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THE WORLD BANK

Washington, D.C.

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Immunities and Powers of the Bank and its members, Articles of Agreement
Volume 2 - 1953 to 1974

IMMUNITIES AND POWERS OF BANK AND ITS MEMBERS;
ARTICLES OF AGREEMENT; INTERNATIONAL LAW DOCUMENTS
AND MEMORANDA

Vol. II

<u>I N D E X</u>	<u>T A B</u>
Memorandum from Mr. Nurick to Mr. Sommers dated June 9, 1953 re inviolability of Bank and Fund premises.	15
U.S. Immigration and Nationality Act (McCarran Act), Secretary's Memorandum 950, dated June 12, 1953.	16
U.N. Headquarters Agreement	17
Immunity of Bank acting through agent, undated memoranda.	18
Supreme Court case of <u>Small Business Administration v. McClellan, Trustee</u> with respect to government tax immunity with private participants	19
Committee Report, Committee on International Law, Report on the Privileges and Immunities of the United Nations (from the Record of the Association of the Bar of the City of New York	20
UN Secretariat study: <u>The Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency concerning their Status, Privileges and Immunities</u>	21
Settlement of Claims by Individuals and Companies Against International Organizations by Michael Akehurst. (Reprint from the Yearbook of the A.A.A., 1967/68)	22
Memorandum from Horace F. Shamwell (State Dept.) to William Mailliard dated July 10, 1974 re Inviolability of OAS Premises: US v. William E. Newcomb.	15A



Record Removal Notice

File Title Immunities and Powers of the Bank and its members, Articles of Agreement - Volume 2 - 1953 to 1974		Barcode No. 1851081
Document Date June 9, 1953	Document Type Memorandum	
Correspondents / Participants To: Mr. Sommers From: L. Nurick		
Subject / Title Comments on Nicoletopoulos' memorandum		
Exception(s) Attorney-Client Privilege		
Additional Comments		The item(s) identified above has/have been removed in accordance with The World Bank Policy on Access to Information or other disclosure policies of the World Bank Group.
		Withdrawn by Shiri Alon
		Date September 30, 2021



DEPARTMENT OF STATE

Washington, D.C. 20520

Very good!

July 10, 1974

TO: USOAS - Mr. William Mailliard
FROM: L/M/SCA - Horace F. Shamwell, Jr. *HFS*
SUBJECT: Inviolability of OAS Premises:
US v. William E. Newcomb

Your office has requested a legal opinion relating to the issues raised in the letter of the OAS Secretary-General dated June 28, 1974. The Secretary-General has requested that the State Department issue confirmation that the premises of the Organization of American States are inviolable under international law and that actions of the police officers in violation of that inviolability are improper. These questions relate specifically to alleged actions of the Metropolitan Police in connection with the arrest of Mr. William Newcomb, an employee of the OAS, for charges relating to the possession of firearms.

The concept of inviolability of premises has applicability to property of a recognized international organization in the United States. The Organization of American States has been designated an international organization under U. S. law, 22 USC, section 288 et seq. Under this legislation, the International Organizations Immunities Act, the property and assets of an international organization wherever located, is immune from search and confiscation, unless such immunity is expressly waived. This principle, as expressed in the domestic statute, reflects the customary rule of international law that property and premises of foreign governments and international organizations used for official purposes are entitled to inviolability and may not be entered by authorities of the receiving state without first seeking permission of the Ambassador or equivalent representative. Consequently it would be improper for officers of the Metropolitan Police Department or other persons not previously authorized by the Organization of American States to attempt to enter the premises of the OAS for the purpose of conducting a search.

15A

The concept of inviolability of premises is embodied in the agreement entered into by the Pan American Union (OAS) with the Metropolitan Police Department under which the service of warrants, and subpoenas and the conduct of other police business at any building under the jurisdiction of OAS is subject to compliance with certain procedures as outlined in the agreement. These procedures call for contact by the police with the appropriate persons in the OAS prior to attempting to serve any legal documents on the premises. The contents of this agreement, negotiated with the assistance of the State Department, implement the principle of inviolability as it relates to premises of a foreign government or international organization.

While the Department is in a position to confirm that property and assets of an international organization such as OAS are entitled to inviolability and that police officers have an obligation not to act in any manner which would lead to infringement of this inviolability, the Department cannot render a judicial determination as to whether the actual actions of the police officers in this case infringed upon the inviolability of OAS premises and whether an infringement of the inviolability of OAS premises renders void any seizure or other police operation pertinent to the prosecution of a particular case. The appropriate judicial authorities should consider the affidavits and other evidence related to these questions with a view toward reaching the appropriate conclusions.



Record Removal Notice

File Title Immunities and Powers of the Bank and its members, Articles of Agreement - Volume 2 - 1953 to 1974		Barcode No. 1851081
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Correspondents / Participants To: Distribution From: The Secretary		
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		Withdrawn by Shiri Alon
		Date September 30, 2021

Legal Department,
International Bank for
Reconstruction and Development

HEADQUARTERS OF THE UNITED NATIONS

Agreement Between the UNITED STATES OF AMERICA and the UNITED NATIONS

- Signed at Lake Success, New York,
June 26, 1947
- And Exchange of Notes bringing Agreement
into Force November 21, 1947



The Department of State publications entitled *Treaty Series* and *Executive Agreement Series* have been discontinued. The *Treaties and Other International Acts Series* has been inaugurated to make available in a single series the texts of treaties and other instruments (such as constitutions and charters of international organizations, declarations, agreements effected by exchanges of diplomatic notes, et cetera) establishing or defining relations between the United States of America and other countries. The texts printed in the present series, as in the *Treaty Series* and *Executive Agreement Series*, are authentic and, in appropriate cases, are certified as such by the Department of State. The *Treaties and Other International Acts Series* begins with the number 1501, the combined numbers in the *Treaty Series* and *Executive Agreement Series* having reached 1500, the last number in the *Treaty Series* being 994 and the last number in the *Executive Agreement Series* being 506.

DEPARTMENT OF STATE

PUBLICATION 3042

[Reprinted June 1953]

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1948



AGREEMENT BETWEEN THE UNITED NATIONS AND THE UNITED STATES OF AMERICA REGARDING THE HEADQUARTERS OF THE UNITED NATIONS

ACCORD ENTRE L'ORGANISATION DES NATIONS UNIES ET LES ETATS-UNIS D'AMERIQUE RELATIF AU SIEGE DE L'ORGANISATION DES NATIONS UNIES

THE UNITED NATIONS AND THE UNITED STATES OF AMERICA:

L'ORGANISATION DES NATIONS UNIES ET LES ETATS-UNIS D'AMERIQUE:

Desiring to conclude an agreement for the purpose of carrying out the Resolution adopted by the General Assembly on 14 December 1946 to establish the seat of the United Nations in The City of New York and to regulate questions arising as a result thereof; [1]

Désireux de conclure un accord en vue d'assurer l'exécution de la résolution adoptée par l'Assemblée générale le 14 décembre 1946 établissant le siège de l'Organisation des Nations Unies dans la ville de New-York, et de régler les questions soulevées par cette décision;

Have appointed as their representatives for this purpose:

Ont désigné à cet effet comme leurs représentants:

The United Nations:

l'Organisation des Nations Unies:

Trygve Lie, Secretary-General, and

Trygve Lie, Secrétaire général, et

The United States of America:

les Etats-Unis d'Amérique:

George C. Marshall,
Secretary of State,

George C. Marshall,
Secrétaire d'Etat,

Who have agreed as follows:

qui sont convenus de ce qui suit:

ARTICLE I

ARTICLE I

Definitions

Définitions

SECTION 1

SECTION 1

In this agreement:

Aux fins du présent accord:

(a) The expression "headquarters district" means (1) the

a) L'expression "district administratif" désigne 1° la zone

¹ United Nations. *Resolutions adopted by the General Assembly during the Second Part of its First Session from 23 Oct. to 15 Dec. 1946*, pp. 196, 197. Lake Success, 1947.

area defined as such in Annex 1, (2) any other lands or buildings which from time to time may be included therein by supplemental agreement with the appropriate American authorities;

(b) the expression "appropriate American authorities" means such federal, state, or local authorities in the United States as may be appropriate in the context and in accordance with the laws and customs of the United States, including the laws and customs of the state and local government involved;

(c) the expression "General Convention" means the Convention on the Privileges and Immunities of the United Nations approved by the General Assembly of the United Nations 13 February 1946, as acceded to by the United States;

(d) the expression "United Nations" means the international organization established by the Charter of the United Nations, hereinafter referred to as the "Charter";

(e) the expression "Secretary-General" means the Secretary-General of the United Nations.

ARTICLE II

The Headquarters District

SECTION 2

The seat of the United Nations shall be the headquarters district.

définie comme telle à l'annexe 1; 2° tous autres terrains ou constructions qui viendraient à être incorporés au district administratif, conformément à un accord additionnel avec les autorités américaines compétentes;

b) L'expression "les autorités américaines compétentes" désigne telles autorités des Etats-Unis, fédérales, d'état ou locales qui seraient appropriées selon le contexte et conformément aux lois et coutumes des Etats-Unis, y compris les lois et coutumes de l'état et de l'administration locale intéressée;

c) L'expression "Convention générale" désigne la convention sur les privilèges et immunités de l'Organisation des Nations Unies approuvée par l'Assemblée Générale des Nations Unies le 13 février 1946, telle qu'elle aura été adoptée par le Gouvernement des Etats-Unis dans son instrument d'adhésion;

d) L'expression "Organisation des Nations Unies" désigne l'institution internationale créée par la Charte des Nations Unies, ci-après dénommée "la Charte";

e) L'expression "Secrétaire général" désigne le Secrétaire général de l'Organisation des Nations Unies.

ARTICLE II

District administratif

SECTION 2

Le siège de l'Organisation des Nations Unies est le district administratif.

SECTION 3

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

SECTION 4

(a) The United Nations may establish and operate in the headquarters district:

(1) its own short-wave sending and receiving radio broadcasting facilities (including emergency link equipment) which may be used on the same frequencies (within the tolerances prescribed for the broadcasting service by applicable United States regulations) for radiotelegraph, radioteletype, radiotelephone, radiotelephoto, and similar services;

(2) one point-to-point circuit between the headquarters district

SECTION 3

Les autorités américaines compétentes prendront toutes les mesures nécessaires pour assurer que l'Organisation des Nations Unies ne soit pas privée de la jouissance de sa propriété du district administratif, en dehors de l'hypothèse prévue à la section 22, c'est-à-dire au cas où l'Organisation des Nations Unies cesserait d'utiliser ladite propriété, étant entendu que l'Organisation des Nations Unies remboursera aux autorités américaines compétentes tous les frais, qu'elles auraient encourus après avoir consulté l'Organisation, pour liquider par une procédure d'expropriation ou par tous autres moyens, toute revendication dirigée contre l'Organisation des Nations Unies.

SECTION 4

a) L'Organisation des Nations Unies pourra établir et exploiter dans le district administratif:

1) ses propres installations de radiodiffusion par ondes courtes (stations émettrices et réceptrices)—y compris une installation de liaison à employer en cas de nécessité exceptionnelle—qui pourront être utilisées sur les mêmes fréquences (dans les limites des tolérances prévues par les règlements applicables aux Etats-Unis en matière de radio-diffusion) pour des services de radiotélégraphie, radiotélétypie, radiotéléphonie, radiotéléphotographie, et autres services de même nature;

2) un circuit de poste à poste entre le district administratif et le

and the office of the United Nations in Geneva (using single side-band equipment) to be used exclusively for the exchange of broadcasting programs and inter-office communications;

(3) low power micro-wave, low or medium frequency facilities for communication within headquarters buildings only, or such other buildings as may temporarily be used by the United Nations;

(4) facilities for point-to-point communication to the same extent and subject to the same conditions as permitted under applicable rules and regulations for amateur operation in the United States, except that such rules and regulations shall not be applied in a manner inconsistent with the inviolability of the headquarters district provided by Section 9 (a);

(5) such other radio facilities as may be specified by supplemental agreement between the United Nations and the appropriate American authorities.

(b) The United Nations shall make arrangements for the operation of the services referred to in this section with the International Telecommunication Union, the appropriate agencies of the Government of the United States and

bureau de Genève des Nations Unies (en utilisant un équipement à une seule bande de modulation) qui sera exclusivement employé pour l'échange de programmes de radiodiffusion et de communications entre bureaux;

3) des installations à ondes ultra courtes, moyennes ou longues et à faible puissance destinées à assurer les communications uniquement à l'intérieur des bâtiments situés dans le district administratif ou des autres bâtiments que l'Organisation pourrait utiliser temporairement;

4) des installations pour les communications de poste à poste dans la même mesure et aux mêmes conditions que celles qui sont prévues par les lois et règlements en vigueur relativement à l'exploitation des postes d'amateur aux Etats-Unis, sous réserve cependant que ces lois et règlements ne seront pas appliqués d'une manière incompatible avec l'inviolabilité du district administratif, prévue à la section 9 a);

5) toutes autres installations de radio qui pourraient être désignées par un accord additionnel entre l'Organisation des Nations Unies et les autorités américaines compétentes.

b) L'Organisation des Nations Unies prendra, avec l'Union internationale des télécommunications, les administrations compétentes du Gouvernement des Etats-Unis et de tous autres Gouvernements intéressés, les arrange-

the appropriate agencies of other affected governments with regard to all frequencies and similar matters.

