A Comparative Study Of The Privileges And Immunities Of United Nations Member Representatives And Officials With The Traditional Privileges And Immunities Of Diplomatic Agents

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A COMPARATIVE STUDY OF THE PRIVILEGES AND IMMUNITIES OF UNITED NATIONS MEMBER REPRESENTATIVES AND OFFICIALS WITH THE TRADITIONAL PRIVILEGES AND IMMUNITIES OF DIPLOMATIC AGENTS

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I. INTRODUCTION

Modern states possess wide jurisdictional authority over their national domain.¹ This authority normally extends to persons, both nationals and aliens, residing within a country and to property located therein. That a nation rules over all persons and things within its territory constitutes one of the basic principles of international law.² For a variety of reasons, however, states have accepted limitations upon their jurisdiction. One of these limitations is the special legal status of diplomatic representatives.³ Under customary international law, diplomatic envoys are granted certain privileges and immunities from the normal legal processes of the state to which they are accredited. The concept of diplomatic immunity constitutes one of the oldest parts of international law, originating even before the rise of the modern state.⁴

Since the end of World War I, a new type of international entity has appeared in the form of the international organization. In order to function effectively, these organizations must enjoy a large degree

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¹H. Biggs, THE LAW OF NATIONS 298 (2d ed. 1952). The comprehensive nature of territorial jurisdiction has been characterized by C. Hyde: "Within the national domain the will of the territorial sovereign is supreme." C. HYDE, INTERNATIONAL LAW: CHIEFLY AS INTERPRETED AND APPLIED BY THE UNITED STATES 640 (2d ed. 1947).

²For illustrative materials on the principle of territorial supremacy, see 2 J. Moore, A DIGEST OF INTERNATIONAL LAW §§ 175 et seq. (1906).

³When agreement is reached on the question of opening of diplomatic relations, the next matter considered is the exchange of representatives. National representatives sent by one state to another to conduct diplomatic affairs are called "diplomatic agents." Article 1, paragraph (e), of the 1961 Vienna Convention on Diplomatic Relations defines a "diplomatic agent" as "the head of the mission or a member of the diplomatic staff of the mission." Vienna Convention Diplomatic Relations, done April 18, 1961, in force April 24, 1964, [1972] 3 U.S.T. 3227, T.I.A.S. No. 7502, 500 U.N.T.S. 95 [hereinafter cited to U.N.T.S. only].

⁴For a detailed study of the origin, growth, and purposes of the historical bases of diplomatic immunity, see M. Ogdon, BASES OF DIPLOMATIC IMMUNITY (1936).
of freedom from interference by individual sovereigns. Consequently, questions concerning the legal status of these international organizations, the extent of the privileges and immunities of national representatives to such organizations, and the extent of the privileges and immunities of international officials employed by the organizations have acquired increasing importance. Though the United Nations is only one of many international organizations, the problems which its existence has created in this area are representative of those experienced by other international institutions. An analysis of the legal status of United Nations Member representatives and officials illustrates the differences and similarities between the traditional privileges and immunities accorded to diplomatic agents and the functional privileges and immunities accorded to these new privileged groups.

II. LEGAL STATUS OF MEMBER REPRESENTATIVES TO THE UNITED NATIONS

In the twenty six years that the United Nations has resided in New York, there has been little publicity regarding the privileges and immunities of its Member representatives. Few untoward incidents have occurred; the public is generally unaware of the difference between the privileges and immunities of diplomatic agents accredited to a host state and those of Member representatives accredited to the United Nations. Because of this lack of understanding, it is often assumed that the privileges and immunities of Member representatives are the same as those of diplomatic agents.

This erroneous notion is not totally without foundation. Traditionally, Member representatives to international conferences or to international organizations were treated as members of diplomatic missions. For example, the juridical basis of the privileges and immunities of Member representatives to the League of Nations, as set forth in paragraph 4 of article 7 of the Covenant of the League of Nations, stipulated that Member representatives and League officials should enjoy full diplomatic privileges and immunities.

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5W. HALL, A TREATISE ON INTERNATIONAL LAW 365 (8th ed. 1924).

6LEAGUE OF NATIONS COVENANT, art. 7, states that "[r]epresentatives 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."

7The report of Rapporteur of Committee IV/2, which was adopted by the San Francisco Conference, includes the following comment:

In order to determine the nature of the privileges and immunities, the Committee has seen fit to avoid the term 'diplomatic' and has preferred to substitute a more appropriate standard, based, for the
In contrast, article 105 paragraph 2 of the United Nations Charter does not grant full diplomatic privileges and immunities: "Representatives of the Members of the United Nations . . . shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization." It is clear that the draftsmen of the United Nations Charter were not sure that the term "diplomatic" would be appropriate in this article. They rejected the traditional rationale and adopted a functional principle as the legal basis for granting privileges and immunities to Member representatives.\textsuperscript{7}

From primitive times, man has extended certain rights and privileges to representatives of other political groups in order to facilitate interaction for mutual benefit. A dozen or more legal theories have been advanced to justify the extension of diplomatic privileges and immunities.\textsuperscript{8} In general, however, legal scholars rely upon one of three commonly accepted theories to explain why diplomatic privileges and immunities should exist: "The three most important doctrines, which have all played a role in the development of the law, are the doctrines of the representative character of diplomatic agents, the fiction of exterritoriality, and the functional theory."\textsuperscript{9}

The theory of exterritoriality followed in the wake of sixteenth century ideas of territorial sovereignty and exaggerated diplomatic privileges. Exterritoriality means that diplomatic envoys must be treated as if they are still living in the territory of the sending state.\textsuperscript{10} This theory is based upon two principles: (1) the concept of residence—the diplomatic agent is not subject to local law because he does not reside in the host territory; and (2) the correlative concept of territory—the local authority considers the diplomatic premises to be foreign territory.\textsuperscript{11} This theory has been seriously criticized by legal


\textsuperscript{8}Harvard Law School, Research in International Law: Diplomatic Privileges and Immunities, 26 Am. J. Int'l L. (1932). E.g., the theory of necessity, the theory of exterritoriality, the representative theory, the theory of the right of legation, and the theory of function.

\textsuperscript{9}Kunz, Privileges and Immunities of International Organizations, 41 Am. J. Int'l L. 828, 837 (1947).

\textsuperscript{10}See Briggs, supra note 1.

\textsuperscript{11}See Ogdon, supra note 4, at 80.
scholars and attacked by the courts of different countries and has slowly fallen into disuse.

Under the representative theory, the diplomatic agent is the personification of his ruler or of a sovereign state whose independence must be respected. Many references to this concept are found in literature dealing with diplomatic law and it has to a great extent superseded the theory of exterritoriality. While the representative theory furnishes a sound legal foundation for the universally admitted exemption of diplomats from the authority of the receiving state for acts performed within their official capacity, the corresponding immunities accorded to the diplomatic agent’s family, secretarial staff and ordinary servants, and to his own private acts are not supported by the representative theory. These latter immunities appear to be remnants of the traditional, exterritoriality theory.

A third theory appears most appropriate for modern times. Due to the complexity of international affairs, nations have expanded the size of their diplomatic missions. Consequently, there has been a tremendous increase in the number of persons claiming diplomatic immunity. For the sake of security, host states have endeavored to keep the number of people enjoying privileges and immunities to a minimum. The functional necessity theory can be utilized to effect the most desirable balance between privileges and immunities and the requirements of host states. Statesmen and jurists since the post-war period have widely adopted functional necessity as a theoretical basis and have also utilized it as a test or standard for granting privileges and immunities.

Along with the increase in the size of diplomatic missions, there has been a rapid increase in the number of international organizations. Persons attached to international organizations, such as Mem-

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12Id. See also A. Harshey, The Essentials of International Public Law (1912).

13Several foreign cases support the argument that the doctrine of exterritoriality was disregarded by international practice. See, e.g., Trent v. Ragonesi, [1938] Ann. Dig. 439 (Italy); Belgian State v. Marechal [1954] Ann. Dig. 249 (Belgium) (Belgian embassy in Germany not “Belgian territory,” and therefore filing of war reparation claims precluded; “the parts of foreign territory in which international custom or treaty gives Belgium rights of exterritoriality do not, by virtue of that fact, become Belgian territory.”); Status of Legation Buildings Case, [1930] Ann. Dig. 197 (Germany) (plaintiff employed by German ambassador in London as a steward filed for unemployment benefits under law which stipulated a period of prior German residence, claiming that as a member of the German diplomatic establishment abroad he had in effect been residing on German soil; in holding that he was not entitled to the benefits, the court noted that “the principle of exterritoriality does not include the fiction that the house of the official representation is to be regarded as territory of the sending state.”).
ber representatives and officials of international organizations, are not covered by the exterritoriality and representative theories. Only the functional necessity theory can adequately justify granting certain privileges and immunities to them. Because of these new developments, the draftsmen of the United Nations Charter adopted the functional approach as the legal basis for granting privileges and immunities to Member representatives. However, in practice this functional approach has not been totally accepted. Certain representatives, specifically permanent representatives, have been accorded essentially the same privileges and immunities as diplomatic agents.

This inconsistency between principle and practice is attributable to the different legal instruments which deal with the various types of representatives. Under the League of Nations, there was no distinction between permanent representatives and those delegates attending international conferences with regard to privileges and immunities because both of these types of representatives were governed by one single legal instrument—article 7, paragraph 4 of the Covenant. But under the practice of the United Nations, there is a definite distinction between the so-called permanent representatives, who are stationed at the United Nations headquarters throughout the year, and the temporary representatives, who are sent for the purposes of attending particular sessions of the United Nations or ad hoc conferences convened by the United Nations. Both are considered Member representatives. However, the legal status of permanent representatives is governed by the Headquarters Agreement concluded between the United States and the United Nations in 1947,14 while the legal status of temporary representatives is governed by the United Nations Convention on Privileges and Immunities of 1946.15 Yet both the Headquarters Agreement and the General Convention were enacted for the purpose of implementing the general principle enunciated in article 105 of the United Nations Charter. Thus, the inconsistency is without legal justification since no such distinction was mentioned in the United Nations Charter, which is the fundamental legal document. This complicated situation can be understood only through a careful examination of the relevant legal instruments.

15The General Convention was adopted by the General Assembly of the United Nations on February 13, 1946. For text see 1 U.N.T.S. 15.
A. The Legal Instruments Governing the Status of Member Representatives to the United Nations

The status of Member representatives to the United Nations is governed by four instruments: (1) the Charter of the United Nations, in particular article 105, paragraph 2; (2) the United Nations Convention on Privileges and Immunities (1946); (3) the Headquarters Agreement between the United States and the United Nations; and (4) the Joint Resolution authorizing the President of the United States to bring into effect the Headquarters Agreement. Since these instruments all purport to govern the legal status of Member representatives and since the validity of some is disputed, many inconsistencies remain unresolved.

1. The Charter of the United Nations

Article 105 of the United Nations Charter specifically provides for certain privileges and immunities of the Organization and its Member representatives:

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.

The first and second paragraphs of Article 105 adopted the "functional theory" as the legal basis for granting privileges and immunities to the Organization, its representatives and its officials—the limits of the function constitute the extent of privileges and immunities to be granted.

Paragraph 3 of article 105 gives the General Assembly the power to make recommendations regarding privileges and immunities or to
propose a convention which would require ratification by Member States to become effective. The latter method would assume the form of a multilateral treaty legally binding on all signatory states. The General Assembly chose the convention alternative in 1946.19


In accordance with article 105, paragraph 3, of the United Nations Charter, the Preparatory Commission and the General Assembly of the United Nations studied the matter of privileges and immunities for the United Nations and its personnel. It was decided that not only was a general convention necessary to implement article 105 of the Charter within the territories of its Members, but also that a special agreement would have to be made with the country in which the United Nations established its headquarters.20

The Convention on Privileges and Immunities of the United Nations,21 usually referred to as the General Convention, was adopted on February 13, 1946, by the General Assembly. The purpose of this Convention is to give certain privileges and immunities to the United Nations as an Organization, as well as to the representatives of Member States, officials of the United Nations and experts on mission for the United Nations. The privileges and immunities of Member representatives to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are governed by article IV of the General Convention. This article gives such

1 U.N. GAOR Annex 3.
3 The text of the General Convention was closely based on the text of the draft convention on privileges and immunities in the report of the United Nations Preparatory Commission. For the United Nations Preparatory Commission's recommendations concerning the privileges and immunities, including a draft convention, see the Report of the Preparatory Commission of the United Nations. PC/20 at 60, 72 (1945).
Member representatives a limited range of privileges and immunities during their journeys to and from meetings.\(^{22}\)


**SECTION 11.**

(a) Immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(b) Inviolability for all papers and documents;

(c) The right to use codes and to receive papers or correspondence by courier or in sealed bags;

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

(e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(f) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys, and also;

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

**SECTION 12.** In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

**SECTION 13.** Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.

**SECTION 14.** Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

**SECTION 15.** The provisions of Sections 11, 12 and 13 are not applicable
More than 100 Member States have ratified this Convention, though some have made certain declarations or reservations as to the application of the Convention. An important development which eliminated some of the ambiguities governing the legal status of Member representatives was the ratification of the General Convention by the United States on April 15, 1970. Before the United States ratified the General Convention, the legal status of the United Nations and its Member representatives within the United States was based on the provisions of the International Organization Immunities Act and the Headquarters Agreement.

Section 16 of the General Convention defines "representatives" as including "all delegates, deputy delegates, advisers, technical experts and secretaries of delegations." But in fact, §16 of the General Convention is applicable only to temporary representatives and Member representatives in transit and at meetings of Committees and Commissions, rather than to permanent representatives who are permanent residents of the country in which the organization is located. The legal status of permanent representatives is governed by the Headquarters Agreement.

as between a representative and the authorities of the state of which he is a national or of which he is or has been the representative.

Section 16. In this article the expression "representatives" shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

The United States ratified the General Convention subject to certain reservations. For example, it stated that paragraph (b) of section 18 regarding immunity from taxation and paragraph (c) of section 18 regarding immunity from national service obligations shall not apply with respect to United States nationals and to aliens admitted for permanent residence. For the entire text of the reservations, see [1970] Pt. 2, 21 U.S.T. 1442. For Canada's reservation to the General Convention with respect to the exemption from taxation of Canadian citizens "residing or ordinarily resident in Canada," see 12 U.N.T.S. 416. For Turkey's reservation concerning taxation of Turkish nationals "entrusted by the United Nations with a mission in Turkey as officials of The Organization," see 70 U.N.T.S. 266. Laos acceded to the General Convention on Nov. 24, 1956, with a reservation somewhat similar to Turkey's: "Laotian nationals domiciled or habitually resident in Laos shall not enjoy exemption from the taxation payable in Laos in sic salaries and income." 254 U.N.T.S. 404.

For the purpose of avoiding unnecessary confusion and for the sake of conveni-
3. The Headquarters Agreement between the United States and the United Nations

Due to heavy work-loads throughout the entire year in the United Nations, the efficient functioning of the organization would be hampered without permanent national delegations at United Nations headquarters in New York. The members of permanent delegations should not be confused with the "representatives of Member States to the United Nations" who may come and go as the meetings of organs of the United Nations require. Permanent delegations and permanent representatives remain to exercise their continuous liaison, information collection and distribution functions. In view of the important functions they have assumed, it is surprising that the General Convention made no direct reference to the permanent representatives of Member States. Since permanent representatives and Member representatives attending United Nations meetings are both accredited to the United Nations, some members of the Sixth Committee of the General Assembly maintained that article IV of the General Convention dealing with representatives of Members should be considered as including the members of the permanent delegations as well. But the Assistant Secretary-General in charge of Legal Affairs pointed out that the only object of article IV of the General Convention was the regulation of the exemptions and immunities of temporary representatives to the United Nations. This interpretation was reasonable since the General Convention was intended as a general agreement to apply equally to all Member States acceding to it.

