

Michigan Law Review

Volume 57 | Issue 1

1958

International Law - The United Nations Emergency Force - Legal Status

Dudley H. Chapman S.Ed.
University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [International Law Commons](#), [Jurisdiction Commons](#), and the [Military, War, and Peace Commons](#)

Recommended Citation

Dudley H. Chapman S.Ed., *International Law - The United Nations Emergency Force - Legal Status*, 57 MICH. L. REV. 56 (1958).

Available at: <https://repository.law.umich.edu/mlr/vol57/iss1/4>

This Response or Comment is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

COMMENTS

INTERNATIONAL LAW—THE UNITED NATIONS EMERGENCY FORCE—LEGAL STATUS—The United Nations Emergency Force (UNEF) was created in November 1956¹ to facilitate the withdrawal from Egypt of British, French and Israeli troops.² By February 1957 UNEF had reached a strength of about 6,000 men consisting of troop contingents furnished by UN member states other than permanent members of the Security Council.³ Its headquarters staff is drawn from the United Nations Truce Supervision Organization in Palestine,⁴ and some technical services are provided by the Secretariat.⁵ The troop contingents are supplied from the armed forces of contributing states but carry only light arms and are not capable of dealing with anything more serious than individual or guerilla type actions.

The UNEF is the first force of its kind ever used by the United Nations. Its objectives, organization and capabilities are altogether different from the UN forces that fought in Korea⁶ and from those provided for in Article 43 of the UN Charter.⁷ The Force is strong enough to carry out its duties of patrolling a military truce or cease fire, but cannot and is not intended to resist organized military aggression by any state. Secretary General Hammarskjöld describes the force as "more than an observer's corps, but in no way a military force temporarily controlling the territory in which it is stationed. . . ."⁸ Its presence and function-

¹ Res. 1000 (ES-I) and Res. 1001 (ES-I) U.N. GENERAL ASSEMBLY OFF. REC., First Emergency Special Session, Supp. No. 1 (A/3354) (1956).

² U.N. Doc. A/3694, ¶47 (1957). See Goodrich and Rosner, "The United Nations Emergency Force," 11 INTERNATIONAL ORGANIZATION 413 (1957); FRYE, A UNITED NATIONS PEACE FORCE (1957); PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 206 (1957).

³ U.N. Doc. A/3694, ¶3 (1957). Units were contributed by Brazil, Canada, Colombia, Denmark, Finland, India, Indonesia, Norway, Sweden and Yugoslavia, id., ¶4. Of these 6,000 only about 3,500 were available for patrol and guard duties, id., ¶6.

⁴ Res. 1000 (ES-I) U.N. GENERAL ASSEMBLY OFF. REC., First Emergency Special Session, Supp. No. 1 (A/3354) (1956).

⁵ U.N. Doc. A/3694, ¶11 (1957).

⁶ For a full discussion of the Korean episode, see Goodrich, "Korea—Collective Measures Against Aggression," INTERNATIONAL CONCILIATION, No. 494, Carnegie Endowment for International Peace (Oct. 1953); Goodrich, "Efforts To Establish International Police Force Down to 1950," Appx. to FRYE, A UNITED NATIONS PEACE FORCE 184-194 (1957).

⁷ See text following note 30 infra.

⁸ U.N. Doc. A/3302, ¶12 (1956). "The Force, which has an international character as a subsidiary organ of the General Assembly, as affirmed in its regulations, was not established to undertake enforcement actions. While UNEF has a military organization, it does

ing on Egyptian territory depend entirely on the consent of Egypt.⁹

Although the Emergency Force was authorized on a strictly temporary basis, the success which it has achieved in relieving an international crisis and restoring, temporarily at least, order in Gaza, Suez and the Sinai Peninsula¹⁰ has prompted support for the establishment of such a force on a permanent basis.¹¹ Lebanon, Jordan, Kashmir¹² and the Tunisian-Algerian border¹³ have all been the subjects of recent proposals for the stationing of a similar UN force. Such a force could also be used by the Security Council, for instance, in connection with Article 40 of the Charter under which the Council can call upon the parties to a dispute to comply with measures aimed at effecting a cease fire and which do not result in prejudice to either party.¹⁴ This article would be substantially more effective if a neutral force could ensure that a complying party will not suffer prejudice.

The present force has already furnished experience that can be highly useful¹⁵ in creating a permanent or another ad hoc force;

not use all normal military methods in achieving the objectives defined for it by the General Assembly. . . . [T]he functions foreseen for UNEF when the cease-fire was being established, were to enter Egyptian territory with the consent of the Egyptian Government, in order 'to help maintain quiet during and after the withdrawal of non-Egyptian troops.' U.N. Doc. A/3694, ¶31 (1957).

⁹ U.N. Doc. A/3302, ¶9 (1956).

¹⁰ U.N. Doc. A/3694, ¶¶30 to 34, 44, 45 (1957); statement of Joseph E. Johnson, President of the Carnegie Endowment for International Peace, Hearings Before the Subcommittee on International Organizations and Movements of the Committee on Foreign Affairs, on H. Res. 367 and H. Con. Res. 373, 85th Cong., 2d sess., pp. 3-4 (1958).

¹¹ See Pearson, "Force for U.N.," 35 FOREIGN AFFAIRS 395 (1957); FRYE, A UNITED NATIONS PEACE FORCE 66 et seq. (1957); Munro, "The Case for a Standing U.N. Army," NEW YORK TIMES MAGAZINE, p. 8, July 27, 1958; Report of Mr. Carnahan from the Subcommittee on Foreign Affairs, Relative to the Establishment of a United Nations Force, Hearings before the Subcommittee on International Organizations and Movements of the Committee for Foreign Affairs on H. Res. 367 and H. Con. Res. 373, 85th Cong., 2d sess., p. 97 et seq. (1958); President Eisenhower's speech before the U.N. General Assembly on Aug. 13, 1958, N.Y. TIMES, Aug. 14, 1958, p. 6:2; Secretary of State Dulles's speech before the Assembly on Sept. 18, N.Y. TIMES, Sept. 19, 1958, p. 4:2.

¹² United Nations Security Council, U.N. Doc. S/3821 (1957). India has vehemently rejected the idea and warned that it would consider an offer to participate in such a force as "an unfriendly act." 3 U.N. CHRONICLE, col. 1003 (1957).

¹³ The United States has favored the use of UN observers in that area. N.Y. TIMES, Feb. 12, 1958, §1, p. 12:3-4, but the proposal encountered considerable difficulty, 51 NEWSWEEK, April 14, 1958, p. 42:3.

¹⁴ See GOODRICH AND HAMBRO, CHARTER OF THE UNITED NATIONS 273-276 (1949); GOODRICH AND SIMONS, THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY 381 (1955). The Security Council could also invoke article 39 for this purpose on the theory that the force is a measure not involving the use of armed force (see article 41) which is to be employed to give effect to a decision of the Council.

¹⁵ The Secretary General designated a special committee of the Secretariat headed

and this is especially true of its legal aspects. The purpose of this comment is to consider the legal status of UNEF and of a potential permanent force of the same type. Some of the incidental legal problems confronting the United Nations will also be considered.

I. *Basis in the Charter*

A detailed analysis of the constitutional basis of UNEF has already been the subject of able treatment¹⁶ and is beyond the scope of this comment. Some brief observations on this subject will nevertheless be useful in exploring the legal status of the force.

UNEF is described, in terms of UN constitutional doctrine, as a subsidiary organ of the General Assembly,¹⁷ functioning in accordance with the "Uniting for Peace" resolution.¹⁸ "Uniting for Peace" was the response of the General Assembly to the Security Council's failure to carry out its "primary responsibility for the maintenance of international peace and security"¹⁹ in connection with the Korean episode.²⁰ The resolution is a statement of policy that the Assembly shall consider on an emergency basis any threat to or breach of the peace or act of aggression and make recommendations concerning it whenever lack of unanimity prevents the Security Council from exercising its primary responsibility.²¹ The resolution thus explains the General Assembly's assumption of responsibility in the Suez crisis, but does not provide for the establishment of a UN force.