(c) The facilities provided for in this section may, to the extent necessary for efficient operation, be established and operated outside the headquarters district. The appropriate American authorities will, on request of the United Nations, make arrangements, on such terms and in such manner as may be agreed upon by supplemental agreement, for the acquisition or use by the United Nations of appropriate premises for such purposes and the inclusion of such premises in the headquarters district.

SECTION 5

In the event that the United Nations should find it necessary and desirable to establish and operate an aerodrome, the conditions for the location, use and operation of such an aerodrome and the conditions under which there shall be entry into and exit therefrom shall be the subject of a supplemental agreement.

SECTION 6

In the event that the United Nations should propose to organize its own postal service, the conditions under which such service shall be set up shall be the subject of a supplemental agreement.

ments nécessaires, en ce qui concerne toutes fréquences et autres questions analogues, pour l'exploitation des services mentionnés à la présente section.

c) Dans la mesure nécessaire à l'efficacité de l'exploitation, les installations prévues par la présente section pourront être établies et exploitées en dehors du district administratif. A la demande de l'Organisation des Nations Unies, les autorités américaines compétentes prendront des dispositions pour l'acquisition ou l'utilisation par les Nations Unies, aux termes et modalités à convenir dans un accord additionnel, de locaux appropriés à cet effet, et pour l'incorporation de ces locaux au district administratif.

SECTION 5

Au cas où l'Organisation des Nations Unies estimerait nécessaire et souhaitable d'établir et d'exploiter un aérodrome, les conditions relatives à l'emplacement, à l'utilisation et à l'exploitation de cet aérodrome, ainsi que les conditions dans lesquelles se feront les entrées et les sorties de l'aérodrome, feront l'objet d'un accord additionnel.

SECTION 6

Au cas où l'Organisation des Nations Unies se proposerait d'organiser son propre service postal, les conditions de la création de ce service feront l'objet d'un accord additionnel.

ARTICLE III

ARTICLE III

Law and Authority in the Headquarters District

Droit en vigueur et autorités compétentes dans le district administratif

SECTION 7

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

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

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

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

SECTION 8

The United Nations shall have the power to make regulations, operative within the headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full

SECTION 7

a) Le district administratif sera sous le contrôle et l'autorité de l'Organisation des Nations Unies, conformément aux dispositions du présent accord.

b) Sauf dispositions contraires du présent accord ou de la Convention générale, les lois fédérales, d'état et locales des Etats-Unis seront applicables à l'intérieur du district administratif.

c) Sauf dispositions contraires du présent accord ou de la Convention générale, les tribunaux fédéraux, d'état ou locaux des Etats-Unis seront compétents pour connaître, selon les termes des lois fédérales, d'état ou locales applicables en l'espèce, des actes accomplis ou des transactions effectuées à l'intérieur du district administratif.

d) Les tribunaux fédéraux, d'état ou locaux des Etats-Unis, lorsqu'ils auront à connaître d'affaires nées à l'occasion d'actes accomplis ou de transactions effectuées dans le district administratif, ou s'y rapportant, tiendront compte des règlements édictés par l'Organisation des Nations Unies conformément à la section 8.

SECTION 8

L'Organisation des Nations Unies aura le droit d'édicter des règlements exécutoires dans le district administratif et destinés à y créer, à tous les égards, les conditions nécessaires au plein

execution of its functions. No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the headquarters district. Any dispute, between the United Nations and the United States, as to whether a regulation of the United Nations is authorized by this section or as to whether a federal, state or local law or regulation is inconsistent with any regulation of the United Nations authorized by this section, shall be promptly settled as provided in Section 21. Pending such settlement, the regulation of the United Nations shall apply, and the federal, state or local law or regulation shall be inapplicable in the headquarters district to the extent that the United Nations claims it to be inconsistent with the regulation of the United Nations. This section shall not prevent the reasonable application of fire protection regulations of the appropriate American authorities.

SECTION 9

(a) The headquarters district shall be inviolable. Federal, state or local officers or officials of the

exercice de ses attributions. Les lois ou règlements fédéraux, d'état ou locaux des Etats-Unis d'Amérique ne seront pas applicables à l'intérieur du district administratif, dans la mesure où ils seraient incompatibles avec un des règlements que l'Organisation des Nations Unies a le droit d'édicter en vertu de la présente section. Tout différend entre l'Organisation des Nations Unies et les Etats-Unis sur la question de savoir si un règlement de l'Organisation des Nations Unies est compatible avec la présente section, ou si une loi ou réglementation fédérale, d'état ou locale est incompatible avec l'un quelconque des règlements édictés par l'Organisation des Nations Unies, conformément aux dispositions de la présente section, devra être rapidement réglé selon la procédure prévue à la section 21. Jusqu'à la solution du différend, le règlement de l'Organisation des Nations Unies restera applicable et la loi ou la réglementation fédérale, d'état ou locale sera inapplicable dans le district administratif dans la mesure où l'Organisation des Nations Unies la considère comme incompatible avec ledit règlement. Cette section ne fera pas obstacle à l'application raisonnable des règlements de protection contre l'incendie édictés par les autorités américaines compétentes.

SECTION 9

a) Le district administratif sera inviolable. Les agents ou fonctionnaires des Etats-Unis d'Amé-

United States, whether administrative, judicial, military or police, shall not enter the headquarters district to perform any official duties therein except with the consent of and under conditions agreed to by the Secretary-General. The service of legal process, including the seizure of private property, may take place within the headquarters district only with the consent of and under conditions approved by the Secretary-General.

(b) Without prejudice to the provisions of the General Convention or Article IV of this agreement, the United Nations shall prevent the headquarters district from becoming a refuge either for persons who are avoiding arrest under the federal, state, or local law of the United States or are required by the Government of the United States for extradition to another country, or for persons who are endeavoring to avoid service of legal process.

SECTION 10

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

rique, relevant d'une autorité fédérale, d'état ou locale, qu'ils soient administratifs, judiciaires, militaires ou de police, ne pourront entrer dans le district administratif pour y exercer leurs fonctions officielles qu'avec le consentement du Secrétaire général et dans les conditions acceptées par celui-ci. L'exécution des actes de procédure, y compris la saisie de biens privés, ne pourra avoir lieu dans le district administratif, qu'avec le consentement et dans les conditions approuvées par le Secrétaire général.

b) Sans qu'il puisse être porté atteinte aux dispositions de la Convention générale ou de l'article IV du présent accord, l'Organisation des Nations Unies empêchera que le district administratif devienne le refuge de personnes tentant à échapper à une arrestation ordonnée en exécution d'une loi fédérale, d'état ou locale des Etats-Unis, ou réclamées par le Gouvernement des Etats-Unis pour être extradées dans un autre pays, ou cherchant à se dérober à l'exécution d'un acte de procédure.

SECTION 10

L'Organisation des Nations Unies pourra expulser ou exclure du district administratif toute personne, et ce, soit pour violation des règlements adoptés conformément aux dispositions de la section 8, soit pour toute autre cause. Les infractions à ces règlements ne pourront donner lieu à d'autres sanctions, ou à la déten-

be adopted by the appropriate American authorities.

tion sous arrestation, que si elles sont prévues par les lois et règlements qui pourront être adoptés par les autorités américaines compétentes.

ARTICLE IV

Communications and Transit

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 officials of the United Nations, or of specialized agencies as defined in Article 57, paragraph 2, of the Charter, [1] or the families of such representatives or officials, (2) experts performing missions for the United Nations or for such specialized agencies, (3) representatives of the press, or of radio, film or other information agencies, who have been accredited by the United Nations (or by such a specialized agency) in its discretion after consultation with the United States, (4) representatives of non-governmental organizations recognized by the United Nations for the purpose of consultation under Article 71 of the Charter, or (5) other persons invited to the headquarters district by the United Nations or by such specialized agency on official business. The appropriate American authorities shall afford any necessary protection to such persons while in transit to or from the

ARTICLE IV

Communications et transit

SECTION 11

Les autorités fédérales, d'état ou locales des Etats-Unis ne mettront aucun obstacle au transit à destination ou en provenance du district administratif: 1) des représentants des Membres ou des fonctionnaires de l'Organisation des Nations Unies, ou des institutions spécialisées telles que définies à l'article 57, paragraphe 2 de la Charte, ou des familles de ces représentants et fonctionnaires; 2) des experts accomplissant des missions pour l'Organisation des Nations Unies ou pour lesdites institutions spécialisées; 3) des représentants de la presse, de la radio, du cinéma ou de toutes autres agences d'information que l'Organisation des Nations Unies (ou l'une des institutions spécialisées) aura décidé d'agréer après consultation avec les Etats-Unis; 4) des représentants des organisations non gouvernementales admises par l'Organisation des Nations Unies au statut d'organes consultatifs, conformément à l'article 71 de la Charte; ou 5) d'autres personnes invitées à venir dans le district administratif par l'Organisation des Nations Unies ou par l'une des

¹ Treaty Series 993; 59 Stat. 1031.

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.

institutions spécialisées, pour affaires officielles. Les autorités américaines compétentes accorderont la protection nécessaire aux personnes ci-dessus énumérées pendant leur circulation en transit à destination ou en provenance du district administratif. La présente section ne s'applique pas aux cas d'interruption générale des transports, qui seront traités comme il est prévu à la section 17, et ne fait pas obstacle à l'application des lois et règlements généralement applicables en ce qui concerne l'exploitation des moyens de transport.

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 12

Les dispositions de la section 11 s'appliqueront quelles que soient les relations existant entre les Gouvernements dont relèvent les personnes mentionnées à ladite section et le Gouvernement des Etats-Unis.

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.

SECTION 13

a) Les dispositions législatives et réglementaires sur l'entrée des étrangers, en vigueur aux Etats-Unis, ne pourront pas être appliquées de manière à porter atteinte aux privilèges prévus à la section 11. Les visas nécessaires aux personnes mentionnées dans cette section seront accordés sans frais et aussi rapidement que possible.

(b) Laws and regulations in force in the United States regarding the residence of aliens shall not be applied in such manner as to interfere with the privileges referred to in Section 11 and, specifically, shall not be applied in

b) Les dispositions législatives et réglementaires sur le séjour des étrangers, en vigueur aux Etats-Unis, ne pourront pas être appliquées de manière à porter atteinte aux privilèges prévus à la section 11. Elles ne pourront notam-

such manner as to require any such person to leave the United States on account of any activities performed by him in his official capacity. In case of abuse of such privileges of residence by any such person in activities in the United States outside his official capacity, it is understood that the privileges referred to in Section 11 shall not be construed to grant him exemption from the laws and regulations of the United States regarding the continued residence of aliens, provided that:

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

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

ment pas être appliquées de manière à contraindre ces personnes à quitter les Etats-Unis en raison de toute activité poursuivie par elles en leur qualité officielle. Il est toutefois entendu qu'au cas où l'une de ces personnes abuserait de ces privilèges en exerçant, sur le territoire des Etats-Unis, des activités sans rapport avec sa qualité officielle, les privilèges prévus à la section 11 ne seront pas interprétés de manière à la soustraire à l'application des dispositions législatives et réglementaires des Etats-Unis, concernant le séjour continu des étrangers, sous réserve que:

1) aucune action ne sera intentée en vertu de ces dispositions législatives ou réglementaires pour contraindre l'une des personnes sus-mentionnées à quitter les Etats-Unis, sans l'approbation préalable du Secrétaire d'Etat des Etats-Unis. Cette approbation ne pourra être donnée qu'après consultation avec le Membre intéressé de l'Organisation des Nations Unies, s'il s'agit d'un représentant d'un Membre (ou d'un membre de sa famille) ou avec le Secrétaire général ou le Directeur général de l'institution spécialisée intéressée s'il s'agit de toute autre personne visée à la section 11;

2) un représentant du Membre intéressé, le Secrétaire général de l'Organisation des Nations Unies ou le Directeur général de l'institution spécialisée intéressée, selon le cas, aura le droit de comparaître pour la personne contre laquelle l'action est intentée;

(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 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.

3) les personnes qui bénéficient des privilèges et immunités diplomatiques en vertu de la section 15 ou de la Convention générale, ne pourront être requises de quitter les Etats-Unis que conformément à la procédure d'usage applicable aux envoyés diplomatiques accrédités auprès du Gouvernement des Etats-Unis.

c) La présente section ne dispense pas de la production, sur demande, de preuves raisonnables établissant que les personnes se réclamant des droits accordés à la section 11 rentrent bien dans les catégories prévues à ladite section. Elle n'exclut pas en outre l'application raisonnable des règlements de quarantaine et de santé publique.

d) Sous réserve des dispositions précédentes de la présente section et de celles de la Convention générale, les Etats-Unis gardent le plein pouvoir de décision et de contrôle en ce qui concerne l'entrée de personnes ou de biens sur le territoire des Etats-Unis et les conditions auxquelles ces personnes seront admises à demeurer ou à résider sur ledit territoire.

e) A la demande des autorités américaines compétentes, le Secrétaire général entrera en négociations avec elles en vue de prendre les dispositions nécessaires pour l'enregistrement des arrivées et départs des personnes titulaires de visas limités au transit à destination et en provenance du district administratif, et ne les autorisant à séjourner que dans le district administratif et dans son voisinage immédiat.