Section 36 of the General Convention provides that the Secretary-General can conclude supplemental agreements subject to General Assembly approval in order to meet specific requirements of individual states. It is under this provision that the status of the permanent
designation, Member representatives attending particular sessions or conferences of the United Nations are referred to as temporary representatives; those representatives stationed at United Nations Headquarters throughout the year are referred to as permanent representatives. When no differentiation is required, the term Member representatives will be used.

In the preamble to Resolution 257 (III) the General Assembly recognized the functions of permanent missions: "The presence of . . . permanent missions serves to assist in the realization of the purposes and principles of the United Nations and, in particular, to keep the necessary liaison between the Member States and the Secretariat in periods between sessions of the different organs of the United Nations. . . ." U.N.G.A. Res. 257 (III), Dec. 3, 1948, II Djonovich, United Nations Resolutions 235 (1948-49).

See note 25 supra.

delegations and the exemptions and immunities of their members came to be considered in some detail in Section 15 of the Headquarters Agreement. Under this Agreement, the United States granted full diplomatic privileges and immunities to the principal resident representatives, usually considered the chiefs of mission with the title of ambassador or minister plenipotentiary. The Headquarters Agreement obviously conflicts with section 11 of the General Convention which accords only functional privileges and immunities.

4. The Joint Resolution

The Congressional Joint Resolution of 1947 is the final legal instrument governing the legal status of Member representatives to the

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Section 15 of the Headquarters Agreement provides:

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

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

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

4. such other principal resident representatives of members of a specialized agency and such resident members of the staffs of representatives of a specialized agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the United States and the Government of the Member concerned, shall, whether residing inside or outside the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it. In the case of Members whose governments are not recognized by the United States, such privileges and immunities need be extended to such representatives, or persons on the staffs of such representatives, only within the headquarters district, at their residences and offices outside the district, in transit between the district and such residences and offices, and in transit on official business to or from foreign countries.

For the full text see 61 Stat. 3416; T.I.A.S. No. 1676; 11 U.N.T.S. 11.

The Reservation clause provides in pertinent part:

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
United Nations. This resolution brought the Headquarters Agreement into effect for the United States. It contains a "Reservation Clause" which indicates that the United States reserves the right to have complete control over the entrance of aliens into any territory of the United States. The chief argument advanced as justification for this reservation is the national security of the United States. This reservation leaves in doubt the extent to which the United States considers itself bound by the Headquarters Agreement.

Thus, because of the numerous and often conflicting legal instruments governing Member representatives, their legal status remains uncertain. Member representatives are divided into two categories, each of which is governed by a different legal instrument. The General Convention is the most basic legal instrument defining the legal status of temporary representatives attending particular sessions of the United Nations' bodies and conferences convened by the United Nations. The legal status of permanent representatives is governed by the Headquarters Agreement as modified by the "Reservation Clause."

B. The Privileges and Immunities of Temporary Representatives to the United Nations

For the purpose of understanding the legal status of temporary representatives, a comparison of the immunities and privileges which the host state extends in normal diplomatic practice to accredited diplomatic agents with those which it extends to temporary representatives is valuable. The customary rules of diplomatic privileges and immunities codified in the Vienna Convention of 1961\(^3\) serve as a basis for comparison.

1. Personal Inviolability

Sir Ernest Satow states that the term "inviolability" implies a

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\(^3\) The United Nations Conference on Diplomatic Intercourses and Immunities met at Vienna in 1961. A Convention entitled "Vienna Convention on Diplomatic Relations" was adopted in the same year. This Convention essentially approved the draft articles prepared by the International Law Commission during its tenth session, though some definitions were made more precise and there were some amendments. Some new provisions were also added. For the complete text see Vienna Convention on Diplomatic Relations, done April 18, 1961, in force April 24, 1964, 500 U.N.T.S. 95. For the draft articles and commentary, see 2 Y.B. Int’l L. Comm’n 89-105 (1958).
higher degree of protection to the diplomatic agent and his belongings than is accorded to a private person.\textsuperscript{32} He adds that it is the duty of the government to which diplomatic agents are accredited to take all necessary measures to safeguard the inviolability of diplomatic agents and to protect them from any act of violence or insult.\textsuperscript{33} Josef L. Kunz takes the same view stating that receiving states are under an international obligation to grant special and extraordinary protection to diplomatic agents.\textsuperscript{34} Though scholars disagree on certain issues regarding immunity problems, they generally agree on this particular issue.

Historically, personal inviolability of the diplomatic agent has been viewed as the fundamental principle from which has been derived all diplomatic privileges and immunities. This principle was codified in article 29 of the 1961 Vienna Convention on Diplomatic Relations:

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.\textsuperscript{35}

Temporary representatives to the United Nations are also accorded the right of personal inviolability. Section 11(a) of the General Convention states that representatives shall enjoy immunity from personal arrest or detention and from seizure of their personal baggage while exercising their functions and during their journeys to and from a place of meeting.\textsuperscript{36}

\textsuperscript{32}E. SATOW, A GUIDE TO DIPLOMATIC PRACTICE (4th ed. Bland 1957) [hereinafter cited as SATOW].
\textsuperscript{33}Id. at 106.
\textsuperscript{34}Kunz, Privileges & Immunities of International Organizations, 41 AM. J. INT’L L. 828, 838 (1947).
\textsuperscript{35}500 U.N.T.S. 95, 110. Article 29 of the 1961 Vienna Convention is identical with article 27 of the International Law Commission’s draft, adopted in 1958, except that the word “appropriate” now appearing in article 29 replaced the word “reasonable” in the Commission’s 1958 draft article. In its commentary on article 27 the International Law Commission explained the underlying rationale of the article:

(1). This article confirms the principle of the personal inviolability of the diplomatic agent. From the receiving State’s point of view, this inviolability implies, as in the case of the mission’s premises, the obligation to respect, and to ensure respect for, the person of the diplomatic agent. The receiving State must take all reasonable steps to that end, possibly including the provision of a special guard where circumstances so require. . . .

\textsuperscript{36}2 Y.B. INT’L L. COMM’n 78, 97 (1958).
\textsuperscript{37}See note 22 supra.
The term "inviolability" not only means that the diplomatic agent shall be immune from any form of arrest or detention, but also that the receiving state shall treat him with due respect and take all appropriate steps to prevent any attack on his person, freedom or dignity. Thus, the problems encountered in the application of this rule of personal inviolability can be discussed under three general headings: (a) arrest and detention; (b) assault and attack; and (c) personal protection of diplomatic agents and temporary representatives.

a. Arrest and Detention

It is universally accepted that diplomatic agents are immune from arrest, detention or imprisonment. But nations have on occasion arrested or detained diplomatic agents. A recent study indicates that the frequency of such incidents has increased dramatically since 1945 and the arrests can be divided into three categories: (1) those cases which appear to be little more than harassment of diplomatic personnel by detention for periods of up to several days; (2) those cases involving diplomatic agents carrying cameras and taking pictures in "forbidden zones;" and (3) those cases involving diplomatic agents who are accused of trespassing in forbidden zones or of some type of espionage activities.

There are few incidents involving the arrest or detention of Member representatives to the United Nations. But a recent case, the arrest and detention of Guinean delegates to the fifth emergency special session of the United Nations General Assembly by Ivory

[38]For example, Iranian police claimed that the arrest of a Soviet diplomatic agent in 1956 was legal since the Russian was without proper papers. N.Y. Times, March 2, 1956, at 1, 7.
[40]For example, Victor Cavendish-Bentwick, the British ambassador who was implicated in an internal matter, was detained for an hour and released by Polish authorities. For more detail about this incident see N.Y. Times, Jan. 3, 1947, at 11. In a similar episode, four United States consular employees were held by the Russians for twenty-four hours after their boat drifted from the British to the Russian side of Travemunde Bay in Germany in 1949. N.Y. Times, Jan. 1, 1949, at 3.
[41]A typical case involved two American diplomatic agents who were arrested September 6, 1948, at the city of Giurgiu on a charge of taking photographs in a forbidden zone of the city and port area. See "American Diplomatic Personnel Detained in Rumania," 65 Dep't State Bull. 404-07 (1948).
[42]Three American attachés and one British attaché were arrested while travelling through Siberia and accused of espionage by the Russian authorities in 1964. See N.Y. Times, Oct. 6, 1964, at 1; Oct. 8, 1964, at 1; Oct. 9, 1964, at 8.
Coast authorities on June 26, 1967, has special significance. On June 30, 1967, the President of the Republic of Guinea informed the Secretary-General of the illegal arrest and detention by Ivory Coast authorities. The Guinean delegation included Dr. Lansana Beavogui, Minister of Foreign Affairs, and Mr. Schkar Marof, the permanent representative of Guinea to the United Nations. Upon receiving this information, the Secretary-General sent a letter to the Minister for Foreign Affairs of the Ivory Coast demanding the immediate release of the Guinean delegation. The Secretary-General stated that the Guinean delegation was protected during its journey by immunities provided for in the General Convention. Furthermore, the Secretary-General protested strongly against the illegal arrest made by the government of the Ivory Coast. In response, the Ivory Coast authorities released the delegation of Guinea. This incident serves to confirm the principle that temporary representatives are entitled to immunity from arrest or detention as provided in § 11(a) of the General Convention.

Two factors emerging from the incident are particularly important. First, the incident showed that there is no direct relationship between two Member States insofar as their United Nations Representatives are concerned. In a dispute the Secretary-General plays an intermediate role whereas, in cases involving diplomatic agents, the concerned states negotiate between themselves. Second, the rank of the persons involved is not the key element in deciding whether immunity attaches—rather it is their function. In the case at hand, although one of the arrested persons was the permanent Representative of Guinea to the United Nations, he was in fact attending a

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43 The Secretary-General’s letter included the following paragraph:

As you are aware, Mr. Lansana and Mr. Marof were covered, during their return journey from the General Assembly session, by the immunities provided for in article IV, section 11, of the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946. As for Mr. Montlouis and his family, they were covered during their journey by the immunities provided for in the Convention on the Privileges and Immunities of the Specialized Agencies adopted on 21 November 1947. Your Government is a party to these Conventions. The ignoring of these diplomatic immunities by your Government constitutes a grave precedent, and if this situation should continue, I would have no other choice but to lodge a strong protest against it and contemplate the means which are open to me to remedy a situation that runs counter to the Conventions binding your Government to the United Nations and to the specialized agency concerned.

special session of the United Nations, and thus was considered as a
temporary representative enjoying only such immunities as are pro-
vided for in the General Convention.

b. Attack and Assault

The framers of the Vienna Convention had historical incidents in
mind when they incorporated the protective role of international law
into the Convention. Article 29 stipulated that receiving states "shall
take all reasonable steps to prevent any attack" on the person, free-
dom or dignity of diplomatic agents. This provision appears quite
necessary in view of the hazards faced by diplomatic agents or foreign
servicemen since political kidnaping has become a popular terrorist
weapon. As a result, diplomacy and the service of one's country
abroad have become perilous occupations. This situation has caused
governments to invoke stringent security measures.

There is no record of an incident involving the kidnaping of Mem-
ber representatives to the United Nations. But there is one case in-
volving the attack by a group of youths on the First Secretary of the
Mauritanian Mission in 1964. Although the attack itself was not
serious, the consequences are worthy of mention. Following the inci-
dent, the representatives of fifty-five Member States sent a joint
letter to the Secretary-General expressing their concern. It was stated
that the First Secretary had been attacked "because he was a diplo-
matic agent and because he was coloured." The signatories declared
that the continued repetition of such incidents could cause "serious
misgivings" as to the conditions required in order for them to live
normal lives and to carry out their work as diplomats within the
United States. The United States Government offered its regrets
and apologized formally to the Mauritanian Mission and its Govern-
ment.

c. Protection

The term "inviolability" implies that receiving states are obliged
to afford a higher degree of protection to diplomatic agents than is

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4 The New York City police authorities acted promptly on being informed of the
incident and located and arrested four boys believed to be guilty of the attack in
question. The district attorney was prepared to prosecute if the First Secretary would
agree to testify. For more detail about this incident, see 2 Y.B. INT'L L. COMM'N 179
(1967).
4 Id.
4 Id.
4 Id.
accorded to private persons. The personal protection of diplomatic agents normally means prosecution of offenders as well as apologies and any necessary redress on the part of the host government to the victim's government. Obviously prosecution of an offender or apology to the victim and his government can only be accomplished after an attack or a serious crime is committed. Therefore, the question is whether a host government should provide protection to prevent any incident from occurring. According to article 29 of the Vienna Convention the answer is in the affirmative, but in practice host states often fail to do so. The chief argument advanced as justification for this failure is the fact that thousands of diplomatic agents are accredited to a host country and that it is very difficult to protect them at all times. Due to numerous incidents involving the kidnaping of diplomatic agents in certain countries, however, some host states do provide secret police or body guards to protect high ranking diplomats.

Furthermore, special laws have been enacted by a majority of nations to provide adequate means for punishing offenses committed by individuals against diplomatic agents. According to English criminal law, a person is guilty of a misdemeanor who by force or personal restraint violates any of the privileges conferred upon diplomatic representatives of foreign countries. This type of legislation also exists in the United States. Since temporary representatives are granted certain privileges and immunities and are therefore a privileged group, it stands to reason that they too should be entitled to the same special protection accorded to diplomatic envoys. At present, however, special protection for temporary representatives has not been explicitly provided.

Another area in which temporary representatives do not enjoy the full immunity of diplomatic agents is the inviolability of residence and property. It is customarily recognized that not only is the person of a diplomatic agent inviolable, but also that his residence and his

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4See Satow, supra note 32, at 178.

4Stephen's Digest of Criminal Law 96-97.


Whoever assaults, strikes, wounds, imprisons, or offers violence to the person of . . . [an] ambassador or other public minister, in violation of the law of nations, shall be fined not more than $5,000, or imprisoned not more than three years, or both.

Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, shall be fined not more than $10,000, or imprisoned not more than ten years, or both.

Id.
property are sacrosanct. Article 30 of the 1961 Vienna Convention explicitly adopts this position. However, article IV, § 11(a) and (b), of the General Convention does not refer to inviolability of private residences and personal property of temporary representatives and in practice inviolability does not attach.

2. Immunity From Legal Process

a. Immunity From Criminal Jurisdiction

The most important consequence of the personal inviolability of diplomatic agents is their right to exemption from the jurisdiction of the receiving state in criminal matters. The immunity of a diplomatic agent in this regard is absolute, he cannot be tried or punished by the local courts of the country to which he is accredited. Most writers in the international law field support this position and it was incorporated into the Vienna Convention. It can be regarded as a virtually settled principle of international law. The principle includes immunity for private acts. In fact, however, it is rare that a crime is committed by an agent while functioning in an official capacity—unless it be an act of espionage sanctioned by his government.

Section 11(a) of the General Convention grants temporary representatives immunity from legal process of every kind with regard to words spoken or written and acts done by them in their official capacity. In other words, they remain subject to the jurisdiction of the host state for their private acts. Here again, temporary representatives do not enjoy full diplomatic immunity. There have been a number of

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51The same provision can also be found in § 13(a) of the Specialized Agencies Convention, approved Nov. 21, 1947, in force Dec. 2, 1948, 33 U.N.T.S. 261, which provides that the “[r]epresentatives of members at meetings convened by a specialized agency shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy . . . [i]mmunity from personal arrest or detention and from seizure of their personal baggage. . . .” It does not refer to inviolability of the residence of representatives. Almost all Headquarters Agreements provide similar privileges and immunities in this respect. The only exception is the ILO Headquarters Agreement. Article 15(a) of the ILO Headquarters Agreement stipulates that the representatives of Member States to the ILO and members of the Governing Body who are in Switzerland on official business, shall enjoy personal inviolability. It provides further that similar inviolability shall attach to the place of residence and all objects belonging to the person concerned.

