



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*86 Chambers Street, 3rd floor  
New York, New York 10007*

July 7, 2014

**BY ECF**

The Honorable J. Paul Oetken  
United States District Judge  
United States District Courthouse  
500 Pearl Street  
New York, NY 10007

Re: *Georges v. United Nations, et al.*,  
13 Civ. 7146 (JPO)

Dear Judge Oetken:

The United States of America, by and through its attorney, Preet Bharara, United States Attorney for the Southern District of New York, respectfully submits this letter in further support of its Statement of Interest, dated March 7, 2014, concerning the defendants' immunity from legal process and suit.

The United States makes this submission pursuant to 28 U.S.C. § 517, in furtherance of the United States' own interests, and consistent with the United States' obligations as host nation to the United Nations and as a party to treaties governing the affairs and immunities of the UN.<sup>1</sup> The member states of the UN have provided the UN with absolute immunity so that it can carry out its important work throughout the world without having to face the burdens and expenses of litigation in the courts of its many members. The United States has consistently asserted the absolute immunity of the UN to lawsuits filed against it in U.S. courts, and the courts have consistently upheld the UN's immunity. Moreover, the high-ranking officials who have been named as defendants also enjoy immunity from this lawsuit, and they and the UN itself are immune from service. Because the UN and its officials are immune from legal process and suit in this matter, the United States respectfully urges the Court to dismiss this action for lack of subject matter jurisdiction.

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<sup>1</sup> The Government incorporates those abbreviations defined in its March 7, 2014, submission.

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### **A. The Immunity of the UN and Its Officials Is Absolute and Unaffected by Any Alleged Breach of the General Convention or SOFA**

Plaintiffs' argument that the UN's immunity from suit under the General Convention is conditioned on providing a mechanism to resolve Plaintiffs' tort claims is erroneous. Nothing in the General Convention, or in the Status of Forces Agreement between the UN and the Government of Haiti ("SOFA"), suggests that the UN's immunity is conditional. To the contrary, as reflected by the text and drafting history of the General Convention, and as confirmed by every court to have considered the issue, the UN's immunity is absolute.

The Executive Branch, and specifically the Department of State, is charged with maintaining relations with the United Nations, and so its views on the General Convention are entitled to deference. *See Kolovrat v. Oregon*, 366 U.S. 187, 194 (1961); *Tachiona v. United States*, 386 F.3d 205, 216 (2d Cir. 2004). Such deference is particularly warranted where, as here, the Government's views are shared by the UN. *See* Docket No. 21, Exs. 1 and 2; *see also, e.g., Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 185 (1982). Because the Government's interpretation is supported by the General Convention's text and drafting history, as well as the courts (*see infra*, Points A.2-3), the Government's views are reasonable and accordingly entitled to "great weight." *Ehrlich v. American Airlines, Inc.*, 360 F.3d 366, 399 (2d Cir. 2004) ("The government's interpretation of Article 17 is faithful to the Warsaw Convention's text, negotiating history, purposes, and the judicial decisions of sister Convention signatories; as such, we ascribe 'great weight' to the government's views concerning the meaning of that provision.") (citation omitted); *see also Fund for Animals v. Norton*, 365 F. Supp. 2d 394, 414 (S.D.N.Y. 2005) (when "faced with two opposing constructions," granting deference to Executive Branch's interpretation of a treaty which was consistent with language and history of the treaty), *aff'd*, 538 F.3d 124 (2d Cir. 2008). The Court should therefore conclude that the UN's immunity from suit bars this action.

#### **1. The Text of the General Convention Requires That A Waiver of Immunity Must Be Express**

"The interpretation of a treaty, like the interpretation of a statute, begins with its text." *Medellin v. Texas*, 552 U.S. 491, 506 (2008). The UN Charter provides that the UN "shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment [sic] of its purposes." UN Charter, art. 105, § 1. The UN's General Convention, which the UN adopted shortly after the UN Charter, defines the UN's privileges and immunities, and specifically provides that "[t]he United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has *expressly waived* its immunity." General Convention, art. II, § 2 (emphasis added). The SOFA similarly provides that MINUSTAH "shall enjoy the privileges and immunities . . . provided for in the [General Convention]." SOFA, art. III, § 3.

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The Second Circuit and other courts have uniformly construed the General Convention to mean exactly what the text states: any waiver of the UN's immunity must be express. *See, e.g., Brzak v. United Nations*, 597 F.3d 107, 112 (2d Cir. 2010) (“The United Nations enjoys absolute immunity from suit unless ‘it has expressly waived its immunity.’”) (citation omitted); *Emmanuel v. United States*, 253 F.3d 755, 756 n.2 (1st Cir. 2001) (“United Nations immunity is absolute unless expressly waived.”); *Askir v. Brown & Root Servs. Corp.*, 95 Civ. 11008, 1997 WL 598587, at \*6 (S.D.N.Y. Sept. 23, 1997) (“The [General] Convention . . . accords the United Nations immunity from suit except where the United Nations expressly waives it.”); *Askir v. Boutros-Ghali*, 933 F. Supp. 368, 372 (S.D.N.Y. 1996) (“The U.N. Convention by its terms provides immunity from ‘every form of legal process,’ the only exception being express waiver by the United Nations itself.”); *Boimah v. United Nations General Assembly*, 664 F. Supp. 69, 71 (E.D.N.Y. 1987) (“Under the [General] Convention the United Nations’ immunity is absolute, subject only to the organization’s express waiver thereof in particular cases.”). *Bisson v. United Nations*, No. 06 Civ. 6352 (PAC), 2007 WL 2154181, at \*10 (S.D.N.Y. July 27, 2007) (“under the UN Convention, the United Nations’ immunity is absolute, subject *only* to express waiver”) (emphasis in original), *report and recommendation adopted by* 2008 WL 375094 (S.D.N.Y. Feb. 11, 2008).

Plaintiffs’ position that the UN’s immunity under Section 2 is conditional on its providing appropriate modes of settling disputes of a private law character under Section 29<sup>2</sup> is contrary to the plain language of the General Convention, which provides that the UN “shall enjoy absolute immunity from every form of legal process *except* insofar as in any particular case it has expressly waived its immunity.” General Convention § 2 (emphasis added). The word “except” is followed by a category of one: express waiver. The UN’s obligation to provide for dispute resolution mechanisms for claims by third parties against it under Section 29(a) is not included in the category of the exceptions to immunity. Plaintiffs argue, in effect, that such an exception should exist, but the text of the General Convention makes clear that it does not.

Nor has there been an express waiver by the UN of its immunity in this case. An express waiver of immunity “requires a clear and unambiguous manifestation of the intent to waive.” *United States v. Chalmers*, 05 Cr. 59 (DC), 2007 WL 624063, at \*2 (S.D.N.Y. Feb. 26, 2007); *see also Baley v. United Nations*, No. 97-9495, 1998 WL 536759, at \*1 (2d Cir. June 29, 1998) (affirming dismissal where the UN “informed this Court by letter that it has not waived its immunity from suit” and plaintiff “presented no evidence of such a waiver”); *Van Aggelen v. United Nations*, No. 06 Civ. 8240 (LBS), 2007 WL 1121744, at \*1 (S.D.N.Y. Apr. 12, 2007) (“[T]he U.N. has specifically invoked its immunity in this case by letter to the (then) U.S. Ambassador to the U.N. . . . Because the U.N. is immune from suit and has not waived its immunity the claims against it must

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<sup>2</sup> Section 29(a) of the General Convention provides: “The United Nations shall make provisions for appropriate modes of settlement of: (a) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party.”

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be dismissed with prejudice.”); *De Luca v. United Nations Org.*, 841 F. Supp. 531, 533 n.1 (S.D.N.Y. 1994) (“Plaintiff has not alleged that the U.N. has expressly waived its immunity in this instance and no evidence presented in this case so suggests.”), *aff’d*, 41 F.3d 1502 (2d Cir. 1994); *Klyumel v. United Nations*, No. 92 Civ. 4231 (PKL), 1992 WL 447314, at \*1 n.1 (S.D.N.Y. Dec. 4, 1992) (“There is no allegation in the complaint of any express waiver in the instant case, and the [UN’s] rejection of attempted service on two occasions would appear to ‘manifest [ ] an intent not to waive immunity in this particular instance.’”) (citation omitted). As the D.C. Circuit has observed, “[t]he requirement of an express waiver suggests that courts should be reluctant to find that an international organization has inadvertently waived immunity when the organization might be subjected to a class of suits which would interfere with its functions.” *Mendaro v. World Bank*, 717 F.2d 610, 617 (D.C. Cir. 1983).

Furthermore, it is plaintiff’s burden to demonstrate that the UN has waived its immunity. *See Baley*, 1998 WL 536759, at \*1; *D’Cruz v. Annan*, 05 Civ. 8918 (DC), 2005 WL 3527153, at \*1-2 (S.D.N.Y. Dec. 22, 2005) (dismissing claims against the UN where “plaintiff has failed to allege facts demonstrating that immunity from suit has been waived”), *aff’d*, 223 F. App’x 42 (2d Cir. 2007); *Bisson*, 2007 WL 2154181, at \*10 (“[t]he burden is on [plaintiff] to prove the [UN] waived immunity, [but plaintiff] has not met that burden”), *report and recommendation adopted by* 2008 WL 375094 (S.D.N.Y. Feb. 11, 2008).

## **2. The UN Has Not Expressly Waived, But Rather Has Expressly Asserted, Its Immunity in This Case**

In this case, the UN has repeatedly asserted its immunity. *See* Exhibits 1 and 2 attached to the Government’s March 7, 2014, submission (UN twice asserting its immunity in this case). Plaintiffs have not presented – and cannot present – any evidence to the contrary. Accordingly, the UN is entitled to absolute immunity from suit, and the Court lacks subject matter jurisdiction over this action. *See, e.g., Baley*, 1998 WL 536759, at \*1; *Van Aggelen*, 2007 WL 1121744, at \*1; *Bisson*, 2007 WL 2154181, at \*4, 8 (finding the UN immune from suit because the “UN’s letters [to the United States] asserted absolute immunity and clearly stated that the UN and the [World Food Programme (“WFP”)] have not waived immunity from [plaintiff’s] suit,” the United States “submitted papers in support of the UN and WFP defendants’ claim of absolute immunity,” plaintiff did not “present[] any evidence of an express waiver,” and plaintiff’s “arguments suggesting implied waiver are not applicable against the UN”).

Any purported inadequacies in the claims resolution process referred to in Section 29 of the General Convention, or even the absence of such a process, fails to establish that the UN has expressly waived its immunity from suit. That the UN allegedly has not complied with this obligation under the Convention does not amount to an express waiver of immunity. Indeed, as the Second Circuit has found, “crediting this argument would read the word ‘expressly’ out of the [General Convention].” *Brzak*, 597 F.3d at 112.

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In *Bisson*, for example, the plaintiff, a UN employee, filed suit against the UN for injuries she sustained during an attack on a UN facility in Baghdad. *See* 2007 WL 2154181, at \*1. The plaintiff alleged that “the staff compensation system through which the plaintiff ha[d] been trudging for nearly four years did not provide for compensation for personal injury claims,” and that “*there is absolutely no system whatsoever through which a third party tort victim may resolve a claim with the United Nations.*” *Id.* at \*9 n.21 (emphasis in original). Because the UN had allegedly failed to provide an “appropriate mode of settlement” for her tort claim in violation of Section 29 of the General Convention, the plaintiff asserted that the UN had waived its immunity. *Id.* at \*9. The court disagreed, holding:

[S]ection 29(a) of the [General] Convention does not contain any language effecting an express waiver under any circumstances. Even assuming *arguendo* that the UN and the WFP have failed to provide an adequate settlement mechanism for Bisson’s claims, such a failure does not constitute the equivalent of an express waiver of immunity. An express waiver may not be inferred from conduct.

*Id.* The court further noted that the fact that the plaintiff was an employee of the UN – and thus could avail herself of the staff compensation system – was not material to the question of waiver. *See id.* at \*9 n.22 (concluding that the plaintiff’s “relationship to the defendants is irrelevant. Even if she were not an employee of the WFP or the UN, both organizations would still be immune from suit by her, and [any failure to comply with] § 29(a) still would not constitute an express waiver.”).

Indeed, every court to have evaluated the UN’s immunity, including the Second Circuit, has based its determination on the unequivocal text of Article 2 of the General Convention, which grants immunity to the UN, and not on the existence or adequacy of an alternative redress mechanism. *See, e.g., Brzak*, 597 F.3d at 112 (“Although plaintiff[] argue[s] that purported inadequacies with the United Nations’ internal dispute resolution mechanism indicate a waiver of immunity, crediting this argument would read the word ‘expressly’ out of the [General Convention].”); *Sadikoglu v. United Nations Development Programme*, No. 11 Civ. 0294(PKC), 2011 WL 4953994, at \*5 (S.D.N.Y. Oct. 14, 2011) (“Nor does the contested status of the parties’ efforts to arbitrate or settle the current dispute strip UNDP of its immunity. . . . [N]othing in [Section 29] or any other portion of the [General Convention] refers to or limits the UN’s absolute grant of immunity as defined in article II – expressly or otherwise. Furthermore, any purported failure of UNDP to submit to arbitration or settlement proceedings does not constitute a waiver of its immunity under article II, section 2.”); *Boimah*, 664 F. Supp. at 71 (noting that “[u]nder the Convention the United Nations’ immunity is absolute, subject only to the organization’s express waiver thereof in particular cases,” and, without evaluating whether plaintiff had other avenues of relief, finding that the UN did not “expressly waive[] its immunity to employee actions brought pursuant to Title VII”). Therefore, the

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existence or adequacy of an alternative remedy is irrelevant to the Court's immunity analysis.

Nor do allegations of wrongdoing or improper motivation alter the UN's absolute immunity under the General Convention. *See Brzak*, 597 F.3d at 110, 112 (UN immune under the General Convention notwithstanding allegations of sex discrimination); *Boimah*, 664 F. Supp. at 70-71 (UN immune under the General Convention notwithstanding allegations of race discrimination); *Askir v. Boutros-Ghali*, 933 F. Supp. 368, 373 (S.D.N.Y. 1996) ("plaintiff's allegations of malfeasance do not serve to strip the United Nations or [the individual defendant] of their immunities afforded under the U.N. Convention"); *see also De Luca*, 841 F. Supp. at 535 (defendant retained immunity under the International Organizations Immunities Act ("IOIA") notwithstanding allegations of malfeasance); *Tuck*, 668 F.2d at 550 n.7 (IOIA immunity applied notwithstanding allegations of race discrimination); *Donald v. Orfila*, 788 F.2d 36, 37 (D.C. Cir. 1986) (allegations of improper motive did not strip individual of immunity under IOIA).<sup>3</sup>

Quite simply, the UN's immunity is "absolute," absent an "express" waiver. *Brzak*, 597 F.3d at 112. Because the UN has not expressly waived its immunity in this case, it is immune from this lawsuit.