The authority for organizing such a force is said to be found in Article 22 of the Charter which authorizes the Assembly to "establish such subsidiary organs as it deems necessary for the

by Dr. Ralph Bunche to make a comprehensive analysis of all aspects of UNEF. 3 U.N. CHRONICLE, col. 990 (1957).

¹⁶ See Sohn, "The Authority of the United Nations To Establish and Maintain a Permanent United Nations Force," 52 AM. J. INT. L. 229 (1958); Goodrich and Rosner, "The United Nations Emergency Force," 11 INTERNATIONAL ORGANIZATION 413 (1957).

¹⁷ U.N. Doc. A/3694, p. 12 (1957).

¹⁸ Resolutions adopted by the General Assembly during the period Sept. 19 to Dec. 15, 1950, U.N. GENERAL ASSEMBLY OFF. REC., 5th Sess., Supp. No. 20, U.N. Doc. A/1175, p. 10; U.N. Doc. A/3302, p. 4 (1956).

¹⁹ U.N. CHARTER, art. 24.

²⁰ See note 6 *supra*.

²¹ Concerning this resolution, see generally: 1 REPERTORY OF UNITED NATIONS PRACTICE 306, 307 (1955); Johnson, "The Effect of Resolutions of the General Assembly of the United Nations," 32 BRIT. Y. B. INT. L. 97 at 156, 157 (1955-1956); GOODRICH AND SIMONS, THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY 408-414 (1955); CHEEVER AND HAVILAND, ORGANIZING FOR PEACE 486-489 (1954); STONE, LEGAL CONTROLS OF INTERNATIONAL CONFLICT 266-278 (1954).

performance of its functions." This article is clearly limited by the scope of the Assembly's functions as they are defined elsewhere in the Charter.²² The provisions of the Charter and its drafting history indicate two limitations on the Assembly's authority to establish a UN force. The first is that the Assembly's functions are all stated in terms of discussion and recommendation, which reflects a distinction the drafters of the Charter sought to draw between the General Assembly, as a kind of "town meeting of the world,"²³ in contrast to the Security Council which was to exercise sole responsibility for *taking action* on behalf of the organization.²⁴ The second limitation is the incapacity of the Assembly (not shared by the Security Council) to impose a legally binding obligation upon the members in matters concerning the preservation of international peace.²⁵

The distinction between the Assembly as the organ of discussion and the Council as the body responsible for action has not been carefully respected, however. The practice of the General Assembly contains several instances of what may be described as direct action on the part of the Assembly, e.g., its resolutions of February 1 [498(V)]²⁶ and May 18, 1951 [500(V)]²⁷ declaring Communist China an aggressor in Korea and urging an embargo against her; and the establishment of the Korean Reconstruction Agency in 1950.²⁸ It is therefore generally accepted that the Assembly had power to establish UNEF as a subsidiary organ of the General Assembly.²⁹

²² See GOODRICH AND HAMBRO, CHARTER OF THE UNITED NATIONS 183-194 (1949), where it is stated at 193-194 with regard to subsidiary organs of the General Assembly: "The basic rule for all such bodies is that their authority cannot exceed that of the General Assembly from which it is derived." But cf. Goodrich and Rosner, "The United Nations Emergency Force," 11 INTERNATIONAL ORGANIZATION 413 at 417-419 (1957).

²³ KELSEN, THE LAW OF THE UNITED NATIONS 199-200 (1950).

²⁴ GOODRICH AND HAMBRO, CHARTER OF THE UNITED NATIONS 28, 150, 172-174 (1949).

²⁵ GOODRICH AND SIMONS, THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY 428 (1955); Johnson, "The Effect of Resolutions of the General Assembly of the United Nations," 32 BRIT. Y. B. INT. L. 97 (1955-1956).

²⁶ YEARBOOK OF THE UNITED NATIONS 224-225 (1951).

²⁷ *Id.* at 228.

²⁸ The Agent General of the Agency was directed "to carry out the recommendations of the General Assembly. . . ." Res. 410 (V) A & B, U.N. GENERAL ASSEMBLY OFF. REC., 5th Sess., Supp. No. 20 (Doc. A/1775) pp. 31-35 (1950). Another such instance is the Commission of Palestine established in 1947, KELSEN, THE LAW OF THE UNITED NATIONS 195-196 (1950).

²⁹ Goodrich and Rosner, "The United Nations Emergency Force," 11 INTERNATIONAL ORGANIZATION 413 (1957). Although UNEF is regarded in its entirety as a subsidiary organ of the General Assembly, it would also be possible for the Assembly to establish only a Command, and then *recommend* to the member states that they furnish troop contingents

The Soviet Union, which did not oppose the establishment of UNEF, purportedly because it was accepted by Egypt, has challenged its constitutionality on the ground that it is an illegal substitute for the forces prescribed in Article 43 of the Charter,³⁰ the only article expressly providing for UN forces. In that article all members of the United Nations undertake to make armed forces available to the Security Council on its call for the purpose of maintaining international peace and security. These forces were to be made available on the basis of special agreements between member states and the Security Council, but no such agreements have been concluded, and hence, no forces made available under Article 43 because the permanent members of the Security Council reached an early impasse over the principles which should govern the composition of any such forces.³¹ The Russian argument is unacceptable because of the basically different functions for which UNEF and Article 43 forces were designed. The latter were intended to provide the Security Council with fighting forces capable of stopping any organized military aggression, whereas UNEF is not intended to impose the will of the United Nations on any nation, but to assist both parties to a dispute in effectuating and preserving a cease fire.

It is clear that even under a broad construction of its powers the General Assembly cannot obligate a member to accept a UN force on its territory, and the scope of its operations as well as the duration of its stay depend on the consent of the host state. Nor can the General Assembly obligate any member state to make available its troops for service with the force. However, it is a very different thing to say that the decision to establish the Force

which would act in accordance with the *recommendations* of the UN Command. The difference is that under the latter plan, the troops would be acting as *national* units and their status would be determined solely by reference to the status of friendly foreign forces under international law (discussed *infra*). If, on the other hand, the troop contingents constitute part of a subsidiary organ of the General Assembly, they are entitled to the privileges and immunities of the United Nations under Article 105 of the Charter (discussed *infra*).

³⁰ Report of the Fifth Committee, U.N. GENERAL ASSEMBLY OFF. REC., 11th Sess. Annexes, Agenda Item No. 66, p. 65, ¶25 (Doc. A/3560) (1957).

³¹ Russia insisted that the contributions of all members be quantitatively and qualitatively equal. This would mean that no contribution could be stronger than that of the weakest member, and in view of the weakened condition of postwar Nationalist China, for example, the result would have been to limit the forces to token size. See Goodrich, "Efforts To Establish International Police Force Down to 1950," appx. to FRYE, A UNITED NATIONS PEACE FORCE 175-184 (1957); and 2 REPERTORY OF UNITED NATIONS PRACTICE 23-54 (1955).

(assuming this to be otherwise valid under the Charter) and to recommend that members contribute military contingents is in any way dependent on the consent of the host state. Nevertheless, the Secretary General did not dispute the Indian position (expressed as a condition of its contribution to UNEF): "It is understood that the Force may have to function through Egyptian territory. Therefore, there must be Egyptian consent for its establishment."³² This qualification may seem unimportant since, in any event, a force cannot function without the consent of the host state. As a practical matter, however, the prior existence of a force could prove an important factor in obtaining this consent.³³ No such limitation on the General Assembly's authority appears in the Charter either expressly or by reasonable inference.

There are alternative methods of establishing a UN force. There is no legal obstacle to the establishment of a force by the Security Council³⁴ if it should so desire. Another possibility is the establishment of a force as part of the Secretariat.³⁵ The justification for this may be found in Article 97 of the Charter which provides that the Secretariat "shall comprise . . . such staff as the organization may require." This was the basis upon which the Secretary General established the United Nations Field Service, with the approval of the General Assembly, in 1949.³⁶ The Field Service was established for the purpose of providing physical protection as well as technical services and facilities for UN missions³⁷ and is now handling communications for UNEF.³⁸ A Field Reserve Panel, which is nothing more than a list of qualified senior military personnel who can be called to service for supervision and observation work when needed,³⁹ was established in conjunction with the Field Service but has not been utilized. These two agencies resulted from

³² U.N. Doc. A/3302/Add. 4/Rev. 1, GENERAL ASSEMBLY OFF. REC., First Emergency Special Sess. 23, 24 (1956).

