

**PROTECTION
OF
INTERNATIONAL
PERSONNEL**

CAROL MCDONNICK CROSSWELL

512-
C593

29/98.1

PROTECTION
OF
INTERNATIONAL
PERSONNEL ABROAD

**LAW AND PRACTICE AFFECTING THE
PRIVILEGES AND IMMUNITIES OF
INTERNATIONAL ORGANIZATION**

By

CAROL McCORMICK CROSSWELL

NEW YORK
OCEANA PUBLICATIONS

1952

Catalog No. 52-10152

Copyright 1952 by Oceana Publications

FOREWORD

In presenting this volume on the Law and Practice relating to Privileges and Immunities of International Organizations and their functionaries, Dr. Crosswell has performed a distinctly meritorious service, and one which should make a valuable contribution to the field of International Law.

When privileges and immunities in the international field are referred to, one readily associates the expression with sovereign states, their heads, their diplomatic envoys, their public vessels and other public property. Or, in a more limited sense, one may think only of diplomatic privileges and immunities. These through the centuries have come to occupy a place in the public mind and in the Public Law of nations.

But much more recently there has emerged, and is now developing with increasing tempo, out of the necessities of modern international life, another category of privileges and immunities of which much less is generally known, i.e., those pertaining to organizations of varying kinds created by international Acts for specified international purposes.

It is with respect to the scope and nature of the privileges and immunities of these inter-governmental organizations that the author has devoted such painstaking care. At once recognizing that such privileges and immunities differ "in important respects" from those accorded sovereign states and their transactions under international law and practice, she distinguishes them from the traditional diplomatic privileges and immunities by using the term "international privileges and immunities," and observes that the foundation for such measure of juridical status as these organizations may have and for such favorable treatment as they may be entitled to claim, is to be found in the basic multilateral or bilateral instruments by which they are created; also, that the essential problem of these privileges and immunities differs measurably from that of diplomatic privileges and immunities in that the latter stem from the accepted theory of

the immunity of the sovereign, whereas those here in question derive solely from agreements made to facilitate the functioning of the organization.

The different types of privileges and immunities appertaining to the various international organizations and to the different classes of officials associated with their work are examined by the author, who draws upon provisions of such basic instruments as the Covenant of the League of Nations, the Charter of the United Nations, the General Convention on privileges and immunities of the United Nations, the Convention relating to the Specialized Agencies, the Statutes of the Permanent Court of International Justice and the present International Court of Justice, the United States International Organizations Immunities Act of 1945, the British Diplomatic Privileges Extension Act of 1946, the Agreement of 1947 between the United Nations and the United States relating to the Permanent Headquarters of the United Nations, and other relevant background material.

In brief, the book is well documented. The chapters cover such topics as the juridical personality of international organizations, taxation of them and their officials, privileges and immunities of officers, legal action affecting officials, national service obligations, representatives of member states, and waiver of immunity.

Of special interest, particularly to the legal profession, are the cases that have arisen—several in the courts—in which officials in some of these organizations have been involved. The cases have ranged in importance from violations of traffic regulations to charges of espionage activities. They have been concisely narrated in Chapter V.

One cannot fail to be impressed by the factual and objective treatment of the subject. Personal views and opinions of the author have been sparingly expressed. The result is a compilation that should be of real value to those interested in this modern development of International Law.

GREEN H. HACKWORTH

PREFACE

Privileges and immunities are the handmaidens of international relations. Governments have long extended to other sovereign States and their representatives certain rights and facilities not available to ordinary citizens in order to avoid interferences with these States' fulfillment of their sovereign functions. These privileges and immunities which are extended in accordance with international law and comity are customarily based upon reciprocity and diplomatic practice developed throughout years of inter-governmental relationship.

In recent years, the creation by governments of international organizations with an international rather than a sovereign character has developed a trend towards a uniform and general international law on privileges and immunities for these international organizations. Although the extension of such privileges and immunities has become noticeable in the present day through the emergence of existing international organizations, it is not new. One of the earliest examples of the granting of quasi-diplomatic immunities to non-diplomatic international functionaries is in Articles 13 and 14 of the Convention of the Contingents of the Panama Congress of 1826.¹

International organizations are agencies with an international status akin to corporate personality set up by intergovernmental agreement for the performance of specific functions which have been assigned to each organization by the participating governments.

As these privileges and immunities differ in important respects from those accorded sovereign States and their transactions under international law and practice, it is convenient to distinguish them by using the term "international privileges and immunities" rather than the term diplomatic privileges and immunities. Their origin springs from the fact that sufficient privilege and immunity must be granted to insure the international organizations, within the

countries in which they carry on their work, the independent status which the common interest of the participating governments demand. The foundations of this independence are in the basic instruments which create the organizations.