### **3. The General Convention's Drafting History Confirms That the UN's Immunity Is Not Contingent on the Existence or Adequacy of a Dispute Resolution Mechanism**

Although the UN's absolute immunity is established by the plain meaning of the treaty, the drafting history confirms that the UN's immunity is not contingent on whether or how it settles disputes. Before the drafting history of the General Convention is addressed, it is important to note that the United States representative to the UN understood, from the date that the UN Charter was signed, that

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<sup>3</sup> Because the General Convention provides the UN with absolute immunity, and the individual defendants with diplomatic immunity, Plaintiffs' argument that defendants' alleged malfeasance strips them of immunity fails as a matter of law. In any event, plaintiffs are incorrect that the General Convention is *lex specialis* such that the IOIA has no application to this case. *See* Pl. Memo at 36 n.9. First, Plaintiffs' contention that the General Convention conflicts with the IOIA is without any support, and rests on the flawed premise that immunity under the General Convention is conditioned on providing dispute resolution mechanisms. Because there is no conflict, the courts have considered the immunities of the UN and its officials under both the General Convention and the IOIA. *See, e.g., Brzak*, 597 F.3d at 112-13 (holding that the UN is immune under both the General Convention and the IOIA). Second, even if Plaintiffs' theory of the General Convention were correct, such that it did not provide defendants in this case with immunity, the IOIA would still provide them with immunity. *See id.* The IOIA simply provides an additional set of immunities for the UN and its officials.

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[t]he United Nations, being an organization of all of the member states, is clearly not subject to the jurisdiction or control of any one of them and the same will be true for the officials of the Organization. The problem will be particularly important in connection with the relationship between the United Nations and the country in which it has its seat.

Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State (June 26, 1945), *reprinted in* 13 Digest of Int'l Law 37 (1963), attached hereto as Exhibit A. Thus, the work of building on the privileges and immunities provisions of the UN Charter, including the statement that the UN “shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment [sic] of its purposes[,]” Charter § 105(1), was undertaken with the understanding – at least as far as the United States was concerned – that the UN would be absolutely immune from the jurisdiction of all of its members.

Nonetheless, Plaintiffs assert that the UN’s “founders . . . understood the importance of limiting UN immunity such that the organization could . . . fulfill its responsibilities to innocent third parties harmed by UN operations . . . .” Plaintiffs’ Memorandum of Law in Opposition to the Government’s Statement of Interest, dated May 15, 2014 (“Pl. Memo”), at 14. In support, Plaintiffs cite to a sentence in the report of the Executive Committee of the Preparatory Commission, which states, “It should be a principle that no immunities and privileges, which are not really necessary, should be asked for.” Pl. Ex. 2, the Study on Privileges & Immunities, PC/EX/113/Rev.1, at 70, Nov. 12, 1945, art. 5. The sentence relied upon by Plaintiffs does not state, or even suggest, that the UN’s immunity is contingent upon providing a mechanism for dispute resolution, nor does it suggest that the UN can implicitly waive its immunity. Moreover, the sentence refers to the immunities and privileges of “specialised agencies,” such as the International Monetary Fund and the International Bank for Reconstruction and Development, which operate independently of the UN. *Id.*<sup>4</sup>

Plaintiffs also rely on the statement by the UN’s Executive Committee of the Preparatory Commission to the effect that when the UN enters into contracts with private individuals or corporations, “it *should* include in the contract or arbitration disputes arising out of the contract, *if it is not prepared to go before the Courts.*” Pl. Memo at 19-

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<sup>4</sup> A different treaty governs the privileges and immunities of the specialized agencies. *See* Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations 33 U.N.T.S. 261. The United States is not a party to the Convention on the Privileges and Immunities of the Specialized Agencies. *See* UN Treaty Collection, Status as of June 25, 2014, *available at* [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-2&chapter=3&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-2&chapter=3&lang=en). In the United States, the privileges and immunities of certain specialized agencies are governed by the IOIA, 22 U.S.C. §§ 288-288I.

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20 (citing Pl. Ex. 2) (first emphasis added). The use of the word “should” is hortatory and undermines plaintiffs’ position that the UN’s immunity is conditional on its providing a dispute resolution mechanism.

Nor do drafts of the General Convention state that providing access to alternative methods of dispute resolution is a “critical pre-condition to immunity,” Pl. Memo at 20, as Plaintiffs argue. Although, as Plaintiffs point out (Pl. Memo at 20), Article 9 of the first draft of the General Convention was entitled “Control of Privileges and Immunities of Officials[,]” that article contained no mention of any pre-condition to the UN’s immunity. *See* Pl. Ex. 9, art. 9. Moreover, the language regarding “[c]ontrol” disappeared in subsequent drafts of the General Convention. *See* Pl. Ex. 10-11. What is constant throughout the drafts is that they provide for absolute immunity for the UN, subject only to express waiver. Pl. Ex. 9, art 4(1); Pl. Ex. 10, art. 2 and 6 (providing that the UN “shall enjoy immunity from every form of judicial process except to the extent it express waives its immunity”); Pl. Ex. 11 (same). By the same token, the provisions for UN immunity and dispute resolution mechanisms remained in separate sections of the draft convention, and without any link between them. Nor is there any suggestion in the drafting history that the UN’s immunity may be waived implicitly if the UN does not comply with another provision of the General Convention. To the contrary, the drafters made clear in the Convention that any waiver of the UN’s immunity must be “express.” Ex. 10, art. 2.

The clear and consistent intent of the drafters that any waiver be express is reflected in the drafters’ repeated statements that only the Secretary-General can waive the immunity of UN officials. Pl. Ex. 19, art. 8; *see also* Pl. Ex. 2, art. 7 (“While it will clearly be necessary that all officials, whatever their rank, should be granted immunity from legal process in respect of acts done in the course of their official duties, . . . the Secretary-General both can waive immunity and will in fact do so in every case where such a course is consistent with the interests of the United Nations.”). The drafting history, therefore, does not indicate that the UN can implicitly waive its absolute immunity, or that its immunity is contingent on the existence or adequacy of dispute resolution mechanisms.

Finally, before the Preparatory Commission transmitted a draft convention to the General Assembly for its consideration, the Commission studied a set of precedents for the UN’s privileges and immunities. *See* Report of the Preparatory Commission of the UN (Dec. 23, 1945), UN Doc. PC/20 ¶¶ 3 at 61, 64-71, excerpts of which are attached as Exhibit B hereto.<sup>5</sup> With respect to the International Monetary Fund (IMF), the relevant provision, entitled “Immunities from Judicial Process,” stated that the IMF’s “property and its assets, wherever located, and by whomsoever held, shall enjoy immunity from

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<sup>5</sup> Plaintiffs cite to the Report of the Executive Committee of the Preparatory Commission (Pl. Memo at 19-20 & Ex. 2), which was addressed to the Preparatory Commission, which based much of its work on that of the Executive Committee. Ex. B at 5 ¶ 4.

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every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.” *Id.* at 64 ¶ 6. By contrast, with respect to the International Bank for Reconstruction and Development, the relevant provision stated, “Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.” *Id.* ¶ 7. The Preparatory Committee ultimately chose to include language identical to that of the IMF immunity provision in the draft convention submitted to the General Assembly. *Id.* at 73 (draft Article 2). That is the same language used in Section 2 of the General Convention (except for the reference to contractual terms, which was presumably dropped as redundant of the waiver exception to immunity). Thus, this history demonstrates that the drafters of the General Convention were presented with a choice between absolute immunity subject only to waiver, and immunity subject to exceptions that would permit lawsuits in the national courts under various circumstances. The General Assembly, in approving the General Convention, chose the former.

The drafting history of the General Convention thus does not support Plaintiffs’ position that the UN cannot enjoy immunity unless it provides for a dispute resolution mechanism. If anything, the drafting history reflects a bargain between the UN and its member states in which, in exchange for Section 2, which establishes the UN’s absolute immunity, the UN, in Section 29, agreed to provide for dispute resolution mechanisms for third-party claims. But the drafting history does not reflect any intent to make the UN’s immunity in any particular case legally contingent on the UN’s providing a forum for, or satisfying the claims of, third parties in that case. In any event, however, the drafting history could not overcome the fact that the final text of the General Convention, as adopted by the General Assembly, and as ratified by the United States Senate, does not include any such condition.

#### **4. The Foreign Authorities Cited by Plaintiffs Do Not Support Their Contention That a Breach of the General Convention Waives the UN’s Immunity From Suit**

Plaintiffs and the putative *Amici Curiae* fail to cite any case in which a foreign court determined that the UN waived its immunity by purportedly breaching the General Convention.

In interpreting a treaty, “opinions of our sister signatories . . . are entitled to considerable weight.” *Abbott v. Abbott*, 560 U.S. 1, 16 (2010). However, the cases cited by Plaintiffs are either inapposite or otherwise unresponsive of Plaintiffs’ position:

- *Drago v. International Plant Genetic Resources Institute* (Sup. Ct. of Cassation, (Feb. 19, 2007)), *see* Pl. Memo at 23 & Ex. 16, does not involve the UN, but rather was a lawsuit against private corporation.

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- *UNESCO v. Boulouis, Cour d'Appel*, Paris (Fr.), Jun. 19, 1998, *see* Pl. Memo at 22 & Ex. 14, does not analyze the UN's immunities under the General Convention. There, the French Court of Appeals examined a contract between a UN agency and a private party that contained an arbitration clause, and evaluated the UN agency's immunity pursuant to Article 12 of the France-UNESCO Agreement of July 2, 1954.
- *Human Rights and the Immunities of Foreign States and International Organizations, in Hierarchy in International Law: The Place of Human Rights* 71, Pl. Memo at 23 & Ex. 15 (in turn citing *Stavrinou v. United Nations* (1992) CLR 992, ILDC 929 (CU 1992) (Sup. Ct. Cyprus 17 July 1992), actually recognizes the UN's immunity. According to this article, the Cypriot court recognized the UN's immunity pursuant to the Convention and thereafter, apparently in dicta, "pointed out" that the UN's internal dispute resolution provided local personnel a remedy).
- *The Privileges and Immunities of International Organizations in Domestic Courts* 332 (August Reinisch ed., 2013), which states that in *Maida v. Admin. for Int'l Assistance* (Italian Court of Cassation (United Chambers) May 27, 1955), 23 ILR 510 (1955), the court found that the UN agency was not immune from suit because the personnel dispute process was "unlawful." Pl. Ex. 17 at 160. However, *Maida* was decided under an agreement between the International Refugee Organization (I.R.O.) and Italy, which referenced Italian law. 23 ILR 510 (attached hereto as Exhibit C). The reported decision makes no mention whatsoever of the General Convention (*see id.* at 510-15), which is not surprising, given that the I.R.O. – the precursor to the UN High Commission for Refugees – was a specialized agency of the UN, and thus its immunities were not governed by the General Convention. *See* Constitution of the International Refugee Organization art. 3 (providing for a future agreement between the I.R.O. and the UN to determine their relationship), *available at* [http://avalon.law.yale.edu/20th\\_century/decad053.asp#1](http://avalon.law.yale.edu/20th_century/decad053.asp#1).

The putative *Amici Curiae* briefs likewise fail to cite any case in which a court has found that the UN's purported failure to provide alternative remedies acted as an "express[]" waiver of the UN's immunities under the General Convention. *See* Docket No. 31-1, Memorandum of Law of *Amici Curiae* International Law Scholars and Practitioners in Support of Plaintiffs' Opposition to the Government's Statement of Interest, dated May 15, 2014, at 4-5 (arguing that "the lack of an alternative and effective remedy for private law claims has been cited as grounds for courts to decline to recognize international organizations' immunity from suit," but acknowledging that such decisions "did not directly address the question of the UN's protections"); *see also* Docket No. 32-1, Memorandum of Law of *Amici Curiae* European Law Scholars and Practitioners in Support of Plaintiffs' Opposition to the Government's Statement of Interest, dated May

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15, 2014 (“Eur. Amici Br.”), at 2-5 (citing cases against a private corporation, Germany, the European Union, the African Development Bank, the Arab League, and the Permanent Court of Arbitration).

Instead, the European Scholars *Amici* point to a series of cases in which foreign courts invalidated local laws implementing UN sanctions resolutions; however, those courts also determined that they lacked jurisdiction to review the UN resolutions themselves. *See Kadi v. Council & Comm’n*, 2008 E.C.R. I-06351, ¶¶ 287, 312 (European Court of Justice invalidated a regulation passed by the Council of the European Union to give effect to a UN resolution, but also found that it had no power to review the lawfulness of resolution adopted by the UN Security Council); *Nada v. Switzerland*, 2012 Eur. Ct. H.R. 1691, ¶ 212 (European Court of Human Rights found that it had jurisdiction to review the Swiss regulation implementing a UN resolution, but did not have jurisdiction to review the UN resolution itself); *Al-Dulimi & Mont. Mgmt. Inc. v. Switzerland*, 2013 Eur. Ct. H.R. 1173, ¶¶ 114, 134 (European Court of Human Rights invalidated a Swiss regulation passed in response to a UN resolution but did not opine on the UN resolution itself, despite noting that the UN resolution failed to create an alternative dispute resolution for individuals added to sanctions list). In any event, none of these cases holds that the UN’s alleged failure to provide for a dispute resolution mechanism deprives it of immunity under Section 2.

Therefore, while it is true, as the European Scholars *Amici* argue, that “encouraging respect for human rights is one of the purposes of the UN,” Eur. Amici Br. at 11, the authorities cited by the *Amici Curiae* and Plaintiffs do not support their contention that the UN’s immunity is conditional upon either upholding human rights or providing for a dispute resolution mechanism. Nor does the text of the General Convention, the drafting history of the General Convention, or the decision of any United States court to have considered the issue support Plaintiffs’ argument. The UN’s immunity is simply not contingent upon any other section of the General Convention.

#### **B. Plaintiffs May Not Assert Breach Claims Against the UN, Including MINUSTAH**

Even assuming, *arguendo*, that the UN did breach the General Convention or the SOFA by failing to provide Plaintiffs with a method for resolving their tort claims, the obligations under the General Convention and the SOFA are owed by the UN to the other parties to those agreements, not to the Plaintiffs. It is those parties that have a right to invoke an alleged breach and to determine an appropriate remedy from among those legally available, not the Plaintiffs. No party to these treaties has alleged that the UN has breached either the General Convention or the SOFA, and Plaintiffs may not independently assert an alleged breach and determine their own preferred remedy.

Because “a treaty is an agreement between states forged in the diplomatic realm and similarly reliant on diplomacy (or coercion) for enforcement,” courts have “recognize[d] that international treaties establish rights and obligations between States-

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parties and generally not between states and individuals, notwithstanding the fact that individuals may benefit because of a treaty's existence." *Mora v. New York*, 524 F.3d 183, 200 (2d Cir. 2008). As the Supreme Court explained:

A treaty is primarily a compact between independent nations. It depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it. If these fail, its infraction becomes the subject of international negotiations and reclamations, so far as the injured party chooses to seek redress, which may in the end be enforced by actual war. It is obvious that with all this the judicial courts have nothing to do and can give no redress.

*Edye v. Robertson*, 112 U.S. 580, 598 (1884), *quoted in Mora*, 524 F.3d at 200. Because "the nation's powers over foreign affairs have been delegated by the Constitution to the Executive and Legislative branches of government," the Supreme Court "has specifically instructed courts to exercise 'great caution' when considering private remedies for international law violations because of the risk of 'impinging on the discretion of the Legislative and Executive Branches in managing foreign affairs.'" *Mora*, 524 F.3d at 200 (quoting *Sosa v. Alvarez-Machain*, 542 U.S. 692, 727-28 (2004)).