³³ This consideration undoubtedly motivated the Indian stipulation. See note 12 supra, and FRYE, A UNITED NATIONS PEACE FORCE 7 (1957).

³⁴ Sohn, "The Authority of the United Nations To Establish and Maintain a Permanent United Nations Force," 52 AM. J. INT. L. 229 (1958).

³⁵ Id. at 235.

³⁶ YEARBOOK OF THE UNITED NATIONS 425 (1948-1949).

³⁷ U.N. GENERAL ASSEMBLY OFF. REC., 4th Sess., Supp. No. 1, Doc. A/930, pp. xiv to xv (1949); note 36 supra.

³⁸ U.N. Doc. A/3694, ¶11 (1957).

³⁹ U.N. GENERAL ASSEMBLY OFF. REC., 4th Sess., Supp. No. 13, Doc. A/959, p. 2 (1949); Schwebel, "A United Nations 'Guard' and a United Nations 'Legion,'" appx. to FRYE, A UNITED NATIONS PEACE FORCE 202, 203 (1957).

Trygvie Lie's proposal in 1948 for a UN Guard Force⁴⁰ that would have performed essentially the same kind of functions as UNEF⁴¹ in addition to furnishing security for UN missions. If a permanent UN force is to be established in the near future there is something to be said in favor of doing so within the framework of the Secretariat.⁴² Perhaps the most important consideration is that the cost of maintaining a standing force larger than current needs require would be prohibitive⁴³ and since the present need is primarily for advance planning of administrative and legal arrangements,⁴⁴ any successful proposal for a permanent force is likely to result in no more than institution of the needed administrative machinery.⁴⁵ The Field Service and Reserve Panel, which serve closely related functions, are a part of the Secretariat, and efficient administration would favor consolidation of these agencies. Moreover, as part of the Secretariat, the Force could more easily recruit its personnel directly and there would be no question that every member thereof is an agent of the United Nations rather than his national state.⁴⁶ Of course there may be considerable political difficulties in obtaining an agreement in the UN on such direct recruitment.

II. *Legal Status*

The status of UNEF concerns its relation to the sovereign of the territory in which it is functioning. We have already observed that the presence and functioning of UNEF in Egypt are premised on that government's consent, from which it follows that the Force would be obligated to remove itself from Egyptian territory if that government should so demand.⁴⁷ The following discussion is addressed to the status of the Force while it is present and functioning pursuant to the consent of the host state.

⁴⁰ Annual Report of the Secretary General on the Work of the Organization, U.N. GENERAL ASSEMBLY OFF. REC., 3d Sess., Supp. No. 1, Doc. A/565, pp. xvii to xviii (1948); for the text of the proposal see U.N. Doc. A/656 (1948).

⁴¹ See FRYE, A UNITED NATIONS PEACE FORCE 32-45 (1957).

⁴² This is envisaged by Secretary of State Dulles's proposal, N.Y. TIMES, Sept. 19, 1958, p. 4:2.

⁴³ Goodrich and Rosner, "The United Nations Emergency Force," 11 INTERNATIONAL ORGANIZATION 413 at 429 (1957); FRYE, A UNITED NATIONS PEACE FORCE 72, 73 (1957).

⁴⁴ FRYE, A UNITED NATIONS PEACE FORCE 81 et seq. (1957); Pearson, "Force for U.N.," 35 FOREIGN AFFAIRS 395, 401, 402 (1957).

⁴⁵ See speech by Sir Leslie Munro, N.Y. TIMES, Dec. 8, 1957, §1, p. 19:2, (Late City Edition).

⁴⁶ See note 29 supra.

⁴⁷ Note 9 supra.

In considering the status of UNEF, it is important to keep in mind its two most important characteristics: (a) it is a subsidiary organ of the General Assembly, and thus an agency of the United Nations; and (b) it is military in nature, its personnel consisting almost entirely of units of the regular armed forces of UN member states. The relations between UNEF and Egypt are regulated by a specific agreement concluded between the Secretary General and the Egyptian Foreign Minister,⁴⁸ and approved by the General Assembly.⁴⁹ Before examining the provisions of this agreement, it will be useful to consider the factors that would govern the status of the Force in the absence of a specific agreement. This was in effect the circumstance in which UNEF functioned during the first two months of its operation prior to the conclusion of the agreement.⁵⁰

A. *Factors Influencing the Status of the Force.* Rules and practices relevant to this question may be derived from three sources. (1) The first is found in Articles 104 and 105⁵¹ of the UN Charter and the Convention on the Privileges and Immunities of the United Nations,⁵² proffered by the General Assembly thereunder, in other Charter provisions and in the rules that have developed in the application thereof. (2) A second source may be found in the customary rules of international law concerning state responsibility as applied to international organizations (particularly the UN), and in the practices that have been developed in connection with UN observer and truce supervision groups such as those which have functioned on various occasions in Palestine, Greece and Pakistan. (3) Also of considerable importance is customary international law

⁴⁸ Report of the Secretary General on arrangements concerning the status of the United Nations Emergency Force in Egypt, U.N. GENERAL ASSEMBLY OFF. REC., 11th Sess., Annexes, Agenda Item No. 66, p. 52 (Doc. A/3526) (1957), hereinafter cited as UNEF Agreement.

⁴⁹ Res. 1126 (XI), U.N. GENERAL ASSEMBLY OFF. REC., 11th Sess., Annexes, Agenda Item 66 at 76 (Doc. A/Res/485) (1957). The agreement is summarized and discussed briefly by Goodrich and Rosner, "The United Nations Emergency Force," 11 INTERNATIONAL ORGANIZATION 413 at 425, 426 (1957).

⁵⁰ From the time UNEF first entered Egypt in November 1956 until the status agreement was concluded on February 8, 1957, the only specific agreement concerning its status was an *aide-memoire* between the Secretary General and the Egyptian Government which called for a more detailed agreement and required all parties to act in good faith until it could be concluded. U.N. Doc. A/3375, p. 9, 10 (1956), approved by the General Assembly in Res. 1121 (XI), U.N. GENERAL ASSEMBLY OFF. REC., 11th Sess., Annexes, Agenda Item 66, p. 75 (Doc. A/Res/411) (1956-1957).

⁵¹ PROCEEDINGS OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW 206 at 222 (1957).

⁵² Resolutions Adopted During the First Part of its First Session, U.N. GENERAL ASSEMBLY OFF. REC. 25 to 27, Doc. A/64 (1946); 43 AM. J. INT. L. SUPP. 1 (1949).

as well as the provisions of recent multilateral treaties, bearing upon the status of friendly military forces while stationed on foreign soil.

Privileges, Immunities and Rights of the United Nations. Article 105 of the UN Charter provides: "(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," and "(2) . . . 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." This article rejects the notion, contended for by some governments, that an international organization is entitled to the privileges, exemptions and immunities accorded foreign governments under customary international law, and that officials of such organizations should enjoy diplomatic privileges and immunities.⁵³ The principle adopted by Article 105, which has been cited as declaratory of customary international law,⁵⁴ is that the privileges of the organization and its officials should be limited to what is necessary for the carrying out of their functions.

This general principle leaves unanswered all of the difficult questions that arise in its practical application. It was for this reason that Article 105 specifically empowered the General Assembly to make recommendations or propose conventions "with a view to determining the details of the application of paragraphs 1 and 2 of [Article 105]." In accordance with this provision, in 1946 the General Assembly proposed the Convention on Privileges and Immunities of the United Nations, which has been accepted by some (including Egypt)⁵⁵ but not all (e.g., the United States)⁵⁶ of the members.

This Convention grants "the United Nations, its property and assets wherever located and by whomsoever held" immunity "from every form of legal process" except where expressly waived, and no

⁵³ See Preuss, "The International Organizations Immunities Act," 40 AM. J. INT. L. 332 (1946).