52SATOW, supra note 32, at 181.


54For a commentary on this article, see 2 Y.B. INT’L L. COMM’N 78, 98-99 (1958).
cases relating to immunity from local criminal jurisdiction of permanent representatives and members of their families. However, there is no incident on record dealing with temporary representatives.

b. Immunity From Civil Jurisdiction

Immunity from civil jurisdiction is also enjoyed by diplomatic agents. The Vienna Convention accepts this principle but provides for some exceptions. The limitations set up in the Vienna Convention are: (1) real actions (action in rem) relating to a diplomat's private immovable property situated in the territory of the receiving state; (2) actions relating to succession in which the diplomatic agent is involved as an executor, administrator, heir or legatee; and (3) suits or other actions relating to any professional or commercial activities exercised by the diplomatic agent in the receiving state which are outside his official functions.

There is little debate regarding the first exception, since every state claims exclusive jurisdiction over immovable property within its territory. The second exception, that a diplomatic agent does not enjoy immunity as a private person from actions relating to succession, is based upon the complexity of succession laws and the incidental interactions of a potentially large number of parties. The third

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54Article 31, paragraph 1, of the Vienna Convention provides:

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:
   (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
   (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
   (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

500 U.N.T.S. 95, 112.

57For a commentary, see 2 Y.B. Int'l L. Comm'n 78, 98-99 (1958). This exception is subject to the condition that the diplomatic agent holds property in his private capacity and not on his government's behalf for the purpose of the mission.

58The second exception is based on the consideration that because it is of general importance that succession proceedings not be hampered, the diplomatic agent cannot plead diplomatic immunity for the purpose of refusing to appear in a suit or action relating to succession. For further comment, see 2 Y.B. Int'l L. Comm'n 78, 98 (1958).
exception arises in proceedings relating to a professional or commercial activity engaged in by the diplomatic agent which are outside of his official functions. It was argued that activities of this kind are normally wholly inconsistent with the position of a diplomatic agent, and that one possible consequence of his engaging in them might be that he would be declared persona non grata by the host country.59

The General Convention says nothing about immunity from civil jurisdiction. Since § 11(b) of the General Convention provides that the Member representatives of the United Nations enjoy immunity only for words spoken or written and acts done by them in their official capacity, there is apparently no immunity from civil jurisdiction for nonofficial acts.

3. Freedom from Taxation

Exemption from taxation is perhaps the privilege of greatest day-to-day importance to diplomatic envoys.60 It is commonly thought that immunity from taxation is not strictly necessary for the exercise of diplomatic functions. Thus it is granted only as a matter of international courtesy rather than as a matter of law. Traditionally, diplomatic agents have always been exempt from all forms of taxation by receiving states.61

Article 34 of the Vienna Convention deals with the exemption of diplomatic agents from taxation:

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:
(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
(b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
(c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;
(d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
(e) charges levied for specific services rendered;

59Id.
61W. HALL, A TREATISE ON INTERNATIONAL LAW 235 (8th ed. 1924).
PRIVILEGES AND IMMUNITIES

(f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.62

Sections (b), (c), and (d) of the article indicate a trend toward the restriction of this aspect of diplomatic immunity. The functional principle is converted into a criterion for determining the extent of the exemption from taxation to be enjoyed by diplomatic agents.63

In spite of the tendency to restrict diplomatic immunity, diplomatic agents still enjoy much broader privileges and immunities in this respect than do temporary representatives to the United Nations. In the case of temporary representatives, the applicable rule is contained in § 13 of the General Convention.64 Since temporary representatives are present in the territory of a host country only to attend meetings, it is customary not to treat such periods as periods of residence for the purpose of determining their liability for taxation.

4. Exemption from Payment of Customs Duties

The view held by various authorities on international law is that the privilege of free entry for articles intended for official use within a mission rests upon international courtesy and not upon any mandatory rule of the Law of Nations. One of the most authoritative writers on international law states that in practice and as a matter of courtesy many states allow all diplomatic agents to receive goods intended for their personal use free of duty.65 However, most states grant such privileges upon the principle of reciprocity. The United States for example, applies a "strict reciprocity" policy which means that diplomatic agents accredited to the United States receive the same number of concessions that foreign governments accord to corresponding United States officials.66

6500 U.N.T.S. 95, 114.
66For more detailed analysis on this subject, see 2 Y.B. Int'l L. Comm'n 89, 100 (1958).
69The practice of the United States is illustrated in the commentary on the Vienna Convention prepared by the Department of State for a Sub-Committee of the Senate Foreign Relations Committee:

Articles for the official use of the mission referred to in paragraph 1(a) of Article 36 are presently imported free of customs duties and import taxes under item 841.10 of the Tariff Schedules of the United States
The International Law Commission in its commentary on this subject, however, states that insofar as the importation of articles for the use of a mission is concerned, exemption is regarded as a rule of international law. Furthermore, the Commission argues that the exemption from payment of customs duty on articles intended for the personal use of members of diplomatic missions should also be accepted as a part of international law. It is on this basis that the Commission formulated the principles which were adopted in the Vienna Convention of 1961. The Vienna Convention, which has been accepted as authoritative, provides that the receiving state, in accordance with local laws, shall grant exemption from customs duties, taxes, and similar charges on articles for the official use of the mission and for the personal use of a diplomatic agent or members of his family, including articles intended for his establishment.

Temporary representatives to the United Nations again enjoy fewer privileges than do diplomatic agents. Section 11(g) of the General Convention states that the United Nations representatives shall enjoy “such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported or from excise or sales taxes.” This sentence appeared ambiguous to members of Sub-Committee I of the Sixth Committee of the General Assembly, because it was difficult to determine the exact scope of the phrase “such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy.” The Sub-Committee stated that governments had encountered difficulties in ascertaining the exact significance of the above, and that the two most important matters which might have been included in the interpretation of the sentence, namely exemption from duties on cus-

and section 10.30(a) of the Customs Regulations. Under these provisions free entry is accorded, on a basis of reciprocity, to all articles (not prohibited by law) which are imported for the official, non-commercial use of the diplomatic mission.


Id.

500 U.N.T.S. 95, 116.

toms goods imported and excise duties or sales taxes, had been specifically excluded.\textsuperscript{71}

As to the exemption of their personal baggage, temporary representatives enjoy the same privileges as diplomatic agents. Article 36(2) of the Vienna Convention provides that the personal luggage of a diplomatic agent is exempt from customs inspection.\textsuperscript{72} But the exemption in both cases is not absolute. In order to prevent any abuse by receiving states, the stipulation was added that baggage may be opened but only in the presence of the diplomatic agent himself or his authorized representative.\textsuperscript{73}

5. Freedom of Communication

One essential condition to the proper functioning of a diplomatic agent is freedom of communication. This freedom enables diplomatic agents to receive instructions from their governments and to send home reports of their actions and observations. The agent without freedom of communication—like a chess player blind-folded—encounters increased difficulty in every move. Thus since earliest times receiving states have permitted officials of diplomatic missions to enjoy free and unhampered communication at all times.\textsuperscript{74} The old rule of law is codified in article 27 of the Vienna Convention, which explicitly states that the receiving state shall permit and protect free communication on the part of the mission for all official purposes. "In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher."\textsuperscript{75}

When temporary representatives are present in the territory of a state in order to attend meetings convened by the United Nations, it is constantly necessary to apprise the home government of the latest developments and to obtain new instructions or information. For this purpose, they are allowed the use of appropriate means to ensure the confidential character of their correspondence. Following this line of reasoning, § 11(c) of the General Convention accorded the right to use codes and to receive papers or correspondence by courier or in sealed bags. Up to now, United Nations records show only one case in which

\textsuperscript{71} Id.
\textsuperscript{72} 500 U.N.T.S. 95, 116.
\textsuperscript{73} Id.
\textsuperscript{74} Id. See also, § 11(f) of the General Convention at note 22 supra.
\textsuperscript{75} 500 U.N.T.S. at 108. For a more detailed analysis, see 2 Y.B. Int'l. L. Comm'n 97 (1958). See also, 500 U.N.T.S. 95, 110 and note 28 supra.
a complaint was received from the mission of a Member State that a coded message sent by cable to the home government had not been received. It is possible, of course, that this failure was due to an error in transmission.\textsuperscript{78}

One interesting aspect for consideration is the method of correspondence used by diplomatic agents and temporary representatives to the United Nations. The bulk of diplomatic correspondence is normally carried through ordinary post or telegraph or in bags carried by diplomatic couriers. However, with the increase in the volume of such correspondence between envoys and their governments and the need for expeditious communication, several countries have established wireless transmitting stations in their embassies for direct communication with the foreign office of the home state. But this new method of correspondence is subject to one condition, that being the permission of the host state.\textsuperscript{79} Although the General Convention has no specific provision on the subject, it seems reasonable that if temporary representatives want to use a wireless transmitter they would be subject to the same conditions as the diplomatic agents.

6. Immigration Restrictions, Alien Registration and National Service Obligations

It is generally accepted that an ordinary alien who lives in a country is subject to local laws and regulations in the same manner as the nationals of that state.\textsuperscript{80} The diplomatic agent, unlike an ordinary alien, acts as a representative of his government and is entitled to special treatment. Thus, Article 35 of the Vienna Convention expressly provides "[that] the receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting."\textsuperscript{81}

Temporary representatives to the United Nations remain in the host state or pass through another state only on a more or less transient basis. Moreover, time is a very important factor for these repre-

\textsuperscript{78} Y.B. Int'l L. Comm'n 188 (1967).
\textsuperscript{79} Article 27(1) of the Vienna Convention provides: "However, the mission may install and use a wireless transmitter only with the consent of the receiving State." 500 U.N.T.S. at 108. See note 31 supra.
\textsuperscript{80} See the Inter-American Convention on the Status of Aliens adopted at Havana, Feb. 20, 1928. Article 1 provides: "States have the right to establish by means of laws the conditions under which foreigners may enter and reside in their territory." Article 2 states: "Foreigners are subject as are nationals to local jurisdiction and law. . . ." See 4 Hudson, International Legislation 2374.
\textsuperscript{81} 500 U.N.T.S. 95, 114.
sentatives since they are sent for the purpose of attending particular sessions of the United Nations or ad hoc conferences convened by the United Nations. In order to reduce the complexity of certain procedures for entering into the territory of host states, representatives are exempt from such formalities as immigration restrictions and alien registration. Furthermore, temporary representatives are also exempt from the national service obligations of the host state. These exemptions are granted to temporary representatives, their spouses and their families under §11(d) of the General Convention. Section 11(d) makes reference to exemptions “in the state which they are visiting or through which they are passing in the exercise of their functions.” This language is significant because it requires explicitly that states other than the host state should grant similar exemptions.

In accordance with article IV, §12 of the General Convention, temporary representatives are given immunity from legal process with regard to words spoken or written and all acts done by them in discharging their duties, both during the course of conferences and meetings and also after completion of such conferences and meetings when their representative status has ended. This latter immunity is given to temporary representatives in order to secure to them complete freedom of speech and independence in the discharge of their duties. However, the provisions of §§11, 12 and 13 of the General Convention are not applicable between a representative and the authorities of the state of which he is a national or of which he is or has been the representative. The rationale behind this rule is that according to generally recognized rules of international law, when a representative is a national of the host state, he should not enjoy privileges and immunities to the same extent as other representatives who are of foreign nationality. The host state must reserve the right to determine the extent of the privileges and immunities to be enjoyed by such persons.

C. THE PRIVILEGES AND IMMUNITIES OF PERMANENT REPRESENTATIVES TO THE UNITED NATIONS

As previously noted, the General Convention only deals with the privileges and immunities of Member representatives to particular

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3 Id.
4 Id. at 175. In a number of instances a host state has refused to grant diplomatic privileges and immunities to representatives on the ground that the person concerned did not possess the nationality of the state he was representing but that of a third state.
5 See note 22 and accompanying text supra.
sessions of United Nations bodies or conferences convened by the United Nations. It is the United Nations Headquarters Agreement which provides for the privileges and immunities of permanent or resident representatives to the United Nations. Section 15 of the United Nations Headquarters Agreement contains a very general statement which is the ultimate legal basis for granting privileges and immunities to resident representatives:

(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 staff as may be agreed upon between the Secretary-General, the Government of the United States and the Government of the Member concerned,

shall, whether residing inside or outside the headquarters district, be entitled in the territory of the United States to the same privileges and immunities, subject to corresponding conditions and obligations, as it accords to diplomatic envoys accredited to it . . . .

Under this provision, permanent representatives are accorded a status similar to that of diplomatic agents accredited to the government of the country concerned. The provision makes a clear distinction between the “temporary representatives” in article IV of the General Convention and the “resident representatives” in § 15 of the Headquarters Agreement. As previously stated, the privileges and immunities of diplomatic agents are based on the Vienna Convention of 1961. According to § 15 of the Headquarters Agreement, the Vienna Convention also provides the standard for granting privileges and immunities to permanent representatives.

For the purpose of clarifying the legal status of permanent representatives to international organizations, a new step was taken in 1969 by the International Law Commission. A set of articles dealing
with the legal status of permanent representatives was approved by the Commission and sent to Member States for consideration and comment. The background of this action by the International Law Commission is a General Assembly resolution (1289 XIII) in 1958 requesting the Commission to consider the question of relations between states and international organizations. At its eleventh session, in 1959, the Commission took note of this resolution and decided to consider the question in due course, which it did in 1962 when Mr. Abdullah El-Erian was appointed Special Rapporteur and instructed to submit a report on the subject to the next session of the Commission.

Mr. Abdullah El-Erian presented his preliminary report in 1963. His second report was submitted four years later in 1967. The third report, containing a full set of draft articles and commentaries on the legal status of permanent representatives to international organizations was submitted in 1968. At the twenty-first session, he submitted a fourth report containing a revised set of draft articles with commentaries on representatives of states to international organizations. The resulting articles which were adopted by the International Law Commission hopefully will be accepted as a codification of the modern rules of international law concerning permanent representatives to international organizations.

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7 Id. at 221-22. In accordance with Articles 16 and 21 of its statute the International Law Commission decided to transmit the present group of draft articles through the Secretary-General to Governments for their observations. Id.

8 An account of the historical background of this subject is contained in the report of the International Law Commission on the work of its twentieth session. See 2 Y.B. Int’l L. Comm’n 193-94 (1968).


12 The second report contained: (a) a summary of the Commission’s discussion at its fifteenth and sixteenth sessions; (b) a discussion of general problems relating to the diplomatic law of international organizations; (c) a survey of the evolution of the institution of permanent missions to international organizations; (d) a brief account of the preliminary questions to be discussed by the Commission before it should consider the draft articles; and (e) three draft articles relating to general provisions of an introductory nature. See 2 Y.B. Int’l L. Comm’n at 133-53 (1967).

13 The third report is in 2 Y.B. Int’l L. Comm’n 119-63 (1968). This report consists of four parts: Part I, general provisions; Part II, permanent missions of international organizations; Part III, delegations to organs of international organizations or conferences convened by international organizations; Part IV, permanent observers of non-member states to international organizations.

14 This revised set of draft articles was adopted by the International Law Commission in 1969. It is reproduced in 2 Y.B. Int’l L. Comm’n 207-22 (1969).