Plaintiffs' arguments in this action about the alleged lack of a dispute resolution mechanism are derivative of potential claims of the parties to the General Convention. "[E]ven where a treaty provides certain benefits for nationals of a particular state, . . . it is traditionally held that any rights arising out of such provisions are, under international law, those of the states and . . . individual rights are only derivative through the states." *United States ex rel. Lujan v. Gengler*, 510 F.2d 62, 67 (2d Cir. 1975) (finding the fact that no states party argued that the United States violated the United Nations Charter was "fatal" to appellant's claim of violation of the treaty; "the failure of Bolivia or Argentina to object to [the U.S. actions] would seem to preclude any violation of international law").

Here, both the General Convention and the SOFA provide methods by which the member states or Haiti, respectively, may dispute the UN's interpretation of the UN's obligations under these agreements. The General Convention and the SOFA provide that any dispute between a state party and the UN shall be submitted to the International Court of Justice, *see* General Convention, art. VIII, § 30; SOFA art. VIII, § 58; and the SOFA provides that any dispute between MINUTSAH and the Government of Haiti shall be submitted to arbitration, *see* SOFA art. VIII, § 57. Accordingly, the treaties provide that the Government of Haiti – not private parties – can seek redress for any purported breach of the General Convention or of the SOFA.<sup>6</sup> But because Plaintiffs' claims are

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<sup>6</sup> Separately, the UN and the Government of Haiti recently established the High Level Committee for the Eradication of Cholera to "address the underlying conditions that made the outbreak possible," and to "focus on the provision of social and economic

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derivative of the Government of Haiti's, rather than arising out of Plaintiffs' own rights, Plaintiffs may not independently assert arguments based on the provisions of the General Convention or the SOFA. *See Lujan*, 510 F.2d at 67.

### C. Plaintiffs' Constitutional Arguments Are Unavailing

Plaintiffs' argument that the UN's immunity from legal process and suit deprives United States citizens of their constitutional right of access to the courts has already been considered and rejected by the Second Circuit.

In *Brzak*, the plaintiffs, one of whom was a United States citizen, argued that granting the UN absolute immunity would violate their procedural due process right to litigate the merits of their case and their substantive due process right to access the courts. *See* 597 F.3d at 113. The Second Circuit disagreed, noting: "The short – and conclusive – answer is that legislatively and judicially crafted immunities of one sort or another have existed since well before the framing of the Constitution, have been extended and modified over time, and are firmly embedded in American law." *Id.* (citing Act for the Punishment of Certain Crimes Against the United States, 25, 1 Stat. 112, 117-18 (1790) (acknowledging diplomatic immunity); *Schooner Exchange v. McFadden*, 11 U.S. (7 Cranch) 116, 3 L.Ed. 287 (1812) (acknowledging foreign sovereign immunity); *Tenney v. Brandhove*, 341 U.S. 367, 376-77 (1951) (acknowledging legislative immunity); *Barr v. Matteo*, 360 U.S. 564, 573 (1959) (acknowledging executive official immunity); *Pierson v. Ray*, 386 U.S. 547, 554-55 (1967) (acknowledging judicial immunity); *Imbler v. Pachtman*, 424 U.S. 409, 424 (1976) (acknowledging prosecutorial immunity) (further citations omitted)). The court concluded that "[i]f appellants' constitutional argument were correct, judicial immunity, prosecutorial immunity, and legislative immunity, for example, could not exist," and accordingly upheld the UN immunity from suit. *Brzak*, 597 F.3d at 113.

Even before the Second Circuit issued the *Brzak* decision, district courts routinely found that the UN was immune from suits brought by United States citizens. *See, e.g., De Luca*, 841 F. Supp. at 533 (acknowledging UN's immunity where plaintiff was a

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assistance to affected communities, with special emphasis on persons affected by the disease." Letter from Miguel de Serpa Soares, Under Secretary-General for Legal Affairs and United Nations Legal Counsel, to Samantha Power, Permanent Representative of the United States to the United Nations, dated May 12, 2014, at 5, attached hereto as Exhibit D (explaining that in December of 2012, the UN launched an effort "to support the Initiative by the Governments of Haiti and the Dominican Republic for the Elimination of Cholera in the Island of Hispaniola," and that in December of 2013, "the Secretary-General appointed a Senior Coordinator for the Cholera Response in Haiti").

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United States citizen); *Bisson*, 2007 WL 2154181, at \*2 (same).<sup>7</sup> Plaintiffs' access to the courts argument is therefore refuted by the case law.

#### **D. The Secretary-General and Assistant Secretary-General Are Also Immune from Suit**

As explained in the Government's Statement of Interest, the UN Charter, the General Convention, and the Vienna Convention on Diplomatic Relations provide immunity from legal process and suit for high-level UN officials such as Secretary-General Ban and Assistant Secretary-General Mulet. *See* Docket No. 21, at 6-8. Plaintiffs point to no support whatsoever for their novel theory that the UN's purported breach of the General Convention or the SOFA renders void the Secretary-General and Assistant Secretary-General's immunity. To the contrary, the Second Circuit has recognized that, under the Vienna Convention, subject only to exceptions that do not apply in this case, "current diplomatic envoys enjoy absolute immunity from civil and criminal process . . ." *Brzak*, 597 F.3d at 113. Because such immunity is absolute, it is necessarily not contingent on the UN's provision of dispute resolution mechanisms. Accordingly, Secretary-General Ban and Assistant Secretary-General Mulet are also immune from this lawsuit.<sup>8</sup>

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<sup>7</sup> Plaintiffs cite two cases – a New York City criminal court decision from 1976 and a Westchester County decision from 1946 – in which a court found that a UN official's immunity was inconsistent with the Constitution, but neither case is relevant. In *People v. Weiner*, 378 N.Y.S.2d 966, 975-76 (N.Y. City Crim. Ct. 1976), the court held that the UN employee could not seek to testify against a defendant while simultaneously refusing to submit to cross-examination – a situation not at issue in this case. *Westchester County on Complaint of Donnelly v. Ranollo*, 67 N.Y.S.2d 31, 32 (N.Y. City Ct. 1946), in which the court declined to grant diplomatic immunity to a UN employee who was charged with violating the speed limit, was decided before the United States' ratification of the General Convention.

<sup>8</sup> Plaintiffs fail to address the United States' argument (Docket No. 21, at 8-9) that service of process on the defendants in this case was ineffectual; rather, they simply assert that defendants lack immunity from service for the same reasons that they are not immune. Pl. Memo at 29, 35-49. These assertions, derivative of Plaintiffs' underlying arguments on immunity, fail for the same reasons. Moreover, plaintiffs do not even acknowledge the United States' arguments about the inviolability of the UN headquarters district under the Headquarters Agreement, or the inviolability of Ban and Mulet under the VCDR. Those arguments should be deemed to be conceded. *See, e.g., Brandon v. City of New York*, 705 F. Supp. 2d 261, 268 (S.D.N.Y. 2010).

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In light of each defendant's immunity, the Court lacks subject matter jurisdiction over this matter, and this action should be dismissed. *See Brzak*, 597 F.3d 107; *see also* Fed. R. Civ. P. 12(h)(3).

We thank the Court for its consideration of this submission.

Respectfully,

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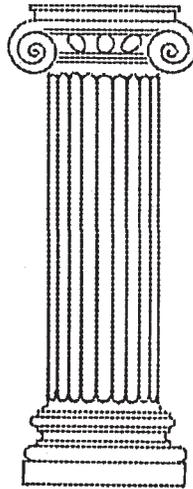
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# EXHIBIT A

# DIGEST OF INTERNATIONAL LAW



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VOLUME

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## PRIVILEGES AND IMMUNITIES

*In Basic Instruments and Related Agreements*

## § 4

U.N. Charter  
and League  
Covenant  
contrasted

Article 105 of the Charter of the United Nations specifies:

"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 comparable provisions of the Covenant of the League of Nations were found in paragraphs 4 and 5 of article 7 of the instrument, which provided:

"Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

"The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable."

For article 105 of the Charter of the United Nations, see U.S. TS 993; 59 Stat. 1031, 1053. For article 7 of the Treaty of Versailles (Covenant of the League of Nations), see III Redmond, *Treaties, etc.* (1923) 3329, 3338; I Hudson, *International Legislation 1919-21* (1931) 2, 6.

Kelsen wrote:

"... Article 7, paragraph 4, of the Covenant, prescribes that representatives of Members and officials of the League shall enjoy 'diplomatic privileges and immunities' when engaged on the business of the League. That may mean, that, in the first place, acts performed by these persons in their capacity as organs of the League shall be exempt from the jurisdiction of the Member states, and only in the second place also private acts performed by them 'when' *i.e.*, during the time they were engaged on the business of the League. By granting exemption from the jurisdiction of the Member states to the official acts of the representatives of the Members and officials of the League, this exemption was granted to the League as such, although the Covenant did not contain an express provision to this effect. Since the 'diplomatic privileges and immunities' referred to in Article 7, paragraph 4, were intended to cover not only the private acts of the representatives and officials but also their acts performed in their capacity as organs of the League, the term had another than its usual meaning. Besides the privileges and immunities granted to representatives of the Members and officials of the League could not be 'diplomatic' since these persons did not exercise diplomatic functions." Kelsen, *The Law of the United Nations* (1959) 340-341.

## PRIVILEGES AND IMMUNITIES

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On the experience of the League of Nations with respect to privileges and immunities in Switzerland, see Hill, *Immunities and Privileges of International Officials* (1947), pp. 24-49; King, *International Administrative Jurisdiction* (1952) 37-52.

When, during World War II, the Director of the International Labor Office, with the approval of the Canadian Government, transferred part of the staff of the International Labor Office to Montreal, the Canadian Government set forth certain aspects of "the status in Canada of the International Labour Office and its staff" in an Order in Council reading in part:

ILO in  
Canada,  
World  
War II

"2. The International Labour Office shall have legal capacity to conclude contracts and to assume and discharge obligations.

"3. The International Labour Office shall have the right to sue and be sued, but no suit or other proceeding (other than a proceeding by way of set off, counter-claim or cross-action) against the International Labour Office shall be entertained by any court without the express consent in writing of the Director of the International Labour Office.

"4. The premises occupied by the International Labour Office are inviolable, that is to say, no peace officer, sheriff, bailiff, member of the armed forces, or other public authority of like nature, may enter them, in the exercise of his duties, without the consent of the Director of the International Labour Office.

"5. The archives of the International Labour Office are inviolable.

"6. (1) The members of the international administrative staff of the International Labour Office shall enjoy immunity from civil and criminal jurisdiction in Canada unless such immunity is waived by the Director of the International Labour Office.

"(2) The list of the members of the international administrative staff shall be published from time to time in the *Canada Gazette* by the Secretary of State for External Affairs.

"(3) The other members of the staff of the International Labour Office shall enjoy exemption from civil and criminal jurisdiction in Canada in respect of acts performed by them in their official capacity and within the limits of their functions unless such immunity is waived by the Director of the International Labour Office; but they shall be subject to the jurisdiction of the Canadian Courts in respect of acts performed by them in their private capacity.

"7. The International Labour Office and all salaries paid by the International Labour Office to permanent members of its staff shall be exempt from all direct taxes imposed by the Parliament or Government of Canada, such as income tax and National Defence Tax.

"Provided, that this exemption shall not apply to salaries paid to temporary members of the staff, that is to say, members whose contracts of employment with the International Labour Office were made for a period of less than one year."

## LEGAL PROBLEMS OF INTERNATIONAL ORGANIZATIONS

Order in Council, P.C. 6283, Aug. 14, 1941, 75 *The Canada Gazette*, No. 8, Aug. 23, 1941, pp. 612-613.

The preamble of this order recited that "by Article 7 of the Covenant of the League of Nations and Article 6 of the Constitution of the International Labour Organization, the International Labour Office as part of the organization of the League enjoys diplomatic privileges and immunities" and further that "the provisions of the Covenant of the League of Nations and of the Constitution of the International Labour Organization constitute obligations of Canada". *Ibid.*, p. 612.

On the distinction between diplomatic and international immunities, Jenks wrote:

Diplomatic immunities distinguished from international immunities

" . . . Three major differences between diplomatic and international immunities stand out in special relief. One of the recognised limitations of diplomatic immunity is that members of the diplomatic staff of a mission may be appointed from amongst the nationals of the receiving State only with the express consent of that State; apart from inviolability and immunity from jurisdiction in respect of official acts performed in the exercise of their functions, nationals enjoy only such privileges and immunities as may be granted by the receiving State. International immunities may be specially important in relation to the State of which the official is a national. While, as will appear when we proceed to examine current practice, this principle is not always fully accepted, the considerations of principle involved differ profoundly from those applicable to diplomatic immunity. Secondly, the immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State; in the case of international immunities there is no sending State and an equivalent for the jurisdiction of the sending State therefore has to be found either in waiver of immunity or in some international disciplinary or judicial procedure. Thirdly, the effective sanctions which secure respect for diplomatic immunity are the principle of reciprocity and the danger of retaliation by the aggrieved State; international immunities enjoy no similar protection; for this reason, matters satisfactorily covered by recognised practice in respect of diplomatic immunities may need to be formulated in unequivocal international obligations in the case of international immunities. In view of such factors as these the functional requirements of international organisations need to be considered on their own merits and not on the basis of automatic assimilation to the functional requirements of diplomatic intercourse. . . ."

Jenks, *International Immunities* (1961), p. xxxvii.

Committee IV/2 on art. 105

The report of the Rapporteur of Committee IV/2 of the United Nations Conference on International Organization at San Francisco, approved by that Committee, stated in explanation of the text of article 105 (set forth *ante*):

"Paragraph I(1) of this proposed article refers to the Organization considered as a distinct entity. In so doing it covers all

## PRIVILEGES AND IMMUNITIES

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the agencies of the Organization, that is, the agencies or authorities established by the Charter, as well as the other bodies and organisms which might subsequently be established by virtue of the powers conferred by the Charter. By way of examples of such bodies and organisms, we may point to those to be established by the General Assembly, the Security Council, and the Economic and Social Council, as contemplated by Chapters V, VI, and IX of the Dumbarton Oaks Proposals. Therefore there have been excluded from the provisions contemplated in the proposal of the Committee those agencies not belonging to the Organization, although they may have been brought into connection or relation with the Organization through application of the Charter. Paragraph I(2) refers to: (A) the representatives of the states members of the Organizations; (B) the officials (functionaries, etc.) of the Organization and of its organs, authorities, or agencies referred to in paragraph I(1).

"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 purposes of the Organization, on the necessity of realizing its purposes and, in the case of the representatives of its members and the officials of the Organization, on providing for the independent exercise of their functions.

"Paragraph II of the draft article empowers the General Assembly to formulate, if it deems it useful, recommendations leading to the determination of the details of application of the provisions in paragraph I. Should it be appropriate, such recommendations could apply only to those members who, for instance, might have weightier obligations owing to the fact that the Organization or its organs happen to have establishments on their territory. These recommendations may, if this method is found opportune, assume the form of a convention (agreement, *modus vivendi*, etc. . . .) proposed by the General Assembly to a member, to be concluded between the two. Naturally the recommendations of the Assembly might differ according to the particular circumstances of the states to which they would be addressed. On the other hand, the possibility is not excluded of a general convention to be submitted to all the Members. Paragraph II only provides a power which the General Assembly may or may not exercise. It does not impair the provisions of paragraph I. This latter sets forth a rule obligatory for all members as soon as the Charter becomes operative. In the opinion of the Committee, this rule should apply under any circumstances, its authority being in no way subordinated to the exercise by the Assembly of the power specified in paragraph II.