⁵⁴ *Ibid.*

⁵⁵ U.N. Doc. A/64, 25-34 (1946).

⁵⁶ Congress enacted the International Organizations Immunities Act, 59 Stat. 669 (1945), 22 U.S.C. (1952) §288, which serves the same purpose but is less favorable to the UN than the Convention on Privileges and Immunities. See Preuss, "The International Organizations Immunities Act," 40 AM. J. INT. L. 332 (1946). The United States also concluded a Headquarters Agreement with the United Nations, 61 Stat. 3416, in force Nov. 21, 1947, 61 Stat. 756. See also 71 HARV. L. REV. 1300 (1958).

waiver of immunity shall extend to any measure of execution." The premises and archives of the United Nations are declared inviolable. Its assets, income and other property are exempt from direct taxes and customs duties and regulations. The privileges accorded its communications and correspondence may be generally described as those accorded diplomatic communications.⁵⁷ UN personnel are accorded varying privileges in accordance with their rank and duties. Several of these provisions have been incorporated into the UNEF status agreement and will be noted in that connection.

Under international law a state has the duty to observe a certain minimum standard in its treatment of foreign nationals on its soil. Private persons have no standing to complain of a breach of such duty and are dependent on their national states to press an international claim for them. Although Article 104 grants the United Nations Organization *legal capacity* in the sense that it can make contracts and bring suit in national courts, the Charter does not specifically confer *international personality*⁵⁸ on the organization, which it must have if it is to press an international claim. The International Court of Justice filled this gap by inferring from the Charter as a whole that the organization has sufficient international personality for this purpose,⁵⁹ so that the UN may protect the rights of its agents just as a state safeguards the interests of its citizens.

The status accorded to UN observer and truce supervision groups is clearly pertinent in determining the status of an international force. A host state's duty to furnish personal protection for officials of such groups is illustrative. The government which is in control of territory in which UN officials carry out their functions, and which furnishes them personal protection, may be held responsible for their safety. These were the principal grounds on which Israel was held responsible in damages for the assassination on Israeli-controlled territory⁶⁰ of UN truce mediator Count Bernadotte.⁶¹

⁵⁷ GOODRICH AND HAMBRO, CHARTER OF THE UNITED NATIONS 522 (1949).

⁵⁸ "This Article [104] does not deal with what is called the 'international personality' of the Organization. . . . Practice will bring about the evolution of appropriate rules so far as necessary." Dept. of State, Conference Series 71, pp. 157, 158 (1945).

⁵⁹ "Reparation for Injuries Suffered in the Service of the United Nations," Advisory Opinion, 1949 I.C.J. Rep. 174.

⁶⁰ 43 AM. J. INT. L. 95 (1949).

⁶¹ Count Bernadotte was in charge of "a multinational uniformed police group . . .

*Status of Friendly Foreign Forces Under International Law.*⁶²

In view of the predominantly military character of UNEF's personnel, the status of friendly foreign armed forces in international law is especially relevant. This matter has been of increasing importance since World War I and is currently posed by the large numbers of such troops in Europe under the NATO and Warsaw Pacts and in Japan. There is support for the proposition that under customary international law, when a sovereign consents to the passage or sojourn of a foreign force, it impliedly concedes that force such freedom from local restraints and controls as is needed to carry out the purposes for which the presence of such forces is intended.⁶³ This standard is too general to be of much practical value and in most instances where there have been sufficient forces to make the question important, a specific agreement has either been concluded⁶⁴ or sought in negotiations.⁶⁵ Although some of the major powers have been able to secure exclusive jurisdiction over their forces in wartime,⁶⁶ the most important treaties since World War II, viz., those regulating the status of NATO and Warsaw Pact forces, have tended to emphasize concurrent jurisdiction,⁶⁷

consisting initially of about 50 UN guards . . . as aides to the military observers of the truce ordered by the Security Council." "The United Nations Emergency Force (UNEF)," *INTERNATIONAL REVIEW SERVICE* 6 (1957).

⁶² See generally: 32 *N.Y. UNIV. L. REV.* 351 (1957); 70 *HARV. L. REV.* 1043 (1957); Schwartz, "International Law and the NATO Status of Forces Agreement," 53 *COL. L. REV.* 1091 (1953); Barton, "Foreign Armed Forces: Immunity From Criminal Jurisdiction," 27 *BRIT. Y. B. INT. L.* 186 (1950); Barton, "Foreign Armed Forces: Immunity from Supervisory Jurisdiction," 26 *BRIT. Y. B. INT. L.* 380 (1949); King, "Further Developments Concerning Jurisdiction Over Friendly Foreign Forces," 40 *AM. J. INT. L.* 257 (1946); Brinton, "Jurisdiction Over Members of Allied Forces in Egypt," 38 *AM. J. INT. L.* 375 (1944); King, "Jurisdiction Over Friendly Foreign Armed Forces," 36 *AM. J. INT. L.* 539 (1942); 2 *HACKWORTH, DIGEST OF INTERNATIONAL LAW* §169, p. 393 (1941).

⁶³ Barton, "Foreign Armed Forces: Immunity From Supervisory Jurisdiction," 26 *BRIT. Y. B. INT. L.* 380 at 411-413 (1949); King, "Jurisdiction Over Friendly Foreign Armed Forces," 36 *AM. J. INT. L.* 539 at 548 (1942); 2 *HACKWORTH, DIGEST OF INTERNATIONAL LAW* 393 (1949).

⁶⁴ For collection and discussion of such treaties, see Barton, "Foreign Armed Forces: Immunity From Criminal Jurisdiction," 27 *BRIT. Y. B. INT. L.* 186 at 187-207 (1950); Schwartz, "International Law and the NATO Status of Forces Agreement," 53 *COL. L. REV.* 1091 at 1094-1102 (1953).

⁶⁵ In World War I the United States and Britain were negotiating for an agreement when the Armistice intervened, King, "Jurisdiction Over Friendly Foreign Armed Forces," 36 *AM. J. INT. L.* 539 at 552, 553 (1942).

⁶⁶ Barton, "Foreign Armed Forces: Immunity From Criminal Jurisdiction," 27 *BRIT. Y. B. INT. L.* 186 at 199-205 (1950). The United States had agreements conferring immunity on U.S. forces in World War II with Belgium (respecting the Belgian Congo), Canada, China, Egypt, India, and New Zealand. *Id.* at 200.

⁶⁷ 70 *HARV. L. REV.* 1043 at 1049 (1957).

with a formula of primary rights to its exercise, depending on the relative interests of the sending and receiving states.⁶⁸

The foregoing precedents furnish the principles from which UNEF's status would have to be inferred in the absence of a specific agreement, and from which the provisions of the agreement presently governing the Force have been derived.

B. *The UNEF Status Agreement.* The Status Agreement is premised on the conception that the entire Emergency Force is an organ of the United Nations. Paragraph 23 states that "the United Nations Emergency Force, as a subsidiary organ of the United Nations established by the General Assembly, enjoys the status, privileges and immunities of the United Nations." Evidence that the contributing states are not acting in their national capacities under recommendations of the General Assembly, but are to be treated as a constituent part of a subsidiary organ is found in the provision which extends the immunities of the United Nations under the Convention on Privileges and Immunities to "the property, funds and assets of Participating States used in Egypt in connection with the national contingents serving in the United Nations Emergency Force."⁶⁹

In addition to the status agreement, UNEF is governed by a set of regulations issued by the Secretary General.⁷⁰ Regulation 15 provides that the Secretary General "shall have authority for all administrative, executive and financial matters affecting the Force and shall be responsible for the negotiation and conclusion of agreements with Governments concerning the Force." The Commander, who is appointed by the General Assembly,⁷¹ is given "full command authority over the Force" and "is operationally responsible for the performance of all functions assigned to the Force by the United Nations."⁷² Regulation 12 provides that "instructions from principal organs of the United Nations shall be channeled by the Secretary General through the Commander and the Chain of Command designated by him."⁷³

⁶⁸ NATO SOF, art. VII, §3; Schwartz, "International Law and the NATO Status of Forces Agreement," 53 *COL. L. REV.* 1091 at 1092, n. 4 (1953).