15 Id. at 206.
Article 30 of the International Law Commission's draft articles deals with personal inviolability of the permanent representatives and is largely a reproduction of the provisions of article 29 of the Vienna Convention. The principle of personal inviolability of permanent representatives implies the obligation of the host state to respect and to ensure respect for the person of individual representatives. The host state must take all necessary measures to safeguard this immunity, including a special guard detail when necessary. Various incidents have occurred from time to time involving the personal inviolability of permanent representatives. In 1962 the permanent representative of a Member State complained that he had been subjected to abuse from the driver of a passing car. United States authorities investigated the case, suspended the license of the driver and conveyed the driver's apologies to the representative concerned.

Another incident involved the Spanish ambassador to the United Nations, who was beaten by a truck driver when he refused to move his car from a diplomatic parking zone in New York City. The attacker was arrested and charged with assault. The most recent incident was one involving Mr. Rossides, the ambassador of Cyprus to the United Nations. He and his wife were mugged and robbed as they strolled in Central Park on June 21, 1972. This was ironic in that he was serving as the Chairman of the United Nations Committee on Relations with the Host State, which was set up in 1971 to deal with the safety of Member representatives in New York City.

A series of incidents aimed at the U.S.S.R.'s Mission by the Jewish Defense League and its leader Rabbi M. Kahane merits special attention. The purpose of the attacks was to protest the treatment of

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*Id.* at 212.


*Ambassador de Pinies reported this incident to the police of New York City. See N.Y. Times, Dec. 1, 1971, at 12.*

*According to police reports, three men attacked the 77 year old barrister and his wife, looped ropes around their throats, took their wristwatches and Mrs. Rossides' engagement ring, threw the couple's shoes into the Central Park Reservoir and escaped. N.Y. Times, June 23, 1972, at 19. At the United States Mission to the United Nations a spokesman stated, "[w]e are quite concerned about this; we contacted Ambassador Rossides when we heard about this and expressed our concern and I understand that our people have contacted [Police] Commissioner [Patrick V.] Murphy's office and tried to find out who the culprits were." *Id.*

69*Id.*

*Kahane, in a speech outside the U.S.S.R. mission to the United Nations, said the Jewish Defense League was forming teams to harass Soviet diplomats in New York City. N.Y. Times, Jan. 11, 1971 at 1. Anti-Russian protesters are waging their war on several fronts—in the courts, in government offices, and in the streets—in trying to force the Russians to free Jewish people in the U.S.S.R.*
Jews in the U.S.S.R. The means used were varied: Soviet representatives were followed on foot and by car by members of the Jewish Defense League;\textsuperscript{102} League members carried signs calling Soviet representatives "pigs" or using other abusive terms;\textsuperscript{103} bombs were placed in cars and at the entrance of the U.S.S.R. Mission;\textsuperscript{104} and shots were fired at the U.S.S.R. Mission.\textsuperscript{105} Following these incidents, strong protests were made by the Russian Delegation demanding more police protection.\textsuperscript{106} Official apologies were conveyed to the Russian Delegation by the United States government.\textsuperscript{107} Hot debates and serious denunciations also erupted in the General Assembly of the United Nations,\textsuperscript{108} and some delegates have suggested changing the site of the United Nations Headquarters.\textsuperscript{109}

The host state does owe a certain amount of protection to representatives. However, practical considerations made it virtually impossible to guarantee complete protection. It is particularly difficult to counter attacks by such well organized groups as the Jewish De-

\textsuperscript{102}New York City Mayor Lindsay expressed outrage at the actions and statements of the Jewish Defense League and stated that he would take every step possible to protect U.N. personnel. N.Y. Times, Jan. 11, 1971, at 1. Kahane was arrested on a warrant issued after he failed to appear for a hearing on riot charges growing out of events on Dec. 27, 1970, but was freed on bail.

\textsuperscript{103}See N.Y. Times, Jan. 12, 1971, at 10.

\textsuperscript{104}An auto belonging to delegation attaché M. Globenko of the U.S.S.R. mission to the United Nations was fire-bombed and slightly damaged outside a cottage used by the Soviet staff in Rockaway. N.Y. Times, July 26, 1971, at 51. Nassau county police, after a phone call warning that a bomb had been placed at the entrance to the U.S.S.R. Mission, found an explosive device and disarmed it. See N.Y. Times, July 23, 1971, at 51.

\textsuperscript{105}Four rifle shots were fired through a window of the Soviet mission to the United Nations on Oct. 17, 1971. An activist member of the Jewish Defense League, Jaroslowicz, was seized by police and charged with illegal possession of a firearm. N.Y. Times, Oct. 22, 1971, at 45. Subsequently G. Shillian, a 17 year old Jewish Defense League activist, was arrested and charged with lying about his identity in order to buy the rifle used in firing the shots into the Soviet U.N. Mission. Charges against Jaroslowicz were subsequently dismissed. N.Y. Times, Feb. 2, 1972, at 19.

\textsuperscript{106}In a formal note to the United States, the U.S.S.R. protested the firing of shots into its United Nations mission. The note was handed to the American Ambassador in Moscow and charged American officials with not taking effective measures to prevent such incidents. It also questioned whether Soviet representatives would be able to continue to function in the United States. N.Y. Times, Dec. 29, 1971, at 12.

\textsuperscript{107}N.Y. Times, Oct. 21, 1971, at 1.


\textsuperscript{109}Secretary-General U-Thant, deploring violence by the Jewish Defense League against U.S.S.R. personnel, stated that such actions only serve to strengthen arguments of those who wish to move United Nations Headquarters. N.Y. Times, Jan. 19, 1971, at 42.
fense League. It may well be that stronger measures should be
adopted by host states to ensure the personal protection of repre-
sentatives. At present, however, no effective means exist to keep such
incidents from occurring.

As discussed in the previous section, temporary representatives
only enjoy limited exemption from criminal jurisdiction of the host
state. But permanent representatives, like diplomatic agents, enjoy
complete exemption from criminal jurisdiction. This constitutes
the principal difference between the "diplomatic" immunity enjoyed
by permanent representatives and the "functional" immunity en-
joyed by temporary representatives. In other words, temporary repre-
sentatives are granted immunity only for official and not for private
acts, while permanent representatives have immunity for both offi-
cial and private acts.

Furthermore, temporary representatives are not entitled to im-
munity from civil jurisdiction while permanent representatives enjoy
the same privileges and immunities with respect to civil jurisdiction
as diplomatic agents. The judgement in the case of Tsiang v.
Tsiang illustrates the fact that permanent representatives are im-
une from the civil jurisdiction of local courts. On January 6, 1949,
a civil action was brought in the Supreme Court of the State of New
York against Ting-fu F. Tsiang by his wife for separation and sepa-
rate maintenance based on the fact that she had been married to Dr.
Tsiang for twenty-five years and had four children by him, and that
Mr. Tsiang had secured a Mexican divorce invalid under both
Chinese and New York law. Dr. Tsiang, who occupied the post of
ambassador plenipotentiary and permanent representative of the
Republic of China to the United Nations, appeared through counsel
and moved to set aside the service of the summons upon the ground
that he had diplomatic immunity as granted by the Headquarters
Agreement. Based on the State Department's request and the terms
of the Headquarters Agreement, the court set aside the summons.

There are other cases relating to the jurisdiction of local courts.

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110 About 60 special trained guards were sent by Washington to New York City to help police protect the U.S.S.R. mission. N.Y. Times, Jan. 19, 1971, at 42.
111 Article 32 of the International Law Commission's draft articles which deal with immunity from jurisdiction of permanent representatives is based on Article 31 of the Vienna Convention. For the text and commentary, see 2 Y.B. INT'L L. COMM'N 212 (1969).
112 Id.
114 Id.
Most cases arise from the operation of motor vehicles by persons entitled to diplomatic privileges and immunities under § 15 of the Headquarters Agreement. In *Friedberg v. Santa Cruz,* the Appellate Division of the Supreme Court of New York recognized the immunity of the permanent representative of Chile in an action for damages and loss of personal services allegedly caused by the negligent operation of a motor vehicle by the representative’s wife. In *People v. Von Otter* the immunity of the wife of a member of the staff of the Swedish delegation to the United Nations was upheld in connection with a parking violation. In *New Rochelle v. Page-Sharp,* the third secretary of the Australia Mission received a summons for speeding. His claim of diplomatic immunity was upheld by virtue of the Headquarters Agreement and the recognition of his position under the Agreement.

There are other important privileges and immunities enjoyed by permanent representatives. Article 36 of the International Law Commission’s draft articles deals with exemption from dues and taxes. This draft article is based on article 34 of the Vienna Convention. According to the draft, except in cases involving nationals of the host state, permanent representatives shall enjoy extensive exemption from taxation.

Draft article 37 deals with exemption from “personal services.” Under this article, the host state shall exempt permanent representatives and members of their respective missions from all personal services, public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting. This article is based on the provisions of article 35 of the Vienna Convention. The Commission’s commentary on the provision on which article 35 is based states that the article attempts to deal with cases “where certain categories of persons are obliged, as part of their general civic duties or in cases of emergency, to render personal services or to make personal contributions.” The phrase “military obligations” covers military obligations of all kinds; the enumeration in article 37 is by way of example only.

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119196 Misc. 8, 91 N.Y.S.2d 290 (1949).
121For text and commentary on this article, see 2 Y.B. Int’l L. Comm’n 214 (1969).
122Id.
123Id.
Draft article 38 deals with exemption from customs duties and inspection and is based on article 36 of the Vienna Convention. While in general permanent representatives and members of the diplomatic staff of permanent missions enjoy exemption from customs and excise duties, the detailed application of this exemption varies in practice in each host state according to the headquarters agreements and to the system of taxation in force.

Since the draft articles concerning the privileges and immunities of permanent representatives were modeled on the corresponding provisions of the Vienna Convention, the proposed privileges and immunities of permanent representatives are analogous to those of diplomats. Although permanent representatives live within the boundaries of the United States, they are not accredited to the United States but to the United Nations. The representatives do not enter into a direct relationship with the host state unlike the case of diplomatic agents accredited to a state. Under former United States statutes and traditional practice, no diplomatic privileges and immunities were extended to representatives other than those accredited to and accepted by the United States. The United States, however, has changed its policy and practice and accorded full diplomatic privileges and immunities to permanent representatives.

Since permanent representatives, like temporary representatives, are accredited to the United Nations, rather than to the United States, the question therefore arises as to why permanent representatives are subject to the Headquarters Agreement instead of Article IV of the General Convention. It is quite difficult to comprehend why the exemptions and immunities of permanent representatives should be different from those of temporary representatives.

Since permanent representatives do not assume the character of diplomatic agents accredited to the United States, there is no basis for application of the traditional principle of reciprocity of treatment which the terms of the Headquarters Agreement provide. Section 15 of the Agreement grants every permanent representative "... the same privileges and immunities, subject to corresponding conditions and obligations, as are accorded by the Government of the United States to diplomatic envoys accredited to it." Based on this section, restrictions on the privileges and immunities of permanent representatives can be imposed by the United States in retaliation for restrictions placed on United States diplomats. United States Customs

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PRIVILEGES AND IMMUNITIES

authorities, for instance, have on occasion inspected the unaccompanied baggage and effects of representatives of certain states on the grounds that United States diplomats to those countries had been subject to similar treatment. On similar grounds the United States has imposed limits on the movement of the representatives of certain countries. The Member States concerned have protested these restrictions. The United Nations, however, has not been directly involved in the correspondence and discussion between the host state and the affected Member States regarding these restrictions. Nevertheless it has been the position of the Secretariat that the privileges and immunities granted should be those afforded to diplomats in general and that they should not be subject to conditions of reciprocity.

D. SPECIAL PROBLEMS CONCERNING THE PRIVILEGES AND IMMUNITIES OF MEMBER REPRESENTATIVES

Although temporary and permanent representatives to the United Nations are often treated differently, there are areas in which no differentiation is made; i.e., they are treated under the single generic heading of Member representative without distinctions between their temporary or permanent status. Several areas are of special importance.

1. Waiver of Immunity

Although Member representatives are entitled to certain exemptions from the jurisdiction of the courts of the host state both with respect to criminal and civil matters, it is now well recognized that such immunity can be waived. Waiver prevents abuse of immunities granted to privileged individuals, which if not waived, would cause injustice. It permits local courts to entertain actions on the merits against privileged persons.

Article 32 of the 1961 Vienna Convention on Diplomatic Relations

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123 Id. In 1960, when the Chairman of the Council of Ministers of the U.S.S.R. attended the fifteenth session of the General Assembly, the United States declared that he should reside “in the closest proximity to the Headquarters of the United Nations” and that his movements, other than his arrival and departure, should be confined to Manhattan Island. After a protest made by the U.S.S.R., the Chairman of the Council of Ministers was eventually permitted to travel to the premises maintained on Long Island by the Mission of the U.S.S.R.
124 Id. at 178.
125 For a detailed discussion on the principle of waiver, see 2 C. HYDE, INTERNATIONAL LAW 75 (1947).
deals with the principle of waiver of immunity of diplomatic agents. The same principle is incorporated in article IV, § 14 of the General Convention:

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

There is no doubt that in theory waiver can prevent injustice. The rationale behind this principle is self-explanatory. The questions it raises are practical ones: Who has the right to make the waiver? What act constitutes waiver? According to § 14 of the General Convention, a Member State has an absolute right to decide whether a waiver should be made. In other words, the representative cannot waive his immunity unless his sending government consents. Moreover, he cannot object if his government decides to waive his immunity. It is also quite clear from the wording of § 14 of the General Convention that it is nowhere contemplated that the judgment of a Member State is subject to revision or examination by the host state.

As to what constitutes a waiver of immunity, the General Convention does not contain a specific provision. The International Law Commission has recommended that in criminal proceedings the waiver must be express, whereas in civil or administrative proceedings the waiver can be express or simply implied. The Vienna Convention, on the other hand, requires express waiver in both civil and criminal proceedings.

129Article 32 of the Vienna Convention provides in part that the “immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.” 500 U.N.T.S. 95, 112.
1301 U.N.T.S. 22. Similar provisions can be found in § 15 of the Specialized Agencies Convention. See note 22 supra.
132Article 32(2) of the Vienna Convention provides that “[w]aiver must always be express.” 500 U.N.T.S. 112.
2. *Right of the Host State to Expel a Representative*

It is a recognized right of every sovereign state to ask for the recall of a diplomatic agent. This right is expressly guaranteed by article 9 of the Vienna Convention. Based on article 9, the receiving state may at any time, without having to explain its decision, notify the sending state that the head of its Mission or any member of the diplomatic staff of the Mission is not acceptable. The right of a government to ask for the recall of a diplomatic agent accredited to it is known as the principle of *persona non grata*.

However, this principle is inapplicable in the case of a Member representative. His accreditation is to the United Nations and not to the host state. Since individuals designated as representatives of their governments to an international organization must enter and reside in the host state, the interest of the host state in persons designated as representatives of Members is manifest. Though the principle of waiver of immunity ideally prevents abuse of privileges by Member representatives, the General Convention does not deal with the problem of a representative who abuses his privileges in such a manner as to become objectionable to the host state. But the Specialized Agencies Convention does contain a provision governing the matter. In accordance with § 25, representatives of Members 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. If abuse of privileges of residence occurs with regard to unofficial activities, the representative may be required to leave by the host state.

In light of this, it would be most unusual if host states did not enjoy a similar remedy with regard to Member representatives. Under the terms of the General Convention, in particular article IV, the privileges and immunities granted to representatives are related to the official functions they perform. Thus no question of requiring a representative to leave a country can normally arise based on acts actually performed by a representative as part of his official duties. However, when non-official acts are committed which amount to abuse of the privileges and immunities accorded, it is understood that a demand for the recall of a representative may be made.

