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**THE SYSTEM OF PRIVILEGES AND IMMUNITIES APPLICABLE TO  
THE INTERNATIONAL ORGANISATIONS IN SWITZERLAND  
AND TO THE PERMANENT FOREIGN DELEGATIONS IN GENEVA**

**(Original version in the French language)**

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## TABLE OF CONTENTS

FOREWORD.....	1	
INTRODUCTION.....	2	
<b>CHAPTER I</b>	<b><u>THE SYSTEM OF PRIVILEGES AND IMMUNITIES</u></b> .....	4
Section I	Origins.....	4
Section II	Legal theory and basis .....	4
Section III	Bilateral diplomacy and multilateral diplomacy .....	5
Section IV	Extension of the system .....	6
Section V	Codification of diplomatic law .....	6
Section IV	Terminology.....	7
<b>CHAPTER II</b>	<b><u>PERSONS BENEFITING FROM THESE PRIVILEGES AND IMMUNITIES</u></b> .....	9
Section I	Introduction .....	9
Section II	The international organisations concerned.....	9
	1) Members of the international organisations.....	10
Section III	The different types of representation .....	11
	1) Members of the representations.....	12
	2) Opening a mission .....	13
	3) Single mission principle .....	14
	4) Members of diplomatic missions.....	16
	5) Members of the international organisations.....	17
	6) Other eligible persons.....	18
<b>CHAPTER III</b>	<b><u>STATUS OF PERSONS BENEFITING FROM PRIVILEGES AND IMMUNITIES</u></b> .....	19
Section I	Introduction .....	19
Section II	Granting of status.....	19
	1) In the organisations.....	19
	2) In the representations .....	20
Section III	The legal basis for status.....	20
	1) The international organisations .....	20
	a) Quota of officials with diplomatic status.....	23
	2) The representations.....	23
	a) Permanent missions and permanent observers from non-member States.....	24
	b) The special missions .....	25
	c) Observers at intergovernmental organisations .....	26

<b>CHAPTER IV</b>	<b><u>PRIVILEGES AND IMMUNITIES AS SUCH</u></b> .....	<b>27</b>
<b>Section I</b>	<b>Privileges and immunities</b> .....	<b>27</b>
	1) <b>Privileges and immunities for the international organisations</b> .....	<b>27</b>
	2) <b>Privileges and immunities for the missions</b> .....	<b>28</b>
	a) <b>Tax regime</b> .....	<b>28</b>
	b) <b>Customs regime</b> .....	<b>28</b>
	c) <b>Exemption from the obligation to obtain permission to install cabled communications equipment</b> .....	<b>29</b>
	d) <b>Vehicle licensing</b> .....	<b>29</b>
	3) <b>Privileges and immunities of persons</b> .....	<b>29</b>
	4) <b>Inviolability</b> .....	<b>29</b>
	a) <b>Generalities</b> .....	<b>29</b>
	b) <b>Class of eligible persons</b> .....	<b>30</b>
	c) <b>Personal inviolability</b> .....	<b>30</b>
	d) <b>Inviolability of residence, documents, correspondence and property</b> .....	<b>31</b>
	5) <b>Criminal, civil and administrative immunity</b> .....	<b>32</b>
	a) <b>Class of eligible persons</b> .....	<b>32</b>
	b) <b>Jurisdictional immunity</b> .....	<b>32</b>
	c) <b>Immunity of execution</b> .....	<b>34</b>
	d) <b>Road traffic offences</b> .....	<b>34</b>
	e) <b>Waiver of immunity</b> .....	<b>34</b>
	f) <b>Procedure and diplomatic channels</b> .....	<b>35</b>
	g) <b>Laying an information before a criminal court</b> .....	<b>37</b>
	6) <b>Access, residence and exit facilities</b> .....	<b>37</b>
	7) <b>Recall of members of the permanent missions and international officials declared <i>persona non grata</i></b> .....	<b>38</b>
<b>Section II</b>	<b>Tax privileges</b> .....	<b>39</b>
	1) <b>General matters</b> .....	<b>39</b>
	a) <b>Situation for Swiss nationals</b> .....	<b>39</b>
	2) <b>Federal taxes</b> .....	<b>39</b>
	a) <b>Direct federal taxation</b> .....	<b>40</b>
	b) <b>Withholding tax</b> .....	<b>41</b>
	c) <b>Securities</b> .....	<b>41</b>
	d) <b>Value-Added Tax (VAT)</b> .....	<b>42</b>
	3) <b>Cantonal and municipal taxation</b> .....	<b>42</b>
	a) <b>Income and wealth tax</b> .....	<b>42</b>
	b) <b>Inheritance and gift taxes</b> .....	<b>43</b>
	c) <b>Tax on consumption (indirect taxation)</b> .....	<b>44</b>
	4) <b>Dues in remuneration for specific services rendered</b> .....	<b>44</b>
	a) <b>Dog licence</b> .....	<b>44</b>
	b) <b>Tolls</b> .....	<b>44</b>
	c) <b>Ministry of Justice fees</b> .....	<b>45</b>
	d) <b>Temporary residence tax</b> .....	<b>45</b>
	e) <b>Hunting, fishing and arms licences</b> .....	<b>45</b>
	f) <b>School and university tax</b> .....	<b>45</b>

	g) Taxes and duty on motor vehicles.....	45
	h) Radio and television recording and entertainment licence.....	46
	i) Hospital tax.....	46
	j) Street-cleaning and repairs, lighting, and water charges .....	46
	k) Tax in lieu of service.....	47
	l) Mooring dues .....	46
	m) Cable television network fees .....	46
	5) Tax position for retired persons.....	47
Section III	Customs privileges.....	47
	1) Heads of mission and members of the directorate .....	48
	2) Members of diplomatic staff and high-ranking officials.....	48
	3) Other officials, members of administrative, technical and service staff of the missions .....	49
	4) Inspection of baggage .....	49
	5) Transfer, sale or assignment of goods admitted free of import duty .....	49
	6) Acquisition of vehicles admitted free of import duty .....	50
	a) Vehicles intended for members of the director, high officials, heads of mission and members of the diplomatic staff .....	50
	b) Vehicles intended for other officials, administrative and technical staff, and service staff of the permanent missions .....	50
	c) Termination of office whilst remaining resident in Switzerland .....	51
	7) Duty-free fuel .....	51
	8) Duty-free shop.....	51
Section IV	Other privileges and prerogatives.....	52
	1) Exemption from social security and welfare legislation .....	52
	a) Welfare insurance .....	52
	b) Federal law on sickness insurance ( <i>LAMal</i> ).....	53
	2) Access to the Swiss job market for spouses and children (Ci Permit) .....	54
	3) Acquisition of real property (i.e., land and/or buildings)....	54
	a) Principles .....	54
	b) Exceptions for international officials.....	55
	c) Exception for members of the missions .....	55
	d) Procedure.....	55
	4) Vehicle licensing and registration .....	56
	a) Special “CD” licence plates .....	56
	b) Allocation of licence plates.....	56
	c) Ordinary plates .....	57
	d) Various formalities and compulsory inspection tests....	57
	5) Reserved parking places on the public highway .....	58
	6) Costs incurred in towing away vehicles .....	58
	7) Persons entitled to drive a vehicle with “CD” plates .....	58

	8) Access to precincts of Geneva-Cointrin Airport.....	59
Section V	Start and end of diplomatic privileges and immunities.....	59
CHAPTER V	<u>THE “DIPLOMATIC” INSTITUTIONS</u> .....	60
	1) The Mediator .....	61
	2) Geneva Welcome Center .....	61
	3) The Diplomatic Committee .....	62
CONCLUSION.....		63
ABBREVIATIONS.....		64
SELECTED BIBLIOGRAPHY .....		64

## **FOREWORD**

This brief study has its origins in a seminar on the subject of “Privileges and immunities for members of permanent missions accredited to Geneva” given to the United Nations Institute for Training and Research (UNITAR), intended for new members of the permanent missions to Geneva.

The present article has been published in response to the need to include an item in the UNITAR Employment Guide setting out the provisions for privileges and immunities which Switzerland extends to international organisations in Switzerland and foreign representations in Geneva. It is thus not a legal opinion or doctrine, but rather a “compendium” intended to enable those who benefit from these provisions or who come across them in the course of their work to understand the workings of the system better. It makes extensive use of and is the natural progression to Jean-Pierre Vettovaglia’s article published in the same Guide and under the same title in 1991<sup>1</sup>. Amendments made to the system since then have meant that the information in the Guide was in need of updating, and that is why, based on his own experience, the author has been prompted to issue a revised edition.

This study is not official in nature, and therefore is not binding on the Swiss authorities.

This article would not have been possible without the full and effective co-operation of the Directorate of International Public Law (DDIP) and of the Political Division III (DP III) at the Federal Department of Foreign Affairs (DFAE), and in particular, Mme Evelyne Gerber, Head of the Diplomatic and Consular Law Department (DDIP/DFAE), and Mme Caroline Kraege, Deputy Head of Section - Host State Affairs (DP III/DFAE).

My thanks also go to Mme Danielle Werthmüller, Assistant to the Legal Department of the Permanent Mission of Switzerland to the International Organisations in Geneva (the Swiss Mission), for her help in the final stages of this work.

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<sup>1</sup> Vettovaglia, J.-P., “Régime des privilèges et immunités des membres des missions permanentes à Genève et des fonctionnaires internationaux en Suisse” [*The System of Privileges and Immunities for Members of Permanent Missions to Geneva and International Civil Servants in Switzerland*]. An analysis in : “Le système des Nations Unies à Genève. Portée et pratique de la diplomatie et de la coopération multilatérale” [*The UN System in Geneva. The Scope and Practice of Diplomacy and Multilateral Co-operation.*] M.A. Boisard and E.M. Chossudovsky (publishers), *Employment Guide*, UNITAR 1991.