⁶⁹ UNEF Agreement, §23 (note 48 *supra*).

⁷⁰ Regulations for the United Nations Emergency Force, U.N. Doc. ST/SGB/UNEF/1(1957), hereinafter cited: UNEF Regulation. These were issued after consultation with the UNEF Advisory Committee.

⁷¹ Note 4 *supra*.

⁷² UNEF Regulation 11.

⁷³ In designating the chain of command, the Commander is to make use of "the

(1) *Powers and privileges.* It has already been noted that the Force is "in no way a military force temporarily controlling the territory in which it is stationed."⁷⁴ Nevertheless, it is essential to the successful functioning of the Force that it exercise some control over the buffer zone in which it operates. Thus, the Force is permitted to carry small arms, and has limited authority over individuals. The Secretary General reports that "UNEF is authorized to apprehend infiltrators [along the Israeli-Egyptian armistice line] and . . . accepted practice is for UNEF to take infiltrators into custody in a zone extending 500 metres from the Demarcation Line, and hand them over to the local police."⁷⁵ However, UNEF has not yet been able to obtain authority "to fire during darkness at infiltrators approaching the line from either direction, which would be somewhat broader than its unquestioned right to fire in self defense—a right which it has, on occasion, exercised. . . ."⁷⁶

The Force is given rights to and definite powers over its encampments. Egypt is bound to provide the Force with necessary premises, which, "without prejudice to the fact that all such premises remain Egyptian territory" are inviolable and subject to the exclusive authority of the Commander.⁷⁷ The qualification regarding Egyptian territory, which is a paraphrase of a similar provision in the Anglo-Egyptian Agreement of 1936,⁷⁸ serves a political purpose but is legally redundant. The obligations of Egypt respecting the premises of the Force are somewhat broader than the NATO agreement under which the authorities of the receiving state assume "sole responsibility for making suitable arrangements to make available to a force or a civilian component the buildings and grounds which it requires, as well as facilities and services connected therewith;"⁷⁹ but does not declare premises of the

officers of the United Nations Command and the Commanders of the national contingents made available by Participating Governments." UNEF Regulation 12.

⁷⁴ Note 8 *supra*.

⁷⁵ U.N. Doc. A/3694, ¶38.

⁷⁶ *Id.*, ¶44.

⁷⁷ UNEF Agreement, ¶19.

⁷⁸ Art. 5, U.K.T.S. 1937 No. 6, p. 24. The new (1957) Russian agreements with Poland, 52 AM. J. INT. L. 211; East Germany, 52 AM. J. INT. L. 210, and Hungary, 52 AM. J. INT. L. 215, state in the first article that the "temporary presence" of Soviet troops is without prejudice to the sovereignty of the receiving state and that they will not interfere in the internal affairs of that state.

⁷⁹ NATO SOF, art. IX, ¶3. Paragraph 34 of the UNEF Agreement entitles the force to the use of public utilities at rates not less favorable than those to comparable consumers. In case of interruption of service, the Force will receive the same priority as

forces inviolable. Military police of the Force are authorized to take into custody any person on the premises of the Force for the purpose of turning him over immediately to the nearest appropriate Egyptian authorities "(a) when so requested by the Egyptian authorities; or (b) for the purpose of dealing with any offence or disturbance on the premises."⁸⁰

In addition to these powers, UNEF enjoys a number of privileges designed to enhance its effectiveness in carrying out its mission. Members of UNEF, like NATO forces,⁸¹ are exempt from passport, visa and immigration restrictions on entering or departing from the receiving state, being required to show only personal identification and individual or collective movement orders.⁸²

UNEF is assured "freedom of movement between Force headquarters, camps and other premises, within the area of operations,⁸³ and to and from points of access to Egyptian territory agreed upon or to be agreed upon by the Egyptian Government and the Commander."⁸⁴

The Egyptian authorities are to supply the force with information which may be useful in facilitating its movements; and "the Government of Egypt recognizes the right of the Force and its

essential government services. The Force has the right to generate electricity on its premises and to transmit and distribute it as needed.

⁸⁰ UNEF Agreement, ¶15; NATO SOF, art. VII, ¶5 obligates the authorities of the sending and receiving states to assist each other in arresting members of the force or its civilian component but is not specific with regard to arrest of local citizens on the premises of the forces. Art. VII, ¶10(a) authorizes the force to police its camps, although all of ¶10 appears to be directed toward control of members of the force.

⁸¹ NATO SOF, art. III.

⁸² UNEF Agreement, ¶7.

⁸³ "Area of operations" includes areas where the Force is deployed in the performance of its functions as defined in paragraph 12 of the second and final report of the Secretary General to the General Assembly . . . [see note 85 infra] military installations or other premises . . . [which are "such areas for headquarters, camps, or other premises as may be necessary for the accommodation and fulfillment of the functions of the Force," UNEF Agreement, ¶19] . . . and lines of communication and supply utilized pursuant to paragraphs 32 and 33. . . ." UNEF Agreement, ¶5.

⁸⁴ UNEF Agreement, ¶32. Paragraph 33 gives the Force "the right to the use of roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges by way of registration or otherwise in the area of operations and the normal points of access, except for charges that are related directly to services rendered." This matter is not specifically dealt with in the NATO agreement. Article IV thereof requires the receiving state to accept a driving license or permit of the sending state or issue one of its own without requiring a driving test or fee. The UNEF agreement does not mention driving licenses or permits specifically. Members of the Force are to receive "the most favorable consideration" to requests for traveling facilities on railways and fare concessions. Art. IX, ¶6 of NATO SOF is to the same effect.

members to freedom of movement across armistice demarcation lines in the performance of the functions⁸⁵ of the Force.”⁸⁶ This latter proviso points up one of the problems that has confronted UNEF. Israel has not consented to the admission of the Force on her side of the Israeli-Egyptian Armistice line of 1949 which UNEF is now policing. Since the status agreement is between only the United Nations and Egypt, the Force still lacks the consent of Israel⁸⁷ which is necessary before it can be stationed on that nation's side of the line.

UNEF is granted diplomatic privileges for its communications,⁸⁸ which is a clear illustration of the impact of the international character of the Force on its status. No such extensive privilege is found in other status of forces agreements.

The agreement confers a number of economic privileges on the Force. It may obtain equipment, services and supplies from local sources, and upon request of the Commander, Egyptian authorities are to assist the Force in so doing.⁸⁹ Sympathetic consideration is to be given by the Commander to requests and observations of the Egyptian authorities so as to avoid any adverse effect on the local economy. Members of the Force may purchase goods for their own use “under conditions not less favorable than for Egyptian citizens.”⁹⁰

⁸⁵ See note 5 supra. The functions of the Force as defined by the Secretary General [U.N. Doc. A/3302, ¶12 (1956)] and incorporated in ¶5 of the status agreement, note 48 supra, are: “. . . when a cease-fire is being established, to enter Egyptian territory with the consent of the Egyptian Government in order to maintain quiet during and after the withdrawal of non-Egyptian troops, and to secure compliance with the resolution of 2 November 1956 . . .” and sustained by the General Assembly in resolution 1000 (ES-I) GENERAL ASSEMBLY OFF. REC., First Emergency Special Sess., Supp. No. 1, Doc. A/3354 (1956). This original purpose of the Force has long since been accomplished and it has taken up the additional function of policing the Egyptian-Israeli armistice agreement, “The United Nations Emergency Force (UNEF),” INTERNATIONAL REVIEW SERVICE 1,2 (1957); U.N. Doc. A/3694, ¶¶30 to 34 (1957).

⁸⁶ UNEF Agreement, ¶32, p. 56.

⁸⁷ Israel has not consented to the operation of UNEF on its soil, U.N. Doc. A/3694, ¶15 (1957).

⁸⁸ UNEF Agreement, ¶¶29 to 31. Article III of the Convention on Privileges and Immunities assures the Organization no less favorable treatment for communications than that accorded to any other government by the host state, including diplomatic missions. There can be no censorship, and couriers get diplomatic privileges and immunities. 43 AM. J. INT. L. SUPP. 1 at 3 (1949).