Obligation

"The draft article proposed by the Committee does not specify the privileges and immunities respect for which it imposes on the member states. This has been thought superfluous. The terms *privileges* and *immunities* indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, to the free functioning of its organs and to the independent exercise of the functions and duties of

## LEGAL PROBLEMS OF INTERNATIONAL ORGANIZATIONS

their officials: exemption from tax, immunity from jurisdiction, facilities for communication, inviolability of buildings, properties, and archives, etc. It would moreover have been impossible to establish a list valid for all the member states and taking account of the special situation in which some of them might find themselves by reason of the activities of the Organization or of its organs in their territory. But if there is one certain principle it is that no member state may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other."

XIII *Documents of the United Nations Conference on International Organization San Francisco, 1945* (1945), pp. 703, 704-705.

The United Nations Preparatory Commission also stated the view "that, under Article 105 of the Charter, the obligation of all members to accord to the United Nations, its officials and the representatives of its members all privileges and immunities necessary for the accomplishment of its purposes, operates from the coming into force of the Charter and is therefore applicable even before the General Assembly has made the recommendations or proposed the conventions referred to in paragraph 3 of Article 105." *Report of the Preparatory Commission of the United Nations* (1945), PC/20, Dec. 23, 1945, p. 60.

The 1945 *Report to the President* [of the United States] *on the Results of the San Francisco Conference* stated:

"... It will depend upon the laws and governmental system of each state whether additional legislation will be required in order to enable each Member to carry out the obligations which this Article places upon it. Some states may take care of the matter by administrative regulation or under existing laws; others may feel the need for enacting additional legislation. Article 105 authorizes the General Assembly to make recommendations to Members regarding the implementation of the Article in the several countries, or, should it seem wiser, to propose conventions to the Members for this purpose. This Article of the Charter suggests the general rule and the general obligations, leaving it to experience to suggest the elaboration of the details.

"So far as the United States is concerned, legislation will be needed to enable the officials of the United States to afford all of the appropriate privileges and immunities due the Organization and its officials under this provision. Such legislation would deal with such exemption from various tax burdens and other requirements as is commonly granted to representatives of foreign governments. The enactment of legislation and its application to such persons would not be for the purpose of conferring a favor upon any individuals. It would rather be for the purpose of assuring to the Organization the possibility that its work could be carried on without interference or interruption. The according of such privileges and immunities is merely one aspect of cooperating with the Organization itself."

## PRIVILEGES AND IMMUNITIES

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*Charter of the United Nations, Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State, June 26, 1945* (Department of State publication 2349, Conference Series 71, 1945), p. 160.

Note the International Organizations Immunities Act, 1945 (59 Stat. 669), and for pertinent legislation by members of the United Nations, see *I Legislative Texts and Treaty Provisions concerning the Legal Status, Privileges and Immunities of International Organizations* (U.N. Legislative Series, 1959), ST/LEG/SER. B/10, pp. 3-180.

In *United States v. Fitzpatrick*, the United States District Court for the Southern District of New York stated:

"The Court concludes that Article 105 of the Charter does not purport to nor does it confer diplomatic immunity. The broadest claim that can be made is that it is self-operative with respect to functional activities. [The Committee which drafted Article 105 expressed the view that it "laid down a rule obligatory for all members as soon as the charter would become effective." U.N. Secretariat, Legal Department, *Handbook on the Legal Status, Privileges and Immunities of the United Nations* (1952) (ST/LEG/2), p. 22. The Report of the Preparatory Commission of the United Nations, Dec. 23, 1945, in *Handbook, op. cit.*, p. 349 is in accord, as is a letter from Ernest A. Gross, Legal Adviser to the Department of State, to a Subcommittee of the House of Representatives, Committee on Foreign Affairs, May 26, 1948 [actually April 29, 1948; see *post*, this *Digest*, p. 138], quoted in Leo Gross, "Immunities and Privileges of Delegations to the United Nations", 16 *International Organization* (1962), pp. 483, 504, n. 46.]"

214 F. Supp. 425, 431 (S.D.N.Y. 1963).

The *Report to the President on the Results of the San Francisco Conference* also stated:

". . . The United Nations, being an organization of all of the member states, is clearly not subject to the jurisdiction or control of any one of them and the same will be true for the officials of the Organization. The problem will be particularly important in connection with the relationship between the United Nations and the country in which it has its seat. The problem will also exist, however, in any country in which the officials of the United Nations are called upon from time to time to perform official duties. The United States shares the interest of all Members in seeing that no state hampers the work of the Organization through the imposition of unnecessary local burdens.

"It would have been possible to make the simple statement that all of these officials and representatives would have diplomatic privileges and immunities but it is not necessarily true that these international officials will need precisely the same privileges and immunities as are needed by the diplomatic representatives of individual states. It accordingly seemed better to lay down as

Rationale  
of art.  
105

## LEGAL PROBLEMS OF INTERNATIONAL ORGANIZATIONS

a test the necessity of the independent exercise of the functions of the individuals in connection with the Organization.”

*Charter of the United Nations, Report to the President on the Results of the San Francisco Conference by the Chairman of the United States Delegation, the Secretary of State, June 26, 1945* (Department of State publication 2349, Conference Series 71, 1945), p. 159.

Previous  
U.S.  
position

The position of the United States with respect to the granting of privileges and immunities to international organizations prior to the drafting of the Charter was described by Preuss as follows:

“Although the United States has recognized the legal capacity of public international organizations, it has taken the position that there exists no obligation under customary international law to extend to such organizations the privileges, exemptions, and immunities accorded to foreign governments. It consequently has declined to grant to their officers and employees any special legal status, whether it be that of foreign diplomatic agents or of non-diplomatic government officials. International organizations have tended to claim a governmental status and to demand at least ‘foreign government official’ treatment for their functionaries, but these demands have been uniformly resisted on the grounds that no basis for such claims has been developed in customary international law, that any special status is as yet dependent upon treaty or upon the municipal law and practice of the state concerned, and that there is, therefore, no justification under the law of the United States for conceding any privileged position to international organizations and their personnel in this country. . . .”

Preuss, “The International Organizations Immunities Act”, 40 *Am. J. Int’l L.* (1946) 332, 333. See also Preuss, “Diplomatic Privileges and Immunities of Agents Invested with Functions of an International Interest”, 25 *ibid.* (1931) 695.

Preuss did not mention the fact that there had been, perhaps, an increasing tendency in the United States to limit diplomatic privileges and immunities in the years just prior to 1945 and that, with the adoption of the Charter, the tendency was arrested.

See further 79th Cong., 1st sess., Report of Senate Committee on Finance on Immunities for International Organizations, Dec. 18, 1945, S. Rept. 861, printed in 83d Cong., 2d sess., S. Doc. 87, *Review of the United Nations Charter, A Collection of Documents* (1954) 88, 89; 1945 *For. Rel.*, vol. I, pp. 1557-1567.

See also *Chapman v. Commissioner of Internal Revenue*, 9 T.C. 619 (1947), in which a League of Nations official, who entered the United States in 1940 and carried on official duties from 1940 to July 1946 at Princeton, New Jersey, was denied exemption from income tax. Justice Harron, in a concurring opinion, stated:

“ . . . It would appear that the Government of the United States is not under any obligation, under international law or treaty or act of Congress, to grant the *immunity* from taxation of income, which is really what petitioner desires. . . .” *Ibid.* 626.

# EXHIBIT B

# REPORT

OF THE

PREPARATORY COMMISSION

OF THE UNITED NATIONS



Published for THE UNITED NATIONS  
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PC/20  
23 December, 1945

# REPORT OF THE PREPARATORY COMMISSION OF THE UNITED NATIONS

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## INTRODUCTION

1. With the completion of this Report by the Preparatory Commission the fourth stage in the work of establishing the United Nations has come to an end. The first stage was completed when the Dumbarton Oaks Proposals, which were agreed to in October, 1944, were supplemented by decisions made at the Yalta Conference in February, 1945. The end of the second stage was reached at San Francisco on 26th June, 1945, when the Charter of the United Nations was signed and the Preparatory Commission was established. The Preparatory Commission held its first session on the following day. Seven weeks later, on 16th August, the third stage of the work began with the meeting in London of the Executive Committee of the Preparatory Commission.

2. The Executive Committee was composed of representatives of the Governments of Australia, Brazil, Canada, Chile, China, Czechoslovakia, France, Iran, Mexico, the Netherlands, Union of Soviet Socialist Republics, United Kingdom, United States of America and Yugoslavia. After nine weeks' intensive work it adopted a Report to the Preparatory Commission covering Items 1 and 4 (b)-(g) of the Interim Arrangements. This Report took the form of a number of recommendations with attached material, such as draft rules of procedure, and agenda, supplemented by appendices. These recommendations and other material were submitted to the Second Session of the Preparatory Commission, which opened in London on Saturday, 24th November, 1945.

3. At the second meeting of this session, held on Monday, 26th November, the Preparatory Commission adopted its agenda and rules of procedure, and elected as Chairman Mr. Eduardo Zuleta-Angel (Colombia), and as Vice-Chairmen, Dr. D. Z. Manuisky (Ukrainian S.S.R.) and Monsieur P. H. Spaak (Belgium). The Report of the Executive Committee was then presented to the Preparatory Commission by Senhor de Freitas-Valle (Brazil) and was remitted for detailed consideration to eight Technical Committees. The eight Technical Committees, with their Chairmen and Vice-Chairmen, are listed below :—

- Committee 1. Chairman : H.E. M. Erik Colban (Norway).  
Vice-Chairman : Senor Manuel Perez Guerrero (Venezuela)
- Committee 2. Chairman : H.E. M. Zygmunt Modzelewski (Poland).  
Vice-Chairman : Mr. G. Heaton Nicholls (South Africa).
- Committee 3. Chairman : Sir Ramaswami Mudaliar (India).  
Vice-Chairman : M. Frantz Hvass (Denmark).
- Committee 4. Chairman : H.E. Dr. Guillermo Belt (Cuba).  
Vice-Chairman : H.E. M. Kuzma V. Kiselev (Byelo-Russian S.S.R.).
- Committee 5. Chairman : H.E. Dr. Abdel Hamid Badawi Pasha (Egypt).  
Vice-Chairman : H.E. Senor Ricardo Rivera Schreiber (Peru).
- Committee 6. Chairman : H.E. M. Th. Aghnides (Greece).  
Vice-Chairman : Dr. R. M. Campbell (New Zealand).
- Committee 7. Chairman : H.E. Dr. Najeeb al Armanazi (Syria).  
Vice-Chairman : H.E. M. Cevad Acikalin (Turkey).
- Committee 8. Chairman : H.E. Senor Dr. don R. E. Maceachen (Uruguay).  
Vice-Chairman : H.E. Blatta Ephrem Tewelde Medhen (Ethiopia).

4. The Executive Committee's Report to the Preparatory Commission is not included, as such, in the present Report. It has served as the basis of the Preparatory Commission's work, but there is too much identical material on the one hand and too many differences exist on the other, to justify its inclusion *in extenso*.

recommendations of the Executive Committee. That was scarcely to be expected. But, on the other hand, the work of the Executive Committee has played an indispensable part in the whole preparatory process. Without the detailed and comprehensive reports furnished by the Executive Committee, the Preparatory Commission could not possibly have accomplished its own task in the time available.

6. Consideration of the Report of the Executive Committee by the Technical Committees began on 28th November and was completed, after less than four weeks' work, on 22nd December. The work of the Technical Committees has now been embodied in the present Report, in the form primarily of recommendations to the United Nations. Attached to these recommendations are a number of positive proposals integrally connected with them, such as the draft provisional staff regulations, the provisional rules of procedure for the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council and the draft agenda for the first meetings of the first three of these organs. There are also a number of reports and memoranda setting out the views of the Preparatory Commission and of special expert bodies on certain matters dealt with in the recommendations. Certain supplementary material, including extracts from the summary records of the proceedings of some Technical Committees, appears in the Appendix.

7. With the adoption by the Preparatory Commission of the present Report, we are about to enter, therefore, on the final stage in the establishment of the United Nations, namely, the First Session of the General Assembly and the inauguration of the various Councils, the International Court of Justice and the Secretariat. The omens are good, for there have been no formal reservations attached to the main proposals of the Preparatory Commission. As the result of close and fruitful debate, unanimity has been reached on such contentious matters as the organization of the Secretariat, the committee structure of the General Assembly, the trusteeship system and the choice of the United States of America as the country in which the permanent seat of the Organization should be located, all of which a few weeks ago seemed likely to be obstacles to the early and successful conclusion of the Commission's work.

8. It is encouraging that such unanimity should have been achieved; it is still more encouraging that it should have been achieved so quickly. At the time of the Yalta Conference few would have dared to predict that in less than a year the World Organization would actually come into effective operation. Fewer still would have maintained at the opening of the San Francisco Conference on 25th April last that it was possible for fifty-one independent states to agree, before the turn of the year, not only on a Charter, but also on long and detailed organizational plans. That all this was possible in the event, and that all these fifty-one states have now ratified the Charter, is certainly due in the first instance to the determination of the peoples of the United Nations to combine their efforts to accomplish the high aims of the Charter.

9. If the spirit in which this last task has been accomplished is any guide, the United Nations will be successfully and happily inaugurated; and if by its early actions the new Organization can capture the imagination of the world it will surely not belie the expectations of those who see in it the last chance of saving themselves and their children from the scourge of war. It is in this confident hope that the Preparatory Commission presents its Report to the United Nations.

## CHAPTER VII

### PRIVILEGES, IMMUNITIES AND FACILITIES OF THE UNITED NATIONS

#### Section 1: Recommendations Concerning Privileges and Immunities

1. THE PREPARATORY COMMISSION REPORTS to the General Assembly that it has instructed the Executive Secretary to invite the attention of the Members of the United Nations to the fact that, under Article 105 of the Charter, the obligation of all members to accord to the United Nations, its officials and the representatives of its members all privileges and immunities necessary for the accomplishment of its purposes, operates from the coming into force of the Charter and is therefore applicable even before the General Assembly has made the recommendations or proposed the conventions referred to in paragraph 3 of Article 105.

2. THE PREPARATORY COMMISSION RECOMMENDS that the General Assembly, at its First Session, should make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of Article 105 of the Charter, or propose conventions to the Members of the United Nations for this purpose.

3. THE PREPARATORY COMMISSION TRANSMITS for the consideration of the General Assembly the attached study on privileges and immunities and the attached draft convention on privileges and immunities.

4. THE PREPARATORY COMMISSION CONSIDERS that the details of diplomatic privileges and immunities to be accorded to members of the International Court of Justice when engaged upon the business of the Court, and the privileges and immunities of agents, counsel, and advocates of parties before the Court, necessary to the independent exercise of their duties, at the seat of the Court and elsewhere, should be determined after the Court has been consulted, and that until further action has been taken the rules applicable to the members of the Permanent Court of International Justice should be followed.