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132 In international law and diplomatic usage, this principle applies to a person who is unacceptable to the government which is to receive him as diplomatic agent, such as an ambassador or a minister. *See* 4 J. Moore, *Digest of International Law* 465 (1906).


Nevertheless, it is essential that this power be exercised sparingly by the host state and only in the most serious circumstances. Furthermore, consultations should be held between host authorities and the appropriate government in the event that a demand is made for the departure of a representative. In practice, the United Nations may inquire or protest if a Member representative is asked to leave the host state without firm evidence that he was engaged in subversive or illegal activities.\textsuperscript{135}

In several instances Member representatives have been withdrawn upon the request of the United States. These requests were provoked because of serious abuse of the privileges of residence. A case in point was the request for the immediate departure of a member of the permanent Mission of Czechoslovakia to the United Nations because of "his highly improper activities" which had no relationship with his duties as a member of the permanent delegation to the United Nations. He was accordingly recalled by his government.\textsuperscript{137}

3. \textit{Representatives Possessing the Nationality of the Host State}

Though it may be possible for a state at times to appoint a national of the receiving state as one of its diplomatic officers with the express consent of the receiving state, the occasion for such an appointment is very rare today. However, if a national of the receiving state is appointed, it is now settled that the receiving state must accord him certain privileges and immunities. The International Law Commission considers it essential that a diplomatic agent, even though he is a national of the receiving state, should enjoy at least a minimum of immunity to enable him to perform his duties satisfactorily—\textit{e.g.}, inviolability and immunity from jurisdiction with respect to official acts performed in the exercise of his function. The Vienna Convention provides in article 38 that a diplomatic agent who is a national of the receiving state shall enjoy immunity from jurisdiction and inviolability with respect to official acts performed in the exercise of his functions. Insofar as the granting of additional privileges and immunities is concerned, they remain in the discretion of each state.\textsuperscript{138}

\textsuperscript{132} Y.B. INT'L L. COMM'N 182 (1967).
\textsuperscript{137} For a detailed report of this incident, see 1150 DEP'T STATE BULL. 66, 67 (1961).
\textsuperscript{138} For the United States stand on this problem, see \textit{Hearings on the Vienna Convention on Diplomatic Relations before the Subcommittee of the Senate Committee on Foreign Relations}, 89th Cong., 1st Sess. (1965), at 62. \textit{See also} 4 O. HACKWORTH, DIGEST OF INTERNATIONAL LAW 517, 541 (1942).
Section 15 of the General Convention provides that §§ 11, 12 and 13 of the Convention do not apply between a representative and the authorities of the sending state. This section expressly denies representatives of the nationality of the host state the privileges, exemptions and immunities that are accorded to representatives of other states.

III: THE LEGAL STATUS OF UNITED NATIONS OFFICIALS

The extraordinary development of international organizations requires a determination of the legal status of those persons directly associated with them. These people are engaged in a new profession which was unknown before the twentieth century. The people in this profession are known as international officials, but their status is still subject to confusion. For example, the press and general public frequently ascribe diplomatic privileges and immunities to international officials. As previously discussed, diplomatic agents possess special status derived from international custom and usage, whereas the status of international officials is regulated by international treaties and conventions. States have granted special privileges and immunities to diplomatic agents for many centuries. However, states are not obligated by traditional principles of international law to grant special status to international officials.

The legal basis for granting privileges and immunities to international officials is contained in article 105(2) of the United Nations Charter.
which officials of the United Nations enjoy privileges and immunities so as to function without hindrance, but neither the Charter nor the Convention define "international official." Suzanne Bastid's 1931 definition still seems entirely valid:

International public officials are persons, who, on the basis of an international treaty constituting a particular international community, are appointed by this international community or by an organ of it and under its control to exercise, in a continuous way, functions in the interest of this particular international community, and who are subject to a particular personal status.¹⁴⁵

From this definition the proposition emerges that international officials possess certain distinctive characteristics. First, they are different from diplomatic agents. The diplomatic agent is a national official rather than an international one;¹⁴⁶ a diplomatic agent represents one sovereign state in its dealings with others. He has immunity from the jurisdiction of other states since the state for which he speaks and acts is outside of the local jurisdiction, though in his own country he has no immunity at all. On the other hand the international official does not represent a particular state, but an international organization to which certain functions have been assigned by multilateral treaty in the interest of every member. Whatever immunities are necessary for the proper performance of his functions are necessary everywhere, in his own country as well as abroad; for even at home he remains an agent of the international organization.¹⁴⁷

¹⁴⁵Kunz, supra note 9, at 854.
¹⁴⁶Referring to the international character of officials of the United Nations, the Preparatory Commission of the United Nations stated in its 1945 report on the Organization of the Secretariat:

2. If it is to enjoy the confidence of all the Members of the United Nations, the Secretariat must be truly international in character. Article 100 of the Charter states that 'the Secretary-General and the staff shall not seek or receive instructions from any Government or any other authority external to the Organization', and shall refrain from any action which might reflect on their position as international officials, responsible only to the Organization. The same article lays on each Member of the United Nations the obligation to respect the exclusively international character of the responsibilities of the Secretary-General and the staff, and not to seek to influence them in the discharge of their responsibilities.


¹⁴⁷M. Hill, Immunities and Privileges of Officials of the League of Nations 8-9 (1945). Hill quoted a letter of June 11, 1925, from the First Secretary-General of the
Second, international officials are also different from Member representatives to the United Nations. Member representatives are accredited by their home states to the United Nations and not to a particular state. Yet representatives are still officials of their own states. In contrast, international officials never represent a government.

International officials are appointed by an international organization, or by some organ of it, to carry on its work on behalf of the international community. This organization need not be universal, embracing all countries of the world; the concept also includes regional bodies, as long as they possess a public international personality independent from that of the states which compose them. Thus, there must always be an element of supra-national representation in the position of international officials. Consequently, international officials require certain privileges and immunities from the national law of individual states, in order that they may freely fulfill their important functions.

Just how extensive the privileges and immunities of international officials should be is still a matter of debate, but there is no question that they are entitled to some special status. Strictly speaking, it is the work rather than the official which is protected, as the Staff Regulations clearly state:

The immunities and privileges attached to the United Nations by virtue of Article 105 of the Charter are conferred in the interests of the Organization. These privileges and immunities furnish no excuse to the staff members who enjoy them for non-performance of their private obligations or failure to observe laws and police regulations. In any case where these privileges and immunities arise, the staff member shall immediately report to the Secretary-General with whom it rests to decide whether they shall be waived.\(^{148}\)

According to this regulation, international officials are not members of a highly privileged group. While they work in an international service they enjoy the accompanying safeguards, but they must obey all ordinary laws governing their private actions. Once again, the functional test is the legal basis for granting privileges and immuni-

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ties to the international officials, though there are exceptions.149

With regard to officials of the United Nations, article 105(2) of the United Nations Charter is the basic legal instrument. It provides that United Nations officials shall "enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization." Article V of the General Convention provides the extent to which officials of the United Nations enjoy privileges and immunities in the exercise of their functions. Section 17 of article V of the General Convention sets forth the categories of officials to which article V applies:

The Secretary-General will specify the categories of officials to which the provisions of this article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.150

The Secretary-General, in line with this responsibility, proposed to the General Assembly during the second part of its first session that "all members of the Secretarial staff, except for those recruited locally and assigned hourly rates of pay" should fall within the terms of article V of the General Convention.151 A joint sub-committee of the Fifth and Sixth Committees of the General Assembly studied and approved the proposal at its 50th plenary meeting.152 In actual practice the names of officials entitled to privileges and immunities are reported to Member States annually in a master list communicated to the Member States by the Secretary-General.153

Not all international officials have the same privileges and immunities; there are variations arising from differences in rank as well as from differences in the applicable conventions. Article V of the General Convention classifies United Nations officials into two distinct categories. The first category is that of high officials who enjoy the same privileges and immunities as diplomats. The second category consists of all other United Nations officials who are accorded functional privileges and immunities. Differences between these two categories merit thorough examination.

149The exception applied to the Secretary-General and all Assistant Secretaries-General. See notes 154-66 and accompanying text infra.
1511 (2) U.N. GAOR, 6th Comm. at 209 (1946).
1521 U.N. GAOR at 76 (1946).
A. DIPLOMATIC PRIVILEGES AND IMMUNITIES ENJOYED BY EXECUTIVE HEADS AND OTHER SENIOR OFFICIALS OF THE UNITED NATIONS

Section 19 of the General Convention stipulates that the Secretary-General and all Assistant Secretaries-General and their families shall enjoy the same privileges and immunities as diplomatic agents. The principle behind this provision is not new. Before World War II, the common practice was to grant diplomatic privileges and immunities to all international officials regardless of their rank. But the legal instruments dealing with international organizations and their personnel during and after World War II adopted the "functional principle" as a legal basis for granting of privileges and immunities. The granting of diplomatic privileges and immunities to high officials is therefore an exception to the general functional principle. Indeed, it was argued in a report of the Preparatory Commission to the General Assembly that "there is every reason for confining full diplomatic immunity to the cases where it is really justified." Full diplomatic immunity is justified for the Secretary-General and Assistant Secretaries-General due to the vital nature of their duties and responsibilities.

However, the structure of the United Nations changed as a result of the 1953 Reorganization of the Secretariat. Based on Resolution 886 of the General Assembly, the ranks of Assistant Secretary-General and Principle Director were abolished. Instead, a simple top level immediately below the Secretary-General was created. These are the Under-Secretaries and officials having the status of Under-Secretaries. Before the term "Assistant Secretary-General" was...

1. U.N.T.S. 15, 24-26. Section 19 of the Convention states:
   In addition to the immunities and privileges specified in section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouse and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

2. For example, article 7, paragraph 4 of the Covenant of the League of Nations provides that representatives of the Members of the League and officials of the League shall enjoy full diplomatic privileges and immunities. See note 6 supra.

3. Diametrically opposite points of view have been expressed by Percy E. Corbett and E.F. Ranshofan-Wertheimer on the question of granting diplomatic privileges and immunities to international officials. See P. CORBETT, POST-WAR WORLD 173 (1944) and E. RANSHOFAN-WERTHEIMER, THE INTERNATIONAL SECRETARIAT: A GREAT EXPERIMENT IN INTERNATIONAL ADMINISTRATION (1945).


5. Resolution 886(IX) of Dec. 17, 1954. The scheme was first presented by the
replaced by the term "Under-Secretary," there were only eight Assistant Secretaries-General.\(^5\) Under the reorganized system, officials at the level immediately below the Secretary-General are more numerous than the former Assistant Secretaries-General.\(^6\) The question therefore arises whether such top-level officials are entitled to the same privileges and immunities as were accorded Assistant Secretaries-General under § 19 of the General Convention.

In the opinion of the Secretary-General, officials having the status of Under-Secretaries should enjoy the privileges and immunities provided under § 19 of the General Convention. Mr. Hammarskjold's stand was incorporated in his report to the General Assembly as a part of the plan for the reorganization of the Secretariat. Paragraph 31 of that report summarizes his viewpoint:

In presenting these new organizational arrangements, I have

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\(^5\) Each Assistant Secretary-General is in charge of a department in the Secretariat. An effort is made not to have two from the same Member State. The eight departments are Security Council Affairs, Economic Affairs, Social Affairs, Trusteeship and Information From Non-Self-Governing Territories, Public Information, Legal Affairs, Conference and General Services, and Administrative and Financial Service.

\(^6\) Following is a list of officials holding the rank of Under-Secretary as of 1967. Officials holding the rank of Under-Secretary at United Nations Headquarters: Administrator, United Nations Development Programme; Associate Administrator, United Nations Development Programme; Co-Administrator, United Nations Development Programme; Commissioner for Technical Cooperation; Executive Director, UNICEF; Executive Director, United Nations Training and Research Institute; Secretary-General's Special Representative to the Conference of the Eighteen-Nation Committee on Disarmament; Under-Secretary, Controller; Under-Secretary, Director of General Services; Under-Secretary, Director of Personnel; Under-Secretary for Conference Services; Under-Secretary for Economic and Social Affairs; Under-Secretary for General Assembly Affairs and Chef de Cabinet of the Secretary-General; Under-Secretary for Inter-Agency Affairs; Under-Secretary Legal Counsel; Under-Secretary for Special Political Affairs; Under-Secretary for Political and Security Council Affairs; Under-Secretary for Trusteeship and Non-Self-Governing Territories.

Officials holding the rank of Under-Secretary at established offices elsewhere: Commissioner-General, UNRWA; Executive Secretary, ECA; Executive Secretary, ECAFE; Executive Secretary, ECE; Executive Director, United Nations Industrial Development Organization; Secretary-General, United Nations Conference on Trade and Development; Under-Secretary, Director-General of the United Nations Office at Geneva; United Nations High Commissioner for Refugees.

Officials holding the rank of Under-Secretary In charge of Missions or on special assignment: Chief of Staff, UNTSO; Chief Military Observer, UNMOGIP; Commander, UNEF; Commander, UNFICYP; Special Representative of the Secretary-General in Cyprus; United Nations Representative for India and Pakistan.
anticipated that the officials having the status of Under-Secretaries will be accorded the privileges specified in Section 19 of the Convention on the Privileges and Immunities of the United Nations. That Section, in providing that the Secretary-General and all Assistant Secretaries-General would be granted the privileges and immunities of diplomatic envoys, clearly contemplated that the highest level of officials immediately under the Secretary-General should be accorded the privileges appropriate to their functions. I trust that it will be found consistent with the intentions of that Section that those who would now be the highest level of officials immediately under the Secretary-General should enjoy the privileges recognized as appropriate to that status and to the responsibility it carries.\(^\text{161}\)

Aside from this affirmative view of the former Secretary-General, there are several other reasons for granting diplomatic privileges and immunities to this category of officials. First, they have far-reaching responsibilities for the conduct of activities within their respective fields. Second, the size and scope of the responsibilities of the United Nations as a whole and the number of programs which the Organization has found necessary have all greatly expanded since the adoption of the General Convention early in 1946. Thus, in the case of heads of the subsidiary organs, such as the Commander of the United Nations Emergency Force, the Executive Director of the United Nations Children's Fund, and the United Nations High Commissioner for Refugees, all of whom are Under-Secretaries, the magnitude and importance of their functions and operations are such that the privileges and immunities envisaged in § 19 of the Convention are as necessary for the independent exercise of their functions as they were to the Assistant Secretaries-General.

In fact, United Nations officials possessing full diplomatic status are even more numerous than § 19 of the General Convention indicates.\(^\text{162}\) For instance, the Commissioner-General of United Nations Relief and Works Agency for Palestine Refugees (UNRWA) and his deputy possess diplomatic status in all of the host countries.\(^\text{163}\) The field representative of UNRWA, known as the Director of UNRWA

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\(^{162}\) Y.B. INT'L L. COMM'N 281 (1967).

\(^{163}\) Id.
Affairs, also has diplomatic status in Jordan, Lebanon, and Egypt but not in Syria.\textsuperscript{164}

Staff members of many missions sent by the United Nations to Member States have also been granted diplomatic status. One example is the United Nations Commissioner in Libya.\textsuperscript{165} An even greater exception to standard practice occurred in Indonesia where the government granted the Principal Secretary and members of the Secretariat of the United Nations for Indonesia the privileges and immunities accorded to members of the diplomatic corps of similar rank accredited to Indonesia.\textsuperscript{166}

B. FUNCTIONAL PRIVILEGES AND IMMUNITIES ENJOYED BY THOSE OFFICIALS OTHER THAN EXECUTIVE HEADS AND SENIOR OFFICIALS OF THE UNITED NATIONS

Officials other than executive heads and senior officials are granted only functional privileges and immunities. According to the functional principle, officials should be accorded only those privileges and immunities which are necessary for the independent exercise of their function. The privileges and immunities provided for this group of officials in article V of the General Convention include immunities from legal process "in respect of words spoken or written and all acts performed by them in their official capacity."\textsuperscript{167} They also enjoy immunity from taxation on their salaries, from national service obligations, from immigration restrictions and alien registration, along with certain privileges with respect to exchange regulations, repatriation facilities in time of international crisis, and duty-free importation of furniture and effects when first taking up their post.\textsuperscript{168}


1. Personal Inviolability

Under well recognized rules of international law, the person of a

\textsuperscript{164}In Syria, the Director of UNRWA Affairs possesses only functional privileges and immunities as provided in § 18 of the General Convention. Buehrig, supra note 162, at 84. In a decree of Aug. 1, 1967, Syria excluded locally recruited staff of UNRWA from all immunities except taxation on salaries. Id. at 102.

