolability of premises of the Mission and of the domicile of some of its members; the measures also appeared to convene the immunities enjoyed by members of the Mission and guarantees attaching to the Mission's status with respect to the protection of its archives and documents and its freedom of communication. The Director-General formally protested against the action which, in the light of the information available to him, he considered to be incompatible with Article 18 of the Headquarters Agreement. While reserving the Organization's position with regard to other measures, the Director-General requested the Minister to take the necessary steps to ensure that the Mission might as soon as possible be able to discharge its duties in a normal fashion and, for that purpose, to benefit once again from the facilities, privileges and immunities attaching to its status. He added that the restitution to the Mission of its archives and documents and of the personal belongings of its members was a matter of particular urgency.

54. In a cable dated 16 March the Minister of Foreign Affairs of the Republic of China requested the Director-General to pursue the matter further and to make strong representations to the French Government so as to enable the Mission to exercise its functions and to enjoy the status accorded to it under the Headquarters Agreement, as it had done before 12 March.

55. In communications dated 18 March and 18 April 1966, the Permanent Representative of France declared that the buildings in question were the property of the Chinese State, "which the Embassy of the People's Republic of China is alone entitled to represent in France". The members of the Permanent Mission of the Republic of China to UNESCO had been "unable to produce any legal instrument to justify their occupation; hence they could not be considered as other than occupants without title of premises which did not therefore enjoy any immunity either under the 1954 Headquarters Agreement or under any other treaty obligation

or rule of customary international law". It was also stated that "the recognition by France of the Government of the People's Republic of China brought into being an international obligation for the French Government, which could not thereafter tolerate the totally unwarranted occupation of buildings belonging to the Chinese State, against the will of that State, which is the legitimate owners. The French Government cannot be open to criticism for having put an end to this situation". The Permanent Representative of France declared that several attempts had previously been made to persuade the Mission to leave but without success. He denied that members of the Mission had been prevented on 12 March from communicating with persons outside the buildings. Alternative facilities had been offered to the Mission both previously and on 12 March, but had been refused; members had been informed that they might return to collect their property at any time. Lastly, the French Representative reaffirmed the intention of his Government to respect fully the terms of the Headquarters Agreement.

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

57. The communications exchanged were placed by the Director-General before the UNESCO Executive Board, with a request for its judgement as to the way in which the provisions of the Headquarters Agreement were to be interpreted with respect to the measures taken on 12 March by the French authorities against the Mission of the Republic of China. The Executive Board adopted a resolution on 13 May 1966 by 12 votes to 1, with 9 abstentions, at the fifteenth meeting of its 72nd session, in which, having noted the points of view expressed in the documents placed before it, it noted "with appreciation" the attitude adopted by the Director-General "in his concern to assure the full respect of the provisions of the Headquarters Agreement" and expressed its confidence that he would safeguard the Agreement in all circumstances.^{2/}

22. NATIONAL FLAG

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

^{2/} UNESCO Executive Board, 72nd Session, 2-31 May 1966, Doc. 72 EX/SR 1-36 at pp. 126-127 and Item 9.1, Resolutions and Decisions adopted by the Executive Board at its 72nd Session.

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

23. FREEDOM OF COMMUNICATION AND INVIOABILITY OF CORRESPONDENCE, ARCHIVES AND DOCUMENTS

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

60. The inviolability of all papers and documents, referred to in Section 13 (b) of the Specialized Agencies Convention, has been fully recognized.^{1/}

24. USE OF CODES, DIPLOMATIC BAG AND COURIER

61. The right to use codes, a diplomatic bag and courier, as envisaged in Section 13 (c) of the Specialized Agencies Convention, has been generally recognized in practice. Such a right has not been permitted, however, either in law or in fact, in the case of representatives to UNESCO. A request from a permanent delegation, headed by an ambassador, to correspond with his Government by diplomatic bag was refused by the Ministry of Foreign Affairs of the host State. The UNESCO Headquarters Agreement contains no provision dealing expressly with the matter. The Customs Regulation adopted by the Swiss Federal Council on 23 April 1952, contains a chapter setting forth the details of the use of sealed diplomatic bags by missions in Switzerland.^{2/}

25. RIGHT OF TRANSIT AND OF ACCESS TO MEETINGS

62. The right of transit to the place of meeting has been generally recognized in practice. Whilst specialized agencies do not normally assist representatives in making transit arrangements, they have occasionally helped representatives to obtain transit and entry visas by informing the authorities concerned that the

^{1/} See, however, the case referred to in Section 21 above.