5. THE PREPARATORY COMMISSION RECOMMENDS to the General Assembly that the privileges and immunities of specialized agencies contained in their respective constitutions should be reconsidered. If necessary, negotiations should be opened for their co-ordination in the light of any convention ultimately adopted by the United Nations with regard to the considerations set forth in the following extract from the appendix to Section 5 of Chapter V of the Report by the Executive Committee, to which a few words in italics have been added :

“ 5. There are many advantages in the unification, as far as possible of the privileges and immunities enjoyed by the United Nations and the various specialized agencies. On the other hand, it must be recognized that not all specialized agencies require all the privileges and immunities which may be needed by others. No specialized agency would, however, require greater privileges than the United Nations itself. *Certain of the specialized agencies may, by reason of their particular functions, require privileges of a special nature which are not required by the United Nations.* The privileges and immunities, therefore, of the United Nations might be regarded as a maximum within which the various specialized agencies should enjoy just such privileges and immunities as the proper fulfilment of their respective functions may require. It should be a principle that no immunities and privileges, which are not really necessary, should be asked for.”

**Appendix A : Study on Privileges and Immunities**

*Provisions of the Charter*

1. Chapter XVI of the Charter contains the following provisions :

*" Article 104*

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

*" Article 105*

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

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

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

*Privileges and Immunities at the seat of the Organization and elsewhere*

2. The question of privileges and immunities for the United Nations is of the greatest importance in connection with the country in which the United Nations has its seat. In the case of the League of Nations, including the International Labour Organization, the Covenant of the League contains only the following short provision in Article 7 :

" Representatives of the Members of the League and officials of the League, when engaged on the business of the League, shall enjoy diplomatic privileges and immunities."

As a result, all the detailed arrangements for the privileges and immunities of the League of Nations and the I.L.O. were worked out in agreements concluded between the Secretary-General of the League and the Swiss Government. It would seem desirable that the working out of the detailed privileges and immunities of the United Nations should be deferred until the question of its seat has been decided.

3. However, although the question of privileges and immunities arises in the greatest degree as between the United Nations and the country in which it has its seat, the same question arises as between the Organization and all its Members. The difference is one of degree rather than one of kind. The United Nations may have offices elsewhere than at its seat. The officials of the Organization may be travelling on its business in any part of the world. The United Nations may wish to conclude contracts and hold funds or property elsewhere than at its seat. For these and similar reasons, therefore, the Organization will require, in the territories of all Members, the same kind of privileges and immunities as it has in the country of its seat.

*Precedents afforded by the Constitutions of Specialized Agencies*

4. A number of specialized agencies is already in existence. Their constitutions, or the agreements under which they are set up, have for the most part detailed provisions with regard to privileges and immunities based to a large extent on the arrangements made between the League of Nations and the Swiss Government. These specialized agencies include the following : The International Monetary Fund (Article IX), the International Bank for Reconstruction and Development (Article VII), United Nations Relief and Rehabilitation Administration (Resolutions Nos. 32, 34 and 36 of the first session of the Council), Food and Agriculture Organization (Articles VIII and XV), European Central Inland Transport Organization (Article VIII, paragraphs 13, 14, 15, 16, 17). These provisions are on the same lines in each case, though in some instances they have been worked out in more detail than in others.

*Co-ordination of the Privileges and Immunities of the United Nations with those of Specialized Agencies*

5. There are many advantages in the unification, as far as possible, of the privileges and immunities enjoyed by the United Nations and the various specialized agencies. On the other hand, it must be recognized that not all specialized agencies require all the privileges and immunities which may be

and the specialized agencies as the proper fulfilment of their respective functions may require. It should be a principle that no immunities and privileges, which are not really necessary, should be asked for. An example of a case where a differentiation has been made between immunities, for practical reasons, may be seen by comparing Section 3 of Article IX of the Articles of Agreement of the International Monetary Fund, and Section 3 of Article VII of the Articles of Agreement of the International Bank for Reconstruction and Development. There are certain privileges and immunities which probably every specialized agency would require as well as the United Nations itself, such as recognition that it possesses legal capacity to contract and to hold property, and to be a party to legal proceedings, the immunity of its premises and papers, and the granting of travelling facilities to its officials. When the privileges and immunities of the United Nations have been determined in detail, and the specialized agencies are being brought into relationship with the United Nations, reconsideration of the privileges and immunities accorded to such specialized agencies may be desirable if it is found that they enjoy privileges and immunities in excess of those to be given to the United Nations or of what is really required.

#### *Creation of an International Passport*

6. 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 United Nations might issue such passports also to the senior officials of specialized agencies. 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. It might, however, be hoped that any necessary visas would be granted speedily. Member governments are already required to grant visas speedily under the constitutions of some specialized agencies. It may be desirable to confine the holding of these special passports to superior officials.

#### *Privileges and Immunities*

7. In this report the expression "diplomatic privileges and immunities" is used for convenience to describe the whole complex of privileges and immunities which are in fact accorded to diplomatic envoys. While it will clearly be necessary that all officials, whatever their rank, should be granted immunity from legal process in respect of acts done in the course of their official duties, whether in the country of which they are nationals or elsewhere, it is by no means necessary that all officials should have diplomatic immunity. On the contrary, there is every reason for confining full diplomatic immunity to the cases where it is really justified. Any excess or abuse of immunity and privilege is as detrimental to the interests of the international organization itself as it is to the countries who are asked to grant such immunities. In the case of existing specialized agencies, the practice has up to now been to confine diplomatic immunity to the senior official of the agency concerned and those of his assistants, whose rank is equivalent to that of Assistant Secretary-General. (In the case of the I.L.O. the range of officials to whom diplomatic immunity has been accorded is somewhat wider.) It is also a principle that no official can have, in the country of which he is a national, immunity from being sued in respect of his non-official acts and from criminal prosecution. It is further most desirable that both the United Nations and all specialized agencies should adopt the principle that privileges and immunities are only given to their officials in the interests of the Organization in whose service they are, and in no way for the benefit of the individual concerned, and that, in consequence, the Secretary-General both can waive immunity and will in fact do so in every case where such a course is consistent with the interests of the United Nations. This rule has long been in force in the International Labour Organization. It has been accepted by most of the new specialized agencies which have come into being. Similarly, it is desirable that where the United Nations or a specialized agency concludes contracts with private individuals or corporations, it should include in the contract an undertaking to submit to arbitration disputes arising out of the contract, if it is not prepared to go before the Courts. Most of the existing specialized agencies have already agreed to do this.

#### *Taxation of Officials in the State of which they are nationals*

8. The provisions in the agreements or constitutions of the new specialized agencies, while providing in general that no taxation should be levied on the salaries of officials, leave complete latitude to governments to tax the salaries of officials who are their own nationals or persons resident in their territory. As a result, the Act of Parliament of the United Kingdom which was passed to enable the United Kingdom to give effect to its obligations as regards privileges and immunities for international organizations (the Diplomatic Privileges Extension Act, 1944) excepts from the immunity from income tax the salaries of those international officials who are both British subjects and whose usual place of abode is in the United Kingdom. A similar practice has been followed

in certain other countries. It is, however, a matter for consideration whether this latitude or this exception are really sound. One of its effects is that some of the members of the staff have salaries which are tax free, because being resident outside their own states they do not fall under the income tax provisions of their own state, while other officials doing the same work for the same nominal salary are subject to income tax. This has led to certain administrative difficulties and has indeed raised the question whether the United Nations should not pay some special allowance to those of its employees who are paying income tax, in order to produce equality.

*The International Court of Justice*

9. The above paragraphs do not apply to the International Court of Justice. The Statute of the Court provides :

*Article 19*

" The members of the Court, when engaged upon the business of the Court, shall enjoy diplomatic privileges and immunities."

*Article 32—Paragraph 8*

" The above salaries, allowances and compensation shall be free of all taxation."

*Article 42—Paragraph 3*

" The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties."

When the first and second of these paragraphs (which correspond to the provisions of the Statute of the Permanent Court, whereas the third is new) are compared with paragraph 2 of the above quoted Article 105 of the Charter of the United Nations, it seems clear that the members of the Court, when engaged in the business of the Court, are to enjoy diplomatic privileges and immunities in the fullest sense. This has been the case with the members of the Permanent Court. For that institution the details of the privileges and immunities to be accorded at the seat of the Court were settled by negotiations between the Court itself and the Netherlands Government. It would seem desirable to postpone consideration of the subject until the Court can be consulted. It is therefore suggested that, for the first session of the Court, the rules applicable to the members of the Permanent Court should be observed, and that the new Court should then be invited to state whether changes are in their opinion required and, if this be the case, whether they wish the General Assembly to act on their behalf.

It would also appear expedient to consult the Court upon the privileges and immunities necessary for its members when engaged on the Court's business outside the country of its seat.

Finally, the question of the privileges and immunities of agents, counsel and advocates of parties before the Court would seem to be a matter which should only be taken up after it has been possible to consult the Court. It is not likely to arise at the first session.

### **Annex to Study on Privileges and Immunities**

IMMUNITIES AND PRIVILEGES GRANTED TO THE ORGANIZATION, REPRESENTATIVES OF THE MEMBERS, AND OFFICIALS IN ACCORDANCE WITH THE CONSTITUTIONS OF THE INTERNATIONAL MONETARY FUND—THE INTERNATIONAL BANK OF RECONSTRUCTION AND DEVELOPMENT — UNITED NATIONS RELIEF AND REHABILITATION ADMINISTRATION — FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS— AND EUROPEAN CENTRAL INLAND TRANSPORT ORGANIZATION

#### **Status of the Organization**

##### *Purposes of the Immunities and Privileges*

1. International Monetary Fund (Article IX—Section 1) and International Bank for Reconstruction and Development (Article VII—Section 1) :

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

2. United Nations Relief and Rehabilitation Administration (Resolution 32) :

" WHEREAS the Council is desirous of insuring to the Administration and its agents the independence necessary for the efficient performance of the duties entrusted to them, and of avoiding the imposition of financial burdens upon the funds contributed by member governments to the

Bank for Reconstruction and Development (Article VII—Section 2) :

“ The Fund/Bank shall possess full juridical personality, and, in particular, the capacity: (i) to contract ; (ii) to acquire and dispose of immovable and movable property ; (iii) to institute legal proceedings.”

4. Food and Agriculture Organization (Article XV) :

“ 1. The Organization shall have the capacity of a legal person to perform any legal act appropriate to its purpose which is not beyond the powers granted to it by this Constitution.”

5. European Central Inland Transport Organization (Article 8—paragraphs 1 and 3) :

“ Every member Government shall recognize the international personality and legal capacity which the Organization possesses.”

*Immunities from Judicial Process*

6. International Monetary Fund (Article IX—Section 3) :

“ The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.”

7. International Bank for Reconstruction and Development (Article VIII—Section 3) :

“ Actions may be brought against the Bank only in a court of competent jurisdiction in the territories of a member in which the Bank has an office, has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities. No actions shall, however, be brought by members or persons acting for or deriving claims from members. The property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.”

8. United Nations Relief and Rehabilitation Administration (Resolution 32—paragraph 1—point 1 (a) ) :

“ That the Council recommends :

1. That the member governments accord to the Administration the facilities, privileges, immunities and exemptions which they accord to each other, including : (a) Immunity from suit and legal process except with the consent of, or so far as is provided for in any contract entered into by or on behalf of, the Administration.”

9. Food and Agriculture Organization (Article XV—paragraph 2) :

“ Each member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit, and exemptions from taxation.”

10. European Central Inland Transport Organization (Article 8—paragraph 3 (a) ) :

“ Every member Government shall accord to the Organization the privileges, immunities, and facilities which they grant to each other, including in particular : (a) immunity from every form of legal process.”

*Immunities from Search, Requisition, Confiscation, Expropriation, or any other Form of Seizure*

11. International Monetary Fund (Article IX—Section 4) and International Bank for Reconstruction and Development (Article VII—Section 4) :

“ Property and assets of the Fund/Bank, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation, or any other form of seizure by executive or legislative action.”

12. United Nations Relief and Rehabilitation Administration (Resolution 32) :

“ I. That the Council recommends :

1. That the member governments accord to the Administration the facilities, privileges, immunities and exemptions which they accord to each other including : (b) inviolability of premises occupied by and of the archives of the Administration.”

13. Food and Agriculture Organization (Article XV—Section 2) :

“ Each Member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit and exemptions from taxation.”

14. European Central Inland Transport Organization (Article 8—paragraph 3 (c) ) :

“ Every member Government shall accord to the Organization the privileges, immunities and facilities which they grant to each other, including in particular : (c) inviolability of premises occupied by, and of the archives and communications of the Organization.”

*Inviolability of Archives*

15. International Monetary Fund (Article IX—Section 5) and International Bank for Reconstruction and Development (Article VII—Section 5) :

“ The archives of the Fund/Bank shall be inviolable.”

16. United Nations Relief and Rehabilitation Administration (Resolution 32) :

“ I. That the Council recommends :

1. That the member governments accord to the Administration the facilities, privileges, immunities and exemptions which they accord to each other including : (b) Inviolability of premises occupied by and of the archives of the Administration.”

17. Food and Agriculture Organization (Article XV—Section 2) :

“ Each member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit, and exemptions from taxation.”

18. European Central Inland Transport Organization (Article 8—paragraph 4 (c) ) :

“ Every member Government shall accord to the Organization the privileges, immunities and facilities which they grant to each other, including in particular : (c) inviolability of premises occupied by, and of the archives and communications of the Organization.”

*Immunity of Assets from Restrictions*

19. International Monetary Fund (Article IX—Section 6) :

“ To the extent necessary to carry out the operations provided for in this Agreement, all property and assets of the Fund shall be free from restrictions, regulations, controls and moratoria of any nature.”

20. International Bank for Reconstruction and Development (Article VII—Section 6) :

“ To the extent necessary to carry out the operations provided for in this Agreement and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.”

*Immunity from taxation*

21. International Monetary Fund (Article IX—Section 9a and c) :

“ (a) The Fund, its assets, property, income and its operations and transactions authorized by this agreement, shall be immune from all taxation and from all customs duties. The Fund shall also be immune from liability for the collection or payment of any tax or duty.

(c) No taxation of any kind shall be levied, on any obligation or security issued by the Fund, including any dividend or interest thereon, by whomsoever held (i) which discriminates against such obligations or security solely because of its origin ; or (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Fund.”

22. International Bank for Reconstruction and Development (Article VII—Section 9a, c, d) :

“(a) The Bank, its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from liability for the collection or payment of any tax or duty.”

“(c) No taxation of any kind shall be levied on any obligation or security issued by the Bank (including any dividend or interest thereon) by whomsoever held (i) which discriminates against such obligation or security solely because it is issued by the Bank ; or (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.”

“(d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Bank (including any dividend or interest thereon) by whomsoever held (i) which discriminates against such obligation or security solely because it is guaranteed by the Bank ; or (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.”

23. United Nations Relief and Rehabilitation Administration (Resolution 32) :

“ I. That the Council recommends :

1. That the member governments accord to the Administration the facilities, privileges, immunities, and exemptions which they accord each other, including :

(c) Exemptions from taxation, including customs duties.”

24. Food and Agriculture Organization (Article XV—paragraph 2) :

“ Each member nation undertakes, insofar as it may be possible under its constitutional procedure, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit, and exemptions from taxation.”

25. European Central Inland Transport Organization (Article 8—paragraph 3b) :

“ Every member government shall accord to the Organization the privileges, immunities and facilities which they grant to each other, including in particular : (b) exemption from taxation and customs duties.”