(f) The United Nations shall, subject to the foregoing provisions of this section, have the exclusive right to authorize or prohibit entry of persons and property into the headquarters district and to prescribe the conditions under which persons may remain or reside there.

SECTION 14

The Secretary-General and the appropriate American authorities shall, at the request of either of them, consult as to methods of facilitating entrance into the United States, and the use of available means of transportation, by persons coming from abroad who wish to visit the headquarters district and do not enjoy the rights referred to in this Article.

ARTICLE V

Resident Representatives to the United Nations

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

f) Sous réserve des dispositions précédentes de la présente section, l'Organisation des Nations Unies aura le droit exclusif d'autoriser ou d'interdire l'entrée dans le district administratif des personnes et des biens, ainsi que de prescrire les conditions auxquelles les personnes pourront y demeurer ou y résider.

SECTION 14

Le Secrétaire général et les autorités américaines compétentes, à la demande de l'un d'entre eux, se consulteront au sujet des mesures propres à faciliter l'entrée aux Etats-Unis de personnes venant de l'étranger qui désirent se rendre dans le district administratif et qui ne bénéficient pas des droits prévus dans le présent article. Ils se consulteront également au sujet de l'utilisation par ces mêmes personnes des moyens de transport disponibles.

ARTICLE V

Représentants permanents auprès de l'Organisation des Nations Unies

SECTION 15

1) Toute personne nommée auprès de l'Organisation des Nations Unies par un Membre, en qualité de représentant permanent principal ou de représentant permanent ayant rang d'ambassadeur ou de ministre plénipotentiaire;

2) tous membres permanents de leur personnel, qui seront désignés suivant accord entre le Secrétaire général, le

Government of the United States and the Government of the Member concerned,

(3) every person designated by a Member of a specialized agency, as defined in Article 57, paragraph 2, of the Charter, as its principal resident 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 to a specialized agency and such resident members of the staffs of representatives to 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 dis-

Gouvernement des Etats-Unis et le Gouvernement de l'Etat intéressé;

3) toute personne nommée par un Membre d'une institution spécialisée, telle que définie aux termes du paragraphe 2 de l'Article 57 de la Charte, en qualité de représentant permanent principal, ayant rang d'ambassadeur ou de ministre plénipotentiaire, auprès de ladite institution spécialisée à son siège aux Etats-Unis, et

4) tout autre représentant permanent principal d'un Membre d'une institution spécialisée, ainsi que tous membres permanents du personnel des représentants auprès d'une institution spécialisée, qui seront désignés suivant accord entre le Directeur général de l'institution spécialisée, le Gouvernement des Etats-Unis et le Gouvernement du Membre intéressé,

jouiront, sur le territoire des Etats-Unis, qu'ils demeurent à l'intérieur ou à l'extérieur du district administratif, des mêmes privilèges et immunités qui sont accordés par les Etats-Unis aux envoyés diplomatiques accrédités auprès d'eux, et ce, sous réserve des conditions et obligations correspondantes. Dans le cas où le Gouvernement d'un Membre n'est pas reconnu par les Etats-Unis, ceux-ci pourront restreindre les privilèges de ses représentants et des membres de leur personnel,

trict, 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.

ARTICLE VI

Police Protection of the Headquarters District

SECTION 16

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

(b) If so requested by the Secretary-General, the appropriate American authorities shall provide a sufficient number of police for the preservation of law and order in the headquarters district, and for the removal therefrom of persons as requested under the authority of the United Nations. The United Nations shall, if requested, enter into arrangements with the appropriate American authorities to reimburse them for the reasonable cost of such services.

aux limites du district administratif, au lieu de leur résidence et de leurs bureaux, s'ils sont situés en dehors du district, au cours de leurs voyages entre le district et leur lieu de résidence et leurs bureaux, ainsi qu'au cours des missions officielles, à destination ou en provenance de l'étranger.

ARTICLE VI

Mesures de police destinées à assurer la protection du district administratif

SECTION 16

a) Les autorités américaines compétentes prendront les mesures appropriées afin d'éviter que la tranquillité du district administratif ne soit troublée par l'entrée non autorisée de groupes de personnes, ou par des désordres dans le voisinage immédiat du district. A cette fin, elles assureront, aux limites du district administratif, toute protection de police nécessaire.

b) A la demande du Secrétaire général, les autorités américaines compétentes fourniront des forces de police suffisantes pour assurer, à l'intérieur du district administratif, le respect de la loi et de l'ordre public, et pour expulser toute personne, suivant les instructions données sous l'autorité de l'Organisation des Nations Unies. L'Organisation des Nations Unies, si les autorités américaines compétentes en font la demande, s'entendra avec celles-ci en vue de leur rembourser les dépenses raisonnables occasionnées par ces services.

ARTICLE VII

Public Services and
Protection of the
Headquarters District

SECTION 17

(a) The appropriate American authorities will exercise to the extent requested by the Secretary-General the powers which they possess with respect to the supplying of public services to ensure that the headquarters district shall be supplied on equitable terms with the necessary public services, including electricity, water, gas, post, telephone, telegraph, transportation, drainage, collection of refuse, fire protection, snow removal, et cetera. In case of any interruption or threatened interruption of any such services, the appropriate American authorities will consider the needs of the United Nations as being of equal importance with the similar needs of essential agencies of the Government of the United States, and will take steps accordingly, to ensure that the work of the United Nations is not prejudiced.

(b) Special provisions with reference to maintenance of utilities and underground construction are contained in Annex 2.

SECTION 18

The appropriate American authorities shall take all reasonable steps to ensure that the amenities

ARTICLE VII

Services publics et
protection du district
administratif

SECTION 17

a) Les autorités américaines compétentes feront usage, dans la mesure où le Secrétaire général le demandera, des pouvoirs dont elles disposent à cet égard, pour assurer la fourniture au district administratif, à des conditions équitables, des services publics nécessaires, y compris l'électricité, l'eau, le gaz, les services postaux, téléphoniques, télégraphiques, les transports, l'évacuation des eaux, l'enlèvement des ordures, les services d'incendie, l'enlèvement de la neige, etc. Dans le cas d'une interruption ou d'une menace d'interruption de l'un quelconque de ces services, les autorités américaines compétentes considéreront les besoins de l'Organisation des Nations Unies comme étant d'une importance égale à ceux de même nature des administrations essentielles du Gouvernement des Etats-Unis. En conséquence, elles prendront les mesures appropriées pour éviter que les travaux de l'Organisation des Nations Unies ne soient entravés.

b) Des dispositions spéciales relatives à l'entretien des services d'utilité publique et des travaux de constructions souterraines sont prévues à l'annexe 2.

SECTION 18

Les autorités américaines compétentes prendront toutes les mesures raisonnables pour empêcher

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

SECTION 19

It is agreed that no form of racial or religious discrimination shall be permitted within the headquarters district.

ARTICLE VIII

Matters Relating to the Operation of this Agreement

SECTION 20

The Secretary-General and the appropriate American authorities shall settle by agreement the channels through which they will communicate regarding the application of the provisions of this agreement and other questions affecting the headquarters district, and may enter into such supplemental agreements as may be necessary to fulfill the purposes of this agreement. In making supplemental agreements with the Secretary-General, the United States shall consult with the appropriate state and local authorities. If the Secretary-General so requests, the Secretary of State of

que l'usage qui pourrait être fait des terrains avoisinant le district administratif ne puisse porter atteinte aux agréments du district et aux fins auxquelles il est destiné. L'Organisation des Nations Unies prendra, de son côté, toutes les mesures raisonnables pour empêcher que l'usage qui pourrait être fait par les Nations Unies des terrains situés dans le district administratif ne porte atteinte aux agréments des terrains situés dans le voisinage du district administratif.

SECTION 19

Il est entendu qu'aucune sorte de discrimination de race ou de religion ne sera tolérée dans le district administratif.

ARTICLE VIII

Questions relatives à l'application du présent accord

SECTION 20

Le Secrétaire général et les autorités américaines compétentes se mettront d'accord sur les voies par lesquelles se feront les communications relatives à l'application des dispositions du présent accord et des autres questions intéressant le district administratif. Ils pourront conclure tout accord additionnel qui se révélerait nécessaire pour réaliser les buts du présent accord. Lors de la négociation d'accords additionnels avec le Secrétaire général, les Etats-Unis entreront en consultations avec les autorités d'état et locales compétentes. Le Secrétaire d'Etat des Etats-Unis désignera auprès du

the United States shall appoint a special representative for the purpose of liaison with the Secretary-General.

SECTION 21

(a) Any dispute between the United Nations and the United States concerning the interpretation or application of this agreement or of any supplemental agreement, which is not settled by negotiation or other agreed mode of settlement, shall be referred for final decision to a tribunal of three arbitrators, one to be named by the Secretary-General, one to be named by the Secretary of State of the United States, and the third to be chosen by the two, or, if they should fail to agree upon a third, then by the President of the International Court of Justice.

(b) The Secretary-General or the United States may ask the General Assembly to request of the International Court of Justice an advisory opinion on any legal question arising in the course of such proceedings. Pending the receipt of the opinion of the Court, an interim decision of the arbitral tribunal shall be observed by both parties. Thereafter, the arbitral tribunal shall render a final decision, having regard to the opinion of the Court.

ARTICLE IX

Miscellaneous Provisions

SECTION 22

(a) The United Nations shall not dispose of all or any part of the land owned by it in the head-

Secrétaire général, si celui-ci en fait la demande, un représentant spécial chargé d'assurer la liaison.

SECTION 21

a) Tout différend entre l'Organisation des Nations Unies et les Etats-Unis au sujet de l'interprétation ou de l'application du présent accord ou de tout accord additionnel sera, s'il n'est pas réglé par voie de négociation ou par tout autre mode de règlement agréé par les parties, soumis aux fins de décision définitive à un tribunal composé de trois arbitres, dont l'un sera désigné par le Secrétaire général, l'autre par le Secrétaire d'Etat des Etats-Unis, et le troisième choisi par les deux autres, ou, à défaut d'accord entre eux sur ce choix, par le Président de la Cour internationale de justice.

b) Le Secrétaire général ou les Etats-Unis pourront prier l'Assemblée Générale de demander à la Cour internationale de justice un avis consultatif sur toute question juridique qui viendrait à être soulevée au cours de ladite procédure. En attendant l'avis de la Cour, les deux parties se conformeront à une décision intérimaire du tribunal arbitral. Par la suite, celui-ci rendra une décision définitive en tenant compte de l'avis de la Cour.

ARTICLE IX

Mesures diverses

SECTION 22

a) L'Organisation des Nations Unies ne pourra disposer, en totalité ou en partie, du terrain

quarters district without the consent of the United States. If the United States is unwilling to consent to a disposition which the United Nations wishes to make of all or any part of such land, the United States shall buy the same from the United Nations at a price to be determined as provided in paragraph (d) of this section.

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

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

dont elle est propriétaire dans le district administratif, sans le consentement des Etats-Unis. Si les Etats-Unis refusent ce consentement, ils devront acheter ledit terrain à l'Organisation des Nations Unies, à un prix qui sera déterminé conformément aux dispositions du paragraphe d) de la présente section.

b) Si le siège de l'Organisation des Nations Unies est transféré hors du district administratif, tous les droits réels, titres de propriété, et autres intérêts portant sur la propriété du district administratif de l'Organisation des Nations Unies, soit des Etats-Unis, cédés et transférés à ceux-ci. A défaut de pareille demande, ces dits droits, titres et intérêts seront transférés et cédés à la circonscription administrative d'état dans laquelle les terrains sont situés, ou encore si cette circonscription administrative ne le désire pas, à l'état dans lequel les terrains sont situés. Dans le cas où aucune de ces parties ne désirerait obtenir pareille cession et transfert, lesdits droits, titres et intérêts pourront être aliénés, conformément au paragraphe a) de la présente section.

c) Si l'Organisation des Nations Unies aliène tout ou partie du district administratif, les dispositions contenues dans les autres sections du présent accord qui s'appliquent au district administratif cesseront immédiatement de s'appliquer aux terrains et aux bâtiments dont elle aura disposé.

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

SECTION 23

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

SECTION 24

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

SECTION 25

Wherever this agreement imposes obligations on the appropriate American authorities, the Government of the United States shall have the ultimate responsibility for the fulfillment of such obligations by the appropriate American authorities.

SECTION 26

The provisions of this agreement shall be complementary to the provisions of the General

d) A défaut d'accord, le prix à payer pour tout transfert de propriété prévu à la présente section consistera en la juste valeur du terrain, des bâtiments et installations au moment du transfert, ladite valeur devant être déterminée conformément à la procédure prévue à la section 21.