International privileges and immunities, as distinguished from diplomatic privileges and immunities, are customarily extended by multilateral and bilateral treaties and are implemented by internal legislation. Although the position is taken that sovereign States are not obligated to extend all of such privileges to persons who are their own nationals, nevertheless, in respect of acts performed in their official capacities, even nationals are granted a certain quasi-diplomatic status.²

About 1920, and simultaneous to the birth of the League of Nations, the practice of extending international privileges and immunities through multilateral treaty and bilateral agreement to international organizations and their officials came into full force. Only the United States, until 1941, assumed the position that representatives to and of international organizations should not have privileges and immunities, and the United States has now altered its view.³

Article 7, Paragraph 4 of the Convention of the League of Nations, a multilateral treaty, gave to officials of the League and representatives of its members, diplomatic privileges and immunities when engaged on the business of the League.⁴

Similarly, Article 19 of the Statute of the Permanent Court of International Justice granted to the judges diplomatic privileges and immunities in the exercise of their functions. A bilateral agreement in the form of a "modus vivendi" also existed between the Swiss Government and the League of Nations and governed the relations of this organization with the country in which its seat was located.

In accordance with this traditional background of granting certain privileges and immunities to international organizations and their officials, the practice has been continued in regard to presently existing international organizations. In order fully to understand the nature and meaning of these privileges and immunities, it will

be necessary to examine the basic documents which grant these privileges and immunities to international organizations, and to study the cases which have arisen with regard to them.

Carol M. Crosswell

Washington, D. C., June, 1952

PREFACE—FOOTNOTES

1. Joseph L. Kuntz, *Privileges and Immunities of International Organizations*, AMERICAN JOURNAL OF INTERNATIONAL LAW, Vol. 41, Oct., 1947, p. 828.
2. Philip C. Jessup, *Status of International Organizations, Privileges and Immunities of Their Officials*, AMERICAN JOURNAL OF INTERNATIONAL LAW, 1944.
3. Green H. Hackworth, DIGEST OF INTERNATIONAL LAW, Vol. 4, pp. 419 to 423.
4. Article 7, Paragraph 4, "Representatives of the Members of the League and Officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities."

TABLE OF CONTENTS

FOREWORD by Green H. Hackworth	III
PREFACE	V
Chapter I INTERNATIONAL ORGANIZATIONS AND THEIR BASIC DOCUMENTS	1
Accession to Specialized Agencies Convention	10
Chapter II THE JURIDICAL PERSONALITY OF INTERNATIONAL ORGANIZATION	14
A. General Legal Status	14
B. Property, Funds and Assets	18
C. Waiver of Immunity	21
Chapter III PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS	29
A. Taxation	32
B. Communications	32
C. Inviolability	34
D. Freedom from Financial Control	38
Chapter IV PRIVILEGES AND IMMUNITIES OF OFFICIALS OF INTERNATIONAL ORGANIZATIONS	40
A. General Status	40
B. Travel Facilities	45
C. Additional Privileges and Immunities	49
D. Deportability	51
Chapter V LEGAL ACTION AFFECTING INTERNATIONAL ORGANIZATION OFFICIALS	55
A. Service of Process	55
B. Arrest of Officials	57
C. Analysis of Cases Involving Arrest of Officials	67

Chapter VI	TAXATION OF OFFICIALS	70
Chapter VII	NATIONAL SERVICE OBLIGATIONS	74
Chapter VIII	REPRESENTATIVES OF MEMBERS TO INTERNATIONAL ORGANIZATIONS	77
	A. Special Status	77
	B. Serving of Process	77
Chapter IX	WAIVER OF IMMUNITY	87
	A. Waiver	87
	B. Withdrawal of Immunity	93
Chapter X	EXPERTS ON MISSIONS FOR INTERNATIONAL ORGANIZATIONS	96
Chapter XI	OTHER PERSONS CONNECTED WITH INTERNATIONAL ORGANIZATIONS	100
CONCLUSION		105
ADDENDA	Privileges and Immunities of the North Atlantic Treaty Organizations	107
ANNEXES	Convention on the Privileges and Immunities of the United Nations	118
	Agreement Between the United Nations and the United States of America Regarding the Head- quarters of the United Nations	127
	Convention on the Privileges and Immunities of the Specialized Agencies	139
	U. S. Public Law 291—79th Congress	159
	Agreement on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff	166
	Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces	176
INDEX		197

Chapter I

INTERNATIONAL ORGANIZATIONS AND THEIR BASIC DOCUMENTS

The basic provisions for the giving of privileges and immunities by member governments to the United Nations are in Articles 104 and 105 of the Charter of the United Nations, which state:

“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 fulfilment 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 fulfilment 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.”

Similar provisions on privileges and immunities are found in the constitutional documents of other international organizations, such as the International Bank for Reconstruction and Development and the International Monetary Fund. Some of these provisions are specific; others are in general terms. Certain basic documents in addition to the Charter now govern the Privileges and Immunities of the United Nations.