#### *Immunity from Foreign Exchange Controls*

26. International Monetary Fund (Article VII—Section 6) and International Bank for Reconstruction and Development (Article VII—Section 6) :

“ To the extent necessary to carry out the operations provided for in this Agreement all property and assets of the Fund/Bank shall be free from restrictions, regulations, controls and moratoria of any nature.”

27. United Nations Relief and Rehabilitation Administration (Resolution 32) :

“ I. That the Council recommends :

1. That the member governments accord to the Administration the facilities, privileges, immunities, and exemptions which they accord to each other, including :

(d) exemptions from or facilities in respect of foreign exchange controls.

#### *Privileges of the Organization*

28. International Monetary Fund (Article IX—Section 7) and International Bank for Reconstruction and Development (Article VII—Section 7) :

“ The official communications of the Fund/Bank shall be accorded by members the same treatment as the official communications of other members.”

*Whereas :*

The Council recognizes the need for expenditure, economy and secrecy in the transmission of the official correspondence of the Administration ; it is therefore

*Resolved :*

That the Council recommends :

1. That the member governments accord to the official correspondence of the Administration :

(a) the same treatment as is accorded by them to the official correspondence of other member governments, including :

(i) priorities for telephone and telegram communications, whether cable or radio, and for mail transmitted by pouch or by courier ;

(ii) government rebates for official telegrams ;

(iii) diplomatic status for couriers and pouches of the Administration ;

(iv) under appropriate safeguards, exemption from censorship of the official correspondence of the Administration ; and

(v) appropriate arrangements for the use of codes and of cable addresses for the telegraphic correspondence of the Administration.

(b) appropriate postal facilities, including such franking privileges or arrangements for the use of specially printed or overprinted stamps as may be possible.

30. Food and Agriculture Organization (Article XV—Section 2) :

“ Each member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Organization all the immunities and facilities which it accords to diplomatic missions, including inviolability of premises and archives, immunity from suit, and exemption from taxation.”

31. European Central Inland Transport Organization (Article 8, paragraph 3) :

“ Every member government shall accord to the Organization the privileges, immunities and facilities which they grant to each other.”

**Status of Representatives of the Members**

32. United Nations Relief and Rehabilitation Administration (Resolution 32) :

“ I. (3). That member governments accord to representatives of member governments on the Council and its committees and to the officials and employees of the Administration when engaged on the business of the Administration, the following privileges and immunities in their respective territories :

(a) immunity from legal process of any kind in respect of acts performed by them in their official capacity and falling within their functions as such ;

(b) immunity from taxation on official salaries, allowances, or other emoluments as representatives, officials, or employees of the Administration ;

(c) the same immunities from immigration restrictions, alien registration and military service obligations and the same facilities as regards exchange restrictions as are accorded to representatives, officials and employees of similar rank of other member governments ; and

(d) any further privileges and immunities that the Director-General may request as necessary to safeguard representatives, officials or employees in the territories of any member government where they are engaged and particularly those engaged in field operations in the areas in which the Administration may be undertaking relief and rehabilitation.”

Provided that each member government shall determine to what extent the above recommendations shall apply to its own nationals, and to non-nationals in permanent residence in its territories.”

graph 4) :

" Every member government shall accord diplomatic privileges and immunities to persons appointed by other members as their representatives in or to the Organization, to the members of the Executive Board, and to the higher officials of the Organization not being their own nationals."

#### Status of Officers and Employees

##### *Immunity from legal process*

34. International Monetary Fund (Article IX—Section 8 (i)) and International Bank for Reconstruction and Development (Article VII—Section 8) :

" All governors, executive directors, alternate officers and employees of the Fund/Bank (i) shall be immune from legal process with respect to acts performed by them in their official capacity except when the Fund/Bank waives this immunity."

35. United Nations Relief and Rehabilitation Administration (Resolution 32) :

" I. (3). That member governments accord to representatives of member governments on the Council and its committees and to the officials and employees of the Administration the following privileges and immunities in their respective territories : (a) immunity from legal process of any kind in respect of acts performed by them in their official capacity and falling within their functions as such ; . . . Provided that each member government shall determine to what extent the above recommendations shall apply to its own nationals, and to non-nationals in permanent residence in its territories."

36. Food and Agriculture Organization (Article VIII—paragraph 4) :

" Each member nation undertakes in so far as it may be possible under its constitutional procedure, to accord to the Director-General and senior staff diplomatic privileges and immunities and to accord to other members of the staff all facilities and immunities accorded to non-diplomatic personnel attached to diplomatic missions, or alternatively to accord to such other members of the staff the immunities and facilities which may hereafter be accorded to equivalent members of the staffs of other public international organizations."

37. European Central Inland Transport Organization (Article 8) :

" Every member government shall accord diplomatic privileges and immunities to persons appointed by other members as their representatives in or to the Organization, to the members of the Executive Board, and to the higher officials of the Organization not being their own nationals."

" Every member government shall accord to all officials and employees of the Organization : (a) immunity from suit and legal process relating to acts performed by them in their official capacity . . ."

##### *Immunity from immigration restrictions, alien registration, national service obligations, and exchange restrictions.*

38. International Monetary Fund (Article IX—Section 8) and International Bank for Reconstruction and Development (Article VII—Section 8) :

" All governors, executive directors, alternate officers and employees of the Fund/Bank . . . (ii) not being local nationals, shall be granted the same immunities from immigration restrictions, alien registration requirements and national service obligations and the same facilities as regards exchange restrictions as are accorded by members to the representatives, officials and employees of comparable rank of other members."

39. United Nations Relief and Rehabilitation Administration (Resolution 32) :

" 1. (3). That member governments accord to representatives of member governments on the Council and its committees and to the officials and employees of the Administration when engaged on the business of the Administration, the following privileges and immunities in their respective territories . . . (c) the same immunities from immigration restrictions, alien registration and military service obligations and the same facilities as regards exchange restrictions as are accorded to representatives, officials and employees of similar rank of other member governments. . . ."

" Provided that each member government shall determine to what extent the above recommendations shall apply to its own nationals, and to non-nationals in permanent residence in its territories."

4. Each Member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Director-General and senior staff diplomatic privileges and immunities and to accord to other members of the staff all facilities and immunities accorded to non-diplomatic personnel attached to diplomatic missions, or alternatively to accord to such other members of the staff the immunities and facilities which may hereafter be accorded to equivalent members of the staffs of other public international organizations."

41. European Central Inland Transport Organization (Article 8) :

"Every member government shall accord diplomatic privileges and immunities to persons appointed by other members as their representatives in or to the Organization, to the members of the Executive Board, and to the higher officials of the Organization not being their own nationals."

*Travel Facilities*

42. International Monetary Fund (Article IX—Section 8) :

"All governors, executive directors, alternate officers and employees of the Fund . . . (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank or other members."

43. International Bank for Reconstruction and Development (Article VII—Section 8) :

"All Governors, executive directors, alternates, officers and employees of the Bank . . . (iii) shall be granted the same treatment in respect of travelling facilities, as is accorded by members to representatives, officials and employees of comparable rank or other members."

44. United Nations Relief and Rehabilitation Administration (Resolution 36) :

*Whereas*

the Council has in mind the importance of securing the expeditious and unhindered travel of officials and employees of the Administration necessary to permit the prompt fulfilment by the Administration of the urgent tasks entrusted to it ; it is therefore

*Resolved*

That the Council recommends :

1. That the Director-General issue to officials and employees of the Administration for use when travelling on official business a document identifying the official or employee and requesting in the name of the Administration that all appropriate facilities be granted to the bearer.

2. That all member governments give full recognition to such documents and instruct their diplomatic, consular, customs and immigration services, and any other services which may be concerned, to recognise such documents as entitling the bearer to all appropriate facilities.

3. That in respect to passports and visas, the member governments accord to the officials and employees of the Administration the same treatment as is accorded to the officials and employees of comparable rank of their own or other governments.

4. That all member governments take the necessary steps to grant all appropriate and possible priorities for the travel of the officials of the Administration on official business and government rebates for such travel.

45. Food and Agriculture Organization (Article VIII—paragraph 4) :

"Each member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Director-General and senior staff diplomatic privileges and immunities and to accord to other members of the staff all facilities and immunities accorded to non-diplomatic personnel attached to diplomatic missions, or alternatively to accord to such other members of the staff the immunities and facilities which may hereafter be accorded to equivalent members of the staff of other public international organizations."

46. European Central Inland Transport Organization (Article 8) :

"Every member government shall accord to all officials and employees of the Organization : . . . (b) all such facilities for their movements and for the execution of their functions, as are deemed necessary by the Organization for the speedy and effective fulfilment of their official duties. . . ."

47. International Monetary Fund (Article IX—Section 9) :

“ No tax shall be levied on or in respect of salaries and emoluments paid by the Fund to executive directors, alternates, officers or employees of the Fund who are not local citizens, local subjects, or other local nationals.”

48. International Bank for Reconstruction and Development (Article VII—Section 9) :

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

49. United Nations Relief and Rehabilitation Administration (Resolution 32):

“ 3. That member governments accord to representatives of member governments on the Council and its committees and to the officials and employees of the Administration when engaged on the business of the Administration, the following privileges and immunities in their respective territories. . . . (b) immunity from taxation on official salaries, allowances or other emoluments as representatives, officials, or employees of the Administration. . . . Provided that each member government shall determine to what extent the above recommendations shall apply to its own nationals, and to non-nationals in permanent residence in its territories.”

50. Food and Agriculture Organization (Article VIII—Section 4) :

“ Each member nation undertakes, in so far as it may be possible under its constitutional procedure, to accord to the Director-General and senior staff diplomatic privileges and immunities accorded to non-diplomatic personnel attached to diplomatic missions, or alternatively to accord to such members of the staff the immunities and facilities which may hereafter be accorded to equivalent members of the staffs of other public international organizations.”

51. European Central Inland Transport Organization (Article 8) :

“ Every member government shall accord diplomatic privileges and immunities to persons appointed by other members as their representatives in or to the Organization, to the members of the Executive Board, and to the higher officials of the Organization not being their own nationals.

“ Every member government shall accord to all officials and employees of the Organization . . . (c) except in the case of their own nationals, exemption from taxation of their official salaries and emoluments.”

*Additional Privileges*

52. United Nations Relief and Rehabilitation Administration (Resolution 32):

“ I. (3). That member governments accord to representatives of member governments on the Council and its committees and to the officials and employees of the Administration when engaged on the business of the Administration, the following privileges and immunities in their respective territories : . . . (d) any further privileges and immunities that the Director-General may request as necessary to safeguard representatives, officials, or employees in the territories of any member government where they are engaged and particularly those engaged in field operations in the areas in which the Administration may be undertaking relief and rehabilitation.

“ Provided that each member government shall determine to what extent the above recommendations shall apply to its own nationals, and to non-nationals in permanent residence in its territories.”

53. European Central Inland Transport Organization (Article 8) :

“ Every member government shall accord to all officials and employees of the Organization . . . (b) all such facilities for their movements and for the execution of their functions, as are deemed necessary by the Organization for the speedy and effective fulfilment of their official duties.”

*Disputes relating to the conditions and terms of appointment of members of the staff*

54. Food and Agriculture Organization (Article XV—paragraph 3) :

“ The Conference shall make provision for the determination by an administrative tribunal of disputes relating to the conditions and terms of appointment of members of the staff.”

55. United Nations Relief and Rehabilitation Administration (Resolution 32) :

I. (2). " That member governments take any steps that they may consider necessary to enable the Administration to exercise within their jurisdiction the powers conferred on it by Article I, paragraph 1, of the Agreement."

56. European Central Inland Transport Organization (Article 8) :

" Every member government shall respect the exclusively international character of the members of the Executive Board, the chief officer and the staff of the Organization."

#### Application of Aforesaid Provisions

57. International Monetary Fund (Article IX—Section 10) :

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

58. United Nations Relief and Rehabilitation Administration :

(Resolution 32) :

" I. (4). That the member governments make any necessary arrangements with the Director-General for the application of the foregoing recommendations.

II. That the Council requests the Director-General :

1. To initiate immediate negotiations with member governments to bring such arrangements into operation as rapidly as possible.

2. Wherever appropriate, to approach non-member governments with a view to their granting such of the above-mentioned facilities, privileges, immunities and exemptions as may be desirable to facilitate the work of the Administration."

(Resolution 34) :

" I. (2). That the member governments make any necessary arrangements with the Director-General for the application of the foregoing recommendations.

II. That the Council requests the Director-General :

1. To initiate immediate negotiations with member governments to bring such arrangements into operation as rapidly as possible.

2. Wherever appropriate, to approach non-member governments with a view to their granting such of the above-mentioned facilities, privileges, immunities, and exemptions as may be desirable to facilitate the work of the Administration."

(Resolution 36) :

" I. (5). That the member governments make any necessary arrangements with the Director-General for the application of the foregoing recommendations.

II. To initiate immediate negotiations with member governments to bring such arrangements into operation as rapidly as possible.

2. Wherever appropriate, to approach non-member governments with a view to their granting such of the above-mentioned facilities, privileges, immunities, and exemptions as may be desirable to facilitate the work of the Administration."

**Appendix B: Draft Convention on Privileges and Immunities**

WHEREAS Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and

WHEREAS Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that 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 and

WHEREAS by a resolution of the General Assembly adopted on.....  
.....it was decided to propose a convention with a view to determining the details of the application of the aforesaid Articles and

WHEREAS the present convention was drawn up and approved by a resolution of the General Assembly adopted on.....

**Introductory Article**

1. The present convention is open to accession on behalf of every Member of the United Nations.
2. Accession shall be effected by a deposit of an instrument with the Secretary-General of the United Nations and the convention shall take effect as regards each Member as from the date of deposit of its instrument of accession.
3. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.
4. It is understood that, when an instrument of accession is deposited on behalf of any Member, this Member will have taken such action as is necessary in its own territories for the purpose of giving effect under its own laws to the terms of the present convention.
5. The present convention shall continue in force as between the Organization and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the Organization unless, by agreement, other provisions are substituted for the provisions of the present Convention. The Secretary-General may conclude with any Member or Members supplementary agreements, approved in each case by the General Assembly, amending, so far as that Member or those Members are concerned, the provisions of the present Convention.

**Article 1**

The Organization shall possess full juridical personality and in particular, the capacity :

- (a) to contract ;
- (b) to acquire and dispose of immovable and movable property ; and
- (c) to institute legal proceedings.

**Article 2**

1. The Organization, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that in any case it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.
2. The premises of the Organization shall be inviolable. The property and assets of the Organization wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and from any other form of seizure, whether by executive, administrative or legislative action or otherwise.
3. The archives of the Organization and in general all documents, belonging to it or held by it, shall be inviolable wherever located.
4. (a) Without being restricted by financial controls, regulations or moratoria of any kind :
  - (i) the Organization may hold funds or currency of any kind and operate accounts in any currency ; and
  - (ii) the Organization shall be free to transfer its funds from one country to another or within any country and to convert any currency held by it into any other currency.
- (b) In exercising its rights under (a) above, the Organization shall pay due regard to any representations by the national authorities of any Member insofar as effect can be given to such representations without detriment to the financial interests of the Organization.