## INTRODUCTION

The aim of this study is to give an idea in concrete, practical terms, and as far as possible without being legalistic, of the system of privileges and immunities applied by Switzerland<sup>2</sup> to *members<sup>3</sup> of the international organisations* established in Switzerland<sup>4</sup> and to *members of the permanent delegations* in Geneva. Due to lack of space, it will merely outline the provisions which apply to those institutions themselves (as distinct from their members).

The organisation charged with the day-to-day application of these provisions as front-line representative of the DFAE is the Swiss Mission<sup>5</sup>, created by the Swiss Federal Council in 1966 and established in Geneva.

This study does not set out to deal with the immunities and privileges applied by Switzerland to embassies in Bern or consulates established in Switzerland, because application of these provisions is not in the remit of the Swiss Mission in Geneva but in that of the DFAE Protocol Department (Privileges and Immunities Section) in Bern<sup>6</sup>.

In order to limit our study further, we shall also not concern ourselves with the regime applicable to non-governmental organisations (NGOs) of a predominantly

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<sup>2</sup> With regard to practice in other countries, cf. In particular, Nash, M., *Cumulative Digest of United States Practice in International Law*, Office of the Legal Adviser, Department of State, 1994; Richtsteig, M., *Wiener Übereinkommen über diplomatische und konsularische Beziehungen, Entstehungsgeschichte, Kommentierung, Praxis*, Baden-Baden, 1994; Quel Lopez, F.-J., *Los privilegios et inmunidades de los agentes diplomaticos en el derecho internacional y en la practica espanola*, IVAP, Editorial Civitas S.A.; *Diplomatic Immunities and Privileges*, Government Report on Review of the Vienna Convention on Diplomatic Relations and Reply to "The Abuse of Diplomatic Immunities and Privileges", Foreign Affairs Committee, Miscellaneous No. 5 (1985), London.

<sup>3</sup> In theory, the members of international organisations are the States themselves. However, for the purposes of this document, we shall be using this term only in the sense of "members of staff".

<sup>4</sup> Most of these organisations are established in Geneva. The UPU and the IRTO have their headquarters in Berne, and the BIS and EUROFIMA in Basle.

<sup>5</sup> The Swiss Federation has two missions in Geneva: the permanent Mission of Switzerland to the WTO and EFTA, and the permanent Mission of Switzerland to the International Organisations. The latter body has a dual role: first it takes on tasks specific to multilateral diplomacy the same as other permanent missions, second, it is the Host Country's official representative and, more specifically, operates as a protocol department generally and oversees the status of approximately 30,000 internationals (international officials, members of permanent delegations and their families) residing in Switzerland.

<sup>6</sup> Cf. "Régime des privilèges et immunités consulaires en vigueur en Suisse" (*The System of Consular Privileges and Immunities in Force in Switzerland*), DFAE Berne, 1967; Bourgnon, E., "La Convention de Vienne sur les relations diplomatiques, Pratique suisse," (*The Vienna Convention on Diplomatic Relations: Swiss Practice*) Berne 1993 (duplicated handout).

intergovernmental nature which have signed a tax agreement with Switzerland<sup>7</sup>, nor shall we be looking at non-governmental organisations in general<sup>8</sup>.

The way in which we are going to look at the question of privileges and immunities requires further clarification on two points. We will not necessarily be giving any legal definitions of the terms used - not even of the terms "privileges" and "immunities" - because in our opinion, such definitions are of no consequence for our analysis, and we will therefore confine ourselves to referring the reader to the relevant legal theory and opinion where appropriate.

Lastly, this document in no way claims to have the final word insofar as the system of privileges and immunities applied in Switzerland is concerned. We are fully conscious of this and would not presume to attempt to do this since, as we have already said, the aim of our work is simply to give a general picture of the system. We trust it will be useful to those who, by virtue of their positions, are called to encounter it in their duties.

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<sup>7</sup> *These are quasi-governmental NGOs which Switzerland recognises as possessing a limited international legal personality.*

<sup>8</sup> *On NGOs in general, cf. Bettati, M., and Dupuy, P.-M., "Les ONG et le Droit International" (The NGOs and International Law), Paris 1980; Gastaut, T., "Le rôle des ONG aux Nations Unies" (The Role of the NGOs at the United Nations), Transnat. Assoc. 34, 1982 4, pp. 254 ff.; Armando Cocca, A., "Las Organizaciones no gubernamentales y las Fundaciones ante el Derecho Internacional", Anuario Hispano-Luson-Amer. de derecho internacional, 6/1981, pp. 219 ff.*



## CHAPTER I THE SYSTEM OF PRIVILEGES AND IMMUNITIES

### Section I Origins

From a rapid glance at history it is apparent that diplomacy is as old as humanity itself and, in the words of Professor Philippe Cahier<sup>9</sup>, we may say that diplomacy was born when, for the first time, a tribal chieftain sent an emissary to the head of a neighbouring tribe in order to settle some point or other that was of interest to both tribes.

Be that as it may, it was the Italian Republics (Venice, Genoa, Florence, Naples and the Papacy) which gave birth to the sort of permanent diplomacy we know today at the end of the 15<sup>th</sup> century<sup>10</sup>. In fact, “instead of sending special ambassadors to resolve difficulties as they arose, these republics instituted permanent representation, where ambassadors became resident as the occasion demanded”<sup>11</sup>. Diplomacy ceased to be an itinerant calling, and became permanent. The creation of these permanent representations led to the emergence of a special legal system, known as the system of diplomatic privileges and immunities.

### Section II Legal theory and basis

This system is “special” because it seems to be an exception to the general principles of law whereby the foreigner, like the native, is subject to the authority of the State on whose territory he finds himself<sup>12</sup>. Whilst this system was originally shaped by permanent diplomacy, it slowly evolved with it and has been the subject of much legal discussion and theorising, particularly with regard to its basis in law<sup>13</sup>.

The principle of extritoriality<sup>14</sup>, was “the most important in the history of doctrines on the legal theory behind the basis for diplomatic privileges and immunities, because it justified the granting of this privileged status throughout a period of time from the 17<sup>th</sup> to the beginning of the 20<sup>th</sup> century”<sup>15</sup>. This principle would thus appear to have made the greatest impact on the mind and language of the

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<sup>9</sup> Cahier, Ph., “*Le droit diplomatique contemporain*” (Contemporary Diplomatic Law), Geneva 1964, p. 7.

<sup>10</sup> On the history of diplomacy, cf. Cahier, Ph., *op. cit.*, pp. 6 to 25.

<sup>11</sup> Perrenoud, G., “*Régime des privilèges et immunités des missions diplomatiques étrangères et des organisations internationales en Suisse*” (System of Privileges and Immunities for Foreign Diplomatic Missions and International Organisations in Switzerland), Lausanne 1949, p. 15.

<sup>12</sup> Perrenoud, G., *op. cit.*, p. 16.

<sup>13</sup> On the origins of the institution and the various opinions expressed on its legal basis since the 18<sup>th</sup> century, cf. Cahier, Ph., *op. cit.*, p. 183 to 194; for a summary, cf., Bourgnon, E., *op. cit.*, p. 67.

<sup>14</sup> On the argument for this theory, cf., Cahier, *op. cit.*, p. 186 ff.

<sup>15</sup> Cahier, Ph., *op. cit.*, p. 186.

uninitiated, especially in its actual form whereby the embassy territory is considered to be a part of the territory of the represented State.

Today, people still wrongly refer to “extritoriality” when, for example, they say that no authority of the receiving or Host State may enter the premises of a foreign diplomatic representation. It is also true to say that sometimes one uses this phrase “as an expressive metaphor” to describe the inviolability or immunity which the foreign representation enjoys<sup>16</sup>. This theory, which is attributed to Grotius, was in fact abandoned long ago<sup>17</sup> and replaced by the principle of functional necessity<sup>18</sup>, which we owe to Vattel. Enshrined in the *Vienna Convention on Diplomatic Relations of April 18, 1961*<sup>19</sup> (RS 0.191.01) and widely recognised in the case law and practice of the States, functional necessity is also the principle applied in Switzerland.

### **Section III Bilateral diplomacy and multilateral diplomacy**

In the early days of diplomacy, the office of a diplomat was to represent his country’s interests vis-à-vis another State. This type of representation still exists today, and is known as bilateral diplomacy. It is carried on in the capitals of the countries involved, through their respective embassies.

The advent of the international organisations gave rise to another type of representation, multilateral diplomacy. In this instance, the diplomats carry out their function not vis-à-vis a State but to an international organisation.

In bilateral diplomacy there is a sending State (the one sending the mission) and a receiving State (the one receiving the mission) which have established diplomatic relations and which, in the normal course of events, both open a diplomatic mission in the other’s country.

In multilateral diplomacy, there is a sending State or institution, a receiving institution (an international organisation) and a Host State. The latter is not the *receiving* State, and this puts the Host State into a legal position that is completely different to the one it has in bilateral diplomacy. It is in fact Host State to both the receiving organisation, to which it is bound by a bilateral headquarters agreement, and to the sending State or institution. This is the position in which Switzerland has found itself, in its capacity as Host State to the international organisations to which States or other international institutions are accredited.

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<sup>16</sup> Perrenoud, G., *op. cit.*, p. 19.