SECTION 23

Le siège de l'Organisation des Nations Unies ne sera pas transféré hors du district administratif, à moins que l'Organisation des Nations Unies n'en décide ainsi.

SECTION 24

Dans le cas où le siège de l'Organisation des Nations Unies serait transféré hors du territoire des Etats-Unis, le présent accord cessera d'être en vigueur, exception faite toutefois de celles de ses dispositions qui seraient nécessaires pour la terminaison régulière des activités de l'Organisation des Nations Unies dans son siège des Etats-Unis et pour la disposition de celles de ses propriétés qui s'y trouvent.

SECTION 25

Le Gouvernement des Etats-Unis assumera en dernier ressort la responsabilité de l'exécution par les autorités américaines compétentes des obligations qui leur sont imposées par le présent accord.

SECTION 26

Les dispositions du présent accord complètent celles de la Convention générale. Dans la mesure

Convention. In so far as any provision of this agreement and any provisions of the General Convention relate to the same subject matter, the two provisions shall, wherever possible, be treated as complementary, so that both provisions shall be applicable and neither shall narrow the effect of the other; but in any case of absolute conflict, the provisions of this agreement shall prevail.

SECTION 27

This agreement shall be construed in the light of its primary purpose to enable the United Nations at its headquarters in the United States, fully and efficiently to discharge its responsibilities and fulfill its purposes.

SECTION 28

This agreement shall be brought into effect by an exchange of notes^[1] between the Secretary-General, duly authorized pursuant to a resolution of the General Assembly of the United Nations,^[2] and the appropriate executive officer of the United States, duly authorized pursuant to appropriate action of the Congress.^[3]

IN WITNESS WHEREOF the respective representatives have signed this Agreement and have affixed their seals hereto.

DONE in duplicate, in the English and French languages, both

où une disposition du présent accord et une disposition de la Convention générale ont trait à la même question, les deux dispositions seront considérées autant que possible, comme complémentaires, et s'appliqueront toutes deux sans que l'une d'elles ne puisse limiter les effets de l'autre. Toutefois, en cas de contradiction absolue, les dispositions du présent accord prévaudront.

SECTION 27

Le présent accord sera interprété à la lumière de son but fondamental, qui est de permettre à l'Organisation des Nations Unies de pleinement et efficacement exercer ses fonctions et d'atteindre ses buts au siège de son activité aux Etats-Unis d'Amérique.

SECTION 28

Le présent accord entrera en vigueur à la suite d'un échange de notes entre le Secrétaire général, dûment autorisé en vertu d'une résolution de l'Assemblée Générale de l'Organisation des Nations Unies, et l'autorité compétente du pouvoir exécutif des Etats-Unis, dûment autorisée en vertu d'une mesure appropriée du Congrès.

EN FOI DE QUOI, les représentants respectifs ont signé le présent protocole et y ont apposé leurs cachets.

FAIT en double exemplaire, en langue anglaise et en langue fran-

¹ *Post*, p. 25.

² U.N. doc. A/P.V. 101, Oct. 31, 1947.

³ Public Law 357, 80th Cong., *post*, p. 27.

authentic, at Lake Success the
twenty-sixth day of June 1947.

çaise, les deux textes faisant égale-
ment foi, à Lake Success, le vingt-
six juin 1947.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
POUR LE GOUVERNEMENT DES ETATS-UNIS D'AMERIQUE:

G C MARSHALL
Secretary of State
Secrétaire d'Etat

[SEAL]

FOR THE UNITED NATIONS:
POUR L'ORGANISATION DES NATIONS UNIES:

TRYGVE LIE
Secretary-General
Secrétaire général

[SEAL]

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In witness whereof the respec-
tive representatives have signed
this Agreement and have affixed
their seals hereto.
Done in duplicate, in the Eng-
lish and French languages, both

* Publ. Law 327, 80th Cong., 1st Sess., p. 27.
* U.S. Doc. A.P.V. 101, Oct. 31, 1947.
* Publ. p. 23.

ANNEX 1

The area referred to in Section 1 (a) (1) consists of (a) the premises bounded on the East by the westerly side of Franklin D. Roosevelt Drive, on the West by the easterly side of First Avenue, on the North by the southerly side of East Forty-Eighth Street, and on the South by the northerly side of East Forty-Second Street, all as proposed to be widened, in the Borough of Manhattan, City and State of New York, and (b) an easement over Franklin D. Roosevelt Drive, above a lower limiting plane to be fixed for the construction and maintenance of an esplanade, together with the structures thereon and foundations and columns to support the same in locations below such limiting plane, the entire area to be more definitely defined by supplemental agreement between the United Nations and the United States of America.

ANNEXE 1

La zone mentionnée à la section 1 a) 1) se compose: a) des lieux sis dans la Borough de Manhattan, ville et Etat de New York, lesdits lieux étant limités, à l'est par la limite ouest de Franklin D. Roosevelt Drive, à l'ouest par la limite est de la Première Avenue, au nord par la limite sud de la quarante-huitième Rue est, et au sud par la limite nord de la quarante-deuxième Rue est, les limites desdites voies étant celles qui devront résulter de leur élargissement tel qu'actuellement proposé; b) d'une servitude sur le Franklin D. Roosevelt Drive partant d'un niveau inférieur au-dessus duquel sera construite une esplanade, ce niveau devant être déterminé en vue de la construction et de l'entretien de l'esplanade susdite. Cette servitude s'étendra à toutes superstructures de même qu'aux fondations et colonnes qui supporteront l'esplanade et qui seraient posées au-dessous du niveau inférieur à délimiter. La zone entière sera définie avec plus de précision par un accord additionnel entre l'Organisation des Nations Unies et les Etats-Unis d'Amérique.

ANNEX 2

Maintenance of Utilities and
Underground Construction

Section 1

The Secretary-General agrees to provide passes to duly authorized employees of The City of New York, the State of New York, or any of their agencies or subdivisions, for the purpose of enabling them to inspect, repair, maintain, reconstruct and relocate utilities, conduits, mains and sewers within the headquarters district.

Section 2

Underground constructions may be undertaken by The City of New York, or the State of New York, or any of their agencies or subdivisions, within the headquarters district only after consultation with the Secretary-General, and under conditions which shall not disturb the carrying out of the functions of the United Nations.

ANNEXE 2

Entretien des services d'utilité
publique et constructions sou-
terraines

Section 1

Le Secrétaire général convient de fournir des laissez-passer aux employés dûment autorisés de la ville de New York, de l'Etat de New York, ou de toute agence ou circonscription de ladite ville ou dudit Etat, en vue de permettre à ces employés d'inspecter, réparer, entretenir, reconstruire les services d'utilité publique, canalisations, collecteurs et égoûts, et de les déplacer, le tout à l'intérieur du district administratif.

Section 2

La ville de New York ou l'Etat de New York ou leurs agences ou circonscriptions ne pourront entreprendre des constructions souterraines à l'intérieur du district administratif qu'après consultation avec le Secrétaire général, et de manière à ne pas troubler l'accomplissement des fonctions de l'Organisation des Nations Unies.

*The United States Representative to the United Nations to the
Secretary-General of the United Nations*

UNITED STATES REPRESENTATIVE
TO THE UNITED NATIONS

NOVEMBER 21, 1947

EXCELLENCY:

I have the honor to refer to Section 28 of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, which provides for bringing that Agreement into effect by an exchange of notes. Reference is made also to the provisions of United States Public Law 357, 80th Congress, entitled "Joint Resolution Authorizing the President to bring into effect an agreement between the United States and the United Nations for the purpose of establishing the permanent headquarters of the United Nations in the United States and authorizing the taking of measures necessary to facilitate compliance with the provisions of such agreement, and for other purposes", which was approved by the President of the United States of America on August 4, 1947.

Pursuant to instructions from my Government, I have the honor to inform you that the Government of the United States of America is prepared to apply the above-mentioned Headquarters Agreement subject to the provisions of Public Law 357.

I have been instructed by my Government to propose that the present note and your note of this date be considered as bringing the Headquarters Agreement into effect on the date hereof.

Accept, Excellency, the renewed assurances of my highest consideration.

WARREN R. AUSTIN

His Excellency

TRYGVE LIE,

Secretary-General

of the United Nations,

Lake Success, New York.

UN-1478A

*The Secretary-General of the United Nations to the United States
Representative to the United Nations*

CABLE ADDRESS: UNATIONS NEW YORK
UNITED NATIONS

TELEGRAMME: UNATIONS NEW-YORK
NATIONS UNIES

LAKE SUCCESS, NEW YORK • FIELDSTONE 7-1100

REFERENCE:

21 NOVEMBER 1947

SIR,

I have the honour to refer to the Resolution adopted by the General Assembly on 31 October 1947, at its one hundred and first meeting,

relative to the Agreement between the United States of America and the United Nations regarding the Headquarters of the United Nations, signed at Lake Success on 26 June 1947.

By this Resolution the General Assembly, after having studied the report of its Sixth Committee and endorsed the opinions expressed therein, has approved the above-mentioned Agreement, which states and defines the mutual obligations of the United Nations and the United States in connection with the establishment of the permanent Headquarters of the United Nations in the United States. The Resolution, consequently, has authorized me to bring that Agreement into force in the manner provided in Section 28 of the Agreement.

Pursuant to the Resolution and in conformity with Section 28 of the Agreement, I have the honour to propose that the present note and your note of this day be considered as bringing the Headquarters Agreement into effect under date hereof.

I have the honour to be, Sir,
Your obedient Servant,

Trygve Lie
Secretary-General

The Honorable

WARREN R. AUSTIN,

Permanent Representative of the

United States of America at the

Seat of the United Nations,

New York.

UN-1676
The Secretary-General of the United Nations to the United States
Representative to the United Nations
CABLE ADDRESS: UNITED NATIONS NEW YORK
TELEGRAMS: UNITED NATIONS NEW YORK
UNITED NATIONS
LAKE SUCCESS, NEW YORK • TELEPHONE 7-1110
31 NOVEMBER 1947

I have the honour to refer to the Resolution adopted by the General Assembly on 31 October 1947, at its one hundred and first meeting.

[PUBLIC LAW 357—80TH CONGRESS]

[CHAPTER 482—1ST SESSION]

[S. J. Res. 144]

JOINT RESOLUTION

Authorizing the President to bring into effect an agreement between the United States and the United Nations for the purpose of establishing the permanent headquarters of the United Nations in the United States and authorizing the taking of measures necessary to facilitate compliance with the provisions of such agreement, and for other purposes.

Whereas the Charter of the United Nations was signed on behalf of the United States on June 26, 1945, and was ratified on August 8, 1945, by the President of the United States, by and with the advice and consent of the Senate, and the instrument of ratification of the said Charter was deposited on August 8, 1945; and

Whereas the said Charter of the United Nations came into force with respect to the United States on October 24, 1945; and

Whereas article 104 of the Charter provides that "The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes"; and

Whereas article 105 of the Charter provides that:

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

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

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

Whereas article 28 and other articles of the Charter of the United Nations contemplate the establishment of a seat for the permanent headquarters of the Organization; and

Whereas the interim arrangements concluded on June 26, 1945, by the governments represented at the United Nations Conference on International Organization instructed the Preparatory Commission established in pursuance of the arrangements to "make studies and prepare recommendations concerning the location of the permanent headquarters of the Organization"; and

Whereas during the labors of the said Preparatory Commission, the Congress of the United States in H. Con. Res. 75, passed unanimously by the House of Representatives December 10, 1945, and agreed to unanimously by the Senate December 11, 1945, invited the United Nations "to locate the seat of the United Nations Organization within the United States"; and

Whereas the General Assembly on December 14, 1946, resolved "that the permanent headquarters of the United Nations shall be established in New York City in the area bounded by First Avenue, East Forty-eighth Street, the East River, and East Forty-second Street"; and

Whereas the General Assembly resolved on December 14, 1946, "That the Secretary-General be authorized to negotiate and conclude with the appropriate authorities of the United States of America an agreement concerning the arrangements required as a result of the establishment of the permanent headquarters of the United Nations in the city of New York" and to be guided in these negotiations by the provisions of a preliminary draft agreement which had been negotiated by the Secretary-General and the Secretary of State of the United States; and

Whereas the General Assembly resolved on December 14, 1946, that pending the coming into force of the agreement referred to above "the Secretary-General be authorized to negotiate and conclude arrangements with the appropriate authorities of the United States of America to determine on a provisional basis the privileges, immunities, and facilities needed in connection with the temporary headquarters of the United Nations."; and

Whereas the Secretary of State of the United States, after consultation with the appropriate authorities of the State and city of New York, signed at Lake Success, New York, on June 26, 1947, on behalf of the United States an agreement with the United Nations regarding the headquarters of the United Nations, which agreement is incorporated herein; and

Whereas the aforesaid agreement provides that it shall be brought into effect by an exchange of notes between the United States and the Secretary-General of the United Nations: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized to bring into effect on the part of the United States the agreement between the United States of America and the United Nations regarding the headquarters of the United Nations, signed at Lake Success, New York, on June 26, 1947 (hereinafter referred to as the "agreement"), with such changes therein not contrary to the general tenor thereof and not imposing any additional obligations on the United States as the President may deem necessary and appropriate,

and at his discretion, after consultation with the appropriate State and local authorities, to enter into such supplemental agreements with the United Nations as may be necessary to fulfill the purposes of the said agreement: *Provided*, That any supplemental agreement entered into pursuant to section 5 of the agreement incorporated herein shall be submitted to the Congress for approval. The agreement follows:

* * * * *

SEC. 2. For the purpose of carrying out the obligations of the United States under said agreement and supplemental agreements with respect to United States assurances that the United Nations shall not be dispossessed of its property in the headquarters district, and with respect to the establishment of radio facilities and the possible establishment of an airport:

(a) The President of the United States, or any official or governmental agency authorized by the President, may acquire in the name of the United States any property or interest therein by purchase, donation, or other means of transfer, or may cause proceedings to be instituted for the acquisition of the same by condemnation.