In accordance with Article 105, paragraph 3, of the Charter of the United Nations, the Preparatory Commission and the General Assembly of the United Nations studied successively the matter of privileges and immunities for the United Nations. During the course of this work, it was concluded that not only was a general convention defining the privileges and immunities of the United Nations within the territories of its members necessary to implement Articles 104 and 105 of the Charter, but also a special agreement would have to be made with the country in which the United Nations established its headquarters. By Resolution No. 6 A of 13 February 1946, the General Assembly approved the Convention on Privileges and Immunities of the United Nations and invited members of the United Nations to accede to it. This General Convention on the Privileges and Immunities of the United Nations—as it is known—has been ratified by 38 member governments¹ and other member governments have indicated their intention to accede to it in the immediate future.

By Resolution 99 (1) of the General Assembly of 14 December 1946, the Secretary-General of the United Nations was 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 permanent headquarters of the United Nations in New York. In pursuance of this Resolution, on 26 June 1947, an agreement between the United Nations and the United States of America known as the Headquarters Agreement, was signed by the Secretary-General of the United Nations and by the Secretary of State of the United States of America. By Resolution 169 (II) of 31 October 1947, the General Assembly adopted, at its 101st Plenary Meeting, this "Agreement between the United Nations and the United States of America regarding the headquarters of the United Nations." By joint resolution of the 80th Congress of the United States, on 26 July 1947, the agreement was approved by the Congress, and U. S. Public Law 357, enacting into law the provisions of this agreement, was signed by the President of the United States on 4 August 1947.

In accordance with Section 28 of the Agreement, the Headquarters Agreement was brought into force on 21 November 1947 by exchange of notes between Trygve Lie, the Secretary-General of the United Nations, and Warren R. Austin, the duly authorized Representative of the United States of America.

On 18 December 1947, in accordance with the authority granted by the Congress to the President of the United States by Public Law 357, the appropriate provisions of the Headquarters Agreement were extended to the Interim Headquarters of the United Nations at Lake Success. These Interim Headquarters included the land and buildings occupied by the United Nations for its official activities at Lake Success, Long Island, New York, and at Flushing Meadows, Long Island, New York, and such other land and buildings occupied by the United Nations as might be defined from time to time by agreement between the United Nations and the United States of America, after consultation with the proper state and local authorities.

A negotiating committee of the United Nations also reached an Interim Arrangement on Privileges and Immunities of the United Nations in Switzerland with the Swiss Federal Council. This arrangement, which came into force on 1 July 1946, provides for certain privileges and immunities for the United Nations and its personnel in Switzerland. As Switzerland is not a member of the United Nations, it could not become bound by the General Convention. In addition an agreement dated 1 July 1948 concerning the Ariana Site was reached with the Swiss Federal Council.²

The provisions of the Interim Arrangement with the Swiss Government follow closely those of the General Convention on Privileges and Immunities. The "modus vivendi" agreed upon in 1926 between the League of Nations and the Swiss Government was narrower in scope. The Interim Arrangement deals with a number of important matters, such as currency regulations, immunities of representatives of members or experts on missions for the United Nations, and the United Nations *laissez-passer*; subjects which were not covered by the "modus vivendi."

The provisions of the Ariana Site Agreement also paralleled those of the Agreement concluded between the League of Nations and the Swiss Confederation in March 1929, except for certain changes required to bring the text up-to-date because various provisions, particularly those concerning the construction of buildings, structures and roads, were obsolete.

Special arrangements have also been entered into for the International Court of Justice. The Statute of the International Court contains an article³ which extends to the judges of the Court diplomatic privileges when engaged on the business of the Court, and Article 32, paragraph 8, of the Statute stipulates that salaries, allowances and compensations paid to the judges shall be free from taxation. Article 42, paragraph 3, extends to agents, counsel and advocates of parties before the Court the privileges and immunities necessary to the independent exercise of their functions. An Agreement was concluded on 20 June 1946 between the International Court of Justice and the Government of the Netherlands extending to the Court certain privileges and immunities in the Netherlands. This agreement and also certain proposals of the Court on privileges and immunities of the court in member countries other than the Netherlands was approved by a resolution of the General Assembly of the United Nations on 11 December 1946.⁴

Provisions similar to those for the United Nations are also contained in the constitutional documents of international organizations and in particular of those international organizations which have entered into relationship with the United Nations under Article 63 of the Charter; these latter are called "Specialized Agencies." On 21 November 1947 the General Assembly, on the recommendation of its Sixth Committee, approved a multi-lateral treaty known as the Convention on the Privileges and Immunities of the Specialized Agencies,⁵ in order to clarify as far as possible the Privileges and Immunities enjoyed by the United Nations and the various Specialized Agencies.⁶