⁸⁹ UNEF Agreement, ¶¶36, 37, p. 56; art. IX, ¶4 of NATO SOF gives the local authorities greater control over the employment of local personnel.

⁹⁰ UNEF Agreement, ¶37, p. 56. Comparable provisions appear in art. IX, ¶¶1 and 2 of NATO SOF but are slightly more restrictive, reflecting the more significant purchases by civilian components of those forces. UNEF Regulation 41 prohibits accompaniment by families except where expressly authorized by the Commander.

The terms of the UNEF agreement give the Force more latitude in the employment of local personnel than the NATO Status of Forces Agreement. UNEF may recruit local personnel, giving sympathetic consideration to avoiding any adverse effect on the local economy and, although to the extent practicable the terms and conditions of employment are to follow the practice prevailing in the community, these may be prescribed by the Commander.⁹¹ The NATO agreement provides that conditions of employment, including "wages, supplementary payments and conditions for the protection of workers, shall be those laid down by the legislation of the receiving state."⁹² The most remarkable provision in the UNEF agreement is that "disputes concerning the terms of employment and conditions of service of locally recruited personnel shall be settled by administrative procedure to be established by the Commander,"⁹³ and this provision, in view of its affirmative language, appears to be exclusive.⁹⁴

(2) *Immunities.* The UNEF agreement contains an article common to other status agreements⁹⁵ which states that the Force and UN officials serving with it shall respect the laws and regulations of Egypt and refrain from any activity of a political character. In recognition of the unusual role of the Force, its members and United Nations officials serving with it must refrain "from any action incompatible with the international nature of their duties. . . ."⁹⁶ The purpose of the immunities granted the Force and its members is expressed in paragraph 10 of the agreement as "having regard to the special functions of the Force and to the interests of the United Nations, and not for the personal benefit of the members of the Force."

(a) *Criminal jurisdiction.* The Commander is required to take all appropriate measures to ensure observance of the foregoing obligations⁹⁷ and to maintain discipline and good order among members of the Force.⁹⁸ With respect to criminal jurisdiction, the

⁹¹ UNEF Agreement, §37 and UNEF Regulation 19(c).

⁹² NATO SOF, art. IX, §4.

⁹³ UNEF Agreement §38(c), p. 56. Article 38 provides that "Disputes or claims of a private law character shall be settled in accordance with . . . [its] . . . provisions."

⁹⁴ If disputes should arise between Egypt and the United Nations in this connection, the arbitration procedures of §40 (discussed *infra*) would be available.

⁹⁵ E.g., NATO SOF, art. II; Poland, 52 AM. J. INT. L. 211, art. 3.

⁹⁶ UNEF Agreement, §6, p. 53.

⁹⁷ *Ibid.*

⁹⁸ UNEF Agreement, §14.

agreement provides: "Members of the Force shall be subject to the exclusive jurisdiction of their respective national States in respect of any criminal offenses which may be committed by them in Egypt."⁹⁹

This provision is particularly favorable to UNEF. Absolute immunity has been the exception rather than the rule both in customary international law and by treaty.¹⁰⁰ The UNEF agreement does not even contain a provision calling for friendly or favorable consideration of a request for waiver of the sending state's exclusive jurisdiction.¹⁰¹ Good reason for this favorable treatment may be found, first, in the fact that UNEF, as its name implies, entered Egypt to perform emergency services, more analogous to wartime conditions than those under which the NATO and Warsaw Pact Forces are stationed. Secondly, there is a greater emphasis on the temporary character of UNEF's stay than in most other status situations. A third and significant factor is UNEF's character as an organ of the UN, representing worldwide, rather than merely national or regional interests.

It is common for status agreements to contain some provision for arrest by either state and surrender of custody to whichever state will exercise jurisdiction and to require prompt notice by the arresting state.¹⁰² The UNEF agreement defines the receiving state's authority a little more closely than the NATO agreement.¹⁰³ Egyptian authorities may take a member of the Force into custody and deliver him to the nearest appropriate authorities of the Force if the Commander so requests or "the military police of the Force are unable to act with the necessary promptness when a member

⁹⁹ *Id.*, ¶11, p. 53.

¹⁰⁰ See notes 63 and 67 *supra*.

¹⁰¹ The NATO SOF contains no such provision where either party has exclusive jurisdiction, but does so stipulate where jurisdiction is concurrent [art. VII, ¶3(c)]. The Convention on Privileges and Immunities of the United Nations makes the Secretary General responsible for waiving the immunity of any official where, "in his opinion the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations." 43 AM. J. INT. L. SUPP. 1 at 5 (1949), art. V, §20. Article V is made applicable to members of the Secretariat attached to UNEF and these people appear to be the only persons connected with the Force to which a specific waiver provision is applicable, in this case by incorporation. No reason appears for isolating members of the Secretariat for special treatment in this regard and the arrangements ought to be more clear on this point.

¹⁰² See NATO SOF, art. VII, ¶5.

¹⁰³ NATO SOF, art. VII, ¶9(a): "The authorities of the receiving and sending States shall assist each other in the arrest of members of a force or civilian component . . . and in handing them over to the authority which is to exercise jurisdiction. . . ."

. . . is apprehended in the commission or attempted commission of a criminal offense that results or might result in serious injury to persons or property, or serious impairment of other legally protected rights."¹⁰⁴ He may be subjected to a preliminary interrogation by the Egyptian authorities, but the transfer of custody to the Force may not be delayed. Following transfer of custody, the person concerned is to be made available for further interrogation by the arresting authority.¹⁰⁵

(b) *Civil jurisdiction.* The comparative treatment of the several types of UNEF personnel with regard to immunity from civil jurisdiction is perhaps the best illustration of the hybrid nature of the Force. The Commander and his family are entitled to privileges, immunities and facilities under the Convention on Privileges and Immunities of the United Nations, which include, inter alia, "the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law."¹⁰⁶ Officers of the Command (the Commander's Headquarters staff) enjoy the privileges and immunities accorded by the Convention to experts on missions for the United Nations, which are those "necessary for the independent exercise of their functions."¹⁰⁷ Members of the Secretariat attached to the Force and their families retain their privileges as "officials of the United Nations" under Articles V and VII¹⁰⁸ of the Convention on Privileges and Immunities, with the exception of local personnel, whose immunity is limited to their official acts.¹⁰⁹

In addition to these special cases, it is generally provided that members of the Force are not subject to the civil jurisdiction of the Egyptian courts in any matter relating to their official duties¹¹⁰ and the factual determination as to whether a matter relates to the official duties of a member is to be made by the UNEF Com-

¹⁰⁴ UNEF Agreement, ¶16, p. 54.

¹⁰⁵ Id., ¶17, p. 54.

¹⁰⁶ Id., ¶25, p. 55.

¹⁰⁷ Ibid.

¹⁰⁸ Article V of the Convention grants various immunities, including immunity for words uttered or acts done in an official capacity, exemption for pay, freedom from national service obligations and extends immigration benefits to dependent relatives. Article VII grants privileges for the purpose of expediting travel.

¹⁰⁹ This is the principle of "nationality discrimination," based on the theory that the only reason for granting a local citizen immunity is for his actions in an official capacity for the Organization. Preuss, "The International Organizations Immunities Act," 40 AM. J. INT. L. 332 at 337 (1946).

¹¹⁰ UNEF Agreement, ¶12(a), p. 53.

mander.¹¹¹ If a matter does not relate to a member's official duties so that civil jurisdiction may be exercised by the Egyptian courts, "the Egyptian courts and authorities shall grant members of the Force sufficient opportunity to safeguard their rights."¹¹² The substance of the rights referred to must be determined by reference to the requirements of customary international law.¹¹³ The NATO agreement is much more specific in this regard, listing several specific rights¹¹⁴ designed to assure defendants, in part, what Americans would describe as due process of law. At least some of these rights would not be necessarily included in the protection accorded by customary international law. If, on the other hand, a matter does relate to a member's official duties the claim is handled in the manner set out in the section on settlement procedures (below).