(b) Upon the request of the President, or such officer as the President may designate, the Attorney General of the United States shall cause such condemnation or other proceedings to be instituted in the name of the United States in the district court of the United States for the district in which the property is situated and such court shall have full jurisdiction of such proceedings, and any condemnation proceedings shall be conducted in accordance with the Act of August 1, 1888 (25 Stat. 357), as amended, and the Act of February 26, 1931 (46 Stat. 1421), as amended.

(c) After the institution of any such condemnation proceedings, possession of the property may be taken at any time the President, or such officer as he may designate, determines is necessary, and the court shall enter such orders as may be necessary to effect entry and occupancy of the property.

(d) The President of the United States, or any officer or governmental agency duly authorized by the President, may, in the name of the United States, transfer or convey possession of and title to any interest in any property acquired or held by the United States, pursuant to paragraph (a) above, to the United Nations on the terms provided in the agreement or in any supplemental agreement, and shall execute and deliver such conveyances and other instruments and perform such other acts in connection therewith as may be necessary to carry out the provisions of the agreement.

(e) There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be required to enable the United States to carry out the undertakings

hereby authorized: *Provided*, That any money appropriated under this authorization shall be spent only on a basis of reimbursement by the United Nations in accordance with section 3 of the agreement, and that the money thus reimbursed shall be deposited and covered into the Treasury of the United States as miscellaneous receipts.

SEC. 3. The President, or the Secretary of State under his direction, is authorized to enter into agreements with the State of New York or any other State of the United States and to the extent not inconsistent with State law, with any one or more of the political subdivisions thereof in aid of effectuating the provisions of the agreement.

SEC. 4. Any States, or, to the extent not inconsistent with State law any political subdivisions thereof, affected by the establishment of the headquarters of the United Nations in the United States are authorized to enter into agreements with the United Nations or with each other consistent with the agreement and for the purpose of facilitating compliance with the same: *Provided*, That, except in cases of emergency and agreements of a routine contractual character, a representative of the United States, to be appointed by the Secretary of State, may, at the discretion of the Secretary of State, participate in the negotiations, and that any such agreement entered into by such State or States or political subdivisions thereof shall be subject to approval by the Secretary of State.

SEC. 5. The President is authorized to make effective with respect to the temporary headquarters of the United Nations in the State of New York, on a provisional basis, such of the provisions of the agreement as he may deem appropriate, having due regard for the needs of the United Nations at its temporary headquarters.

SEC. 6. Nothing in the agreement shall be construed as in any way diminishing, abridging, or weakening the right of the United States to safeguard its own security and completely to control the entrance of aliens into any territory of the United States other than the headquarters district and its immediate vicinity, as to be defined and fixed in a supplementary agreement between the Government of the United States and the United Nations in pursuance of section 13 (3) (e) of the agreement, and such areas as it is reasonably necessary to traverse in transit between the same and foreign countries. Moreover, nothing in section 14 of the agreement with respect to facilitating entrance into the United States by persons who wish to visit the headquarters district and do not enjoy the right of entry provided in section 11 of the agreement shall be construed to amend or suspend in any way the immigration laws of the United States or to commit the United States in any way to effect any amendment or suspension of such laws.

Approved August 4, 1947.

17

white

GLEDHILL V. SCHIFF

C.A. N.Y. July 12, 1918
224 N.Y. 593, 120 N.E. 863
affirming 173 App. Div. 890, 157 N.Y.S. 1126

Jurisdiction. Immunity. Foreign State. Agent of.

.....The trustee for collection for a British corporation that held treasury notes of Austria Hungary the interest and capital of which were payable in the city of New York at the office of a banking firm cannot, after the Austrian government gave notice to such firm that moneys would be deposited with them to pay only those holders of notes who should present therewith an affidavit stating that the holders were not citizens of countries in a state of war with Austria Hungary and that the notes were not acquired after a specified date from any such citizen, recover the face value of the notes with interest from the members of the banking firm or impress a lien for the amount of its holdings upon the fund held by it as the members of such firm are mere agents for the Austrian government.

FRAZIER V. HANOVER BANK

Sup. Cr. Jan. 27, 1953
119 N.Y.S.2d 319, aff'd 119 N.Y.S.2d 918,281
App. Div. 861

Jurisdiction's Foreign Government. Agent of -

In F----- v. H----- B----- plaintiff sought to compel defendant, a domestic corporation acting as agent of the Republic of Peru, to deliver certain scrip certificates of the latter Republic to him and other bondholders of a class, instead of to all bondholders as defendant was directed by the Republic of Peru.

Defendant demurred that it was not subject to the jurisdiction of the court because it was a mere agent of the Republic of Peru and the adjudication of the claim would necessarily require an adjudication against Peru.

Held that, although defendant itself did not enjoy personal immunity, the action would require an adjudication of a claim against Peru and should be dismissed.

.....Defendant of course has no personal immunity of its own, and it of course cannot escape responsibility for its acts by asserting that it performs the acts at the direction of a foreign sovereign. Conversely, however, the fact that plaintiff names as sole party defendant an agent of Peru, instead of Peru itself, and is able to effect service of the summons upon that agent, does not enable plaintiff to obtain an adjudication of a claim against Peru in the face of Peru's assertion of its sovereign immunity.

P. 322

In the end, therefore, the question is whether this action is in substance an action against Peru in the sense that it seeks an adjudication of a claim against Peru or involves specific property in which Peru claims an interest.

.....It seems to me plain, therefore, that by this action plaintiff is seeking.....to compel Peru, against its will, to abide by that contract; and ~~xxxxx~~ that is precisely such an adjudication of claim against a sovereign as sovereign immunity precludes....

P. 323

..... Finally, plaintiff argues that Peru has waived its sovereign immunity and consented to being sued in New York because a new bond which Peru is issuing as a part of and in connection with the general plan under which the scrip certificates here involved are being issued contains the statement:

"This General Bond is being delivered in the City of New York, State of New York, and shall be governed by the laws of the State of New York in the construction thereof."

P. 323

I think that is patently untenable. The provision quoted is not in any sense a consent to be sued or a waiver of immunity. Furthermore it is not contained in any instrument involved in this action or from which plaintiff derives any rights. See Matter of U.S. of Mexico v. Schmuck, 293 N.Y. 264, at pages 268, 269, 56 N.E. 2d 577, at pages 578, 579.

P. 324

Plaintiff's motion for an injunction pendente lite is denied. The cross-motion to vacate the service of the summons and strike out the complaint is granted,....

Frazier v. Foreign Bondholders Protective Council
Sup. Ct. App. Div. Nov. 24, 1953
125 N.Y.S. 2d 900

"It is the general rule that when a foreign government is recognized by our State Department, our courts will not sit in judgment on the validity of acts done by that government within its own territory. This general rule holds true whether the foreign government is sued directly or through an agent....." [125 N.Y.S. 2d 903].

ULEN & CO. V. BANK GOSPODARSTWA KRAJOWEGO (NATIONAL ECONOMIC BANK)

Supreme Court, Appellate Division, Second Department.

Dec. 23, 1940.

261 Aff. Div. 1, 24 N.Y.S. 2d 201

Appeal denied. 25 N.Y.S. 2d 1002, 261 App. Div. 838

Jurisdiction's Immunity (No.). Bank partly owned by foreign state, instrumentality.

A bank created by Republic of Poland as a state institution, but as a "distinct legal fees or possessing the right to autonomous legal representation", whose stock was oned by the state, municipalities, and state and municipal enterprises, was not immune from suit on interest coupons attached to bonds issued by it and guaranteed by the Polish government.

.... the defendant..... was chartered by means of a decree of the President of the Republic on May 30, 1924, pursuant to a statute relative to the reform of the currency.....The new bank was described as follows in Article 3:"The Bank Gospodarstwa Krajowego is a State institution; it is a distinct legal person possessing the right to use in its seal the coat of arms of the State. The corporate seat of the Bank is the City of Warsaw and the territory of its activity -- all the Republic."

P. 202

Under Article 4 the share capital of the Bank was to be fixed by the by-laws in the form of shares owned by the State Treasury, State enterprises, municipalities, and municipal enterprises; but not less than 60 per cent of the shares were to be owned by the State Treasury and State enterprises. The objects of the Bank were stated, in Article 5, to be the granting of long-term credits through the issuance of bonds; the support of savings institutions; the reconstruction of devastated lands; and the conduct of all banking activities with particular consideration for the needs of the State, State enterprises and municipalities. Supreme control of the Bank was vested in the Minister of Finance, who was also authorized to promulgate the by-laws.

P. 203

.....There appears to be no decision in either the United States Supreme Court or in the New York Court of Appeals dealing with corporations formed by foreign governments. There are several such cases, however, in the lower Federal courts in which the same conclusion has been reached as in the case of domestic governmental corporations. In Coale v. Societe Co-op. Suisse Des Charbons, Basle, D.C., 21 F.2d 180, the defendant was a corporation formed by the Swiss government for the importation of coal. The charter and

P. 206

by-laws were subject to governmental approval. The government appointed seven of the seventeen directors, and was entitled to all the net profit above six per cent. The plaintiff sued on a contract of sale which had been signed in the defendant's behalf by the Swiss Minister. The defendant claimed immunity. The District Court held that the defendant was not immune from suit and was liable on the contract. A similar conclusion was reached in *United States v. Deutsches Kalisyndikat Gesellschaft, D.C.*, 31 F.2d 199, in the case of a corporation formed and controlled by the French government for the purpose of exploiting potash mines in Alsace. It was held that a "suit against a corporation is not a suit against a government merely because it has been incorporated by direction of the government, and is used as a governmental agent, and its stock is owned solely by the government." 31F.2d at page 202.

.....We approve the principle of these latter cases and conclude that a corporation organized by either a domestic or foreign government for commercial objects in which the government is interested, does not share the immunity of the sovereign.....

KINGDOM OF SWEDEN v. New York Trust Co.
Sup. Cr. N.Y. Dec. 14, 1949
96 N.Y.S. 2d 779, 197 Misc. 431

Jurisdiction - Immunity - Central Bank.

.....(2) In any event, however, defendant New York Trust Company's argument in this respect is without merit. Under the laws of Sweden (Constitution, Article 72), the Swedish Bank is within the direct administration of the Parliament of the Kingdom of Sweden. Six of the seven bank commissioners, who exercise powers similar to those of a bank director in this country, are appointed by Parliament. The seventh bank commissioner is appointed by the King of Sweden. The Swedish Bank is not now and never was a corporation separate from and independent of the Government of the Kingdom of Sweden. It has no stock, and all of the profits derived from its banking business go to the Swedish State as part of the revenue of the Kingdom. Expert opinion by the Ambassador of Sweden, the Governor of the Swedish Bank, and the Swedish Consul-General in San Francisco, which was adduced upon the trial, bears out the fact that the bank is not a separate corporate entity apart from the Swedish Government. The fact that the defendant New York Trust Company was able to locate judgments obtained in Sweden in actions wherein the Swedish Bank appeared in its individual capacity does not alter the situation. Although an offer of proof as to such judgments by the defendant New York Trust Company was denied, it might be well to state that these judgments do not necessarily indicate that the Swedish Bank has a separate jural capacity in this country or any other foreign country to the exclusion of the right of the Kingdom of Sweden to represent any of its governmental entities. The appearance of a political unit or a sovereign entity in law actions involving independent business relationships within its native land is known even in this country. *Jones v. City of Portland*, 245 U.S. 217, 220, 38 S.Ct. 112, 62 L.Ed. 252, L.R.A. 1918C, 765, Ann.Cas. 1918E, 660; *Green v. Frazier*, 253 U.S. 233, 235, 40 S.Ct. 499, 64 L.Ed. 878. I hold, therefore, that the plaintiff Kingdom of Sweden is the real party in interest and has full legal capacity to maintain the instant action.....

pp.786-787

SCHNEIDER v. CITY OF ROME, ITALY
City Court, N.Y. Nov. 10, 1948
83 N.Y.S.2d 756, 193 Misc. 180

Jurisdiction, Immunity of - Political subdivision

P. 757

[1, 2] Although it is true that a person, agency or instrumentality representing a foreign sovereign is immune from suit, it does not necessarily follow that a so-called subdivision of a sovereign power is immune. In *Sullivan v. State of Sao Paulo*, 2 Cir., 122 F.2d 355, 360, sovereign immunity was extended to one of the constituent states of the United States of Brazil. In a concurring opinion Learned Hand, C.J., took the view that the position of our Department of State in that particular situation made it necessary "for the district court not to proceed." He indicated his unwillingness to hold "without more that each of the federated states of Brazil is immune from suit," and continued, "Possibly that is true, for those states do indeed have large governmental powers; but so have many cities, and I should hesitate to hold that every political subdivision was immune which exercised substantial governmental powers." The analogy, in the federal system of Brazil, between one of the states of that republic and one of the United States was pointed out in the opinion of Clark, C.J., as one, at least, of the grounds for holding the State of Sao Paulo immune from suit. That the City of Rome is a "political subdivision" of the Italian Government which exercises "substantial governmental powers" is not alone sufficient to render it immune.