\textsuperscript{165}2 Y.B. Intr'l. L. Comm'n 280 (1967).

\textsuperscript{166}Id.

\textsuperscript{167}U.N.T.S. 15, 24-28.

\textsuperscript{168}Id.
diplomatic agent is inviolable; i.e., he is not subject to any form of arrest or detention in the receiving state. This inviolability also extends to his residence. The receiving state must take all reasonable steps to ensure this inviolability, and if circumstances demand, to provide special police guard. The Vienna Convention explicitly incorporated this principle in article 29.169

In contrast, the General Convention does not contain any specific provision relating to the personal inviolability of officials of the United Nations. This suggests that international officials do not enjoy privileges and immunities under international law which are as extensive as those accorded to diplomatic agents. Thus it can be inferred that international officials may be treated as other aliens in the territory of the host state. It may further be surmised that a host state incurs responsibility only if damage is sustained by international officials as a result of acts or omissions of the officials of the host state whenever such acts or omissions contravene the international obligations of a host state.170 The fact that international officials are not granted personal inviolability was recognized by Secretary-General Lie in 1949 when he stated that United Nations personnel are not immune from arrest or interrogation for acts which are unrelated to their official duties and unlawful in the Member State where they were alleged to have been committed. On July 11, 1963, a memorandum171 from the United Nations Legal Counsel of the Secretary-General's Deputy Chef de Cabinet reemphasized this principle: "We should like to confirm that the Secretary-General has, on a number of occasions, informed delegations that United Nations Secretariat personnel do not enjoy immunity from arrest or prosecution for alleged acts which are not related to their official duties ..."172

Thus, international officials are subject to arrest or detention by the host state. Various cases have occurred in which international officials were arrested and placed in detention. One example was the arrest of Valentin A. Gubitchev by the United States for alleged acts of espionage.173 Mr. Gubitchev, an official of the United Nations em-

169See note 35 and accompanying text supra.
172Id. at 188.
173See text accompanying notes 194-95 infra for a discussion of other aspects of this case.
ployed on the Headquarters Planning Staff, was subsequently found guilty and sentenced to serve fifteen years in prison. Before his sentence was initiated, he was deported. Another case involved the interrogation of a local employee of a United Nations Information Center by Czech authorities. The Chief of Diplomatic Protocol of Czechoslovakia informed the Director of the Center that the official concerned "was suspected of conduct with a group engaged in anti-state activities" and requested the delivery of the official for interrogation. With reference to this request, the Secretary-General instructed the Director "to ask, in accordance with the general practice of the United Nations, for written confirmation of the subject of the interrogation including specific assurance that the matters upon which the official will be questioned do not refer to United Nations activities or to words spoken or written and acts performed in his official capacity." This assurance was given by the Ministry of Foreign Affairs of Czechoslovakia. The Secretary-General was later informed that the official concerned was convicted for acts which had no connection with his work at the United Nations Information Center.

In 1956, Syrian military police violated the premises of UNRWA and arrested two United Nations officials. After a period of detention they were expelled from the country. One of the two officials was charged with lighting a match at the time of an air alarm during office hours. The second official was charged with inciting the workers against the local government, though no evidence in support of this charge was presented. The Secretary-General protested to the Syrian government and sought an appropriate apology for the arrest and expulsion suffered by the United Nations officials. In January, 1957, a further incident occurred in Syria when a security officer entered UNRWA's premises and sought to take custody of a United Nations official for questioning. The Secretary-General once again protested to the Foreign Ministry of Syria regarding this incident and sought assurances that the official concerned would have the right of unmo-

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174 See note 194 infra.
177 Id.
178 The name of the subsidiary organ and of the particular Member State are not mentioned in the Yearbook of the International Law Commission. However, one author has identified the subsidiary organ as UNRWA and Syria as the Member government concerned. Buehrig, supra note 162. For detailed discussion on this case, see 2 Y.B. Int'l L. Comm. 269 (1967), and Buehrig, supra note 162 at 87.
listed entry into the country in the future in order that his official function on behalf of the United Nations might be fulfilled.\textsuperscript{179} Other Middle East countries have also interfered with UNRWA. From 1967 to 1969 a total of 128 members of the UNRWA staff were arrested in Gaza alone by Israeli occupation authorities. Detention or arrest of international officials for alleged security reasons has seriously interfered with UNRWA's work.

From the foregoing, it is apparent that international officials do not enjoy immunity from arrest or interrogation for alleged acts unrelated to their official duties. The policy of the United Nations with respect to cases involving arrest of its officials attempts to balance the needs of the United Nations with those of the host state. The Secretary-General has stated that the arrest of an official of the United Nations by the host state must meet three requirements: (1) the Secretariat should be informed beforehand of any impending arrest or interrogation; (2) assurances should be given that arrest is due to actions performed outside the individual's official capacity and that the person shall not be questioned with regard to his official functions; and (3) that arrested persons should be treated in accordance with universally recognized principles of justice.\textsuperscript{180} In addition, once an official is arrested, the United Nations insists upon the right to send officials to visit and converse with the person detained.\textsuperscript{181} Some Member States, most notably Israel which was responsible for the Gaza arrests, have ignored certain portions of this policy.

2. Immunity from Legal Process

Under a generally recognized principle of international law, diplomatic agents are granted complete immunity from the jurisdiction of the courts of the receiving state.\textsuperscript{182} Immunity is granted in the case of official acts because such acts are imputed to the sending State. Immunity is granted for private acts to ensure the unhampered fulfillment of the responsibilities of the diplomatic agents. Furthermore, there is no obligation on the part of diplomatic agents to testify before any court.\textsuperscript{183}

\textsuperscript{179} Buehrig, supra note 162, at 87.
\textsuperscript{180} Id. at 99. See also Crosswell, supra note 163, at 66.
\textsuperscript{181} For the memorandum prepared by the Legal Department of the Secretariat with respect to the right of the United Nations to visit and converse with staff members in custody and detention, see United Nations Juridical Yearbook 191-92 (1963). See also Buehrig, supra note 162, at 100.
\textsuperscript{182} See note 52 supra.
\textsuperscript{183} Vienna Convention Article 32(2) states that "[a] diplomatic agent is not obliged to give evidence as a witness." 500 U.N.T.S. 95.
The exemptions and immunities of United Nations officials in the United States, as stipulated by the terms of the United Nations Charter and the General Convention, are designed solely to protect the independence of officials in their United Nations functions. No exemption from local jurisdiction is provided officials for acts in their private capacity. In § 18(a) of the General Convention, international officials are given immunity “from legal process in respect of words spoken or written and acts performed by them in their official capacity.” This exemption is far less than the total immunity from legal liability of the diplomatic agent.

There are many cases which are directly related to the issue at hand. The first landmark case was Ranallo v. Westchester County. In October, 1946, the Secretary-General’s chauffeur Ranallo was charged in Westchester County, New York, with speeding while driving the Secretary-General to a business meeting. As an employee of the United Nations acting in an official capacity, Ranallo challenged the jurisdiction of the court on the ground that he, at the time of the alleged offense, had been performing an act falling within his functions, and that he was therefore entitled to the immunity provided in § 7(b) of the International Organizations Immunities Act. The court rejected Ranallo’s argument:

To recognize the existence of a general unrestricted immunity from suit or prosecution on the part of the personnel of the United Nations, so long as the individual be performing in his official capacity, even though the individual’s function has no relation to the importance or success of the Organization’s deliberations, is carrying the principle of immunity completely out of bounds. To establish such a principle would be in effect to create a large preferred class within our border who would be immune from punishment on identical fact, for which the average American would be subject to punishment. Any such theory does violence to and is repugnant to the American sense of fairness and justice and flouts the very basic principle of the

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184 Before the United States acceded to the General Convention, the International Organizations Immunities Act was the legal instrument for granting privileges and immunities to international officials in the United States. Section 7(b) of that Act provided that officials and employees of international organizations who are within the scope of the Act are “immune from suit and legal process relating to acts performed by them in their official capacity and falling within their function.” 59 Stat. 669; 22 U.S.C. § 288 (1964).


188 At that time the Headquarters Agreement was not concluded, nor had the United States ratified the General Convention. See note 184 supra.
United Nations itself, which in its preamble to its Charter affirms that it is created to give substance to the principle that 'the rights of all men and women are equal'.

The court further stated that any such construction of the principle of immunity would go beyond the diplomatic immunity for ambassadors, foreign ministers, and members of their households because, theoretically speaking, the group is subject to return to their country for trial and punishment for various offenses. Since the United Nations itself does not have a tribunal for trial and punishment for offenses such as Ranallo's, the court concluded that unlimited immunity would be tantamount to a ruling that such officials should escape trial and punishment entirely. The court further held that without a trial of the issue itself, the defendant was not entitled to immunity as a matter of law.

A careful examination of the Ranallo judgment reveals the fact that the issue was not the defendant's identity but rather the character of his act. The court clearly states that the only way in which the nature of an act, private or official, can be determined is by a full trial. One leading authority has criticized this approach:

Interpretations of Section 18(a) of the General Convention, and Section 7(b) of the Immunities Act, suggest that the local courts are competent to determine whether a given act is 'official' or 'private' within the meaning of these provisions. The argument is that if the nature of an act as official or private were left for the organization to determine, its sole recourse would consist of the execution, or non-execution, or waiver. Since waiver is not mentioned in connection with Section 18(a) of the General Convention, the decision must rest with the local authorities. . . . On the basis of this interpretation, it may be seen that the determination of the character of a given act by an international official passes from international to national control and endangers the independence of the international organization. . . .

Three possible methods have been suggested to avoid difficulty in this area. The first is to allow an international organization to de-
cide in its discretion whether a given act is official in nature. The second solution is to permit the executive branch of the host state to decide the nature of a particular act. The third solution is to create an international arbitration procedure which determines the nature of an act. In practice, these suggestions have been ignored.

The Secretariat of the United Nations, as well as a number of writers, did not accept Ranallo as properly decided; nor does it represent current United States practice as several more recent cases indicate. In United States v. Coplon, Judith Coplon and Valentine Gubitchev were indicted on charges of violation of espionage laws. Mr. Gubitchev was a United Nations official of USSR nationality. He claimed diplomatic immunity on grounds that he had entered the United States as Third Secretary of the Soviet Delegation to the United Nations and still retained a post with the Foreign Ministry of the U.S.S.R. The Court dismissed the defendant's claim of diplomatic immunity as Third Secretary of the U.S.S.R. Ministry of Foreign Affairs in light of the views expressed by the Department of State:

Even if we assume that at the time of his arrest defendant was still a Third Secretary of the Soviet Ministry of Foreign Affairs it is clear that he was not thereby clothed with diplomatic immunity. The dispositive fact is that the State Department has declared to the Soviet Embassy by aide-memoire of March 24, 1949, and aide-memoire of April 29, 1949, that defendant does not enjoy diplomatic status. Even if we assume that he is a foreign emissary and that he entered as such, it is clear that he was not so received.

Referring to the defendant's position as a member of the staff of the Secretariat of the United Nations, the court declared that the Headquarters Agreement was the source of Gubitchev's privileges since he was an employee of the United Nations. The Headquarters Agreement did not, by virtue of his employment relationship to the

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182 Id.
183 Lawrence Preuss is one. This case has been carefully analyzed and criticized by him. Preuss, Immunities of Officials and Employees of the United Nations for Official Acts: The Ranallo Case, 41 Am. J. Int'l L. 555 (1947).
185 Gubitchev's claim of diplomatic immunity was supported by the Soviet Embassy in Washington. He contended that on entering the United States he was a Third Secretary of the Soviet Ministry of Foreign Affairs, that he carried a Soviet Diplomatic passport, and that he had been granted a diplomatic visa by the United States. 84 F. Supp. at 477. See also United States v. Coplon, 88 F. Supp. 915 (S.D.N.Y. 1950).
186 84 F. Supp. at 475.
United Nations alone, confer any immunity upon the defendant. With respect to the Immunities Act, the court stated that the "... Act does not avail the defendant. It does not confer general diplomatic status or immunity. It does confer immunity on United Nations officers and employees for the category of acts performed by them in their official capacity and falling within their functions as such officers or employees. The offense charged against the defendant does not fall within such a category." In other words, unlawful espionage was not a direct function of the defendant as an employee of the United Nations. Freedom from arrest for such conduct is not a privilege or immunity necessary for the independent exercise of an official function in connection with the United Nations.

In People v. Coumatos, the court strictly adopted the principle of functional necessity for granting privileges and immunities to international officials and rejected the defendant's argument, finding the defendant guilty of grand larceny. The court based its argument on the International Organizations Immunities Act of 1945, in which it is provided that only official acts of officials afford immunity. Since the pertinent provisions of the General Convention are the same as the terms of the Immunities Act, identical judgments would result today.

3. Tax Exemption of Officials of the United Nations

According to nearly universal current practice, diplomatic
agents and those members of their families residing with them are exempt in the receiving state from all taxes upon their persons, salaries, and personal property. Similarly, taxes cannot be levied on the diplomatic Mission. If officials of the United Nations are to be truly international in character, they must also be relieved from such national executions as taxation. In practice, however, exemption from taxation is less than complete for all except the highest ranking United Nations officials, since officials of certain nationalities are kept from having even limited exemption by their respective governments. When permitted, immunity from income taxation is one of the most striking privileges enjoyed by international officials. It is also one of the privileges with respect to which the principle of nationality discrimination has established its strongest hold. For example, the United States has consistently refused to grant an income tax exemption to its own nationals working for the United Nations within the confines of the United States.

According to § 18(b) of the General Convention, officials of the United Nations shall be exempt from taxation on the salaries and emoluments paid to them by the United Nations. The section makes no reference to the principle of nationality discrimination, nor does it give latitude to Member States to determine the extent to which this provision can be applied to their own nationals. Nevertheless, a few states, of which the United States is the most notable, do not grant exemption from national income tax. The rationale underlying the United States position is that the Constitution gives Congress the sole power to exempt American citizens from taxation. The United States therefore requested that a reservation to § 18(b) be recorded when the General Convention was adopted by the General Assembly in 1946. The reservation was officially placed on § 18(b) of the General Convention by the United States when it acceded to the General Convention in April, 1970. It reserved to the United States the right to tax American citizens and resident aliens working for the

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241Article 34 of the Vienna Convention. 500 U.N.T.S. 95. See note 63 supra.
243When the General Assembly adopted the resolution approving the General Convention on February 13, 1946, the United States reserved its position with regard to the Convention provisions on tax immunity for American citizens and exemption of American citizens from national service obligations. The United States took the position that only the Congress of the United States has the power to exempt American citizens from taxation or military service. 1 U.N. GAOR 454-55 (1946).
United Nations. Certain other states have recorded the same reservation. The taxation problem is thus one of the most interesting dilemmas of the United Nations.