<sup>17</sup> Cf. *Legal opinion from the DFAE dated 12.5.1972 in JAAC 1972, folio 36, no. 26.*

<sup>18</sup> This principle may be summarised as follows: “a diplomatic agent may only carry out his office if there is no constraint threatening him and he is fully independent of the State to which he is accredited”, Bourgnon, E., *op. cit.*, p. 68; cf. also Cahier, Ph., *op. cit.*, p. 190 ff.

<sup>19</sup> For the English language text see “*Diplomatic and Consular Law*” cited in the Bibliography.

#### Section IV Extension of the system

With the creation of the international organisations, persons other than State diplomatic agents have become eligible to enjoy this favoured status or another similar status, because they are invested with international functions. These people are international officials, some of whom also enjoy diplomatic status. We have seen that the “state”, or “national” diplomatic agents, enjoy the benefit of privileges and immunities based on international practice and codified diplomatic law. “International” diplomats enjoy the same but by virtue of special agreements<sup>20</sup>.

#### Section V Codification of diplomatic law

Customary international law was and continues to be the basis for the system of privileges and immunities. An initial partial codification was made in 1815 (*The Vienna Regulation of March 19, 1815*) and in 1818 (*The Aix-la-Chapelle Protocol of November 21, 1818*). The International Law Commission (ILC) tackled this question and drew up a draft in 1958<sup>21</sup>. By UN General Assembly resolution 1450 (XIV), a Conference was held in Vienna in order to work out a convention on diplomatic relations. The *Vienna Convention on Diplomatic Relations of April 18, 1961* (The Vienna Convention) resulted from this conference.

In the opinion of the Swiss Federal Council<sup>22</sup> “the Vienna Convention of April 18, 1961 was the first instrument which fixed the standards set by international practice in the field of multilateral diplomatic relations and laid down the immunities and privileges necessary for diplomatic relations to be accomplished without let or hindrance”. This Convention was approved by the Federal Assembly on June 21, 1963 (RO 1964 429). Switzerland deposited the instrument of ratification on October 30, 1963, and it came into force, for Switzerland, on April 24, 1964 (RO 1964 431; FF 1963 I 425).

The Vienna Convention does not, however, finally do away with international custom. In the Preamble, the Convention provides that “the rules of international customary law should continue to govern questions not expressly regulated by the provisions of the present Convention”. Customary law, therefore, is elevated to the

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<sup>20</sup> *The Covenant of the League of Nations already provided for special status of its officials (art. 7.4). Cf. Secrétan, J., “Les privilèges et immunités diplomatiques des agents de la Société des Nations” (The Privileges and Diplomatic Immunities for Agents of the League of Nations), Revue du Droit International Privé, 1925, p. 1 ff.*

<sup>21</sup> *Cf. ILC Report on 10<sup>th</sup> Working Session, 28 April to 4 July 1958 in the ILC Yearbook, 1958, vol. II, p. 92-109.*

<sup>22</sup> *Cf. Federal Council Message to the Federal Assembly dated 22<sup>nd</sup> February 1963 concerning approval of the Vienna Convention of 18<sup>th</sup> April 1961 on diplomatic relations, FF 1963, I, p. 266; Bourgnon, E., op. cit., p. 2.*

rank of non-mandatory law (i.e. expressing the presumed intentions of the parties to the Convention) in relation to the Convention.

## Section IV Terminology

As principal instrument fixing the standards for the provision of privileges and immunities in both bilateral and multilateral diplomacy, the Vienna Convention makes use of a certain number of terms which we need to know and understand. Only a few of these are defined in the First Article, namely:

- **head of mission** : the person charged by the sending State with the duty of acting in that capacity; [(a)]
- **members of the mission** : the head of the mission and the members of the staff of the mission; [(b)]
- **members of the staff of the mission** : members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission; [(c)]
- **members of the diplomatic staff** : members of the staff of the mission having diplomatic rank; [(d)]
- **diplomatic agent** : head of the mission or a member of the diplomatic staff of the mission [(e)]
- **members of the administrative and technical staff** : members of the staff of the mission employed in the administrative and technical service of the mission; [(f)] other legal texts refer to them as “AT” staff;
- **members of the service staff** : members of the staff of the mission in the domestic service of the mission; [(g)]<sup>23</sup>
- **private servant** : a person who is in the domestic service of a member of the mission and who is not an employee of the sending State; [(h)]
- **premises of the mission** : the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission [(i)].

The Vienna Convention does not define the term “representation”. In Switzerland, this term is deemed to cover “diplomatic missions and consular posts”<sup>24</sup>.

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<sup>23</sup> In the Swiss system, this category also includes another category called “local staff” who are not in the domestic service of the mission but deal with administrative affairs (e.g., secretarial/clerical staff).

<sup>24</sup> Cf. “Règlement du service diplomatique et consulaire suisse” (Swiss Diplomatic and Consular Service Regulations), 24 November 1967, RS 191.1.

The Convention does not define “diplomatic mission” either. It is generally understood to mean “the body charged by the State to represent it to another State”<sup>25</sup>.

The terms “sending State” and “receiving State” are not defined in the Vienna Convention. The “sending State” is the State which sends the diplomat and the “receiving State” is the one which receives the envoy.

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<sup>25</sup> Bourgnon, E., *op. cit.*, p. 111.

## **CHAPTER II PERSONS BENEFITING FROM THESE PRIVILEGES AND IMMUNITIES**

### **Section I Introduction**

When dealing with privileges and immunities in multilateral diplomacy, it is necessary to make a distinction between the legal entity or juridical person on the one hand, and the staff or natural persons [occupied] in these entities. Thus, on the one hand we have:

- intergovernmental international organisations<sup>26</sup> and their members, the international officials, and on the other hand,
- the representations to these international organisations and the members of these representations.

### **Section II The international organisations concerned**

The only organisations taken into consideration here are those which have signed a headquarters agreement with Switzerland, governing their legal status; and for the purposes of our analysis the most important organisations are those where the headquarters are actually in Switzerland. In particular, the following organisations fall into this category:

- AEMF - Association of Iron Ore Exporting Countries
- EFTA - European Free Trade Association
- BIS - Bank for International Settlements (in Basle)
- IOE - International Office for Education
- ITCB - International Textiles and Clothing Bureau
- UNO - United Nations Organisation
- CERN - European Centre for Nuclear Research
- IRTB - International Rail Transport Bureau
- ICDO - International Civil Defence Organisation
- ILO - International Labour Organisation

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<sup>26</sup> *The Swiss Federal Council has entered into agreements of a fiscal nature with NGOs of a predominantly intergovernmental type. These are: the League of Red-Cross Societies, agreement dated 10 July 1952 (RS. 0.192.122.519), which became the International Federation of Red-Cross and Red-Crescent Societies (International Federation) and with which the Federation has just signed a headquarters agreement on 29 November 1996 superseding the previous one; the Inter-Parliamentary Union (IPU) agreement dated 28 September 1971 (RS 0.192.121.171); the International Air Transport Association (IATA), agreement dated 20 December 1976 (RS 0.192.122.748); International Union for Nature Conservation (IUCN), agreement dated 17 December 1976 (RS 0.192.122.451); the International Aeronautical Telecommunications Society, agreement dated 4 June 1992 (RS. 0.192.122.784).*

- IRTO - International Road Traffic Organisation
- IOM - International Organisation for Migrations
- WMO - World Meteorological Organisation
- WIPO - World Intellectual Property Organisation
- WHO - World Health Organisation
- WTO - World Trade Organisation (formerly GATT - General Agreement on Tariffs and Trade)
- EUROFIMA - European Company for the Financing of Railroad Rolling Stock (in Basle)
- ITU - International Telecommunications Union
- UPU - Universal Postal Union (in Bern)
- UPOV - International Union for the Protection of New Varieties of Plants

Under the terms of the Headquarters Agreements themselves, the Swiss Federal Council provides that the DFAE (Federal Department of Foreign Affairs) is the Swiss authority charged with application of such headquarters agreements. In theory, all relations with these organisations for the whole of Switzerland, should be conducted through diplomatic channels, namely, the Swiss Mission.

#### 1) Members of the international organisations

For the intergovernmental international organisations established in Switzerland, we would distinguish the following categories<sup>27</sup>:

1. Chiefs of staff (director or secretary-general level)  
(DFAE pink card type B);
2. High-ranking official  
(DFAE pink card type C);
3. Professional official  
(DFAE brown card type D);
4. General services official  
(DFAE purple card type E);
5. Member of the private staff attached to members of the Directorate  
(DFAE purple card type E);
6. Member of the private staff of international officials  
(DFAE yellow card type F);
7. Member of the family  
(DFAE card of the same type as the principal holder);
8. International official of Swiss nationality

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<sup>27</sup> The DFAE introduced new plastic credit-card style identity cards in 1995; these particulars refer to this new style of credential.

(DFAE green card type S).

N.B. From certain points of view, the system applicable to international officials or members of permanent missions who are of Swiss nationality should really be the subject of a separate review, but we have abandoned this idea due to lack of space.<sup>28</sup>

### Section III The different types of representation

If by “representation” we mean diplomatic missions and consular posts, the term “diplomatic mission” itself may cover a variety of concepts. In classic bilateral diplomacy, there are four types of diplomatic mission<sup>29</sup>: embassies, nunciatures, legations (now obsolete) and internunciatures.

“High commissions” may also be added to this list; these are “diplomatic missions from one State to another State with which it is particularly closely linked”<sup>30</sup>.

In the sort of multilateral diplomacy we have been referring to, one also comes across diplomatic missions under other names. Thus, in Geneva there are four different types of diplomatic mission:

- permanent missions;
- permanent observers from non-UN member states;
- special missions;
- observers at intergovernmental organisations.