Privilege and Immunities
BR v IFC Tax Question

Small Business Administration v. G. M. McClellan, Trustee

Supreme Court of the United States, December 5, 1960

Question in this case is whether when the Small Business Administration has joined a private bank in the loan and the borrower becomes bankrupt, the Administration's interest in the unpaid balance of the loan is entitled to the priority for "debts due to the United States" even though the Administration has agreed to share any money collected on the loan with the private bank and therefore the private bank will get priority over other private creditors.

The Court distinguished several other cases, holding that certain corporate governmental agencies were not the United States. The Court stated as follows:

"At that point, there is no difference between the money so received and money received from any other source and, like other money, it may be disbursed in any way the Government sees fit, including the satisfaction of obligations already incurred, so long as the purpose is lawful. The Small Business Administration is authorized to enter into contracts calculated to induce private banks to make loans to small businesses. [67 Stat. 236] The contract involved in this case, by providing additional security to the private bank at the Government's expense, is well adapted to that end. Indeed, in many cases such a contract may be the only way the Administration could induce private bank participation in a necessary loan. In those cases, acceptance of respondent's argument would make it more difficult for the Administration to perform its statutory duties. Clearly Congress did not intend, by the very act of imposing duties upon the Administration, to take away a privilege necessary to the effective performance of those duties.

"Respondent's argument from the policy of equality of distribution for similar creditors expressed in the Bankruptcy Act [11 U.S.C. § 1 et seq.] is no more convincing. It is true that the allowance of the priority asserted here will place the bank, a private unsecured creditor, in a better position than other private unsecured creditors. But this position is a result, not of any inequality of distribution on the part of the bankruptcy court, but of the bank's valid contract with the Small Business Administration."

Committee Report
COMMITTEE ON INTERNATIONAL LAW
REPORT ON
CONVENTION ON THE PRIVILEGES
AND IMMUNITIES OF THE UNITED NATIONS

The Convention on the Privileges and Immunities of the United Nations (known as "the General Convention") was drafted by representatives of the member nations, including the United States, to serve as the basic instrument governing juridical relations between the United Nations and its members. Approved and submitted by the General Assembly to the member nations for accession in 1946,¹ pursuant to Articles 104 and 105 of the Charter,² it provides full or partial diplomatic immunities for United Nations delegates and personnel, according to rank, and various aspects of sovereign immunity for the United Nations and its property. Its principal effect would be to confer upon the United Nations and its personnel most but not all of the privileges and immunities which foreign governments and their representatives enjoy in the territory of other nations by virtue of customary international law.

The General Convention deals with many facets of the relationship of the United Nations and its personnel to the member nations. Among the problems dealt with are taxation, police and court jurisdiction, military service, secrecy of diplomatic communications, travel on United Nations business, and immunity from suit for official acts and statements. A brief digest of the provisions of the General Convention is annexed.³

The United States has never acceded to the General Convention, although sixty-seven other member nations, including the United Kingdom, France, and the Soviet Union, have done so. Most but not all of the privileges and immunities provided for in the General Convention are available in the United States through other arrangements referred to below.

Reasons for United States Accession to the General Convention

In the view of the Committee, it is of considerable importance that the United States accede to the General Convention. There are two problem areas regarding the application of the Convention, but these can readily be dealt with by reservations.

The effectiveness of the United Nations depends to no small degree upon the ability of its officials to function as international civil servants, serving and speaking for the United Nations rather than their respective nations of origin. This conception of the international status and role of United Nations officials has long been maintained and advanced by the United States and other nations based upon the United Nations Charter and has prevailed over the Soviet view that United Nations officials should function as mere spokesmen for their national governments. The Soviet view has recently

been advanced with increased vigor in the "troika" proposal, designed to cripple the United Nations by destroying the international character of its civil service.

The view that the United Nations should be an entity in its own right, functioning as an intermediary between nations through officials answerable only to the United Nations and deriving their status from their United Nations position, finds its fullest formal expression in the General Convention. At a time when the United States finds itself leading the opposition to the Soviet proposal within the United Nations, it is singularly inappropriate and a source of continuing embarrassment for the United States not to be a party to the General Convention. Prompt accession would demonstrate the sincerity of our conviction and our commitment to the principles which the United States is not only actively advocating but has been observing in practice almost without exception for over fifteen years.

In addition, accession would remedy existing deficiencies in United States legal protection for the United Nations, most notably the lack of diplomatic privileges for the Secretary-General and his chief assistants.

Even apart from the foregoing specific considerations, refusal to enter into a binding agreement to extend the privileges and immunities which all member nations are asked to grant is plainly inconsistent with our role as host nation and one of the principal supporters of the United Nations.

The Committee urges prompt action by the Administration and the Congress.

Genesis of the Present Situation

The present rather haphazard United States legal situation arose fortuitously. Most, but not all, of the privileges and immunities provided for in the General Convention have been established in the United States through a combination of domestic legislation, the Headquarters Agreement with the United Nations, and various *ad hoc* arrangements and informal practices.

The International Organizations Immunities Act of 1945⁴ was adopted to provide for the existing operations of U.N.R.R.A., F.A.O., and other similar international agencies, and also to cover temporarily the immediate needs of the United Nations, which was soon to hold its first General Assembly session.⁵ But the Immunities Act did not confer all of the privileges and immunities later incorporated in the General Convention and fell far short of covering the problems and needs of the permanent United Nations headquarters.

The Headquarters Agreement is a bilateral United States-United Nations agreement laying down the detailed obligations of the United States arising out of the establishment of the permanent headquarters in New York.⁶ Despite some overlapping, the General Convention and the Headquarters Agreement were intended to be complementary, as the latter expressly recognizes.⁷

The Senate in 1947 simultaneously passed two Joint Resolutions, one approving each agreement.⁸ Without explanation, however, the House Foreign Affairs Committee reported out only the Joint Resolution approving

the Headquarters Agreement, which was duly passed.⁹ After brief abortive efforts to obtain approval of the General Convention in 1948 and 1949, no further effort has been made to secure United States accession.

As far as can be ascertained, there was no significant substantive objection or opposition to the General Convention in Congress in 1947, apart from the questions of tax and draft exemption for Americans employed by the United Nations. The objections on these two points were dealt with in the Senate by the adoption of reservations, as the United States representatives during the negotiation of the General Convention in the United Nations had indicated would be done.¹⁰ Apparently the Headquarters Agreement was regarded as more urgent in 1947 because the Congress had invited the United Nations to make its home in the United States and therefore felt a particular obligation to adopt promptly the special provisions pertaining to the functioning of the new United Nations headquarters.¹¹ The General Convention was less urgent for the further reason that many of its provisions were already covered by the Immunities Act.

The result is that the United States has become a party to the agreement granting privileges and immunities necessary because of the location of the United Nations headquarters in this country but has not become a party to the companion agreement laying down the privileges and immunities which all member nations are expected to accord. This has left incongruous and unintended gaps. For instances, the principal resident representatives of every permanent delegation of a member nation (and the principal representatives to the specialized agencies as well) have full diplomatic privileges and immunities in the United States by virtue of the Headquarters Agreement, while the Secretary-General of the United Nations and his principal assistants do not, since their status is a matter for recognition by all member nations and is therefore dealt with in the General Convention, to which the United States has not acceded.

Substantive Objections to the General Convention

The appropriateness of a few provisions of the General Convention was questioned during the 1946-47 Congressional hearings. We consider these provisions next, along with two questions raised by this Committee. In our view, in so far as there is merit to any of the objections they can and should be dealt with by reservations and do not justify failure to accede to the General Convention.

A. Income Tax Exemption for United States Nationals Employed by the United Nations.

Article V of the General Convention provides:

"Section 18. Officials of the United Nations shall:

* * *

(b) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;***"

The United States indicated during the negotiation of the General Convention that it would require a reservation on this point to permit United States taxation of salaries received from the United Nations by United States nationals, and a reservation to that effect was incorporated in the 1947 Joint Resolution adopted by the Senate.¹²

The purpose of the tax exemption is to preserve the separate identity of the United Nations as an international organization outside the jurisdiction of any particular sovereign state, and also to promote the creation of an international civil service by assuring equality of position of all members of the Secretariat regardless of their nationality. The United States objection to the provision expressed in the period 1946-47 was that there should be no group of United States citizens resident in the United States exempt from the taxes paid by other citizens.¹³ Of the sixty-seven nations which have acceded to the General Convention, four—Canada, New Zealand, Turkey and Laos—have adopted reservations on the question of income tax exemption.¹⁴ In each instance the right has been reserved to deny the exemption to nationals of the signatory nation resident in that nation.

Some members of the Committee find merit in the objection to the creation in our tax law of a specially privileged group of Americans resident in the United States. In deference to their views, and recognizing that such views are likely to be held by many other citizens, the other members of the Committee join in recommending that the General Convention be ratified with an appropriate reservation on this point.

In the past seventeen years, during which there has been no tax exemption for Americans working for the Secretariat in New York, the United Nations has adopted internal arrangements for equalizing the net salaries after taxes of its employees, irrespective of nationality.¹⁵ The administrative work which the suggested reservation would require the United Nations to continue has not been found unduly burdensome.

B. Military Service Obligations of United States Nationals.

Article V of the General Convention provides:

“Section 18. Officials of the United Nations shall:

* * *

(c) be immune from national service obligations;***”

The obvious purpose of this provision is to ensure continuity of service by the United Nations staff, especially in time of war. The equally obvious objection rests on the desire to minimize the number of groups among United States citizens who are privileged in regard to military service. (Ministers, judges, state and federal elected officials and other occupational groups are exempt.¹⁶) Of the sixty-seven nations which have acceded to the General Convention, three—Thailand, Laos and Turkey—have adopted reservations regarding military service.¹⁷ The Senate in 1947 adopted a similar reservation.¹⁸

Neither in practice nor in principle would a reservation of the United States position on this issue appear to present substantial difficulties. In practice the present United States draft age is such that almost no United States nationals on the United Nations staff have been called for military service. A few reservists have recently been called, but the numbers involved are small. Obligatory service in time of peace is normally completed before the age of thirty, and persons of importance to the United Nations are likely to be above that age and thus not subject to involuntary service.

If events should occasion a drastic change in United States draft policies, the very emergency would be likely to increase the importance and desirability to the United States of leaving experienced United States citizens on the United Nations staff in their positions of responsibility.

The subject of draft exemptions is understandably charged with emotion, and the United Nations would probably be the gainer from a reservation which prevented its opponents in this country from labeling it as a refuge for draftdodgers.

The Committee accordingly favors a reservation on this point which would leave the United States free to draft United States members of the United Nations Secretariat if and when appropriate circumstances arise. Any difficulties could be resolved by an arrangement similar to that adopted in the bilateral Interim Arrangement on Privileges and Immunities concluded between Switzerland (a non-member state) and the United Nations.¹⁹ In substance, the Swiss agreement provides for consultation between the Secretary-General and the Swiss Government before any United Nations officials of Swiss nationality are called for military service, with the Swiss Government further agreeing to exempt or defer those found to be most important to the United Nations. In view of the blanket statutory exemption in the United States for ministers, judges and others, such a qualified reservation should be acceptable.

C. Recognition of the United Nations Laissez-Passer.

Article VII, Section 24, of the General Convention provides that the United Nations may issue to its officials "laissez-passer" which "shall be recognized and accepted as valid travel documents" by the member nations. Visa requirements remain in force, but a visa must be granted promptly to the holder of a laissez-passer upon presentation of a certificate that he is traveling on United Nations business. The Secretary-General and his chief assistants are to be accorded normal diplomatic facilities when traveling on United Nations laissez-passer on United Nations business.

The primary purposes of Article VII are to facilitate official travel and to indicate that United Nations officials travel not in their capacity as nationals of a particular country but as United Nations representatives under the auspices and protection of the United Nations.