^{2/} See Summary of Practice relating to the Status, Privileges and Immunities of the Representatives of Member States to the United Nations, Section 24.

visas are required to enable representatives to attend conferences or meetings called by the Agency.

63. When a country in which a conference or meeting was to be held indicated that it would refuse to allow the representatives of a certain Member State or States to enter (e.g. by refusing to issue an entry visa) the specialized agency concerned arranged for the meeting to be convened elsewhere, so as to enable all eligible Member States to be represented.

CHAPTER VI. OBSERVERS OF NON-MEMBER STATES

26. PERMANENT OBSERVERS

64. Few permanent observers of non-member States appear to have been appointed to specialized agencies. The only cases reported were the Permanent Observer of the Holy See at FAO; the appointment in 1959 by the Republic of San Marino of an observer to the ILO; and some instances at UNESCO. The appointment of temporary observers by non-member States to attend meetings or conferences held by specialized agencies, on the other hand, is widespread. A number of specialized agencies have made provision for this practice vis-à-vis the organization in the pertinent rules of procedure, usually those of the General Conference.^{1/}

27. FACILITIES AFFORDED BY THE SPECIALIZED AGENCIES TO OBSERVERS

65. In general specialized agencies accord observers of non-member States broadly the same practical facilities as are extended to representatives, e.g. by way of documentation, entry to public meetings etc.; they do so, however, as a matter of grace and not of obligation. Oral statements by observers to meetings or conferences may usually be made only upon invitation. The circulation of communications from observers of non-member States is a matter of discretion.

28. GRANT OF PRIVILEGES AND IMMUNITIES TO OBSERVERS

66. As a matter of practice observers sent by non-member States to attend conferences and meetings held by specialized agencies have usually been accorded the same privileges and immunities by the host State as the representatives of Member States. Where such non-member States have been invited by an organ of a specialized agency so as to make the attendance of their observers a matter of official business, the grant of functional privileges and immunities by the host State has been obligatory in some cases under the terms of the pertinent

^{1/} E.g. FAO Statement of Principles relating to the Granting of Observer Status to Nations (FAO Basic Texts, vol. II, pp. 1-7); rule 30 of the rules of procedure of the IAEA General Conference; Article 2, paragraph 3 (e) of the Standing Orders of the ILO General Conference; and Article 1, paragraph 7, of the Rules concerning the Powers, Functions and Procedure of ILO Regional Conferences.

international agreements.^{1/} In other instances, however, although privileges and immunities have usually been granted, this has been as a matter of courtesy within the discretion of the host State and the specialized agency has not intervened.

^{2/} Thus under Article 14 of the 1946 Agreement between Switzerland and the ILO freedom of access and sojourn is guaranteed for all persons having official business with the Organization; this provision has been considered to extend to observers of non-member States invited to attend ILO meetings. Article XI, Section 27 (a) of the IAEA Headquarters Agreement stipulates that, with respect inter alia to the representatives of non-member States who are sent as observers to meetings convened by the IAEA in accordance with rules adopted by IAEA, the host State shall take all necessary measures to facilitate their entry into and sojourn in Austria, place no impediment to their departure or to their transit to IAEA headquarters and afford them necessary protection in transit.

ANNEX. SUMMARY OF THE POSITION OF THE REPRESENTATIVES OF MEMBER STATES IN
RELATION TO THE IBRD, IFC AND IDA, AND THE IMF

67. The particular organizational structure of the above-mentioned specialized agencies and the sources from which their privileges and immunities are derived rendered it difficult to attempt to classify their practice in conjunction with that of the other specialized agencies. The following summary of the position, supplied by the secretariats of the IBRD, IFC and IDA, and the IMF, is therefore given separately below. In so far as the application of the United Nations Headquarters Agreement and United States legislation is referred to, practice in this respect corresponds largely to that followed in the case of representatives to the United Nations and which has been dealt with elsewhere in this study.^{1/} The concluding portion of the summary relating to IMF describes the practice of both IBRD and IMF regarding annual meetings and the customs and similar facilities granted to directors of those organizations.