1. The Organization, its assets, income and other property shall be :

(a) exempt from all direct taxes\* ; it is understood, however, that the Organization cannot claim exemption from taxes which are, in fact, no more than charges for services rendered ; and

(b) exempt from customs duties in respect of articles imported by the Organization for its official use and in respect of publications issued by it. It is, however, understood that articles imported free of customs duty will not be sold in the country into which they were imported except under conditions agreed with the authorities of that country.

2. While the Organization cannot in principle claim exemption from sales taxes and excise duties, which form part of the price of goods sold, nevertheless in cases where the Organization is making large purchases for official use of goods on which such taxes and duties have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of tax or duty.

#### Article 4

Provisions regarding communication facilities and facilities for purchases. (See Annex to Appendix C of this chapter).

#### Article 5

1. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the Organization shall be accorded, while exercising their functions and during their journey to and from the place of meeting, the following privileges and immunities :

(a) immunity from legal process of any kind ;

(b) immunity from immigration restrictions, alien registration and national service obligations ;

(c) the same facilities as regards exchange restrictions as are accorded to representatives of the Governments of Members visiting the country ; and

(d) the same immunities and facilities as regards their personal baggage as are accorded to diplomatic envoys.

2. As a means of securing complete freedom of speech and independence in the discharge of their duties, the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the Organization shall be accorded immunity from legal process in respect of all acts done and words spoken or written by them in the discharge of their duties as such.

3. The provisions of paragraphs 1 (a) and (b) and of paragraph 2 of this Article cannot be invoked by any persons against the authorities of the country of which he is a national or of which he is or has been the representative, nor when the Member which he represented has waived the immunity in question.

4. In this Article the expression representatives shall be deemed to include all Delegates and Deputy Delegates, advisers, technical experts, and secretaries.

#### Article 6

1. All officials† of the Organization shall :

(a) be immune from legal process with respect to acts performed by them in their official capacity ;

(b) be exempt from taxation on the salaries and emoluments paid to them by the Organization ;

(c) be immune from national service obligations ;

(d) be immune, together with their spouses and minor children, from immigration restrictions and alien registration ;

(e) be accorded the same privileges as regards exchange facilities as are accorded to the officials of comparable ranks forming part of the diplomatic missions to the government of x ; and

(f) be given together with their spouses and minor children the same repatriation facilities as diplomatic agents in time of international crisis.

2. In addition the Secretary-General, all Assistant Secretaries-General, their spouses and minor children shall be accorded the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, their spouses and minor children in accordance with international law, but shall not be entitled to invoke immunity from legal process as regards matters not connected with their official duties, before the courts of the country of which they are nationals.

\* The sub-committee considered that it may be desirable to define the expression "direct taxes," but did not feel able to perform this task, which requires the assistance of revenue experts.

† By this word it is intended to cover all ranks of the Secretariat and all those who have to make the declaration of loyalty to the Organization (Chapter VIII, Section 3,

1. The Organization may issue United Nations passports to its officials.\* All United Nations passports shall be recognized and accepted as passports.

2. Applications for visas from the holders of such passports when accompanied by a certificate that they are travelling on the business of the Organization, shall be dealt with with the minimum of delay. In addition the holders of United Nations passports shall be granted facilities for speedy travel.

3. Similar facilities to those specified in paragraph 2 above shall be accorded to experts and other persons who, though not officials of the United Nations, have a certificate that they are travelling on the business of the Organization.

4. The Secretary-General, Assistant Secretaries-General, and Directors travelling on United Nations passports on the business of the Organization shall be granted the same facilities as are accorded diplomatic envoys.

#### Article 8

1. It is understood that privileges and immunities are granted to officials in the interests of the Organization and not for the benefit of the officials 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, such immunity can be waived without prejudice to the interests of the Organization.

2. The Organization shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the execution of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this convention. In particular the Secretary-General will ensure that the drivers of all official motor cars of the Organization and all officials who own or drive motor cars shall be properly insured against third party risks.†

3. The Organization shall make provision for appropriate modes of settlement of :

(a) disputes arising out of contracts or other disputes of a private law character to which the Organization is a party ; and

(b) disputes involving any official of the Organization, who by reason of his official position enjoys immunity, if such immunity has not been waived by the Secretary-General.

#### Article 9

Freedom of travel to the seat of the Organization for the press, representatives of non-governmental Organizations and private individuals. (See Annex to Appendix C of this chapter).

#### Article 10

The provisions of Article 7 may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

#### Article 11

All differences arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If the dispute is between the Organization on the one hand and a Member on the other hand, a request shall be made for an advisory opinion in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The advisory opinion of the Court shall be accepted by the parties to the dispute as a binding decision in the same manner as a judgment.

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\* See footnote to Article 6.

† If it is decided that the internal regulations of the Organization shall contain provisions to this effect this sentence could be omitted.

# EXHIBIT C

## JURISDICTION

submit to the jurisdiction of another State for imposition of a fine should, even where it is agreed by a treaty, be recognized only when such willingness is clearly manifested. The provision of paragraph 4 of Article XV should not be interpreted to mean that the Japanese courts can impose a fine on an agency of the Government of the United States for violation of the labor laws and regulations.

“ Besides, in view of the absence of any evidence in the instant case that the United States has agreed to submit to the jurisdiction of the Japanese courts, this Court is not entitled to exercise jurisdiction to impose a fine on the United States or the Officers' Club in this case.”

[Report: *Japanese Annual of International Law*, No. 2 (1958), p. 140.]

**Jurisdiction—Exemptions from—Foreign Armed Forces—United States Military Base in Italy—Whether Department of United States Army Exempt from Jurisdiction of Italian Courts in Respect of Contracts of Employment at Military Base—The Law of Italy.**

See p. 201 (*Department of the United States Army v. Savellini*).

## (e) MISCELLANEOUS

**Jurisdiction—Exemptions from—International Organizations—The United Nations.**

See p. 509 (*Wencak v. United Nations*).

**Jurisdiction—Exemptions from—International Organizations—International Refugee Organization.**

See p. 510 (*Maida v. Administration for International Assistance*).

**Jurisdiction—Exemptions from—Agency of Occupant in Occupied Territory—Occupation of Germany—Joint Export-Import Agency—Counterclaim against Successor of Joint Export-Import Agency—Whether German Courts Competent to Determine Counterclaim.**

See p. 783 (*Joint Export-Import Agency (Germany) Case*).

**Jurisdiction—Exemptions from—Consuls—Acts in Performance of Official Functions—What Constitutes Such Acts—The Law of France.**

See p. 445 (*Boyer and Another v. Aldrete*).

sense the successor of Unrra but did undertake to administer the liquidation of that organization. The administration was not an assumption of liabilities upon succession to the assets as is frequently found with business corporations. By treaty dated September 27, 1948, the United Nations agreed to settle such claims as were on the books of Unrra's administrator for liquidation and other claims if there were sufficient funds and it believed the claim to be just. The liquidation lasted some months and the books were closed March 31, 1949. Assuming that these facts might show a cause of action against the United Nations it is clear that such action arose after the immunity statute was in force. Plaintiff claims that there is a different theory of sovereign immunity to-day than existed some years ago. No doubt that is true. But immunity remains a political rather than a legal question, and the extent of it is for the Department of State rather than the courts. As regards this action the department has indicated no limitation of the immunity to be conferred."

[Report: *New York Law Journal*, January 19, 1956, p. 6, col. 7.]

## B—THE UNITED NATIONS

### I.—Legal Nature of the United Nations. Membership

**International Organization—In General—Exemption of International Organizations from Local Jurisdiction—International Refugee Organization—Contract of Employment between International Refugee Organization and Citizen of Host State—Whether Contract Subject to Jurisdiction of Courts of Host State—The Law of Italy.**

MAIDA *v.* ADMINISTRATION FOR INTERNATIONAL ASSISTANCE.

*Italy, Court of Cassation (United Chambers). May 27, 1955.*

THE FACTS.—An Agreement between the International Refugee Organization (I.R.O.) and Italy provided for the usual immunities of the I.R.O. from the jurisdiction of the Italian courts. The Staff Regulations of the I.R.O. provided for arbitration by the Italian Chamber of Advocates in cases of dispute between the I.R.O. and its employees but laid down that, in so far as the Regulations themselves made no provision for the settlement of such disputes, the employees of the I.R.O. "were to refer to the relevant Italian legislation on private employment". The plaintiff, an Italian citizen, was employed by the I.R.O. as a doctor. A dispute arose between the parties, and the plaintiff brought an action against the I.R.O. in the Civil Labour Court of Naples. That Court, while of opinion that the I.R.O. was not immune from the jurisdiction of the

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Italian courts in respect of disputes arising out of contracts of employment between the I.R.O. and its employees, declared itself incompetent and took the view that the case fell within the competence of the Italian administrative courts.

On appeal, the parties agreed that the administrative courts were not competent, but they disagreed on the question of jurisdiction generally. The plaintiff contended that the civil courts were competent whereas the I.R.O. contended that the Italian courts in general were not competent, and that the case could only be determined by arbitration as provided in the Staff Regulations of the I.R.O.

*Held:* (i) that as the Staff Regulations merely provided for arbitration by the Italian Chamber of Advocates and did not contain any specific provision as to the number of arbitrators or the manner of their appointment, the constitution of an arbitral tribunal was impossible and there could accordingly be no arbitration.

(ii) As the Staff Regulations provided for the subsidiary application of the "relevant Italian legislation on private employment", such application would result in the competence of the Italian courts.

(iii) The most suitable Italian court to deal with the present dispute was the competent Civil Labour Court and not an administrative court, because administrative courts—so far as concerned labour disputes—were competent to deal only with disputes arising out of contracts of employment with the Italian Government and not those with international organizations.

The Court said: "The parties, Dr. Maida and the Administration for International Assistance (A.A.I.)—the latter being substituted for the International Refugee Organization (I.R.O.) for the purposes of this action—agree that, contrary to the finding of the lower Court, the I.R.O. is not subject to the jurisdiction of the Italian administrative courts in respect of the contract of employment here in issue. On the other hand, they disagree on the finding of the lower Court in the following respect, that whereas the plaintiff contends that the Labour Division of the Civil Court is competent, the A.A.I. contends that the Italian courts in general have no jurisdiction. The A.A.I. says that the plaintiff can have recourse only to the special form of arbitration provided for in Article 9 of the I.R.O. Staff Regulations and entrusted to the Italian Chamber of Advocates (Organo Avvocatura dello Stato italiano). We must draw a distinction, firmly embedded in our jurisprudence and confirmed in recent judgments of this Court, between cases in which a subject of international law acts as such and remains on the plane of international relations in performing sovereign functions incidental to such relations, and cases in which it performs acts of a private character within the ambit of the legal order of another State. In the former case, it must enjoy immunity from the jurisdiction; in

the latter, it acts *jure privatorum* and is therefore subject to the jurisdiction of the State in which it has carried on its commercial activity. This rule must be interpreted in the sense that the exemption from the jurisdiction applies unless the subject of international law has waived it. If, on the other hand, it is alleged that the activity is of a commercial character which belongs to the realm of private law, then it must be governed by a treaty or agreement of an international character. On the basis of this rule, and while there is no need to add to the finding of the lower Court that the I.R.O. is a subject of international law, it cannot be said that the contract of employment between the plaintiff and the I.R.O. is inherent in the performance of the official functions of the latter and within its institutional purposes. These purposes consist of a programme of assistance, maintenance, rehabilitation and repatriation of certain classes of refugees from various countries who have come to Italy [and other countries] as a result of the vicissitudes of the last war and for whose benefit a suitable international organization was set up which is recognized by the various States, including Italy. Italy has undertaken to co-operate in the achievement of these purposes by undertaking specific duties and granting various facilities and benefits on Italian territory (Decree Law No. 468 of March 6, 1948). In order to render material assistance to the refugees, Italy has provided medical personnel (doctors and nurses) to serve in the medical establishments of the Organization in the areas in which the latter performs its functions. The contract of employment of these doctors is directly linked with the institutional purposes of the I.R.O., the doctor being appointed for the performance of tasks [sanitary services] within the specific scope for which the Organization has been established. The transaction [contract of employment between the plaintiff and the I.R.O.], therefore, of which the contract to perform professional work forms part, is—so to speak—merged in the public purposes of the international organization, and the rule of exemption from the jurisdiction should accordingly apply unless the I.R.O. has waived its immunity. In the present case the plaintiff contends that the I.R.O. has waived its immunity. This is strongly contested by the A.A.I., respondents herein, who also say that the acceptance of the jurisdiction of the Italian courts by the I.R.O. would not make the plaintiff's claim admissible. This Court is of opinion that everything in this case suggests that we are concerned with a special régime governing a subject of international law which differs from the general rule governing sovereign States and other subjects of international law, whose autonomy—at least in principle—in the exercise of their public functions in the territory of another State we have preserved intact. This special régime is inherent in the special nature of the aims pursued by the I.R.O. and which the Italian Government, in active co-operation with the other member States, intended to further on Italian territory.

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" By means of the aforementioned Decree Law No. 468 of March 6, 1948, the Italian Government gave legislative recognition to the international character of the I.R.O. and granted to its director and chief executive officers of other than Italian nationality who were not permanently resident in Italy the immunities, facilities and privileges normally enjoyed by diplomatic missions. In order to 'co-operate in the programme of the I.R.O. within the limits of its own jurisdiction', the Italian Government granted facilities of the most varied kind: free use of immovable and movable property (in respect of which it undertook to bear the whole cost), immunity from taxes and duties, railway facilities, and other services. All this was inherent in the discharge of the functions of this international organization. Further, to facilitate the discharge of the functions of the I.R.O., the Italian Government also ensured the latter's protection from suit, whether as plaintiff or defendant, in all actions concerning the Organization itself or its personnel in Italy so far as concerns the official functions of the Organization. However, while giving all effective assistance to the I.R.O. by means of the above-mentioned Agreement (*sic*) of March 6, 1948, provision was made that the functions and activities of the I.R.O. were to be carried out in accordance with the laws and international obligations undertaken or to be undertaken by Italy, and that the I.R.O. would be responsible for all damage resulting, within the meaning of Italian law, from the negligence of its own personnel or the refugees. As the I.R.O., for the purpose of carrying out its functions, employed many persons of different callings [manual and other workers], and as the Italian Government undertook to give to the I.R.O. every possible assistance in the selection and appointment of qualified Italian citizens, it was provided that there should be applicable to these all the privileges of social insurance provided by Italian law for employees of private Italian firms. The I.R.O. then laid down in detail, in its Internal Staff Regulations of April 13, 1951, the conditions of employment and provided that, in so far as no provision was made in these Regulations, the Organization or the employees should refer to the relevant Italian legislation on private employment. It accordingly follows that the I.R.O., notwithstanding that it is a subject of international law, placed itself indirectly and in a subsidiary manner under Italian law in certain respects. This fact must serve as a guide in the present case to determine the competent body which can decide the dispute between the I.R.O. and the plaintiff. Article 9 of the above-mentioned Staff Regulations provides that in cases of dispute between the employee and the Organization, the employee may present his case to the Personnel Office of the Organization and, if he does not accept its decision, 'may submit a request for arbitration to the Italian Chamber of Advocates'.