The retention of the visa requirement means that the United States will always be on notice as to who is to travel where and can restrict the visa as to time and place to conform to the precise demands of the official duty

involved. Further protection against abuse is afforded by the United Nations practice of requiring the surrender of each laissez-passer upon completion of the mission for which it is issued.

The 1947 Senate Committee report discussed the possibility that recognition of the laissez-passer might create security problems by permitting travel by subversive persons to, from and in the United States. The Senate Committee concluded that no reservation was required. This conclusion was based on the understanding that existing passport requirements would not be superseded, and that the United Nations laissez-passer would simply be recognized in addition.²⁰

This Committee reaches the same conclusion for somewhat different reasons. It would seem that, at least in some circumstances, to give meaning to Article VII of the General Convention official travel on a United Nations laissez-passer must be permitted even in the absence of a passport. But the obligation to permit entry to and departure from the United States by officials on United Nations business already exists by virtue of Section 105(2) of the United Nations Charter and Section 11 of the Headquarters Agreement. These existing provisions would appear to require the United States to permit the entry of United Nations officials who are aliens and the departure of United Nations officials who are United States nationals where necessary for the conduct of United Nations business.

The Headquarters Agreement expressly requires the United States to permit official travel to and from the New York headquarters area by United Nations officials, and by representatives of member nations and other related groups. The Congress in 1947 recognized that such access was an essential concomitant of having the United Nations headquarters in this country. The Senate Committee concluded that preservation of the right to confine visas to travel to and from the New York headquarters, along with preservation of the right to deport persons guilty of improper acts outside the scope of their official duties, "adequately protect the security of the United States."²¹ Similar protections will remain under the General Convention, and the Committee believes that there would accordingly be no significant extension of the security problem.

The net effect of adopting the General Convention on this score would be to obligate the United States to permit travel to points in the country outside New York if necessary for the conduct of United Nations business. Such travel is already permitted in practice and apparently creates no special additional security problem. The United States could ordinarily control any such security problem which might arise by refusing to permit a particular United Nations function to be carried on in this country outside of the New York area, to which travel is already authorized by the Headquarters Agreement. Hence we conclude that there is no reason for any reservation as to Article VII of the General Convention.

D. Validity of Reservations.

While the question has not to our knowledge previously been raised with respect to the General Convention, the validity of a reservation to a

multilateral treaty has been widely debated.²² The General Convention provides in Section 36 of the Final Article as follows:

"The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly."

While the above provision viewed in isolation might appear to preclude a unilateral reservation, in the Committee's opinion it must be read as applying only where a nation wishes to substitute an alternative provision, and not where a provision is in effect deleted or limited by a reservation.

Three factors in the present situation lead us to this conclusion and justify United States accession with reservations as proposed. First, the United States intention to reserve its position on the tax and draft exemptions was announced during the negotiation of the General Convention, and there was acquiescence by the other nations.²³ Second, other nations have adopted reservations on these points, and their instruments of accession have been accepted for deposit by the United Nations and, so far as we are aware, have never been challenged. Third, refusal of a member nation to grant all of the privileges and immunities which the United Nations would receive under the terms of the General Convention is hardly a valid reason for declaring the grant of nearly all to be invalid and ineffective.

In these circumstances, the Committee's opinion is that the recommended reservations would be effective, would not prevent the remaining provisions of the General Convention from being binding on the United States, and would not affect the obligations of other members to the United Nations.

E. Settlement of Disputes.

Article VIII, Section 30 provides that differences arising out of the interpretation or application of the General Convention shall be determined by the International Court of Justice. This provision was not questioned by the Congress in 1947. The United States has acceded to numerous treaties with similar provisions, and the provision seems especially appropriate in the present case. In the Committee's view there can be no justification for seeking to have disputes under the General Convention heard in the United States courts since comparable disputes with foreign governments, even if unfriendly, and with their diplomatic representatives, are excluded from our courts under the traditional doctrines of sovereign immunity and diplomatic immunity.

CONCLUSION

The Committee urges prompt United States accession to the General Convention, with appropriate reservations regarding taxation and military service.

COMMITTEE ON INTERNATIONAL LAW

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FOOTNOTES

¹ Approved by the General Assembly February 13, 1946. Document A/43, Annex I, pp. 5-15. ¹ Journal of the General Assembly 687-93 (Mar. 7, 1946).

2

ARTICLE 104

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

ARTICLE 105

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

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

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

³ The Senate Foreign Relations Committee in 1947 summarized the terms of the General Convention as follows:

"Articles I, II, and III.—These articles have the effect of giving the United Nations, as an organization, substantially the same legal capacities and the same privileges and immunities in the United States as are accorded to foreign governments.

"Articles IV, V, and VI.—These articles set forth the privileges and immunities that are accorded to (1) representatives of members, (2) officials of the United Nations, and (3) experts on missions for the United Nations. The only persons who receive by this convention the same privileges and immunities as diplomatic envoys accredited to the Government of the United States are the Secretary-General and the Assistant Secretaries-General of the United Nations (sec. 19). All other categories of persons covered by these articles receive only the the privileges and immunities specifically set forth therein, except in so far as article V of the headquarters agreement affects certain limited groups of representatives of member states.

"In general, the lesser immunities given the categories of persons listed above are confined to immunities in connection with acts performed by individuals 'in their official capacity.'

"Article VII.—This article authorizes the United Nations to issue travel documents to its officials.

"The remaining articles of the convention concern the settlement of disputes and deposit of accessions by members of the United Nations." S. Rep. No. 559, 80th Cong., 1st Sess., p. 5.

⁴ P.L. 291, 79th Cong., 59 Stat. 669 (Dec. 29, 1945).

⁵ S. Rep. No. 559, 80th Cong., 1st Sess., p. 3 [hereinafter cited as "1947 Senate Report"].

⁶ 22 U.S.C.A., Sec. 287, note [hereinafter cited as "H.Q. Agmt."].

⁷ H.Q. Agmt., Sec. 26; 1947 Senate Report, p. 3.

⁸ S.J. Res. 136, S.J. Res. 144, 80th Cong., 1st Sess.; Cong. Rec., July 17, 1947, pp. 9124-36.

⁹ H. Rep. No. 1093, 80th Cong., 1st Sess.; Cong. Rec., July 26, 1947, pp. 10,515-18, 10,397-400; J. Res., Aug. 4, 1947, c. 482, 61 Stat. 756.

¹⁰ 1947 Senate Report, p. 2; *supra*, n. 8; cf. GA (II) Sixth Committee, Subcommittee on Privileges and Immunities, SR 10 Oct. 1947.

¹¹ H. Concurrent Res. 75, 79th Cong.; H. Rep. No. 1093, 80th Cong., 1st Sess., p. 12.

¹² 1947 Senate Report, pp. 6-7; S.J. Res. 136, 80th Cong., 1st Sess.

¹³ 1947 Senate Report, p. 6.

¹⁴ Legislative Texts and Treaty Provisions Concerning the Legal Status, Privileges and Immunities of International Organizations, U.N. Legislative Series, ST/LEG/SER.B/10, (N.Y., 1959) [hereinafter cited as "U.N. Compilation"], pp. 191-93.

¹⁵ G.A. Res. Nos. 239 (III), 973 (X); the 1947 Senate Report said (p. 6): "the Committee agreed that there could be no objection to any arrangement which might be made within the United Nations Secretariat to equalize the tax burden imposed upon staff members. . . ."

¹⁶ 50 U.S.C.A., App., Sec. 456.

¹⁷ U.N. Compilation, pp. 191-93.

¹⁸ S.J. Res. 136, 80th Cong., 1st Sess. The reservation extended not only to United States nationals but also to "persons who have declared their intention to become citizens of the United States."

¹⁹ U.N. Compilation, p. 202.

²⁰ Cf. 1947 Senate Report, p. 7. A statement setting forth the Committee's understanding of the effect of Article VII was added to the Joint Resolution.

²¹ 1947 Senate Report, p. 6.

²² Genocide Case, I.C.J. Reports 1951, p. 15; see Comments and Reporters' Notes, §113, Restatement of the Foreign Relations Law of the United States (Tentative Draft No. 3, 1959) and authorities there cited.

²³ GA (II) Sixth Committee, Subcommittee on Privileges and Immunities, SR 10 Oct. 1947, Indian and U.K. statements.

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

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

Study prepared by the Secretariat
(Provisional Edition)

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21

CONTENTS

	<u>Paragraphs</u>
CHAPTER I. JURIDICAL PERSONALITY OF THE SPECIALIZED AGENCIES AND OF IAEA	1 - 26
1. <u>Contractual capacity</u>	3 - 8
(a) Recognition of the contractual capacity of the specialized agencies and of IAEA	3
(b) Choice of law; settlement of disputes and system of arbitration	4 - 8
2. <u>Capacity to acquire and dispose of immovable property</u> . .	9 - 16
3. <u>Capacity to acquire and dispose of movable property</u> . . .	17 - 19
(a) Recognition of the capacity of the specialized agencies and of IAEA to acquire and dispose of movable property	17
(b) Licensing and registration of land vehicles, vessels and aircraft	18 - 19
4. <u>Legal proceedings brought by and against the specialized agencies and IAEA.</u>	20 - 22
5. <u>International claims brought by and against the specialized agencies and IAEA</u>	23
6. <u>Treaty-making capacity</u>	24 - 26
(a) Treaty-making capacity of the specialized agencies and of IAEA	24
(b) Registration, or filing and recording, of agreements on the status, privileges and immunities of the specialized agencies and of IAEA	25 - 26
CHAPTER II. PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES AND OF IAEA IN RELATION TO THEIR PROPERTY, FUNDS AND ASSETS	27 - 74
7. <u>Immunity of the specialized agencies and of IAEA from legal process</u>	27 - 31
8. <u>Waiver of the immunity from legal process of the specialized agencies and of IAEA</u>	32 - 35
9. <u>Inviolability of the premises of the specialized agencies and of IAEA and the exercise of control by the specialized agencies and by IAEA over their premises</u>	36 - 37
10. <u>Immunity of the property and assets of the specialized agencies and of IAEA from search and from any other form of interference</u>	38 - 39

CONTENTS (continued)

	<u>Paragraphs</u>
11. <u>Name and emblem of the specialized agencies and of IAEA: United Nations flag</u>	40 - 42
12. <u>Inviolability of archives and documents</u>	43 - 44
13. <u>Immunity from currency controls</u>	45 - 52
14. <u>Direct taxes</u>	53 - 57
15. <u>Customs duties</u>	58 - 64
(a) Imports and exports by the specialized agencies and by IAEA "for their official use"	58 - 61
(b) Imposition of "customs duties... prohibitions and restrictions"	62
(c) Sales of articles imported by the specialized agencies and by IAEA	63 - 64
16. <u>Publications</u>	65 - 66
17. <u>Excise duties and taxes on sales; important purchases</u>	67 - 74
(a) Excise duties and taxes on sales forming part of the price to be paid	67 - 70
(b) Important purchases	71
(c) Remission or return of taxes paid	73 - 74
CHAPTER III. <u>PRIVILEGES AND IMMUNITIES OF THE SPECIALIZED AGENCIES AND OF IAEA IN RESPECT OF COMMUNICATION FACILITIES</u>	75 - 102
18. <u>Treatment equal to that accorded to Governments in respect of mails, telegrams and other communications</u>	75 - 97
19. <u>Use of codes and dispatch of correspondence by courier or in bags</u>	98 - 100
20. <u>Postal services provided by the specialized agencies and by IAEA</u>	101
21. <u>Radio communications of the specialized agencies and of IAEA</u>	102
CHAPTER IV. <u>PRIVILEGES AND IMMUNITIES OF OFFICIALS</u>	103 - 146
22. <u>Categories of officials to which the provisions of articles VI and VIII apply</u>	103 - 107
23. <u>Immunity of officials in respect of official acts</u>	108 - 112
24. <u>Exemption from taxation of salaries and emoluments</u>	113 - 118
25. <u>Immunity from national service obligations</u>	119 - 121
26. <u>Immunity from immigration restrictions and alien registration</u>	122 - 124

CONTENTS (continued)

	<u>Paragraphs</u>
27. <u>Exchange facilities</u>	125 - 127
28. <u>Repatriation facilities in time of international crisis</u> . .	128
29. <u>Importation of furniture and effects</u>	129
30. <u>Diplomatic privileges and immunities of the Executive Head and other senior officials of the specialized agencies and of IAEA</u>	130 - 140
31. <u>Waiver of the privileges and immunities of officials</u> . . .	141 - 144
32. <u>Co-operation with the authorities of member States to facilitate the proper administration of justice</u>	145 - 146
CHAPTER V. PRIVILEGES AND IMMUNITIES OF EXPERTS ON MISSIONS FOR THE SPECIALIZED AGENCIES AND IAEA AND OF PERSONS HAVING OFFICIAL BUSINESS WITH THE SPECIALIZED AGENCIES AND IAEA	147 - 155
33. <u>Persons falling within the category of experts on missions for the specialized agencies and IAEA</u>	147 - 148
34. <u>Privileges and immunities of experts on missions for the specialized agencies and IAEA</u>	149
35. <u>Privileges and immunities of persons having official business with the specialized agencies and IAEA</u>	150 - 155
CHAPTER VI. UNITED NATIONS LAISSEZ-PASSER AND FACILITIES FOR TRAVEL	156 - 170
36. <u>Issue of United Nations laissez-passer and their recognition by States as valid travel documents</u>	156 - 158
37. <u>Freedom of movement of personnel; inapplicability of persona non grata doctrine</u>	159 - 161
38. <u>Issue of visas for holders of United Nations laissez-passer</u>	162 - 164
39. <u>Certificates issued by the specialized agencies and IAEA</u> .	165 - 168
40. <u>Diplomatic facilities for the Executive Head and other senior officials whilst travelling on official business</u> . .	169 - 170
CHAPTER VII. SETTLEMENT OF DISPUTES	171 - 181
41. <u>Settlement of disputes</u>	171 - 174
42. <u>Settlement of disputes regarding alleged abuses of privileges</u>	175 - 177
43. <u>Reference to the International Court of Justice of differences arising out of the interpretation of the Specialized Agencies Convention</u>	178 - 181

CONTENTS (continued)

	<u>Paragraphs</u>
CHAPTER VIII. ANNEXES AND FINAL PROVISIONS	182 - 191
44. <u>Annexes to the Specialized Agencies Convention</u>	182 - 184
45. <u>Supplemental agreements</u>	185 - 187
46. <u>Accession to the Specialized Agencies Convention</u> <u>by Member States of the United Nations and by</u> <u>member States of the specialized agencies</u>	188 - 191

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

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

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

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

1. Contractual capacity

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

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

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

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

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

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

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

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

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

^{2/} United States Court of Appeals, Fourth Circuit, 11 May 1951, Nos. 6202, 6245, 6249, 189 F. 2d 858, on appeal from United States District Court D. Maryland, Cir. No. 4479, 92 F. Supp. 674 and No. 3132, 93 F. Supp. 798.