(A) IBRD, IFC AND IDA

I. Organizational structure of IBRD, IFC and IDA

68. The organizational structure of IBRD, IFC and IDA consists of:

(a) A Board of Governors composed of one Governor and one Alternate Governor appointed by each Member State. Governors and Alternate Governors appointed by members of IBRD are ex officio Governors and Alternate Governors of the respective Boards of IFC and IDA to the extent that the member appointing them is also a member of either one or both of these organizations;

(b) Executive Directors (called in Articles of Agreement of IFC Board of Directors) composed of twenty members for IBRD and IDA and of nineteen members for IFC, five of whom are appointed by the members having the largest capital subscriptions and the remainder elected by groups of other member States. Each Executive Director appoints an Alternate. Executive Directors and their Alternates in IBRD are ex officio Executive Directors and Alternate Executive Directors of IFC and IDA to the extent that the member appointing them or a member electing them is also a member of either one or both of these organizations;

(c) An international staff headed by the President, who is selected by the Executive Directors.

^{1/} See Summary of Practice relating to the Status, Privileges and Immunities of the Representatives of Member States to the United Nations.

69. The question of the extent to which Governors, Executive Governors, and their respective Alternates, may be regarded as the representatives of member States, is to be determined in the light of the factors set out below.

(a) Governors. Governors and Alternate Governors are subject to the pleasure of the member State appointing them, are appointed for five years and serve without compensation (other than expenses) from the organization to which they are appointed. Most members appoint as Governors and Alternate Governors their Ministers of Finance, the Heads of their Central Banks or persons holding comparable positions. Since these officials have full time responsibilities in their home countries, the Articles of Agreement have provided that the Board of Governors shall hold annual and such other meetings as may be provided by the Board or called by the Executive Directors. No such special meeting has in fact been called and meetings of the Governors have so far been limited to annual meetings, lasting approximately one week each. Under present arrangements, annual meetings are generally held in each of two succeeding years in Washington, D.C., where the principal offices of the organizations are located, and every third year in a member country other than the United States.

70. Under the circumstances, it would seem that Governors may be characterized as "representatives" of their Governments, though clearly problems arising in connexion with the status, privileges or immunities of "permanent representatives" do not concern them.

(b) Executive Directors. Executive Directors are appointed or elected every two years. They function in continuous session at the principal offices of the organizations and meet as often as the business of each organization may require. Their current practice is to hold a regular meeting once a month, with frequent special meetings to handle specific items of business as they arise. It has not been necessary for the discharge of these responsibilities that all Executive Directors and Alternates serve on a full-time basis, although some do. In addition, some Executive Directors serve full-time and their Alternates part-time, while some Alternates serve full-time with the Executive Directors serving part-time. Those who sit as, or for, Executive Directors are entitled to cast the votes of the country or countries appointing or electing them.

71. While having been appointed or elected, as the case may be, by member Governments, the Executive Directors and their Alternates serve in each organization and receive salaries and other emoluments from one or more of the organizations. Executive Directors and their Alternates usually report to the Governments which have appointed or elected them. Some Directors may also perform outside duties, e.g. in other organizations, national embassies and elsewhere. It is therefore considered that, at least for present purposes, the variety of posts held by Executive Directors from time to time and the different ways in which individual Directors perform their duties make it inappropriate to treat them as being exclusively "representatives" or the opposite.

II. Sources of privileges and immunities

1. The Articles of Agreement

72. The Articles of Agreement of the three organizations contain substantially the same provisions regarding the privileges and immunities of Governors and Executive Directors. The relevant Articles of Agreement of IBRD are as follows:

Article VII

Section 1. Purposes of Article

To enable the Bank to fulfil the functions with which it is entrusted, the status, immunities and privileges set forth in this article shall be accorded to the Bank in the territories of each member.

Section 8. Immunities and privileges of officers and employees

All governors, executive directors, alternates, officers and employees of the Bank

(i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Bank waives this immunity;

(ii) not being local nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials, and employees of comparable rank of other members;

(iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Section 9. Immunities from taxation

(b) No tax shall be levied on or in respect of salaries and emoluments paid by the Bank to executive directors, alternates, officials or employees of the Bank who are not local citizens, local subjects, or other local nationals.