**Permanent missions**, also sometimes called delegations, are diplomatic missions sent by States to the international organisations. At present, there are 146 permanent missions in Geneva<sup>31</sup>.

**Observer status** (or permanent observer mission) is the name given to diplomatic missions from States which are not members of the UN, or to diplomatic missions of other intergovernmental organisations.

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<sup>28</sup> Cf. Knapp, B., “Avis de droit concernant certains aspects du régime juridique des fonctionnaires internationaux en Suisse” (Legal Opinion on Certain Aspects of the Legal System governing International Civil Servants in Switzerland), Vérenaz 1992, prepared at the request of the Swiss International Civil Servants Union (AFIS); Bourgnon, E., “Statut juridique en Suisse des personnes investies de fonctions internationales” (The Legal Status of Persons invested with International Functions in Switzerland), FJS no 1011a.

<sup>29</sup> Cf. Bourgnon, E., p. 8.

<sup>30</sup> Cf. Bourgnon, E., p. 9.

<sup>31</sup> Cf. the pamphlet published by the UN Office at Geneva (UNOG) which contains the list of permanent missions and diplomats accredited to the UN (141) together with those published by the WTO (15) and the Conference on Disarmament (15) as regards their members.



The Holy See is a non-member permanent observer State (Switzerland being the Host State) at the UNOG. As examples of permanent observer intergovernmental organisations at UNOG we may cite :

- Agence de la Francophonie (ACCT);
- The Arab League;
- The Islamic Conference;
- The Organisation for African Unity (OAU);
- The European Union (EU).

Palestine has a permanent observer mission at UNOG and is considered to be an “organisation” by the UN. The Sovereign Military Order of Malta also has permanent observer status.

**Special missions** are temporary diplomatic missions of a representational nature sent by one State to another in order to resolve a specific issue or to fulfil a specific task<sup>32</sup>. For example, the following are considered to be special missions :

- The US-Russia Permanent Consultative Commission;
- The US and Russian Delegations to the US-Russia negotiations on Nuclear and Space Armament;
- The Hong Kong Economic and Trade Delegation to the WTO;
- The Israel-Egypt Arbitration Tribunal.

### 1) Members of the representations

For permanent and special missions, the non-member permanent observer States and the intergovernmental organisation observers to the United Nations Office at Geneva (UNOG) may be distinguished as follows:

1. **Head of the mission**  
(DFAE pink card type B);
2. **Member of the diplomatic staff**  
(DFAE pink card type C);
3. **Member of the administrative and technical staff**  
(DFAE blue card type D);
4. **Member of the service staff**  
(DFAE purple card type E)
5. **Private servant attached to the head of the mission**  
(DFAE purple card type E);

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<sup>32</sup> Cf. Article 1 (a) of the New York Convention on Special Missions of December 8, 1969 (RS 0.191.2); Bourgnon, E., “Diplomatie ‘ad hoc’ ” (Ad Hoc Diplomacy); *Special missions, their members and functions*, FJS 831 d, and *Legal status of special missions and their members*, FJS 831 e.

6. **Private servant** of a member of the diplomatic or administrative and technical staff;  
(DFAE yellow card type F)
7. **Family member**  
(DFAE card of the same type as the principal holder)
8. **Member of the mission with Swiss nationality**  
(DFAE green card type S).

N.B. The status of a member of a mission who has Swiss nationality<sup>33</sup> is a special case. So too is the case of a member of the mission whose permanent place of residence is Switzerland. According to Article 38 of the Vienna Convention on Diplomatic Relations:

- “1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall only enjoy immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.
2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.”

Switzerland has not granted additional privileges and immunities. Consequently, the diplomatic agent who is a national of or permanently resident in Switzerland enjoys inviolability and jurisdictional immunity in the exercise of his functions. His family does not enjoy any privilege. The other members of the mission and their families do not enjoy any privileges either.

## 2) Opening a mission

In bilateral diplomacy, a diplomatic mission is opened in the receiving State once the sending State and the receiving State have taken the decision to establish diplomatic relations. Mutual consent is required. In multilateral diplomacy, a permanent mission to an organisation may take place on the sole initiative of the sending State. The latter has the right to open a mission as soon as it becomes a member of the

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<sup>33</sup> Cf. Bourgnon, E., *op. cit.* P. 72, and by the same author, “Statut juridique en Suisse des personnes investies de fonctions internationales” (*Legal Status of Persons Invested with International Functions in Switzerland*) FJS no 1011a.

organisation<sup>34</sup>. The position is different for non-member States: they are required to obtain the consent of the organisation concerned.

The position of the Host State is that of third party. In practice, there is a procedure to be followed<sup>35</sup>. Switzerland is informed of the opening of a mission both bilaterally by the sending State and directly by the Director or Secretary General of the organisation to which the mission is to be accredited.

The question of whether Switzerland may oppose the opening of a mission to any of the three organisations which are currently accreditable (UN, WTO and the Conference on Disarmament) has not been decided by the DFAE. Some legal theorists would say that “it is unlikely Switzerland would be able to oppose the opening of a mission”<sup>36</sup>. However, on the basis of the principle that a sending State should be represented by a single mission, the Federal Department for Foreign Affairs has refused to accredit representatives to organisations other than the United Nations Organisation.

### 3) Single mission principle

For a long time, the Swiss authorities held the “single mission” principle to be the rule. According to this principle<sup>37</sup>, the sending State should be represented by a single mission accredited to the UN and the other international organisations, and it was only with this mission that the host country was prepared to deal.

By diplomatic note dated May 20, 1994, the Swiss Mission informed the permanent missions to the UN that this principle was being abandoned. Since then, those States which wish to do so may establish separate diplomatic representations in Geneva with

- the United Nations and the specialised agencies;
- the Conference on Disarmament;
- the GATT (which since then has become WTO).

Thus in Geneva there are now some countries which have a permanent mission to the UN and to the other international organisations (146), a permanent mission

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<sup>34</sup> Cf. for example, article 4 of the Headquarters Agreement signed with the WTO which states “every member of the Organisation may establish a permanent mission to the latter”.

<sup>35</sup> Cf. Aide mémoire from the Swiss Mission on the opening of a permanent mission to Geneva, dated 8 August 1991.

<sup>36</sup> Cf. Virally, M., Gerbet, P., Salmon, J., with the collaboration of Gheballi, V.-Y., “Les missions permanentes auprès des organisations internationales” (The Permanent Missions to the International Organisations), Vol. 1, Brussels, 1971, p. 140.

<sup>37</sup> Cf. on this question Virally, M., Gerbet, P., Salmon, J., with the collaboration of Gheballi, V.-Y., *op. cit.*, p. 141.

(called a permanent representation) to the Conference on Disarmament (13 countries) and a permanent mission to the WTO (15 countries). All these representations and their members are treated equally from the point of view of the system of privileges and immunities.

#### 4. MEMBERS OF DIPLOMATIC MISSIONS

	Card Letter	Card Colour	Inviolability	Jurisdictional immunity	Immunity from giving evidence
Heads of Mission	B	Pink	Yes	Yes	Yes <sup>38</sup>
Diplomatic staff	C	Pink	Yes	Yes	Yes
Administrative and Technical Staff	D	Blue	Yes	Criminal : Yes Administrative and civil : only insofar as the exercise of their functions is concerned	Only insofar as the exercise of their functions is concerned <sup>37</sup>
Service staff	E	Purple	No	Only insofar as the exercise of their functions is concerned <sup>39</sup>	Only insofar as the exercise of their functions is concerned <sup>37</sup>
Private staff (servants)	F	Yellow	No	No	No

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<sup>38</sup> *If it seems necessary to cross-examine a witness, seek help from the Swiss Mission.*

<sup>39</sup> *In the event of arrest, preventive detention or criminal proceedings, inform the Swiss Mission through the quickest channels.*

## 5. MEMBERS OF THE INTERNATIONAL ORGANISATIONS

	Card Letter	Card Colour	Inviolability	Jurisdictional immunity	Immunity from giving evidence
Chiefs of staff	B	Pink	Yes	Yes	Yes <sup>40</sup>
High-ranking functionaries (Diplomatic)	C	Pink	Yes	Yes	Yes <sup>39</sup>
Professional category staff	D	Brown	No	Only insofar as the exercise of their functions is concerned	Only insofar as the exercise of their functions is concerned <sup>39</sup>
General services	E	Purple	No	Only insofar as the exercise of their functions is concerned <sup>41</sup>	Only insofar as the exercise of their functions is concerned <sup>39</sup>
Private staff (servants)	F	Yellow	No	No	No

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<sup>40</sup> If it is necessary for a witness to be cross-examined, seek help from the Swiss Mission.

<sup>41</sup> In the event of arrest, preventive detention or criminal proceedings, inform the Swiss Mission through the quickest channels.