In 1948 the General Assembly requested that all Member Nations exempt citizens employed by the United Nations from taxation. This request was ignored by those states which either refused to accede to the Convention or which accepted the Convention with a reservation on § 18(b). In response, the General Assembly approved at its Third Session a Tax Equalization - Staff Assessment on United Nations Staff Members, which is comparable to a national income tax. Staff salaries were raised by approximately the amount of the assessment; i.e., they were converted from net to gross rates. Assessments, collected by withholding, were to "be applied as an appropriation in aid of the budget." The General Assembly further authorized the Secretary-General to reimburse members of the staff who paid national income taxes on salaries received during 1949. It also directed the Secretary-General to provide for the payment of salaries on a gross basis, without provision for the reimbursement of national income taxes in all future personnel contracts. The Secretary-General reported to the Ninth Session of the General Assembly in 1954 that the Staff Assessment Plan had not achieved the principle of equality among Member States.

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203 Id. A reservation is "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, acceding to, accepting or approving a treaty, whereby it purports to exclude the legal effect of certain provisions of the treaty in their application to that State." Article 2(d) of the Draft Articles on the Law of Treaties, Waldock, (Final) Report on the Law of Treaties, [1966] 2 Y.B. INT'L L. COMM. 169, 178, U.N. Doc. A/6309/Rev 2 (1966). In the context of bilateral agreements, a reservation is closely analogous to a counter-offer by the reserving state. The most difficult problems concerning reservations arise when one or more of the parties to a multilateral treaty objects to another state's attempt to become a party subject to one or more reservations. Article 19 of the Draft Article on the Law of Treaties deals with the legal effects of reservation. See Id. at 180.

204 For Canada's reservation to the General Convention on taxation of Canadian citizens "residing or ordinarily resident in Canada," see 12 U.N.T.S. 416. For Turkey's reservation concerning taxation of Turkish nationals "entrusted by the United Nations with a mission to Turkey as officials of the Organization," see 70 U.N.T.S. 266.


206 Id.

207 Id.


209 Report of the Secretary-General on the use of income derived from the Staff Assessment Plan. 9 U.N. GAOR, Annexes, Agenda Item No. 38 at 20, 21, 46.
The General Assembly subsequently adopted Resolutions 973(X)\textsuperscript{10} and 1099(XI)\textsuperscript{11} which provided a new solution for the double taxation problem of United Nations employees who paid both the staff assessment and national income tax. The new procedure provided for a refund of staff assessments up to the amount of national tax liability. To ensure equity among governments following the adoption of the new procedure, a Tax Equalization Fund was created to which the revenue from staff assessments was initially credited. A share in this fund was established for each United Nations Member in proportion to its percentage contribution to the United Nations regular budget. In determining amounts due to each Member State, however, the shares of governments that continue to impose a national tax on staff members are charged with the refunds of staff assessments to individuals paying those taxes. From time to time, governments that have not imposed such taxes, and which accordingly have had no charges made against their shares in the fund, are permitted to use such shares to reduce their contribution to the regular United Nations budget. Consequently, a Member State taxing the official income of any staff member or official of the United Nations is not entitled to a reduction of its assessed contribution to the United Nations budget.\textsuperscript{217}

This plan eliminates the annual appropriations to reimburse employees for payment of national income taxes. The United States, which continues to tax staff members who are U.S. nationals or permanent residents of the United States, no longer receives a share of the revenue from the Staff Assessment Plan. The effect on other Member Nations is to relieve them of the necessity of contributing to the tax reimbursement of United States nationals.

The case of United Nations Relief and Works Agency (UNRWA) is uniquely deserving of mention in this regard. First, the majority of UNRWA's staff is locally recruited.\textsuperscript{218} Further, virtually all of UNRWA's locally recruited staff are paid on a monthly rather than an hourly basis. Thus they are all "officials" of the United Nations within the terms of Article V of the General Convention.\textsuperscript{219} The intent of the General Convention is to grant all officials the same exemption

\textsuperscript{217}Id.
\textsuperscript{218}There were 12,900 persons locally recruited by UNRWA in 1964. Bushro, supra note 162.
\textsuperscript{219}U.N.T.S. 15, 24.
regardless of their nationality. Based on this principle of non-discrimination, UNRWA claims exemption from national taxation for its local employees. Though some difficulties were initially encountered,²² exemption of UNRWA's locally recruited officials from income tax is now conceded by all host governments.

4. Exemption of Officials of the United Nations from National Service Obligations

Article 35 of the Vienna Convention provides that receiving states "shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting." Exemption is based on the principle that while an ordinary alien who lives in the country does so for his own purposes and is therefore subject to the local laws and regulations in the same manner as the nationals of a state, the residence of a diplomatic agent in a state is purely on account of his being posted there in the service of his home government.

In order to guarantee their independent character and to secure the independent exercise of their functions, officials of the United Nations must also be immune from national service obligations. The effective functioning of an international organization obviously requires the continued services of its staff. If large numbers of staff are called away for military service by their home governments, the work of an international organization will suffer. This consideration is particularly relevant with regard to those officials who are nationals of the state upon whose territory the headquarters of the particular organization is located.

The question of exemption from national service obligations presents a problem similar to that presented by exemption of international officials from national income taxation. In both instances, the issue is whether the interests of a state should be given precedence over international interests.

The General Convention, § 18(c), stipulates that officials of the United Nations shall be immune from national service obligations. However, five Member States recorded reservations to this section when they acceded to the General Convention.²³ Laos and Thailand declared that their nationals should not be exempt from national service obligations by virtue of their employment as United Nations officials.

²²BUEHRIG, supra note 162, at 88.
²³Turkey, Laos, Mexico, Thailand and the United States.
officials. In the case of Mexico, the grant of privileges and immunities to United Nations officials who are of Mexican nationality excludes § 18(c). Turkey acceded to the General Convention subject to the same reservation. A similar reservation by the United States is of greater consequence because the headquarters of the United Nations is located in the United States. Many employees of the United Nations, particularly at lower levels, are United States nationals.

In the case of Switzerland, a special arrangement governs national service by Swiss nationals employed by the United Nations or the specialized agencies. An agreement with the United Nations specifies that the Secretary-General shall communicate to the Swiss Federal Council "a list of officials of Swiss nationality liable for service of military nature." The Swiss Federal Council and the Secretary-General then agree upon a limited list of Swiss nationals who are exempt from military service on the basis of the offices they hold. In the case of other Swiss nationals, the United Nations may ask for "postponement or some other appropriate measure."

Several states have sought to apply military service provisions to locally recruited officials of a United Nations subsidiary organ. This problem is especially important for UNRWA, since most of its staff is recruited locally. Up to 1965 the problem was of little consequence in the host countries. Immunity from national service obligations claimed by UNRWA for its employees was never an issue in Lebanon since the Lebanese armed services are volunteer rather than conscript. In Jordan compulsory service was not instituted until 1967, and in Gaza citizens were not subject to military service prior to 1965. Thus the question of national service obligations never arose. After 1965, however, a conscription law was promulgated by the Governor-General of Gaza eliminating UNRWA staff immunity from national service obligations. A definite solution to the problem in Gaza was

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For the reservation of Laos, see 254 U.N.T.S. 404. For that of Thailand, see 231 U.N.T.S. 347.


See 70 U.N.T.S. 266.

See 1 U.N.T.S. 15.


Id. For the practice of Switzerland with regard to the military service of Swiss nationals employed by the League of Nations, see King, supra note 190, at 47, 48.

Buehrig, supra note 162, at 95.
never agreed upon, and UNRWA simply resorted to termination of employees who were conscripted.\textsuperscript{229}

5. \textit{Exemption from Immigration Restrictions and Alien Registration}

In order to enable diplomats to enter freely upon their responsibilities and to cross national frontiers without any loss of time, an exemption is provided from immigration restrictions and alien registration. Officials of the United Nations are also excluded from immigration restrictions and alien registration under § 18(d) of the General Convention. A similar provision is contained in the various headquarter agreements, such as § 15(d) of the Headquarters Agreement with the Government of Switzerland.\textsuperscript{220}

Before its accession to the General Convention, this problem was regulated in the United States by the International Organizations Immunities Act. Under § 7(a) of the Immunities Act, international officials and members of their immediate families were entitled to the same freedom of entry and departure as diplomats of foreign governments. A comparison of § 7 of the Immunities Act to § 18(d) of the General Convention reveals no substantial differences between them.

On December 24, 1952, a new Immigration and Nationality Act\textsuperscript{221} was enacted in the United States. This Act provides that any alien, lawfully admitted into the United States, may apply for permanent resident status. The term alien includes representatives of foreign governments and officials of international organizations. When foreign representatives or officials of international organizations apply for permanent resident status, they must file with the Attorney General a waiver of all privileges and immunities to which they were previously entitled. They retain those privileges and immunities which a United States citizen, who is also an official of an international organization, is entitled to enjoy under the International Organizations Immunities Act. Thus an immigrant who has applied for permanent resident status receives only those privileges, exemptions,


and immunities which are granted to American citizens similarly employed.

There have been few incidents which directly concern this issue, although two cases have occurred regarding taxes. In 1961, the authorities of a Member State sought to impose "taxes de résidence" on all locally recruited United Nations staff members serving in the country. Although the Technical Assistance Board Regional Representative protested against this imposition to the Foreign Ministry, the Ministry refused to change its position. A memorandum prepared by the Office of Legal Affairs to the Technical Assistance Board Administration sets forth the viewpoint of the United Nations and reaffirms the general contention that United Nations officials are immune from immigration restrictions and alien registration:

The purpose of Section 18(d) of the Convention is of course to ensure the freedom of the officials of the United Nations to enter and reside in any country for the exercise of their functions in connexion with the Organization. The imposition of an alien immigration fee would appear to derogate from such freedom, by making the residence of United Nations officials in the country in fact dependent upon the payment of a tax on aliens. The "taxe de résidence" may thus be considered to be of the nature of an "immigration restriction", the imposition of which is inconsistent with the letter and spirit of the Convention. Furthermore, the tax in question discriminates against officials in the country concerned as compared to officials in other States which do not impose such a tax. In such circumstances the organization may feel obliged to reimburse the officials concerned in that State, the tax thus becoming, in fact, one upon the United Nations itself in a manner which would not accord with the letter and spirit of the Convention. . . .

The second case concerned a Member State which required United Nations officials to pay fees as a condition for remaining in its territory. The Legal Counsel stated that the imposition of such a fee was inconsistent with § 18(d) of the General Convention. The authorities in question subsequently agreed to exempt all United Nations officials.

\[\text{\textsuperscript{2}}\text{See Study cited supra note 230 at 276.}\]
\[\text{\textsuperscript{3}}\text{Id.}\]
\[\text{\textsuperscript{4}}\text{Id. The name of the Member State was not mentioned in the Yearbook of the International Law Commission.}\]
\[\text{\textsuperscript{5}}\text{Id.}\]
6. Customs Exemptions and Import Facilities

Article 36 of the Vienna Convention requires the receiving states grant exemption from customs duties, taxes, and similar charges on articles for the official use of a Mission and for the personal use of a diplomatic agent and members of his family. This article entitles diplomatic agents to exemption from duties on baggage on first arrival and also on goods thereafter imported for personal use. United Nations officials are granted less extensive privileges than diplomatic agents in this respect.

Under § 18(g) of the General Convention, officials of the United Nations "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." After their arrival they cannot import goods free of duty. According to the Legal Counsel, however, the length of time during which staff members of the United Nations may import their furniture and effects depends upon the customs regulations of the country concerned and the facts of each particular case. Approximately six to eight months is usually considered a reasonable period.

Before its acceptance of the General Convention, the position of the United States was that the effects of United Nations officials who were recruited internationally and who were not United States citizens or permanent residents was governed by § 3 of the International Organizations Immunities Act. Section 3 provided international officials with exemption from customs duty on baggage and effects imported by the owner on arrival, which might be upon recruitment, change of duty station or return from official travel. In the case of entry upon recruitment or following a change of duty station, a staff member could be required to furnish a detailed listing of his effects and the contents of his baggage. One automobile and a reasonable amount of alcoholic beverages could be imported free of duty. All articles imported, irrespective of the time of entry, were required to be for the bona fide personal or household use of a staff member and could not be imported as an accommodation to others or for sale or other commercial use. The wording of § 3 of the Immunities Act is different from that of § 18(g) of the General Convention, but the

See note 72 supra.

As regards the importation of the "effects" which may be imported free of duty, the United Nations has consistently mentioned that these include an automobile. See Study cited supra note 230 at 279.

Id.

Id.

Id. at 280.
effect of § 18(g) is virtually identical to that of § 3 of the Immunities Act.

7. Exchange and Repatriation Facilities

International officials are entitled to special facilities when exchanging currency; they are granted full exemption from foreign exchange restrictions. This immunity is necessary because international officials have financial commitments in countries other than the country of residence.

It is interesting to note that both the Headquarters Agreement and the United States Immunities Acts do not provide special facilities for the exchange of currencies by officials of the United Nations. Section 18(e) of the General Convention does grant the same exchange facilities to United Nations officials as are accorded officials of comparable rank forming part of the diplomatic missions accredited to the government concerned. In practice, a number of field offices have reported difficulty in securing full implementation of this provision, especially when officials have sought to transfer their money into other currencies on completion of their assignments. In some instances, while imposing no restriction on the amount, consent of the host authorities has been required in order to convert local currency; in other instances, limitations were placed on the total amount which might be transferred and an official permit was required. The procedures involved are frequently complex and lengthy. In a few cases no means were provided to exchange local currency for that of an official's own country or for freely convertible currency. These cause a great deal of inconvenience to United Nations officials. The ideal solution would be to exempt all United Nations officials from such national regulations.

Under § 18(e) of the General Convention, officials together with their spouses and dependent relatives are accorded repatriation facilities in times of emergency. Receiving states must provide the means for leaving the host country at the earliest possible moment. The United Nations has not on any occasion directly invoked this provision, though United Nations officials have been evacuated from certain areas, such as the Congo, chiefly with the help of United Nations facilities and forces, and from the Middle East.

110 Id. at 278.
117 Id.
110 The Vienna Convention, article 44, contains similar provisions. 500 U.N.T.S. 95, 122.
114 See Study cited supra note 230 at 279.
8. *Travel Facilities*

Special travel facilities are important for international officials whose function requires their presence in territories other than their own. The grant of such facilities saves considerable time and enables officials to perform their functions expeditiously. An emergency sometimes requires the immediate dispatch of international officials and a delay of even a few days in obtaining the necessary visas, re-entry permits or passports can be prejudicial to the organization's interests. When this issue came before the Preparatory Commission of the United Nations, it was proposed that an international passport should be issued by the United Nations describing the holder as a United Nations official. A report made by the Preparatory Commission of the United Nations specifically made such a suggestion:

In order to facilitate the travelling of officials it may be found desirable to institute an international passport issued by the organization, describing the holder as its official . . . . The creation of this passport would not, of course, impair the sovereign rights of Members of the United Nations in respect of the granting of visas . . . .

Due to objections that the issuance of such a passport is solely the prerogative of a sovereign state, the document was named a "laissez-passer" instead of a passport.

Article VII of the General Convention provides that the United Nations may issue United Nations laissez-passer to its officials and that these laissez-passer shall be recognized and accepted as valid documents by the authorities of Member States. According to § 25 of the Convention, this in no way impairs the sovereign right of Member States to require visas, but "application for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations shall be dealt with as speedily as possible." The exact legal nature of the laissez-passer has provoked disagreement among Members of the United Nations. The United States interprets the language of § 24 of the General Convention to mean that neither the United States nor any Member State is required to accept the laissez-passer as a substitute for a passport or other docu-

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24 Id.
mentation of nationality. According to this interpretation, the laissez-passer is merely a certificate attesting to the United Nations affiliation of the bearer for travelling and is to be accepted by the United States as such.