Provision is also made for satisfaction of judgments.¹¹⁵ Property of a member of the Force may be seized for "the satisfaction of a judgment, decision or order" subject to two exceptions: (1) property which is certified by the Commander to be needed by him for the fulfillment of his official duties and (2) property exempt under Egyptian law. The personal liberty of a member of the Force cannot be restricted in a civil proceeding for any reason. If "a claim adjudicated or an award made in favour of the claimant by an Egyptian court or the Claims Commission . . . has not been

¹¹¹ UNEF Agreement, ¶13, p. 54. Several Egyptian decisions in World War II refused to give conclusive effect to official declarations or certificates of military commanders concerning the question whether the criminal offender was at the time engaged in *service commandé*. Brinton, "Jurisdiction Over Members of Allied Forces in Egypt," 38 AM. J. INT. L. 375 at 382 (1944). Article 4 of the Treaty of London (1936) between Great Britain and Egypt, U.K.T.S. No. 6, p. 24 (1937) applied the official duties test only to cases of civil jurisdiction. Barton, "Foreign Armed Forces: Immunity From Criminal Jurisdiction," 27 BRIT. Y. B. INT. L. 186 at 194, 195 (1950). The determination of whether a given act related to a member's official duties was reserved to the British Ambassador. Brinton, "Jurisdiction Over Members of Allied Forces in Egypt," 38 AM. J. INT. L. 375 at 378 (1944).

¹¹² UNEF Agreement, ¶12(b), p. 53.

¹¹³ See BISHOP, INTERNATIONAL LAW 473, 474, 487-496 (1953).

¹¹⁴ NATO SOF, art. VII, ¶9 entitles members of visiting forces "(a) to a prompt and speedy trial; (b) to be informed, in advance, of the specific charge or charges made against him; (c) to be confronted with the witnesses against him; (d) to have compulsory process for obtaining witnesses in his favour . . . ; (e) to have legal representation of his own choice . . . under the conditions prevailing for the time being in the receiving State; (f) if he considers it necessary, to have the services of a competent interpreter; and (g) to communicate with a representative of the Government of the sending State and, when the rules of the court permit, to have such a representative present at his trial."

¹¹⁵ UNEF Agreement, ¶12(b), (c), pp. 53, 54. Paragraph 12(b) states that the exempted categories shall be free from seizure.

satisfied, the Egyptian authorities may, without prejudice to the claimant's rights, seek the good offices of the Secretary General to obtain satisfaction."¹¹⁶ The only civil immunity accorded NATO forces is from proceedings to enforce a judgment against a member in a matter arising from the performance of his official duties.¹¹⁷

In addition, the Secretary General's Regulations provide that "Members of the Force are entitled to the legal protection of the United Nations and shall be regarded as agents" thereof for purposes of this protection.¹¹⁸ This suggests the advisory opinion of the International Court of Justice¹¹⁹ that the United Nations could bring an international claim not only for damage to itself, but also (with some dissent) for injuries to the particular agent of the UN, on the theory that the agent should be assured of protection by the organization, rather than be required to turn to his national state to press an international claim for him. The policy consideration in favor of this conclusion is that it relieves an international servant from dependence on his own state where an international claim is to be allowed on his behalf.¹²⁰

All members of UNEF are exempt from taxes¹²¹ on pay received from their national states or the UN and from all other direct taxes except municipal rates for services enjoyed,¹²² and can import free of duty all personal effects. Any personal property "not required of them by reason of their presence in Egypt with the Force" is subject to customs and exchange regulations,¹²³ however.

(3) *Settlement procedures.* The agreement is fairly detailed in this respect. The International Court of Justice, a special claims commission and an arbitral tribunal are availed of for these purposes.

¹¹⁶ *Id.*, ¶12(c), p. 54.

¹¹⁷ NATO SOF, art. VIII, ¶¶9 and 5(g), art. XI, ¶1.

¹¹⁸ UNEF Regulation 30.

¹¹⁹ 1949 I.C.J. Rep. 174.

¹²⁰ *Id.* at 183, 184.

¹²¹ UNEF Agreement, ¶26. Article X of NATO SOF is similar in effect. Neither agreement immunizes members from taxes on purchases of goods or services. See NATO SOF, Art. IX, ¶8.

¹²² Section 7(a) if the Convention on Privileges and Immunities of the United Nations is to the same effect. The exception from immunity for taxes which are in fact a charge for services is common.

¹²³ NATO SOF, art. XI, ¶¶5, 6 and 7 accord NATO members the same privilege. Imported articles subject to customs duties for failure to meet the requirements of immunity are also subject to direct taxes under the last sentence of art. X, ¶1, but apparently not under the NATO provision which confers immunity from *all* direct taxes except those which are charges for services enjoyed.

(a) *Claims commission.* The Commission is composed of three persons, the Secretary General and Egyptian Government each appointing one, and a Chairman jointly.¹²⁴ The most important function of the Claims Commission is to hear claims brought by a citizen or the government of Egypt against a member of the Force which relate to a matter in connection with his official duties.

The Claims Commission will also settle claims by Egypt or the United Nations against each other unless the question involves an interpretation of the status agreement, in which case the matter is to be decided by an arbitral tribunal in accordance with paragraph 40.¹²⁵ The agreement simply states that such claims are to be "settled" by the Commission, but does not specifically state that its decision is final and binding.

(b) *Arbitral tribunal.* Paragraph 40 of the agreement provides that disputes between the United Nations and Egypt concerning the "interpretation or application" of the status agreement, and not settled by negotiation "or other agreed mode of settlement" are to be referred for final settlement to an arbitral tribunal¹²⁶ which, like the Claims Commission, is to consist of three persons, the Secretary General and Egypt to choose one apiece and an umpire jointly. Provision is also made to assure that neither party can block the arbitral process by refusing to participate or appoint a representative such as occurred in connection with the alleged violations of human rights under the Peace Treaties of 1947 respecting Bulgaria, Hungary and Rumania.¹²⁷ If the parties cannot agree on an umpire within one month of the proposal for arbitration by one of the parties, "the President of the International Court of Justice shall be asked by either party to appoint the umpire." The tribunal will come into existence on appointment of the umpire and at least one other member of the tribunal and two members constitute a quorum, a favorable vote by two members being sufficient for all decisions thereof. Thus, it is im-

¹²⁴ UNEF Agreement, ¶38, p. 56.

¹²⁵ *Id.*, ¶¶38 and 40, pp. 56, 57. Article XVI of NATO SOF requires that all differences "relating to the interpretation or application" of that agreement be settled "by negotiation between them without recourse to any outside jurisdiction."

¹²⁶ The question whether a dispute concerns the "interpretation or application" of the status agreement, and hence, whether the Claims Commission or the Arbitral Tribunal has jurisdiction should be decided by the Arbitral Tribunal since such a question involves interpretation and application of the words "concerning the interpretation or application of these arrangements" in paragraph 40.

¹²⁷ See BISHOP, *INTERNATIONAL LAW* 59-61 (1953).

possible for one party to prevent arbitration by refusing to cooperate in setting up the commission.

(c) *International Court of Justice*. Should a dispute arise over the interpretation of any of the provisions of the Convention on Privileges and Immunities incorporated in the agreement, the question is to be submitted to the International Court of Justice for an advisory opinion which shall be accepted as binding.¹²⁸

The UNEF status agreement is a response to a novel legal development on the international scene. It has skillfully taken account of the hybrid nature of the Force which is part military and in part like other international observer groups and truce supervision teams. The independence of the Force has been carefully guarded on the basis of a functional approach to the question of privileges and immunities. Although the agreement reiterates the proposition that UNEF is a "subsidiary organ of the United Nations" the special privileges and immunities accorded that organization and its personnel are not extended to the military elements of the Force, which are treated with due regard to their character as friendly foreign military personnel. The more favorable treatment accorded these UNEF military personnel as compared with current status-of-forces agreements such as those of NATO and Japan can be explained by the greater urgency under which UNEF entered Egypt, the comparatively greater emphasis on the temporary character of its stay, and the international character of this Force.