## 6. OTHER ELIGIBLE PERSONS

	Proof of Identity		Concession of inviolability	Jurisdictional immunity	Immunity from giving evidence
	Passport	Car licence plates			
Foreign heads of states, members of reigning families (on State visit or incognito)	Diplomatic passport	Issued by foreign state (CD)	Yes <sup>41</sup>	Yes	Yes
Heads and ministers of foreign governments on official visit, as well as diplomats on official mission	Diplomatic passport	Issued by foreign state	Yes <sup>41</sup>	Yes	Yes
<b>Persons passing through Switzerland to take up or return to their posts, or to return to their own country:</b>					
Diplomatic Staff	Diplomatic passport	CD (of a foreign state)	Yes <sup>41</sup>	Yes	Yes
Career consular officials	Diplomatic passport	CD (of a foreign state)	Yes <sup>41</sup>	Yes in the exercise of their functions during official business in Switzerland	Yes so long as it is in relation to official business in Switzerland
Members of admin. and technical staff, consular staff and Embassy service staff	Ordinary or special service passport	Issued by a foreign state (AT or CC)	The holder must be allowed to travel freely throughout the country. <sup>42</sup>		
Members of diplomatic missions and career consular staff visiting as tourists	Diplomatic passport	CD or CC (issued by foreign state)	Immunity and exemption in the event of minor infringements, as a matter of courtesy. <sup>41</sup>		

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<sup>42</sup> In the event of any serious breach of any Swiss legal provisions, inform the Swiss Mission through the quickest channels.

## **CHAPTER III STATUS OF PERSONS BENEFITING FROM PRIVILEGES AND IMMUNITIES**

### **Section I Introduction**

The status of the international organisations and their members in Switzerland is governed by the agreements signed by the international organisation concerned and the Swiss Federal Council, and by any decisions taken unilaterally by the latter.

The status of the representations to these international organisations and their members is governed by international conventions which the Swiss Federal Council has adopted as applying to them by analogy.

There are four types of status granted to such persons, namely:

- full diplomatic status;
- restricted diplomatic status (inviolability, criminal immunity and official civil and administrative immunity);
- official immunity only;
- no immunity, but tax privileges.

N.B. Palestine is an exception to the rule because its members enjoy inviolability and official immunity.

### **Section II Granting of status**

Under the Swiss system, the status granted by Switzerland to every person who is a member of a foreign representation or an international organisation, is summarised on the back of the identity card issued to the cardholder by the DFAE (or the Protocol Department for embassies and consular posts, or the Swiss Mission for the missions to Geneva and the international organisations established in Switzerland<sup>43</sup>).

#### **1) In the organisations**

- members of the directorate and high-ranking officials enjoy diplomatic status;
- other officials (professionals and general services) enjoy official immunity;
- officials with Swiss nationality enjoy official immunity;
- private servants do not have any immunity, but are exempt from taxation.

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<sup>43</sup> *Headquarters Agreements expressly provide that officials be issued with an identity card issued by the Federal Department of Foreign Affairs (DFAE) cf. e.g. article 42 of the WTO agreement.*



## 2) In the representations

- the head of the mission and the members of the diplomatic staff enjoy diplomatic status
- the administrative and technical staff enjoy inviolability, criminal immunity and official civil and administrative immunity
- service staff enjoy official immunity only
- private servants have no immunity, but do have tax privileges

N.B. As regards Swiss nationals, see remarks above on the subject of article 38 of the Vienna Convention.

## Section III The legal basis for status

### 1) The international organisations

As it is not a member of the United Nations, Switzerland has not ratified the Convention on Privileges and Immunities of the United Nations dated February 13, 1946, neither is it party to the Convention on Privileges and Immunities of the United Nations Specialised Agencies dated November 21, 1947.

Status is defined, on the one hand, in the Headquarters Agreement which the Swiss Federal Council has signed with each organisation; and on the other, by decisions of the Federal Council, made on the basis of its jurisdiction in foreign policy, which, and with the consent of the Organisation concerned, amend or complete certain provisions in the Agreements.<sup>44</sup>

Even though the status of each organisation is now the same (since Switzerland applies the principle of equal treatment to all), for historical reasons the system is not uniform in that it is not based on the same legislation. For example, some organisations have inherited a system dating back to 1921 from the League of Nations and the International Labour Office (ILO). We are referring here in particular to the 1921/1926 “modus vivendi”, amended in 1928<sup>45</sup>, relating to the privileges and immunities of staff at the League of Nations and the ILO<sup>46</sup>.

The first post-war agreement entered into by the Swiss Federal Council intended to regulate the status of an international organisation in Switzerland was signed with

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<sup>44</sup> Cf. Vettovaglia, J.-P., *op. cit.*, p. 447.

<sup>45</sup> These texts were published by the League of Nations, *Official Gazette, Minutes of the Council*, 42<sup>nd</sup> session, no 10, October 1926, no 1805, p.1407, and appendix no 911a p. 1422.

<sup>46</sup> On the question of the application of the “modus vivendi” to UN officials, cf. legal opinion of the DDIP (E. Gerber) dated March 26, 1979.

the International Labour Organisation on March 11, 1946 (RS 0.192.120.282). Under the terms of this agreement (article 16):

“The Director of the International Labour Office and those officials in the categories designated by him and agreed by the Swiss Federal Council, shall benefit from the privileges, immunities, exemptions and facilities extended to diplomatic agents in accordance with the law of nations and international custom”.

This agreement provides for three categories of staff:

- high-ranking staff in the directorate who shall be equivalent to the heads of mission;
- first category officials who shall be equivalent to diplomats;
- second category officials who shall have no diplomatic privileges or immunities.

Even though later in date, the Provisional Arrangement on Privileges and Immunities of the United Nations signed on June 11 and July 1<sup>st</sup>, 1946, by the Swiss Federal Council and the Secretary-General of the United Nations Organisation, provided (section 15) for two categories of staff:

- high-ranking staff equivalent to the head of mission;
- other officials, which was a category not benefiting from diplomatic privileges and immunities and was equivalent to the second category officials of the ILO.

This situation was inconsistent<sup>47</sup> with the Resolution of the General Assembly dated February 13, 1946. This resolution provided that “the privileges and immunities of the Organisation should be considered as a maximum within which the various specialised agencies would only benefit from such privileges and immunities as are necessary to fulfil their functions”. It was also in contradiction with the grant of “most-favoured organisation”<sup>48</sup> status to the UN (August 3, 1946).

This situation was put right by a Decision of the Swiss Federal Council dated December 30, 1947, which provided that “as from January 1<sup>st</sup>, 1948, the privileges and immunities granted to the diplomatic staff of the heads of mission accredited to the Swiss Confederation shall also be granted to certain high-ranking officials at the European Office of the United Nations”. The 1946 provisional agreement<sup>49</sup> was amended by an exchange of letters between the DFAE and the Director of the Office of the United Nations dated 5 and 11 April, 1963, making the provisional agreement definitive.

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<sup>47</sup> Cf. Vettovaglia, J.-P., *op. cit.*, p. 448.

<sup>48</sup> According to this “clause”, the Swiss authorities agreed to treat the United Nations and their officials in all respects at least as favourably as any other international organisation set up on Swiss territory.

<sup>49</sup> RO 1956 p. 1182.

Under article V, section 16, of the Agreement on Privileges and Immunities of the United Nations Organisation between the Swiss Federal Council and the Secretary-General of the United Nations Organisation (RS 0.192.120.1):

“The Secretary-General, the Deputy Secretaries-General and equivalent officials, both for themselves and their spouses and minor children, shall benefit from the privileges, immunities, exemptions and facilities granted to diplomatic envoys, in accordance with the law of nations and international custom. Moreover, officials in the categories designated by the Secretary-General, or by such person as he shall have delegated to, and approved by the Swiss Federal Council, shall enjoy the privileges, immunities, exemptions and facilities granted to diplomatic agents who are not heads of mission”.

The regulations adopted since then have been largely inspired by the system governing diplomatic missions and all have the intention of ensuring that international officials are allowed the necessary freedom in which to exercise their offices.

By agreement with the Swiss Federal Council, the international organisations designate the categories of officials who should enjoy the privileges and immunities extended to diplomatic agents.

The most explicit (i.e. clearest) agreement on determining legal status of international organisations is that between the Swiss Federal Council and the World Trade Organisation in Switzerland dated June 2, 1995. At article 30, para 1, entitled “Privileges and immunities granted to the Director general of the Organisation”, it provides that:

“The Director General or, failing him, his deputy, shall enjoy the privileges and immunities which are extended to diplomatic agents in accordance with the law of nations and international custom”.

In article 31 (Privileges and immunities granted to deputy directors general, high-ranking members of the directorate and international officials of the rank P-5 and above), it is stated that:

“The Deputy Director-generals, members of the directorate and international officials of the rank P-5 and above shall enjoy the privileges, immunities and facilities granted to diplomatic agents in accordance with the law of nations and international custom”.

Thus, two categories of international official enjoy the privileges and immunities extended to diplomatic agents, namely, the members of the directorate and high officials ranked P-5 and above.

a) Quota of officials with diplomatic status

The decision of the Swiss Federal Council dated December 30, 1947, limited the number of officials with this status at the United Nations Office in Geneva (UNOG)<sup>50</sup> to 35. This number was justified at that time because of the numbers of staff present in Geneva. However, it was modified later by the DFAE, with the agreement of the Director General of Customs and the international organisations concerned, and was transformed into a quota. Thus 12% of the total number of officials in an organisation could benefit from the status of diplomat. The Swiss Federal Council again modified this system on June 1<sup>st</sup>, 1995. Since that date, every international official of the rank P-5 and above (directorates and high officials) enjoys the same privileges as a diplomatic agent.

The following equivalencies are now the norm<sup>51</sup>:

- members of the directorate (director-generals, secretary-generals, deputy director-generals, assistant director-generals) are put on the same footing as that of the heads of mission, and their status is governed by the Vienna Convention on Diplomatic Relations;
- high-ranking officials (officials of the first category at the time of the League of Nations) enjoy the same privileges as diplomatic agents and their status is governed by the Vienna Convention;
- other officials (of the second category at the time of the League of Nations) enjoy official immunity only and their status is governed by headquarters agreements.