The United Nations does not accept the interpretation of the United States and at one point notified the United States State Department that no reservation or restriction with regard to the United Nations laissez-passer had been made by any other Members of the Organization. The letter dispatched by the Organization emphasized that a great number of the United Nations staff had utilized the document and that it had been accepted and recognized by several states. It was urged that a restrictive interpretation of article VII of the General Convention by the Government of the United States could greatly affect the significance and usefulness of the laissez-passer.

Unfortunately, the attempt to persuade the United States to recognize the laissez-passer as a valid travel document, as well as evidence of nationality in lieu of a passport, failed. The United States still requires visas of all officials and delegates entering the United States on United Nations business and requires that all American citizens going abroad on United Nations business hold a valid United States passport.

C. SPECIAL PROBLEMS CONCERNING THE PRIVILEGES AND IMMUNITIES OF UNITED NATIONS OFFICIALS

1. Waiver of Immunities of International Officials

The principle of waiver of immunities is employed in order to prevent abuse of privileges and immunities by international officials.

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248 Letter, Secretary of State (Marshall) to Speaker of the House of Representatives (Martin), Hearings, supra note 205, at 504.
249 Hearings, supra note 205, at 507.
252 Recent developments have occurred in Syria over the freedom of movement of international officials. In 1968 an international official was “prevented from travel to headquarters . . . though provided with a United Nations laissez-passer . . .” Buehrig, supra note 162, at 87.
as well as by Member representatives. Its applicability to officials, however, is rather anomalous:

Since there is no immunity from local jurisdiction for private acts, waiver seems unnecessary. The official is immune from local jurisdiction for official acts, but he should not be held personally liable for acts of an official nature in the sense that such acts are imputed to the organization. Thus, the official's immunity should not be waived, the immunity of the organization should be waived. The organization would be responsible for unlawful acts of its officials which are imputable to the organization. And, finally, the organization should have initial authority in determining in doubtful cases, whether or not an act is imputable to it.

The principle of waiver of immunities was incorporated in § 20 of the General Convention:

Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

According to this provision, the chief executive of the United Nations, the Secretary-General, is under an obligation to waive the immunity of U.N. officials in any case where, in his opinion: (a) immunity would impede the course of justice; and (b) immunity could be waived without prejudice to the interests of the United Nations.

In fact, the legal instruments of international organizations, including the General Convention, all make it clear that privileges and immunities have been accorded to international officials in the interests of the Organization in question and not for the personal benefit of the officials. Therefore, the chief executive of every organization is under an obligation to waive the immunity of its officials when such waiver is appropriate. In Ranallo's case, even though his act was in the line of official duties, the Secretary-General nevertheless waived

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228 See notes 128-29 and accompanying text supra.
229 King, supra note 190, at 139.
230 U.N.T.S. 15, 26. For correlation to the Vienna Convention, see note 129 supra.
his immunity in deference to local law and permitted local authority to assume jurisdiction. 286

With regard to the Secretary-General, the Security Council has the right to waive immunity. To date, however, no case has arisen in which the Security Council has been requested to waive the immunity of a Secretary-General.

Two major differences emerge between the waiver of immunity of officials and that of diplomatic agents. First is the legal basis. In the case of international officials, the legal basis for jurisdictional immunity is found in international agreements rather than in the general international law which applies to diplomatic agents. Second, the right to immunity belongs to the international organization in the case of international officials rather than to any one state as it does in the case of diplomatic agents—i.e., the power to waive the immunity of international officials rests with the international organization for which they work, not with the home state of the particular official.

2. The Right of the Host State to Expel International Officials

If a diplomatic agent habitually breaks the law or if he commits an act of shocking magnitude, substantial grounds exist for the host state to demand his recall. 287 The host state normally communicates information concerning violations to the head of the offending agent’s mission declaring the agent persona non grata. Once such a declaration is made by the host state, the diplomatic agent ceases to function in that state and must immediately leave. The principle of persona non grata is incorporated in article 9 of the Vienna Convention. 288 Article 9 also provides that if the sending state refuses or fails within a reasonable period of time to carry out its obligations, the receiving state may refuse to recognize the person concerned as a member of the Mission. 289 The receiving state can then treat the diplomatic agent in question the same as any other alien within its territory. Thus, the receiving state can exercise its authority to deport the unwelcome diplomatic agent in accordance with its own laws and procedures.

As with diplomatic agents, officials of the United Nations are not entitled to disregard local law or to interfere in the internal affairs of

287 Hill, supra note 147, at 258-63.
288 U.N.T.S. 95, 102.
289 Id.
the host state. In order to protect local interest, there must be some remedial procedure for the host state to use in case of abuse on the part of such officials. Strangely enough, the General Convention does not contain any provision relating to the expulsion of officials of the United Nations in the event of abuse of privileges of their residence.\textsuperscript{260} However, the United Nations Headquarters Agreement with the United States does provide a limited solution. Section 13 of the Headquarters Agreement stipulates that if the Secretary of State determines that the continued presence of a person enjoying benefits under the Act has become "undesirable," he shall inform the foreign government or the international organization which that person represents. The departure of the individual involved can be requested, whereupon that person is no longer entitled to receive the benefits of the Agreement.\textsuperscript{261}

According to § 13, Member representatives to the United Nations, officials of the United Nations and diplomatic agents of foreign governments are treated the same by the United States as regards \textit{persona non grata}. However, the arrangement which grants the Secretary of State of the United States the power to declare a Member representative or an official of the United Nations \textit{persona non grata} has been criticized on the ground that it is based on a false analogy between international officials and diplomatic agents. The United Nations considers the doctrine of \textit{persona non grata} inapplicable to its officials. It argues that because international officials are not accredited to the host state, invocation of the principle is not subject

\begin{footnotesize}
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\item \textsuperscript{260}Section 25(1) of the Specialized Agencies Convention provides that officials within the meaning of § 18 of the Convention shall not be required by the territorial authorities to leave the country in which they are performing their functions due to any activities undertaken by them in their official capacity. In case of abuse of privileges of residence committed by officials in their private capacity, they may be required to leave by the Government of the country in which they are functioning. Section 25(2)(II) provides: "No order to leave the country shall be issued other than with 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." The executive head of the agency is granted the right to appear on behalf of the international official who has been charged. According to § 25(2)(I), the officials who enjoy diplomatic immunity under § 21 of the Specialized Agencies Convention can only be required to leave in accordance with diplomatic procedure applied to diplomatic envoys accredited to the country concerned. Convention on the Privileges and Immunities of the Specialized Agencies, approved November 21, 1947, 33 U.N.T.S. 261, 278.
\end{itemize}
\end{footnotesize}
to the restraint of reciprocity. Moreover, such an arrangement can be detrimental to the interests and function of the organization itself. Accordingly, the United Nations requests that it be fully apprised of a government’s allegation of official unsuitability and insists on judging the matter itself.282

IV. CONCLUSION

Historically, the rationale underlying the legal status of diplomatic agents and other privileged individuals has passed through a number of stages, from the exterritorial standard to the personal representative principle and finally to the functional test. At present the theory of functional necessity is generally accepted as the basis for granting such immunities to diplomatic agents, international officials and Member representatives to international organizations. This view favors granting such individuals only those privileges and immunities necessary for the independent exercise of their functions. While the theory of functional necessity appears likely to grow as an international standard for granting immunities to privileged individuals, practical difficulties in its implementation still remain.

Furthermore, traditional rules continue to play an important role. The 1961 Vienna Convention, the first large-scale international convention dealing extensively with diplomatic immunities and now ratified by more than one hundred states,283 vividly illustrates this point. It has attempted to codify a uniform practice to be followed by all states. The preamble explicitly states that the functional and the representative theories are the bases for codification of diplomatic privileges and immunities. In fact, however, the contents and spirit of the Vienna Convention appear more closely related to traditional law and practice in many respects. For example, the traditional principle of the diplomatic agent’s personal inviolability and absolute immunity from criminal jurisdiction is restated in the Vienna Convention, while other immunities such as exemption from payment of customs duties and immunity from taxation are also based on traditional international courtesy. There is therefore solid ground for the conclusions of some legal scholars that the Vienna Convention is merely a codification of traditional rules and practices.

282See 22 DEP’T STATE BULL. 559 (1950); The N.Y. Times, March 10 and 21, 1950. See also, Buehrig, supra note 162, at 85.
283United Nations, Secretariat, Multilateral Treaties in Respect of Which the Secretary General Performs Depository Functions (ST/LEG/SER.D/7) as of Dec. 31, 1973, at 49.
Yet there is evidence that the functional theory has modified traditional principle in certain aspects. For instance, article 31, dealing with civil jurisdiction, states that diplomatic agents are not entitled to absolute immunity from local jurisdiction in civil cases, but are subject to it with certain exceptions. Previously, diplomatic agents had been entitled to absolute immunity in this respect.

While the representative theory is still the principal legal basis for determining the extent of diplomatic privileges and immunities, in the case of other privileged groups such as Member representatives to international organizations, international officials and experts, the functional theory has been explicitly adopted by various conventions as the principal criterion for determining the extent of privileges and immunities. Exceptions do exist, the most obvious example being the permanent representatives to the United Nations. Their status is governed by the Headquarters Agreement, which grants them blanket diplomatic privileges and immunities. Compared to other privileged groups, permanent representatives along with diplomatic agents are the favorite sons of the current system. Temporary representatives, on the other hand, are governed by the General Convention rather than the Headquarters Agreement. Under the former’s provisions the privileges and immunities granted to temporary representatives are not as far-reaching. Although they are accorded personal inviolability, this inviolability has not been expressly extended to their place of residence or to their personal property. Unlike diplomatic agents, they do not enjoy complete immunity from legal process; such immunity is restricted to their official acts only. In other words, they are still subject to the jurisdiction of the host state for non-official actions. Temporary representatives are, however, exempted from customs duties on goods imported for their personal use. They also enjoy exemption from immigration restrictions, alien registration, and national service obligations, as well as the same privileges and immunities as diplomatic agents with regard to their personal baggage. As for freedom of communication, missions to the United Nations and representatives attending conferences of the United Nations enjoy the same privileges and facilities as those enjoyed by diplomatic agents.

Closely related to the privileges and immunities enjoyed by Member representatives are certain special problems. The principle of waiver is one of them. It is clearly stipulated in the General Convention that privileges and immunities are granted to the representatives for the purpose of safeguarding the independent exercise of their functions, not for their personal benefit. Therefore, every Member
State is under an obligation to waive the immunity of its representative in any situation where, in its opinion, immunity impedes the course of justice and can be waived without prejudice to the purpose for which it is granted.

As regards the legal status of international officials, the functional principle is again used as a yardstick to determine the extent of their privileges and immunities. Privileges and immunities granted temporary representatives and international officials are not as broad as those accorded to diplomatic agents under the terms of the Vienna Convention. But there are exceptions. Officials at the topmost level, such as the Secretary-General and Under-Secretaries-General, are accorded full diplomatic privileges and immunities. Since the General Convention does not contain any specific provision relating to personal inviolability of lesser officials, it can be assumed that the great majority of these officials do not enjoy extensive privileges and immunities under general international law. As regards legal process, lesser officials and temporary representatives enjoy immunity only in their official acts.

A problem which has attracted considerable attention in connection with the privileges and immunities of international officials is the position of nationals of the host state who are employed by the international organization. The question is whether such officials should enjoy privileges and immunities to the same extent as are accorded by the host state to international officials of foreign nationality. In order to promote the efficient functioning of international organizations, all international officials should receive the same privileges regardless of their nationality. Nationality should not form the basis for discriminatory treatment among officials. However, some states have adopted the "principle" of nationality discrimination, especially with regard to income tax. Moreover, some states do not exempt their citizens working for international organizations from national service obligations. Such practices quite obviously affect adversely the work of international organizations and often cause great confusion and injustice. To avoid interference with the functioning of international organizations, the proper approach would be to grant all international officials exemption from taxation and from national service obligations without exception.

In general, income taxation and national service obligations are the only exceptions to the rule that international officials, whatever their nationality, have the same privileges and immunities. In this respect, they enjoy broader privileges and immunities than those of diplomatic agents. The diplomatic agent is granted privileges and immunities in the interest of his native state. Therefore, he is not
entitled to claim any immunity or exemption from his own government. International officials, on the other hand, do not act in the name or in the interests of any specific state, but act for the international organization in question. Whatever immunities are necessary for the proper performance of their functions are necessary everywhere.

It is evident that the functional principle has indeed been adopted as a criterion for determining the extent of the privileges and immunities of international officials and Member representatives. The basic advantage of this principle is its flexibility. Privileges and immunities can be changed as functions change. However, the functional test has given rise to considerable confusion on the part of the courts as to the dividing line between official and non-official acts. Of course, no immunity is granted for such acts as non-payment of rent or espionage. But in many situations the issues are not clear-cut. The question remains as to who is competent to determine whether a given act is a private or an official act. Is it the representative state, the United Nations, or the host state? So far this question has not been satisfactorily answered.

Solutions to the above question have been suggested, but none has yet met with consensus. As noted earlier, Professor Jenks suggests three workable solutions: (1) an international organization may, in its discretion, decide that a given act is an act official in nature; (2) it is the duty of the executive branch of the host state to decide the nature of a particular act; and (3) the decision as to the nature of an act may be left to international arbitration. The first suggestion is analogous to Act of State theory—i.e., an act of an official is an act of his state. Since an international organization is subject to international law, it may be argued that the same doctrine applies to it. The second solution is founded on the place of wrong doctrine in private international law, by which the executive branch of the host state decides the nature of a given act. The third solution is premised on the assumption that international arbitration is a good and reasonable way of solving international disputes, including the question of the nature of any given act. All three suggestions appear workable, but up to now they have been generally ignored. Until this practical problem is solved, the functional theory will continue to face serious problems.

Another significant failure of the General Convention is the lack of any provision relating to expulsion of officials of the United Na-
tions for abuse of privileges in a host country. A possible solution is provided by the United Nations Headquarters Agreement with the United States, under which Member representatives, officials of the United Nations and diplomatic agents of foreign governments are all subject to the host state's right to invoke the doctrine of persona non grata. This arrangement has been criticized on the ground of a false analogy between international officials and Member representatives, and diplomatic agents. Another possible solution lies in § 25(1) of the Specialized Agencies Convention which clearly stipulates that in the event of abuse of privileges of residence committed by officials in their private capacity, they may be required to leave by the host country. However, the distinction between official and private acts remains ambiguous.

While international law governing diplomatic privileges and immunities has remained almost constant for many decades, the law governing the privileges and immunities of international officials and Member representatives is still in a state of flux due to the inconclusive legal basis upon which these privileges and immunities are founded. International conventions and national legislation, on which functional exemptions from territorial jurisdiction are based, have failed to resolve these problems and eliminate confusion. Hopefully, the International Law Commission will succeed in its effort to produce a comprehensive draft treaty.

It is clear that the extension of privileges and immunities to persons connected with the United Nations and other international organizations is essential for their smooth and effective functioning. To this end, despite its lacunae, the functional theory has proven to be an important step forward in the current system of exemptions from territorial authority.

28The subject of this paper is currently included on the agenda of the International Law Commission. Resolution 1289(XIII) of the General Assembly directed the International Commission to consider the question of relations between states and international organizations. It has been thirteen years since the International Law Commission first undertook to resolve this problem. Only a set of draft articles with respect to permanent missions and their privileges and immunities has been adopted by the Commission. This set of articles was submitted to the governments of the Member States of the United Nations for comments. See notes 89-95 and accompanying text supra.
Washington and Lee Law Review

Member of the National and Southern Law Review Conferences

Volume XXXIII Winter 1976 Number 1

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