Section 10. Application of Article

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Article and shall inform the Bank of the detailed action which it has taken.

Article VI of IFC's Articles of Agreement differs from the corresponding Articles of the other two Organizations in one respect. Article VI, Section 11 of IFC's Articles of Agreement provides expressly that IFC may, at its discretion, waive any of the privileges and immunities conferred under that Article. In view of this provision, Article VI, Section 8 (i) of the IFC's Articles of Agreement omits the specific reference to waiver of the immunity from legal process contained in Article VIII, Section 8 (i) of IBRD's Articles and in Article VIII, Section 8 (i) of IDA's Articles.

2. The Specialized Agencies Convention

73. A number of Member States have adhered to the Convention in respect of IBRD, IFC and IDA. Pursuant of Article VI, Section 18, of the Convention, IBRD, IFC and IDA periodically notify the Secretary-General of the United Nations and the Governments of all countries which have acceded to the Convention in respect of each Organization, the categories of officials, to which the provisions of Articles VI and VIII of the Convention shall apply. Each such list contains the names of all Executive Directors, Alternate Executive Directors and all officials of each Organization.

3. United Nations Headquarters Agreement

74. The provisions of article V, section 15 (3) and (4)^{2/} of the Agreement have been occasionally applied to Executive Directors. For example, an appointed Executive Director of IBRD was accorded diplomatic privileges pursuant to his Government's designation of him under section 15 (3) as its principal resident representative with the rank of ambassador. Although IBRD acted as a channel of communications in this arrangement, there was no occasion for the IBRD to acquiesce or object since the arrangement was a matter between the appointing government and the United States Government under an agreement to which IBRD was not a party.

75. On another occasion, IBRD was requested to communicate to the United States Government a request by a member Government that the Executive Director representing it be given the privileges and immunities granted to representatives under section 15 (4). IBRD complied with this request, stating that if the United States Government decided to accede to the request, IBRD would have no objection. The request was ultimately granted. Though a few cases are still under consideration by the United States Government, it is understood that, while privileges and immunities under section 15 (3) will continue to be granted, those under section 15 (4) will not be.

2/ Article V, Section 15

"(3) Every person designated by a member of a specialized agency, as defined in Article 57, paragraph 2 of the Charter, as its principal permanent representative, with the rank of ambassador or minister plenipotentiary at the headquarters of such agency in the United States, and,

(4) Such other principal resident representatives of members of a specialized agency and such resident members of the staffs of representatives of a specialized agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the United States and the Government of the Member concerned,

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

(B) IMF

I. Organizational structure of IMF

76. The organizational structure of IMF is prescribed by its Articles of Agreement, and may be described as follows:

(a) Board of Governors. All powers of IMF are vested in the Board of Governors, consisting of one Governor and one Alternate appointed by each member in such manner as it may determine. The Governors and Alternates serve as such at the pleasure of the appointing governments and without compensation (other than expenses incurred in connexion with attendance at meetings of the Board of Governors) from IMF. While some early drafts of the Articles incorporated language that referred to representation, the Articles of Agreement as finally adopted make no reference to a representative capacity for any functionaries of IMF.

77. The Board of Governors is required by the Articles of Agreement to hold annual meetings. Under present practice these annual meetings are of approximately one week's duration and are held in each of two succeeding years in Washington, D.C., and every third year in a member country other than the United States. Special meetings of the Board of Governors also may be called but to date none has in fact been called.

(b) Executive Directors. Each of the five countries having the largest quotas in IMF appoints an Executive Director and the remaining fifteen Executive Directors are elected for two-year terms by the other member countries. Each Executive Director appoints an Alternate. The Executive Directors (of whom there are presently twenty) function in continuous session, meeting as often as the business of IMF may require, at IMF's headquarters in Washington, D.C. The Executive Directors, and their Alternates, report to the Governments appointing or electing them as each Executive Director and his Alternate sees fit, but at the same time they serve as officials of IMF. As such, they receive salaries and other emoluments from IMF as prescribed by it and are responsible for the conduct of the general operations of IMF under powers delegated to them by the Board of Governors.