2) The representations

In 1946, when the Swiss Federal Council came to an “arrangement” with the Secretary General of the United Nations Organisation on the latter’s privileges and immunities in Switzerland in order to regulate the status of the UN European Office and its officials in Switzerland, neither the Organisation nor the Swiss authorities thought it likely that member States would set up permanent delegations in Geneva as in the days of the League of Nations<sup>52</sup>. For that reason, the arrangement contained no provision for permanent delegations (now permanent missions); 49 years had to pass before they were mentioned in any headquarters agreement<sup>53</sup>.

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<sup>50</sup> Vettovaglia, J.-P., *op. cit.*, p. 449.

<sup>51</sup> Cf. for example, art. 13 of the Ordinance on Customs privileges for international organisations, States in their relations with these international organisations and the special missions of foreign States, dated 13 November 1985 (RS 631.145.0).

<sup>52</sup> Cf. Vettovaglia, J.-P., *op. cit.*, 445.

<sup>53</sup> This is the case with the WTO agreement, section II A, articles 17 to 22.

Yet in 1948, as Jean-Pierre Vettovaglia<sup>54</sup> points out, there were six permanent delegations already installed in Geneva (Denmark, United States, France, Great Britain, Luxembourg and the Netherlands), and this trend developed rapidly. The question of their status had to be regulated by the Swiss authorities and so the Swiss Federal Council passed a decision on March 31, 1948, by which similar facilities to those granted to the diplomatic missions in Bern were extended to the delegations in Geneva. The Federal Council reviewed the matter again on March 20, 1958, and again on November 3, 1967, after the Vienna Convention came into force in Switzerland on April 24, 1964.

Under the terms of these various decisions, the permanent missions to the international organisations in Geneva and their members (including families), benefit from privileges and immunities equivalent to those extended to the missions and diplomatic agents in Bern. The Swiss Federal Council passed a further decision on the matter, dated July 14, 1964, on the observers to the international organisations, putting them on the same footing. The status of special missions was regulated by the entry into force in Switzerland, on June 21, 1985, of the New York Convention on Special Missions. This system is similar to that applying to permanent and associated missions.

In 1995, the Swiss Federal Council took the decision to extend additional facilities to the international organisations and to some of their members, and to the permanent and associated missions and to some of their members. We shall examine these at a later stage.

a) Permanent missions and permanent observers from non-member States

In Switzerland, the privileges and immunities for permanent missions and permanent observers from non-UN member States are based on the following:

- the Vienna Convention on Diplomatic Relations dated April 18, 1961 (RS 0.191.01) which applies by analogy to the permanent missions in Geneva by virtue of the Federal Council decision dated March 31, 1948, amended May 20, 1958, and November 3, 1967 (unpublished)<sup>55</sup>;
- the Federal Council decisions based on its powers under the Constitution (Cst. Art. 102 Ch. 8);

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<sup>54</sup> Vettovaglia, J.-P., *op. cit.*, p. 445.

<sup>55</sup> Cf. *Swiss International Tax Law*, vol. III, B 4b, p. 261.

- the practice of the Swiss authorities<sup>56</sup> regulating those questions left open by the aforesaid Convention and applies the system of privileges and immunities provided therein.

N.B. On April 1<sup>st</sup>, 1987, the Swiss Mission issued a collection of directives on the subject of permanent missions which draws together some of the practice. These directives are currently undergoing revision.

The Vienna Convention applies by analogy<sup>57</sup> to the permanent missions in Geneva and to the members of these missions, by virtue of a decision of the Swiss Federal Council. This decision is generally referred to as the “Decree of the Federal Council of March 31, 1948 / May 20, 1958 / November 3, 1967”. In this decision, the permanent missions in Geneva are given a status analogous to that of the diplomatic missions established in Bern. In practice, the same applies to the permanent observers from non-UN member States and their members.

b) The special missions

In Switzerland, the privileges and immunities for special missions are based on the following:

- the New York Convention on Special Missions signed on December 8, 1969 (RS 0.191.2);
- the Federal Council Decrees by virtue of its powers under the Constitution (Cst. Art. 102 Ch. 8);
- the practice of the Swiss authorities regulating those questions left open by the aforesaid Convention and adapting the system of privileges and immunities it provides.

The New York Convention on Special Missions of December 8, 1969, was approved by the General Assembly on March 25, 1977<sup>58</sup> and came into force in Switzerland on June 21, 1985. The privileges and immunities relating to members of special missions are provided for at articles 29 to 40.

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<sup>56</sup> This practice is occasionally published in the JAAC or in the ASDI by Professor L. Caflisch (*The Practice of International Public Law*).

<sup>57</sup> Cf. Note from the DDIP to the Swiss Mission dated February 9, 1983, in: ASDI 1984, vol. XL, p. 185-187.

<sup>58</sup> Cf. art. 1, para 1, sub-para a, of the Federal Decree dated March 25, 1977, RO 1985 1259; Message from the Federal Council dated 1<sup>st</sup> September 1976, FF 1976 III 309.

c) Observers at intergovernmental organisations

By virtue of Swiss Federal Council decision dated July 14, 1964 (unpublished)<sup>59</sup>, privileges and immunities for observers at intergovernmental organisations are the same as those for the permanent missions.

With regard to members of observers at the international organisations, this decision in principle was taken by the Federal Council on July 14, 1964. Permanent observer intergovernmental organisations at UNOG, the special organisations or other international agencies in Switzerland, enjoy the same facilities as those granted to the permanent missions and their members and, consequently, the same ones as the diplomatic missions in Bern, by virtue of the decision of the Swiss Federal Council dated March 31, 1948 / May 20, 1958.

There are five such observer intergovernmental organisations:

- Agence de la Francophonie (ACCT);
- The Islamic Conference;
- The Arab League;
- The Organisation for African Unity (OAU);
- The European Union (EU).

There is a special case which requires separate treatment and that is the permanent observer mission of Palestine. This has its own status, and is considered to be a non-governmental organisation (NGO) with an office at the United Nations Organisation. In Switzerland, this is deemed to have *sui generis* status.

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<sup>59</sup> Cf. *Swiss International Tax Law*, vol. III, B4b, p. 262.

## CHAPTER IV PRIVILEGES AND IMMUNITIES AS SUCH

### Section I Privileges and immunities

#### 1) Privileges and immunities for the international organisations

The international organisations enjoy privileges and immunities based on the agreements entered into with Switzerland<sup>60</sup>. On June 1<sup>st</sup>, 1995, the international organisations based in Switzerland were notified<sup>61</sup> that “the Swiss Federal Council has decided to grant additional facilities to the international organisations as well as to some of their officials. These modifications are related in particular to exemption from Value-Added Tax (VAT), access to the job market, keeping families together, the rules applying to private servants as well as certain facilities with regard to customs and vehicle licences”.

The immunities may be summarised as follows: apart from the recognition of legal personality and capacity, freedom of action, freedom of assembly, freedom of discussion, freedom of decision and freedom of publication, the international organisations also enjoy:

- inviolability of premises;
- inviolability of archives and records;
- immunity of jurisdiction and enforcement;
- exemption from federal, cantonal and municipal direct taxes;
- exemption from federal, cantonal and municipal indirect taxes;
- exemption from federal, cantonal and municipal taxes, except where these are due in respect of services specially rendered;
- exemption from customs duty in accordance with the Ordinance dated November 13, 1985, relating to customs privileges for international organisations, the States in their relations with these organisations and the special missions of foreign States (RS 631.145.0);
- free export and import of published material intended for the organisation;
- no restriction upon transfers of funds;
- freedom to make official communications to the extent that these are compatible with provisions in the Convention of the International Telecommunications Union (ITU) dated December 22, 1992;

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<sup>60</sup> Art. 5 para 1 WTO provides: “The Organisation shall benefit from privileges and immunities in accordance with the present agreement”.

<sup>61</sup> Circular from the Swiss Mission to the international organisations (OI no 0) dated 1 June 1995.



- unrestricted licensing of vehicles to the extent that these are approved for international use (and subject to a road-worthiness test);
- exemption, as employer, from compliance with Swiss welfare legislation (old-age and dependants' insurance, disability insurance, unemployment insurance, loss of earnings benefit, compulsory occupational old-age pension, dependants' and disability provident fund) and sickness insurance.

## 2) Privileges and immunities for the missions

The missions benefit from privileges and immunities in accordance with customary law and the Vienna Convention, which applies by analogy<sup>62</sup>. As the missions have no legal personality<sup>63</sup>, they enjoy the privileges and immunities for the State which they represent.

On June 1<sup>st</sup>, 1995, the permanent missions were notified<sup>64</sup> that “the Swiss Federal Council has decided to grant additional facilities to missions and representations as well as to some of their members. These modifications are related in particular to exemption from Value-Added Tax (VAT), access to the job market, keeping families together, the rules applying to private servants as well as certain facilities with regard to customs and vehicle licences”.

### a) Tax regime

The mission enjoys tax advantages in accordance with the Vienna Convention. It is exempt from value-added tax (VAT) on articles acquired for official use and for all services rendered for official purposes.

In the cantons of Geneva and Vaud, the mission is also exempt from the transfer tax payable on the acquisition of property for use as service accommodation.