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

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

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

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

^{5/} Ibid., vol. 400, p. 212.

^{6/} Ibid., vol. 415, p. 69.

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

2. Capacity to acquire and dispose of immovable property

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

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

(i) FAO

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

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

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

(ii) IAEA

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

(iii) ILO

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

(iv) ITU

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

(v) UNESCO

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

^{8/} ILO Official Bulletin, 1946, No. 1, P. 67.

^{9/} Ibid., 1963, No. 2, p. 289.

(vi) UPU

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

3. Capacity to acquire and dispose of movable property

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

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

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

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

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

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

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

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

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

^{1/} See, however, International Refugee Organization v. Republic S.S. Corp. et al, referred to in section 1 above.

^{2/} See section 18 below.

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

^{4/} United States Court of Appeal, Allied High Commission for Germany, 3 August 1951, Civil Case No. 11, Opinion No. 665.

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

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

6. Treaty-making capacity

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

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

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

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

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

^{1/} See also section 45 below.

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

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

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

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

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

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

^{1/} See e.g. the case of Schaffner v. International Refugee Organization, referred to in Section 4 above.

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

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

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

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

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

^{4/} U.S. District Court, Southern District of New York, Civil No. 61-210.

8. Waiver of the immunity from legal process of the specialized agencies and of IAEA ^{1/}

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

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

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

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

35. In 1963 the United Nations Office of Legal Affairs advised^{2/} the Special Fund regarding

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

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

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

^{2/} United Nations Juridical Yearbook 1963, p. 179.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Inviolability of archives and documents

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

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

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

13. Immunity from currency controls

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

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

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

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

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

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

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

(i) IAEA

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

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

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

(ii) Operate accounts in any currency;

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

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

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

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

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

(ii) IFC

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

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

(iii) ILO

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

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

(iv) IMCO

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

(v) WHO

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

14. Direct taxes^{1/}

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

^{1/} See also Section 17 below as regards excise duties and taxes on sales.

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

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

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

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

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

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

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

15. Customs duties

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

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

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

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

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

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

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

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

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

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

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

16. Publications

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

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

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

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

17. Excise duties and taxes on sales: important purchases

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

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

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

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

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

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

^{1/} See Section 14 above.

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

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

(b) Important purchases

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

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

(c) Remission or return of taxes paid

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

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

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

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

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

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

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

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

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

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

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

^{1/} See section 14 above regarding the payment of turnover tax by FAO on telephone charges.

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

^{3/} See Official Records of the General Assembly, Fourth Session, Sixth Committee, annex pp. 26-28.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Article 37

Priority of Government Telegrams and Telephone Calls

Subject to the provisions of articles 36 and 46, Government telegrams shall enjoy priority over other telegrams when priority is requested for them by the sender. Government telephone calls may also be accorded priority upon specific request and to the extent possible, over other telephone calls."

[Note: Article 36 provides for "absolute priority" of telecommunications concerning safety of life; while Article 46 for "absolute priority" for distress calls and messages.]

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

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

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

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

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

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

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

Considering

1. the seeming conflict between the definition of Government Telegrams and Government Telephone Calls contained in Annex 2 of the International Telecommunication Convention, Atlantic City, 1947, and the provisions of Article IV, Section 11 of the Convention on the Privileges and Immunities of the Specialized Agencies;
2. that the International Telegraph and Telephone Conference, Paris, 1949, recommended to the Administrative Council that the Secretary-General of the Union be instructed to communicate to the Secretary-General of the United Nations the proposal that the United Nations should consider the revision of Article IV, Section 11 of the Convention on the Privileges and Immunities of the Specialized Agencies;
3. that as a result of this recommendation, the proposal was put on the Agenda of the Fourth Session of the General Assembly of the United Nations, and that the Sixth Committee of that Assembly merely took note of the situation;
4. that the Plenipotentiary Conference of Buenos Aires has decided not to include, in Annex 3 of the Buenos Aires Convention, the Heads of the specialized agencies among the authorities entitled to send government telegrams or to request government telephone calls;

Recognizing

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

Instructs

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

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

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

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

^{6/} Official Records of the General Assembly, Eighth Session, Suppl. No. 1
(A/2404, p. 111).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. Radio communications of the specialized agencies and of IAEA

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

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

CHAPTER IV. PRIVILEGES AND IMMUNITIES OF OFFICIALS

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

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

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

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

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

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

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

23. Immunity of officials in respect of official acts

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

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

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

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

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

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

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

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

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

24. Exemption from taxation of salaries and emoluments

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

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

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

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

The Administrative Committee on Co-ordination requested the Secretary-General in 1966 to pursue the matter with the Canadian Government.^{1/}

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

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

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

^{1/} On the question of reservations to the Specialized Agencies Convention see generally section 46 below.

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

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

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

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

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

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

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

ILO income subject to tax x total tax

Total income subject to tax

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

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

25. Immunity from national service obligations

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

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

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

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

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

26. Immunity from immigration restrictions and alien registration

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

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

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

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

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

27. Exchange facilities

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

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

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

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

28. Repatriation facilities in time of international crisis

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

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

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

29. Importation of furniture and effects

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

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

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

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

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

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

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

(1) FAO

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

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

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

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

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

(ii) IAEA

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

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

(iii) IBRD, IDA, IFC, IMF

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

(iv) ICAO

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

(v) ILO

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

(vi) IMCO

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

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

(vii) UNESCO

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

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

(viii) WHO

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

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

31. Waiver of the privileges and immunities of officials^{1/}

141. Section 22 of the Specialized Agencies Convention provides that

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

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

^{1/} See also section 8 above.

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

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

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

145. Section 23 of the Specialized Agencies Convention requires that

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

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

^{2/} See also section 23 above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

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

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

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

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

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

Section 27 continues,

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

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

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

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

^{3/} Ibid., vol. 68, p. 213.

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

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

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

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

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

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

The section continues

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

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

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

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

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

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

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

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

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

39. Certificates issued by the specialized agencies and by IAEA

165. Section 29 of the Specialized Agencies Convention provides that

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

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

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

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

^{1/} See chapter V above.

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

169. Section 30 of the Specialized Agencies Convention provides that

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

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

CHAPTER VII. SETTLEMENT OF DISPUTES

41. Settlement of disputes

171. Section 31 of the Specialized Agencies Convention states that

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

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

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

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

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

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

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

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

42. Settlement of disputes regarding alleged abuses of privileges

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

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

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

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

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

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

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

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

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

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

CHAPTER VIII. ANNEXES AND FINAL PROVISIONS

44. Annexes to the Specialized Agencies Convention

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

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

"Section 33

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

Section 34

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

Section 35

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

Section 36

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

Section 37

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

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

Section 38

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

Section 40

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

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

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

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

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

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

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

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

1/ See section 18 above.

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

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

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

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

These annexes provide that:

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

^{1/} See section 30 above.

^{2/} See chapter V above.

^{3/} See section 43 above.

^{4/} See section 7 above.

^{5/} See section 13 above.

^{6/} See section 8 above.

45. Supplemental agreements

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

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

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

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

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

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

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

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

"Section 41

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

Section 42

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

Section 43

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

Section 44

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

Section 45

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

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

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

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

^{1/} See section 18 above.

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

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

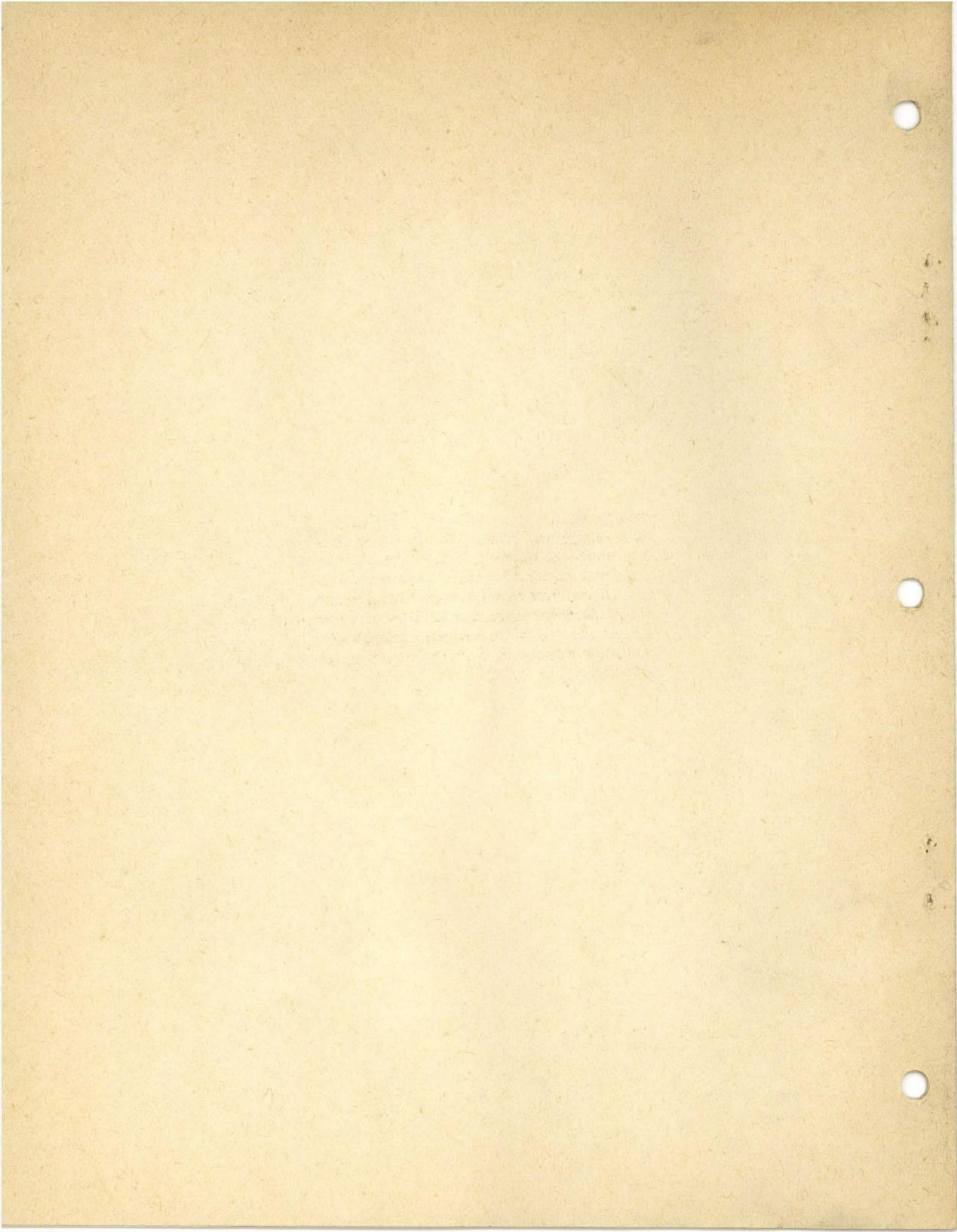
191. The IAEA Agreement on Privileges and Immunities, which is open to all member States of the Agency, had twenty-six States parties as on 1 February 1966. It may be noted that article XV of the Statute of IAEA contains an obligation on member States to grant the necessary legal capacity, privileges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

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

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

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

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



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