(c) Managing Director and Staff. The Executive Directors select a Managing Director who may not be a Governor or Executive Director. He is the chief of the operating staff of IMF and, under the direction of the Executive Directors, conducts its ordinary business. Subject to the general control of the Executive Directors,

the Managing Director is responsible for the organization, appointment and dismissal of the staff. The Managing Director and the staff, in the discharge of their functions, owe their duty entirely to IMF.

78. Questions relating to permanent representatives or member delegations to international organizations are not therefore applicable to IMF.

II. Sources of privileges and immunities

79. The following are the sources of privileges and immunities which relate expressly to IMF functionaries.

1. The Articles of Agreement

80. Article IX, Sections 1, 8, 9 (b) and 10, of the Articles of Agreement of IMF contain the same provisions regarding privileges and immunities as are set out in the corresponding portions of the Articles of Agreement of IBRD, quoted above.

2. The Specialized Agencies Convention

81. A number of Member States have adhered to the Convention in respect of IMF. Pursuant to Article VI, Section 18, of the Convention, IMF periodically notifies the Secretary-General of the United Nations, and the Governments of all countries which have acceded to the Convention in respect of IMF, of the categories of officials to which the provisions of Articles VI and VIII of the Convention shall apply. Each such list had contained the names of all of IMF's Executive Directors, Alternate Executive Directors, and all officers and staff of IMF.

3. United States Bretton Woods Agreements Act and United States International Organizations Immunities Act

82. In accordance with Article IX, Section 10 of the Articles of Agreement, the privileges and immunities contained in the provisions of Article IX, Sections 2 to 9 inclusive, were given full force and effect in the United States and its territories and possessions by the Bretton Woods Agreements Act, Section 11.

83. The IMF was designated by the President of the United States in Executive Order 9751 of 11 July 1946, as a public international organization entitled, along

with its officers and employees, to enjoy the privileges, exemptions and immunities provided for in the United States International Organizations Immunities Act.

84. Since the United States is the host country for IMF's headquarters, reference to members' domestic legislation regarding privileges and immunities to be accorded to IMF functionaries has been limited to the foregoing United States statutes.

III. Practice regarding annual meetings of IBRD and IMF and customs and similar facilities granted to IBRD and IMF Directors

(a) Annual meetings

85. When annual meetings of IBRD or IMF are held in Washington the Joint Annual Meetings Secretariat notifies the United States Department of State of the arrival of Governors and Alternate Governors, giving by countries, their names, IBRD or IMF titles, their position in their home country, the date and port of arrival in the United States, with airline flight number or the name of the steamship on which they will arrive. The United States Department of State transmits this information to the United State Treasury Department which has jurisdiction over the Bureau of Customs.

86. When the annual meetings are held outside the United States, at the time preliminary arrangements are made with the host member country an assurance is obtained that the Governors, Alternate Governors, Executive Directors, Alternate Executive Directors, officers and employees of IBRD or IMF, as well as all persons in member country and observer delegations, and the spouses of the foregoing will be given such facilities as the prompt provision of visas, courtesy of the port and duty-free entry of their baggage. On one occasion abroad, when the annual meetings were held in Japan, that Government was given the same information as provided to the United States Department of State for those attending, in order to facilitate port clearance.

87. For annual meetings in Washington and abroad, for the past several years, specially designed baggage labels have been used for the accompanying baggage, and special labels for shipments when the meetings are held abroad. The United States and other host member Governments have honoured these labels and customs clearance had been expedited. In host member States enforcing exit baggage control, these labels have likewise afforded expeditious clearance. The use of these labels has met with approval of all Governments concerned.

88. In no known case has a Governor, Alternate Governor, Executive Director or Alternate Executive Director attending the annual meetings in the United States or abroad been denied any privileges and immunities to which they were entitled.

(b) Customs and similar facilities granted to IBRD and IMF Directors

89. The United States International Organizations Immunities Act is applicable to IBRD and IMF Executive Directors and Alternate Executive Directors, other than United States citizens, when they return to the United States from official travel, home leave travel, resettlement or personal vacation. Request for duty-free entry and courtesy of the port is made to the United States Department of State in these instances upon request of the traveler.

90. Household goods and personal effects of Executive Directors and Alternate Executive Directors coming to the United States on resettlement are entitled to be cleared under the International Organizations Immunities Act.