### b) Customs regime

Customs treatment of articles intended for official use by the mission is governed by article 36 of the Vienna Convention, which applies by analogy, and by the relevant provisions of Swiss law applicable to missions (Ordinance dated November 13, 1985, relating to the customs privileges for international organisations, for States in their

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<sup>62</sup> *The WTO agreement contains the aforesaid privileges and immunities. In art. 17 it provides “The permanent missions benefit from privileges and immunities in accordance with customary law, the Vienna Convention on Diplomatic Relations dated April 18, 1961 which is applicable by analogy, and with the relevant provisions of this Agreement”.*

<sup>63</sup> *Cf., Gloor, W., “Immunité de juridiction et contrat de travail” (Jurisdictional Immunity and the Service Contract), extract from the “Semaine judiciaire” no 34, Geneva 1995.*

<sup>64</sup> *Circular from the Swiss Mission to the international organisations (MPNo 0) dated 1 June 1995.*

relations with the international organisations and the special missions of foreign States RS 631.145.0).

c) Exemption from the obligation to obtain permission to install cabled communications equipment

So long as it is for its own needs, the mission is exempt from the obligation to obtain permission to install cabled communications equipment if this is exclusively within the confines of its own premises.

d) Vehicle licensing

Subject to tests for road-worthiness, service vehicles of permanent missions which are approved for international use may be licensed in Switzerland without restriction.

3) Privileges and immunities of persons

As already seen, state diplomatic agents are not alone in benefiting from privileges and immunities. A certain category of international official is also entitled to the same benefits. In order to avoid repetition, we shall examine the content of such privileges and immunities as applied to persons with diplomatic status, and on each occasion, shall define the class of persons entitled to benefit.

The principal privileges and immunities<sup>65</sup> are inviolability, jurisdictional immunity and customs and tax prerogatives. We shall also look at other prerogatives and privileges enshrined in the Vienna Convention or that have simply become accepted practice and part of the system.

4) Inviolability

a) Generalities

Inviolability, sometimes also called “immunity from constraint”, is the oldest of the privileges and immunities<sup>66</sup>. The notion of *Sancti sunt legati, sancti habentur legati*<sup>67</sup> dates from antiquity. The sacred character of the “envoy” has disappeared nowadays and been replaced by the “functional necessity” which now justifies this privilege<sup>68</sup>. It is enshrined in article 29 of the Vienna Convention which states that:

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<sup>65</sup> Cf., Cahier, Ph., op. cit., p. 430-434.

<sup>66</sup> Cahier, Ph., op. cit., p. 195 and p. 430.

<sup>67</sup> Perrenoud, G., op. cit., p. 18.

<sup>68</sup> Bourgnon, E., p. 73.

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

b) Class of eligible persons

in the permanent missions<sup>69</sup>

- the head of mission
- members of the diplomatic staff of a permanent mission
- members of the administrative and technical staff of a permanent mission.

in the international organisations

- members of the directorate
- high-ranking officials.

c) Personal inviolability

Inviolability requires the Host State to refrain from any action or constraint towards the person benefiting from this privilege. In particular, there is constraint where there is arrest or detention, or even simply failure to ensure freedom of travel and communication<sup>70</sup>.

The principle of inviolability also obliges the Host State to take steps to ensure protection as necessary<sup>71</sup>. However, in the opinion of some legal commentators<sup>72</sup>, the extreme seriousness of any act that the person benefiting from the privilege is alleged to have committed, the need to seize his person urgently in order to forestall or avoid a major disaster or even his being caught in the act of committing a crime are all reasons which could justify certain constraint. This “must in any event be of an exceptional nature”<sup>73</sup>, and, should it arise, the authority intervening must inform the Swiss Mission as rapidly as possible.

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<sup>69</sup> Without other precision, the term “permanent mission” covers the permanent missions to the UN, the permanent representations to the Conference on Disarmament, the permanent missions to the WTO, the special missions, the permanent observers from non-UN member States and the observers at intergovernmental organisations.

<sup>70</sup> Vettovaglia, J.-P., *op. cit.*, p. 450.

<sup>71</sup> On the protection of the diplomatic agent in the face of terrorism or hostage-taking, *cf.*, Bourgnon, E., *op. cit.*, p. 82-83.

<sup>72</sup> Vettovaglia, J.-P., *op. cit.*, p. 450.

<sup>73</sup> Bourgnon, E., *op. cit.*, p. 84.

d) Inviolability of residence, documents, correspondence and property

Article 30 of the Vienna Convention states:

- “1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of article 31, his property, shall likewise enjoy inviolability”.

The first paragraph of article 30 of the Vienna Convention relating to the inviolability of the diplomatic agent’s residence should be read in conjunction with article 22 of the same Convention. The inviolability of the premises of the mission, and by analogy of the agent’s private residence, obliges the Host State to refrain from any act of constraint. Consequently, representatives of the Swiss authorities are prohibited from entering these buildings for any official reason whatsoever to carry out any acts relevant to their office or functions<sup>74</sup>. They may do so only with the consent of the head of the mission or of the director / secretary general of the organisation. This is the rule<sup>75</sup>, the exception being the consent of the interested party or a case of force majeure (fire, etc.).

The inviolability of residence also applies to the service of official notices to appear (only the DFAE or the Swiss Mission is entitled to summon a diplomat), to the service of writs or sub-poenas or of any notification of any legal document (notice of proceedings, orders to pay, etc.).

The service of any such document must, therefore, be conducted through diplomatic channels. According to the procedure at the Geneva State Prosecutor’s Office, the Swiss Mission shall decide whether it is in a position to serve a legal document originating from abroad on a diplomat holding a post in Geneva, subject to the proper limits on immunity as defined by the Vienna Convention (article 31, paragraphs 1 and 3). The principle of inviolability is absolute<sup>76</sup>, and not open to interpretation by the authorities. If there is any doubt, advice must be requested from the DFAE and its opinion is final.

The property of the diplomatic agent, or any person benefiting from similar status, must be protected from any constraint. Thus, his papers, correspondence, personal property, salary, and bank account may not be seized or sequestered. This

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<sup>74</sup> Vettovaglia, J.-P., *op. cit.*, p. 450.

<sup>75</sup> Notice from the DDIP dated July 16, 1975, in: JAAC 1976 folio 40-11, no 50.

<sup>76</sup> Cf. Notice from the DDIP dated April 13 1971 in JAAC 1970/1971 folio 35, no 24 and dated January 9 1981 in ASDI 1981 vol. XXXVII, p. 269 ff.

inviolability means, for example, that a landlord's right to distrain on a tenant's goods is overridden<sup>77</sup>.

The limitations of the Vienna Convention mean that sometimes, however, this immunity is not absolute. Where there is a case of a real action concerning a deceased person's estate, or a profession carried on by the agent, measures of execution are possible (article 31, paragraphs 1 and 3, Vienna Convention). However, these measures must be taken "without infringing the inviolability of the diplomatic agent's person or of his residence"<sup>78</sup>.

## 5) Criminal, civil and administrative immunity

### a) Class of eligible persons

#### in the permanent missions:

- head of mission;
- members of the diplomatic staff;

#### in the international organisations

- members of the directorate;
- high-ranking officials.

### b) Jurisdictional immunity

"Recognised by international customary law and the practice of States, accepted by the majority of writers on the subject of the law of nations and often enshrined in national legislation, the jurisdictional immunity of the diplomatic agent has the effect of removing him from the cover of local law"<sup>79</sup>.

Article 31, paragraph 1 of the Vienna Convention sets out the position in these terms:

"1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

- a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

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<sup>77</sup> Vettovaglia, J.-P., *op. cit.*, p. 451.

<sup>78</sup> Bourgnon, E., *op. cit.*, p. 86.

<sup>79</sup> Bourgnon, E., *op. cit.*, p. 88.

- b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions”.

The criminal jurisdictional immunity from which the diplomatic agent (or any other person enjoying similar status) in Switzerland benefits is absolute. There is no distinction to be drawn whether the activity be private or official.

Occasionally immunity from the civil and administrative jurisdiction is confused with the immunity of States<sup>80</sup>. According to the Swiss Federal Court<sup>81</sup>, the immunity of States has been recognised in a restricted form and draws the distinction between where the State is acting *jure imperii* or *jure gestionis*. This is not the case in the immunity of the diplomatic agent.

The question is settled by the terms of the Vienna Convention which defines civil and administrative jurisdictional immunity very precisely. The diplomatic agent enjoys civil and administrative jurisdictional immunity except where it is a case of:

1. a real action<sup>82</sup> relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
2. an action relating to a succession in which the diplomatic agent is acting as executor, administrator, heir or legatee, in a private capacity, and not on behalf of the sending State;
3. an action relating to any activity<sup>83</sup>, whether professional or commercial,<sup>84</sup> exercised by the diplomatic agent in the receiving State outside his official functions.

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<sup>80</sup> On the codification of the immunity of States, cf., Krafft, Ch.-M., *The European Convention on the Immunity of States and its Additional Protocol*, in ASDI 1975, vol. XXXI, p. 11-30.

<sup>81</sup> Cf. ATF 44 I 49, 111 Ia 62; on the question seen through jurisprudence and doctrine in working relations cf. Gloor, W. *op. cit.*

<sup>82</sup> Cf. DDIP opinion dated 13 August 1971 on the registration of a legal mortgage and the calling in of a pledge in JAAC 1970/1971, folio 35, no 24.

<sup>83</sup> As Mr Bourgnon remarks in *op. cit.* at p. 89, this is prohibited under article 42 of the Vienna Convention anyway.

<sup>84</sup> On the status of a diplomat who is a member of the board of a public company, cf. note from the DDIP dated 25 August 1976 in JAAC 1977, folio 41-1, no 32.

c) Immunity of execution

According to article 31, paragraph 3 of the Vienna Convention:

“No measures of execution may be taken in respect of a diplomatic agent except in the case coming under sub-paragraphs a), b) and c) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence”.