This Convention is divided into two parts: the first part contains standard clauses on the privileges and immunities which the

General Assembly believed necessary for all these organizations if they were to be able properly to perform their functions, and the second part contains annexes applicable to the various agencies which grant special privileges and immunities or otherwise modify the standard clauses to meet special needs of the agency concerned. Although the General Convention is open to accession by States, members of the United Nations, this Specialized Agencies Convention is open to accession not only by States, members of the United Nations, but also by States who are not members of the United Nations but are members of the Specialized Agencies.*

In the Specialized Agencies Convention it is provided that the Specialized Agency shall be the final authority on its own annex, but the final text of any annex sent by a Specialized Agency to the Secretary-General shall be consistent with the provisions of the constitutional instrument of the agency. If any amendment to that instrument is necessary to achieve this consistency, the amendment is to be brought into force in accordance with the constitutional procedure of that agency before the final annex is transmitted.⁷ However, it is also provided that the provisions of the Convention will not limit or prejudice the privileges which may be accorded by any State to a Specialized Agency by reason of the location in the territory of that State of its Headquarters or a regional office.

The Convention does not prevent the conclusion between any State party and any Specialized Agency of supplementary agreements adjusting the provisions of the Convention or extending or curtailing the privileges and immunities granted it.⁸

The basic problem of international privileges and immunities differs somewhat from that of diplomatic privileges and immunities since the latter are granted on the theory of the immunity of a sovereign, whereas the former are provided in order to facilitate the functioning of the organization. However, basically four types of privileges and immunities are extended in this field. In the General Convention, the United Nations organization itself is given juridical personality, and the capacity to contract, to acquire and dispose of

* See Table of Accession at end of chapter.

immovable and movable property and to institute legal proceedings. Its property and assets are given immunity from legal process and its premises, its archives and, in general, all its documents are determined to be inviolable. The organization itself is given freedom from financial controls and regulations in order that it may be free to transfer its funds, gold or currency from one country to another.⁹ Its assets, income and other property are exempted from all direct taxes, customs duties and prohibitions and restrictions on imports and exports.¹⁰ It is given in the territory of each of its members the same treatment as diplomatic missions in the matter of priorities, rates and taxation on mails, cables, and other communications. Censorship cannot be applied to its official correspondence and the organization is given the right to use codes and to dispatch its correspondence by courier or in sealed bags with the same privileges as are given to diplomatic couriers and bags.¹¹

Similar provisions are made for other International Organizations in their constitutional instruments, and for the Specialized Agencies in the Convention on Privileges and Immunities of the Specialized Agencies.

The representatives of members of the principal and subsidiary organs of the United Nations, and participants in conferences convened by the United Nations, while exercising their functions, are given, under the General Convention of the United Nations, a limited form of diplomatic immunity. This immunity is, however, not applicable between such a representative and the state of which he is a national or of which he is a representative. In contrast, under the United Nations Headquarters Agreement, representatives of members enjoy, in the country in which the United Nations has its site, the full privileges and immunities of an accredited diplomat if they are permanent resident representatives or resident staff members¹² and fall within the category of entitled persons as defined by the General Assembly.¹³ (This, as a matter of practice, includes all resident delegation personnel with the rank of diplomatic secretary and above.) By the terms of the General Convention, the Secretary-General and Assistant Secretaries-Gen-

eral of the United Nations are also accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys in accordance with international law.¹⁴ Other officials of the United Nations enjoy more limited privileges and immunities under the terms of the General Convention¹⁵ and are entitled to immunity from suit and legal process only while engaged in the performance of their functions. By the Agreement between the United Nations and the United States regarding the Headquarters site they also obtain freedom of transit to and from the Headquarters District.¹⁶

Similar provisions for the representatives of members to Specialized Agencies and their staffs, as well as officials of the Organization, are made in the constitutional instruments of certain of the Specialized Agencies and in the Specialized Agencies Convention. These persons are also entitled to freedom of transit to and from the United Nations Headquarters under the Headquarters Agreement.¹⁷

A fourth category of privileges and immunities created by International Convention concerns experts performing missions. In order to facilitate the independent exercise of the functions of such persons during the course of their missions and during the time spent on journeys in connection with these missions, they are granted "necessary" privileges and immunities. Also various agreements and arrangements have been concluded relating to the privileges and immunities to be enjoyed by the United Nations, its organs, representatives of Member States and officials of the United Nations, with respect to the functions to be exercised by United Nations conferences, commissions and missions in the territories of Member and non-member States. The following may be said to be of particular interest and importance.

On 2 November 1950, the Secretary-General concluded with Italy, by means of exchanges of letters, an agreement relating to the privileges and immunities to be enjoyed by the United Nations and the secretariat staff of the Advisory Council in Somaliland.

On 30 January 1951, the Secretary-General concluded an agree-