" The present serious and irreconcilable dispute between the

parties turns on the nature and compulsory character of this arbitration. The defendants contend that this arbitration automatically excludes the jurisdiction of the Italian courts and that the I.R.O. has created its own special tribunal for the determination of disputes with its personnel, within the framework of its own public organization. The plaintiff, on the other hand, denies the effect of the Internal Regulations of the I.R.O., which have been laid down unilaterally and cannot bind the Italian State; Italian law need not recognize such Regulations as would be contrary to Articles 24 and 25 of the Constitution whereby all persons are entitled to invoke the jurisdiction of the courts for the protection of their rights and nobody can be deprived of the right to appeal to the Judge appointed by law. According to the plaintiff, the arbitration here relied upon is therefore only voluntary [the employee 'may . . .'], and, in particular, arbitration is prohibited in cases concerning contracts of employment [Article 806 of the Code of Civil Procedure]. The Court is of opinion that the contentions of the plaintiff lose their force where we are concerned, as is undoubtedly the case here, in regard to services which are inherent in the performance of the public functions of an international person which, within the framework of its own organization, has provided for a method of solving such disputes. No valid argument can be derived from the word 'may' in order to prove the voluntary nature of the arbitration in the present case; once the sovereign will of the I.R.O. has been recognized in respect of contracts with its own personnel, the procedure laid down by the I.R.O. would be the only means open to an employee to assert his rights. Lastly, the exclusion of the right to settle by arbitration labour disputes which are or may be governed by collective agreements, however binding in municipal law, cannot be binding in all cases concerning international relations. Italian law governing private employment can be relied upon in so far as the internal law of the international person makes no other provision. It seems to the Court that the decisive factor militating against the legality of the arbitration in the present case, as provided in Article 9 of the Staff Regulations of the I.R.O., is the fact that it is contrary to the basic requirements underlying the constitution of any arbitral tribunal. In fact, the arbitration in the present case is entrusted [as the Regulations provide] 'to the Italian Chamber of Advocates'. Nothing further is said, and in particular there is no provision as to whether there shall be a sole arbitrator or several arbitrators (in the latter case the number of arbitrators should have been stated), and by whom the arbitrators are to be appointed. These particulars are indispensable because the Italian Chamber of Advocates consists of a large elected body. . . ."

The Court then dealt in greater detail with those aspects of Italian law which caused it to conclude that an arbitral tribunal as provided for in the Staff Regulations of the I.R.O. could not be

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constituted. As, according to those Regulations, Italian law was to apply to the extent that the Regulations themselves made no provision, the Court then had to determine the question whether jurisdiction was vested in the administrative or the civil courts. The Court continued: "As disputes concerning contracts of employment with the Italian State are made subject to the jurisdiction of the administrative courts and as in this case one of the parties is a subject of international law which is outside the administrative organization of that State, this Court considers it more consonant with principle to refer this case to the ordinary courts, having regard to the universal character of the jurisdiction of those courts which is limited only in so far as the law expressly precludes it.

The question of jurisdiction must be determined in this sense and the finding of the labour Tribunal of Naples modified in so far as it declared itself incompetent (and held jurisdiction to be vested in the administrative courts).

[Report: *Rivista di Diritto internazionale*, 39 (1956), p. 546.]

**United Nations—Legal Nature of—United Nations Korean Reconstruction Agency—Capacity to Institute Legal Proceedings in a National Court—Subjection to Same Requirements as Citizens of Nation Concerned—The Law of the United States of America.**

UNITED NATIONS KOREAN RECONSTRUCTION AGENCY *v.* GLASS  
PRODUCTION METHODS, INC., *ET AL.*

*United States, District Court, Southern District, New York.*

*August 3, 1956.*

THE FACTS.—This was an action by an international organization against a corporation domiciled in New York and against three individuals, two of whom were residents of Connecticut. 22 U.S.C. § 288a, 59 Stat. 669, accords the privilege of instituting legal proceedings in courts of the United States to international organizations designated by the President.<sup>1</sup>

The plaintiff contended that the Federal District Court had jurisdiction of the action by virtue of 28 U.S.C. § 1331, 62 Stat. 930, which granted to that Court original jurisdiction of all civil actions wherein the matter in controversy exceeded \$3,000 in value and arose under the Constitution, laws, or treaties of the United States. A venue requirement was imposed by 28 U.S.C. 1391 (b), 62 Stat. 935, which provided that a civil action wherein jurisdiction was not based solely on diversity of citizenship could be brought only in the judicial district where all the defendants resided.

The individual defendants, who were residents of Connecticut,

<sup>1</sup> The United Nations had been so designated by Executive Order No. 9698 of February 19, 1946 (11 Fed. Reg. 1809 (1946)).

# EXHIBIT D

United Nations  Nations Unies

HEADQUARTERS • SIEGE NEW YORK, NY 10017

TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

REFERENCE:

12 May 2014

Excellency,

Complaint in the United States District Court for the Eastern District of New York—  
*Laventure, et al. v. United Nations, et al.*

I write to inform you that the United Nations has become aware of the filing of the above-mentioned Complaint filed by Marie Laventure et al. against the United Nations, the United Nations Stabilization Mission in Haiti (MINUSTAH) and, in their official capacities, (i) Ban Ki-Moon, Secretary-General of the United Nations; (ii) Edmond Mulet, former Special Representative of the Secretary-General for Haiti and Head of MINUSTAH, now Assistant Secretary-General for Peacekeeping Operations; (iii) Chandra Srivastava, former chief engineer for MINUSTAH; (iv) Paul Aghadjanian, former Chief of Mission Support for MINUSTAH; (v) Pedro Medrano, Assistant Secretary-General, Senior Coordinator for the Cholera Response in Haiti; and (vi) Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and UN Legal Counsel. The Complaint is related to the cholera outbreak that occurred in Haiti in 2010.

In this connection, I wish to refer to a similar complaint filed against the United Nations in the United States District Court for the Southern District of New York on 9 October 2013, my letter of 20 December 2013 requesting the competent United States authorities to take appropriate action to ensure the full respect for the privileges and immunities of the United Nations and its officials in relation to that case and my subsequent letter of 10 February 2014 informing the United States that notwithstanding the Plaintiffs' claims to the contrary, the United Nations had not waived its immunity nor had it accepted service of process in that case. I wish to thank the United States for its decision to intervene in that case and filing a statement of interest on 7 March 2014 consistent with my request, and for its continued engagement in the case with a view to ensuring that the privileges and immunities of the United Nations are respected.

With respect to the subject Complaint filed in the United States District Court for the Eastern District of New York, I hereby similarly return the copy of the Complaint and respectfully request the competent United States authorities to take appropriate action to ensure full respect for the privileges and immunities of the United Nations and its officials, in accordance with the obligations of the United States under both international and United States law.

Her Excellency  
Ms. Samantha Power  
Permanent Representative of the United States  
to the United Nations  
New York

As you are aware, the United Nations is an international inter-governmental organization established pursuant to the Charter of the United Nations (hereinafter referred to as "the UN Charter"), a multilateral treaty signed on 26 June 1945. The UN Charter was ratified by the Government of the United States of America on 8 August 1945 and came into force in the United States on 28 October 1945. *See* UN Charter, 59 Stat. 1031 (1945).

As an international organization, the United Nations has been accorded certain privileges and immunities which are necessary for the fulfillment of its purposes. Article 105 of the UN Charter provides the general basis for the privileges and immunities of both the United Nations and its officials. Pursuant to Article 105, paragraph 1 of the UN Charter, "[t]he Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes". Article 105, paragraph 2 provides that "officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization". Article 105, paragraph 3 stipulates that "[t]he 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". UN Charter, Art. 105.

In order to give effect to Article 105 of the UN Charter, the General Assembly of the United Nations adopted the Convention on the Privileges and Immunities of the United Nations (hereinafter referred to as "the General Convention") on 13 February 1946. 1 U.N.T.S. 15 (1946), General Convention, Art. II, 21 U.S.T. at 1422. The United States of America acceded to the General Convention on 29 April 1970. 21 U.S.T. at 1418; [1970] TIAS No. 6900. As a subsidiary organ of the United Nations, MINUSTAH is also entitled to the privileges and immunities provided for in the General Convention.

Article II, Section 2 of the General Convention provides that "[t]he United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution". The immunity provided for under Article II is absolute and is neither qualified nor limited in any way under the terms of the General Convention. Any exception to the provision that an express waiver is required would render the applicable immunity void and risk the United Nations being embroiled in litigation in its 193 Member States, thereby defeating the purpose of the immunity granted to it by its Member States.

I hereby respectfully wish to inform you that the United Nations has not waived and is expressly maintaining its immunity with respect to the above-mentioned Complaint.

I further wish to inform you that the provisions in paragraph 54 of the Agreement between the United Nations and the Government of Haiti concerning the

status of the United Nations Operation in Haiti, signed on 9 July 2004, do not constitute a waiver of the immunity of the Organization. The provisions in that paragraph do not relate to the issue of immunity, but rather to the issue of dispute settlement. Since pursuant to the General Convention each waiver of immunity must be express and in relation to a specific case, this provision cannot constitute a waiver of the Organization's immunity with respect to the above-mentioned Complaint.

With respect to the named individual defendants, I wish to note that pursuant to Article V, Section 18(a) of the General Convention, these individuals are "immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity". Furthermore, pursuant to Article V, Section 19 of the General Convention and by virtue of their official rank, Mr. Ban Ki-Moon (Secretary-General of the United Nations), Mr. Mulet (Under-Secretary-General at the time of the cholera outbreak and currently Assistant Secretary-General), Mr. Medrano (Assistant Secretary-General) and Mr. Serpa Soares (Under-Secretary-General), enjoy "the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law". Pursuant to Article 31 of the Vienna Convention on Diplomatic Relations (hereinafter, "the Vienna Convention"), 500 UNTS 95 (18 April 1961), which entered into force with respect to the United States on 13 December 1972, 23 U.S.T. 3227; TIAS No. 7502, diplomatic envoys enjoy immunity from criminal, civil and administrative jurisdiction of the host country.

Pursuant to Article V, Section 20 of the General Convention, it is the Secretary-General who has the sole authority to waive the immunity of officials of the Organization while the Security Council has the authority to waive the immunity of the Secretary-General himself. In this case, the claims made by the plaintiffs against all of the individual defendants relate to actions undertaken or alleged omissions by them in the performance of their official functions.

Specifically, with respect to Mr. Ban, the Complaint states that he is and was at all relevant times Secretary-General of the United Nations, and that, as such, "he has and had overall responsibility for the management of the United Nations and its operations, including all operations in Haiti". With respect to Mr. Mulet, the Complaint states that he was the Special Representative of the Secretary-General [for Haiti] and Head of MINUSTAH, and mentions that pursuant to relevant Security Council resolutions, Mr. Mulet "had overall authority on the ground for the coordination and conduct of all activities of the United Nations agencies, funds and programmes in Haiti". With respect to Mr. Medrano, the Complaint states that he is the United Nations Senior Coordinator for the Cholera Response in Haiti and is "currently responsible to coordinate the United Nations' cholera response in Haiti". Finally, with respect to Mr. Miguel de Serpa Soares, the Complaint states that he is the Under Secretary General for Legal Affairs and is "currently responsible for all legal affairs and issues arising from the United Nations' cholera response".

With respect to Ms. Srivastava, the Complaint states that she was the chief engineer for MINUSTAH during the relevant time and "was responsible for the environmental unit and sanitation unit in Haiti during the mission". With respect to

Mr. Aghadjanian, the Complaint states that he was Chief of Mission Support for MINUSTAH during the relevant time and “was responsible for the contribution and implementation of the mission/office mandate by providing the necessary managerial, logistical and administrative support required for the fulfilment of the mandate....”

Therefore, the Secretary-General, Mr. Mulet, Mr. Medrano and Mr. Serpa Soares enjoy both diplomatic immunity and functional immunity under the General Convention, while Ms. Srivastava and Mr. Aghadjanian enjoy functional immunity, in relation to the present Complaint unless their immunity has been waived, which it has not. The United Nations is expressly asserting the immunity of the Secretary-General, Mr. Mulet, Mr. Medrano, Mr. Serpa Soares, Ms. Srivastava and Mr. Aghadjanian in relation to the above-referenced Complaint.

I further wish to inform you that the Complaint indicates that “[m]embers of the proposed Class filed claims against Defendants UN and Ban Ki-Moon” before filing suit in the district court. The United Nations has previously considered other claims related to the same cholera epidemic in Haiti and determined that they are not receivable pursuant to Section 29 of the General Convention as consideration of these claims would necessarily include a review of political and policy matters. The United Nations maintains that the claims referred to in this Complaint are similarly not receivable.

Pursuant to Section 34 of the General Convention, the Government of the United States undertook an obligation to be “in a position under its own law to give effect to the terms of this Convention”. Any interpretation of the provisions of the General Convention must be carried out within the spirit of the underlying provisions of the UN Charter, and in particular Article 105 thereof, which provides that “the Organization shall enjoy such privileges and immunities as are necessary for the fulfilment of its purposes”.

In view of the above, please be advised that the United Nations has not waived, and indeed, expressly maintains the privileges and immunities of the United Nations and its officials in respect of the above-mentioned Complaint in the United States District Court for the Eastern District of New York. Accordingly, I wish to respectfully request the Government of the United States to take the appropriate steps with a view to ensuring that the privileges and immunities of the United Nations and its officials are maintained in respect of this legal action.

I further wish to advise you that despite the Plaintiffs’ efforts to deliver the Complaint and summons to the United Nations by various means, including by facsimile, the United Nations maintains its immunity in respect of such purported service and therefore has not, and does not, accept such service.

In this connection, I wish to recall, as noted in my 10 February 2014 letter, that Article 9 (a) of the Agreement regarding the Headquarters of the United Nations, approved by the General Assembly on 31 October 1947, provides that the service of

process in the Headquarters District can only take place with the consent of and under conditions prescribed by the Secretary-General. The Secretary-General of the United Nations has not prescribed any conditions under which service by mail or facsimile would be allowed. Accordingly, the United Nations has not agreed to service and, in the absence of its consent, no service against it or its officials has been duly effected in this matter.

Finally, I take this opportunity to inform you that since the outbreak of the disease, the United Nations, in cooperation with other partners, has been assisting the Government of Haiti in combating and eradicating cholera in Haiti. In December 2012, the Secretary-General launched his special effort to support the Initiative by the Governments of Haiti and the Dominican Republic for the Elimination of Cholera in the Island of Hispaniola. In August 2013, the Secretary-General appointed a Senior Coordinator for the Cholera Response in Haiti to work closely with the relevant United Nations agencies, funds and programmes as well as the World Bank, Inter-American Development Bank, NGOs and other key actors to ensure a coherent and effective response to the issue of cholera in Haiti.

Recently, the Organization and the Government of Haiti established the High Level Committee for the Eradication of Cholera which will address the underlying conditions that made the outbreak possible with a view to improving access to water, sanitation, hygiene and health-care facilities for the population of Haiti as a whole. The establishment of the joint committee is a unique collaboration between the United Nations and the Government of Haiti, which will focus on the provision of social and economic assistance to affected communities, with special emphasis on persons affected by the disease. Please find enclosed a copy of the exchange of letters between the Government of Haiti and the United Nations of 2 and 11 April 2014 constituting an agreement on the establishment of the High-Level Committee for the Eradication of Cholera.

Please accept, Excellency, the assurances of my highest consideration.



Miguel de Serpa Soares  
Under Secretary-General for Legal Affairs  
and United Nations Legal Counsel