It should be noted, however, that the present arrangements were concluded with only one party to the controversy, since Israel has refused to admit the Force on its side of the armistice line.¹²⁹ Looking to the future, the very nature of a UNEF-type force makes it most useful in situations where there is friction across an international boundary,¹³⁰ so that its effective functioning might make operations on the territory of more than one country desirable. If the Force is deployed in more than one country it would obviously be desirable that its status be defined in a single agreement, or, if this proves impossible, that the substantive provisions be identical. Nevertheless, depending on the type of receiving countries and the circumstances there may well be a basis for some

¹²⁸ UNEF Agreement, ¶39, p. 56. KELSEN, *THE LAW OF THE UNITED NATIONS* 486 (1950).

¹²⁹ U.N. Doc. A/3694, ¶15 (1957).

¹³⁰ Text at notes 11 to 14 *supra*.

variations in these provisions. The present arrangements with Egypt furnish a valuable precedent and a model on which alternative agreements can be prepared in advance of future needs. This kind of advance preparation, which would have to be flexible enough to take into account the need for variation, could facilitate the rapid deployment of a future UN force by removing doubts as to its role and status on the part of both the contributing and receiving states.

III. *Other Problems Posed by the Force*

A. *Death and Injury Claims.* The United Nations' liability for claims resulting from death or injury to members of the Force remains an open question. The Secretary General stated in his report of October 1957 that thirteen members of the Force have died or been killed,¹³¹ in addition to several injury cases; but no claims had as yet been filed against the United Nations. Mr. Hammarskjold's position is that such death or injury qualifies the personnel or their dependents for benefits under their respective national service schemes, which should administer these payments and later file claims with the United Nations. He has requested that such claims be limited to "cases of death or serious disability involving a material cost to the Government." In view of the uniqueness of the problem, the Secretary General has requested a temporary period during which claims can be dealt with on the merits of each case, so that formal rules need not be established at this time.¹³² Ideally, all of these losses should be borne by the United Nations rather than the contributing states, as it is in the service of that organization that they are incurred. Claims which arise specifically from service in UNEF and do not meet the standard proposed by the Secretary General constitute an inequitable burden on the contributing state.

B. *Financial Problems.* The most troublesome problem associated with UNEF is how it should be properly financed.¹³³ The Soviet Union has insisted that the parties who brought on the

¹³¹ U.N. Doc. A/3694, ¶96 (1957). Causes of the fatalities are said to be mainly accidental shootings, encounters with mines and traffic accidents, *id.*, ¶22.

¹³² *Id.*, ¶¶92 to 98.

¹³³ Costs for the 14-month period ending December 31, 1957 were estimated at between \$24 million and \$30.5 million. U.N. Doc. A/3694, ¶99 (1957). This does not take account of the considerable savings accruing to the UN due to facilities contributed by various member states, *id.*, ¶¶58 to 62.

crisis should bear the entire cost.¹³⁴ In addition to the obvious political objections to this kind of solution in the Suez controversy, it would seriously impair the possibility of employing a UN force by requiring a political judgment of the responsibility for the crisis in each case.¹³⁵ Setting aside the practical problems associated with obtaining funds from the members of the UN,¹³⁶ the policy question presented is how much of the cost should be borne by the United Nations as a whole, and how much by the states contributing units. It might seem that the UN should bear the entire burden, but it should be recalled that these forces constitute part of the respective national military establishments which may be withdrawn by these governments. If the UN were to pay all costs it would be in part reimbursing these states for pay and similar expenses which they would have incurred in any event. The first formula recommended and used by the Secretary General therefore called for the contributing states to pay all costs of equipment and salaries, and for the United Nations to assume all other expenses.¹³⁷ This formula did not, however, take account of the extra costs incurred by the contributing states in maintaining their units overseas, and the General Assembly therefore approved¹³⁸ the Secretary General's proposal¹³⁹ to reimburse these states "for all extra and extraordinary costs" incurred in making its forces available to UNEF beyond the first six months.¹⁴⁰ These extra costs include any extra pay or allowances paid by reason of service with UNEF and for abnormal depreciation and destruction of equipment.¹⁴¹ The Force is being financed outside the normal budget of the United Nations.¹⁴² An initial sum was provided by the

¹³⁴ Report of the Fifth Committee, U.N. GENERAL ASSEMBLY OFF. REC., 11th Sess. Annexes, Agenda Item 66, p. 65, ¶25 (Doc. No. A/3560 Add. 1) (1957).

¹³⁵ Moreover, such a policy would confront the parties to a dispute, whose cooperation is of primary importance, with the prospect of an economic penalty as the result of agreeing to the use of a force.

¹³⁶ See Report of Mr. Carnahan from the Subcommittee on Foreign Affairs, Relative to the Establishment of a United Nations Force, Hearings Before the Subcommittee on International Organizations and Movements of the Committee for Foreign Affairs on H. Res. 367 and H. Con. Res. 373, 85th Cong., 2d sess., p. 99 (1958).

¹³⁷ U.N. Doc. A/3694, ¶80 (1957).

¹³⁸ Res. 1151 (XII) U.N. Doc. A/Res/1151 (XII) (Nov. 1957).

¹³⁹ U.N. Doc. A/3694, ¶88 (1957).

¹⁴⁰ The reason for the six-month dividing line is that the additional costs incurred beyond that point exceed what a contributing state could foresee or be fairly expected to bear. *Id.*, ¶85.

¹⁴¹ *Id.*, ¶91.

¹⁴² *Id.*, ¶48.

establishment of a special account in the amount of \$10 million which was financed by special assessments according to the scale of assessments used in connection with the normal budget.¹⁴³ Costs in excess of that amount have been left to voluntary contributions by members.¹⁴⁴ In response to the Secretary General's October report, the General Assembly appropriated additional funds for operations in 1957-1958 and several additional voluntary contributions were received.¹⁴⁵ Nevertheless, the reluctance of the membership as a whole to bear the costs of UNEF is one of the more sobering considerations associated with planning for a permanent force.¹⁴⁶

IV. *Conclusion*

The fact that the General Assembly cannot impose a binding obligation on any state to accept a UN force makes its effectiveness largely dependent on the consent of the receiving state. The present status agreement with Egypt accords the UNEF more rights than it could demand under customary international law and yet adequately protects the interests of Egypt. On the whole, these arrangements have worked satisfactorily, except that the Force should be given greater discretion with regard to its deployment and authority to take action against individual violators of the truce which it is policing.

It would appear that the establishment, as opposed to stationing and operation, of a UN force in a country does not require the advance consent of any particular member. UNEF has provided a precedent on which the framework and legal status of a permanent force can be constructed. The advance organization of a force could greatly enhance its usefulness both to the General Assembly which may recommend its employment, and to the

¹⁴³ *Id.*, ¶¶50, 51.

¹⁴⁴ *Id.*, ¶¶52, 53. Voluntary contributions were meager until several came in during November in response to the plea of the Secretary General, *ibid.*, and U.N. Docs. A/3745, U.N. GENERAL ASSEMBLY OFF. REC., 12th Sess., Agenda No. 65 (1957), A/3694/Add. 1 (Nov. 1957).

¹⁴⁵ *Ibid.*

¹⁴⁶ Twenty percent of the contributions assessed to supply the first \$10 million have not been paid because the members involved have refused. U.N. Doc. A/3694, ¶66 (1957). Only a little more than half of this assessment had been paid when the Secretary General issued his report in October 1957 (*id.*, ¶99). Sanction against members who refuse to pay is found in article 19 of the Charter which provides that if a member is in arrears in payment of its financial contributions to the Organization in an amount equal to or exceeding the amount of contributions due from that member for the preceding two full years, that member shall have no vote in the General Assembly.

Security Council, which may call upon the parties to a dispute to admit the force as a "provisional measure" under Article 40,¹⁴⁷ or as a measure not involving the use of armed force under Article 39¹⁴⁸ of the United Nations Charter.

Dudley H. Chapman, S.Ed.

¹⁴⁷ It is probable that the Security Council cannot impose a legal obligation by calling upon the parties to a dispute to comply with provisional measures under this article, but the failure to comply may justify use of sanctions under article 42. The obligation is considered stronger than any the General Assembly is capable of imposing. GOODRICH AND HAMBRO, CHARTER OF THE UNITED NATIONS 274, 275 (1949).

¹⁴⁸ See note 14 supra.