Jurisdictional immunity is linked to immunity of execution. Even in the three cases provided for in the Vienna Convention where jurisdictional immunity does not apply, such measures of execution as are possible must be carried out in compliance with the principle of inviolability of the residence and of the person of the diplomatic agent or other person benefiting from similar status<sup>85</sup>.

d) Road traffic offences

No other exceptions than those provided by article 31, paragraph 1, of the Vienna Convention are taken into consideration. According to DDIP opinion<sup>86</sup>, States may not circumvent the Convention and attempt to qualify the principle of immunity through their internal laws, and in the case of road traffic accidents not even administratively through the withdrawal of the driver's licence or the application of fines<sup>87</sup>. The situation is different in the case of headquarters agreements<sup>88</sup> which tend to restrict immunity for this type of offence.

e) Waiver of immunity

These privileges and immunities are granted to the members of permanent missions and international officials so they may freely carry out their duties and functions; and the waiver or lifting of such immunities is in the remit of their “principal”. Thus in the case of members of missions, it is up to the sending State, and for international officials, the international organisation concerned, to waive immunity if they consider it appropriate.

Article 32 of the Vienna Convention sets out the position with regard to the sending State as follows:

“1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State.

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<sup>85</sup> Vettovaglia, J.-P., *op. cit.*, p. 452.

<sup>86</sup> Advice from DDIP dated 17 November 1967 in JAAC 1968/1969, folio 34, no 17.

<sup>87</sup> Bourgnon, E., *op. cit.*, p. 89.

<sup>88</sup> Cf., e.g., headquarters agreement with the BIS dated 18 May 1987 (RS 0.192.122.971.3).

2. Waiver must always be express.
3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim”.

The headquarters agreements provide the following form with regard to the international organisations:

“The privileges and immunities provided by the present Agreement are not designed to confer any personal advantage on the persons benefiting therefrom. They are solely for the purpose of ensuring, in all circumstances, freedom of operation for the Organisation and full independence for the persons concerned in carrying out their functions in relation to the Organisation”.

“The director general (*mutuatis mutandis* the secretary general) not only has the right but also the duty to waive the immunity of an official in all cases where he considers that this immunity may impede the course of justice and where it may be waived without impairment to the ability of the person concerned to carry out the functions for which immunity was granted”.

f) Procedure and diplomatic channels

In matters of criminal law, requests for immunity to be waived must emanate from the State Prosecutor’s Office (Attorney-General). The latter forwards such requests to the Swiss Mission which assumes responsibility for transmitting them to the Federal Department for Foreign Affairs, and the latter decides on the course of action it intends to take<sup>89</sup>. If the request for waiver is approved, it is, in the case of members of permanent missions, sent to Switzerland’s representative in the country concerned, for forwarding to the Ministry of Foreign Affairs in that country; in the case of international officials, the approved request is sent to the Swiss Mission for forwarding to the international organisation concerned.

In civil cases, a request for waiver of immunity is sent to the Swiss Mission via the Department of Justice and Police (DJP) of the canton concerned. Prior to filing an application to the court (for example, a divorce suit), the advocate is obliged to request waiver of immunity via the DJP, and from then on the procedure followed is the same as for criminal cases. Once waiver of immunity has been obtained from the State or the organisation concerned, proceedings may be commenced and writs and notices to appear may be issued.

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<sup>89</sup> The DFAE may decide not to take the matter further. This decision is not subject to appeal.



In administrative cases, it is the administrative authority which presents the request for waiver to the Swiss Mission. The latter assumes responsibility for referring this to the DFAE for decision and action according to the same rules.

Waiver of immunity from civil and administrative jurisdiction by the sending State or the international organisation concerned is of limited scope only in that it does not imply waiver of immunity in respect of the execution of any judgement. A separate waiver is required and thus a separate formal request must be addressed in this respect via the diplomatic channels already described.

Paragraph 4 of article 32 of the Vienna Convention provides for this as follows:

“Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement, for which a separate waiver shall be necessary”.

In practice, the two requests, for waiver of immunity of jurisdiction and for waiver of immunity from measures of execution, are often made at the same time, especially in cases under civil law. For criminal or administrative matters, the State or the organisation approached may prefer to handle the two requests separately, and if the first is accepted, to wait to hear the judgement or decision of the authorities before deciding on whether to grant the second request, thus requiring a separate request in this event.

Person benefiting from jurisdictional immunity are exempt from having to give evidence as witnesses before a Swiss court. Depending upon the category in which they find themselves, such persons are exempt absolutely or relatively.

For a person holding diplomatic status, article 31, paragraph 2, of the Vienna Convention expressly provides that: “A diplomatic agent is not obliged to give evidence as a witness”. This provision also applies to officials with diplomatic status.

According to the DDIP note addressed to the Swiss Mission dated February 9, 1983<sup>90</sup>, if the diplomatic agent “considers nevertheless that it is appropriate, he may, as a matter of principle, give his consent without the authorisation of his government”, *mutatis mutandis*, his organisation.

This authorisation, as the DDIP points out, is necessary for two fundamental reasons:

1. The privileges and immunities are not attached to the diplomatic agent, they are not granted to him in his own interests but rather in those of the State which he represents or of the organisation which he serves;

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<sup>90</sup> In ASDI 1984, vol. XL, p. 186 ff.

2. In the event of false witness, the agent exposes himself to legal sanctions with all the ensuing consequences that this could have for the State he represents or the organisation to which he belongs.

If the legal authorities have need of information, this must be applied for through diplomatic channels, in which case the Swiss Mission enquires of the mission (or organisation) concerned as to whether a member of staff may be authorised to provide the information required, and if so, in what form. Generally, this form is in writing.

Officials without diplomatic status (professional and general service categories), members of the administrative, technical and service staff of the missions and the private servants attached to the heads of mission are exempt from giving evidence only where this is related to their office and functions.

g) Laying an information before a criminal court

There is no question of it being difficult for persons benefiting only from official immunity to make a complaint or lay an information before a criminal court in their private capacity. The question may however arise for those enjoying absolute criminal jurisdictional immunity. In the opinion of the DDIP<sup>91</sup>, a diplomatic agent may lay an information before a court, whether the offence be prosecuted as the result of a complaint or of its own motion, and his complaint must be registered. His immunity from criminal jurisdiction must not prevent him from having access to justice in the receiving State.

Once an information has been laid before the court<sup>92</sup>, criminal jurisdictional immunity becomes an obstacle preventing the prosecutor or the judge from continuing with procedure (calling, hearing, etc.). The diplomatic agent should submit an express waiver of his immunity from his State, or, in the case of an international official with diplomatic status, from his organisation.

6) Access, residence and exit facilities

Generally speaking, members of permanent missions and their families are obviously not subject to federal police requirements limiting entry of foreign nationals into Switzerland, and they are exempt from having to present themselves to the local police authorities. They are officially recorded at the *Contrôle de l'habitant* [Residence Office] via the Swiss Mission. The Swiss authorities therefore take all

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<sup>91</sup> DDIP note dated 9 February 1983 in ASDI 1984, vol. XL, p. 185.

<sup>92</sup> For the procedure to follow see aforesaid DDIP note.

steps to facilitate entry into, residence in and exit from Switzerland. Exemption from the obligation to obtain a temporary or permanent residence card entails the issue of an identity card (*carte de légitimation*) or a letter of authority by the DFAE. This card or authority enables the holder to prove the legitimacy of his status with respect to all federal, cantonal and municipal authorities.

A series of directives issued by the DFAE dating from April 1<sup>st</sup>, 1987, came into force on May 22, 1987, and codified the practice followed and developed on the subject from 1921 to 1986. It gives detailed information on everything connected with entry, exit and residence in Switzerland for “internationals”. These are currently being revised.

7) Recall of members of the permanent missions and international officials declared *persona non grata*

Where a person benefiting from privileges and immunities carries out acts in a private capacity which, in the opinion of the Host State, constitute an abuse of such privileges and immunities, the Host State may take sanctions against him. This relates to the application, by analogy, of article 9 of the Vienna Convention which allows a member of a mission to be considered *persona non grata*. Recall may be requested for several reasons and in particular if the DFAE considers that the presence in Switzerland of a person with immunity and privileges can be tolerated no longer because it represents a threat to State security (the headquarters agreements provide this right for the Host State).

In the event of a person benefiting from privileges and immunities abusing his diplomatic status by carrying out activities in Switzerland which had no relation to his official capacity or were in contradiction of the terms of the Vienna Convention, the DFAE could deprive him of his status and oblige him to leave Switzerland or, simply, withdraw the status.

The DFAE has had recourse to this procedure on several occasions over the last few years. A Host State may do this at any time and without having to justify its decision. It merely informs the receiving organisation, in addition to the usual bilateral information.

## Section II Tax privileges

### 1) General matters

In a federal State such as Switzerland, there is no such thing as a single tax system applicable throughout the territory<sup>93</sup>. The collection of taxes, dues, charges and fees is in the parallel jurisdictions of the Swiss Confederation, cantons and municipalities. Because of this structure, the tax privileges in general may differ in scope and extent depending on the holder's place of residence. This is the case in particular for charges and fees, which vary appreciably from canton to canton. However, there is no doubt that the tax exemption provided under the Vienna Convention and the headquarters agreements apply to the three levels of taxation<sup>94</sup>.

The Vienna Convention devotes article 34 to fiscal prerogatives of the diplomatic agent. The Convention on Special Missions contains an article 33 which is based on it. In application of article 34 of the Vienna Convention:

“A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- a) indirect taxes of a kind which are normally incorporated in the price of goods and services;
- b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- c) estate succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of article 39;
- d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- e) charges levied for specific services rendered;
- f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 23”.

#### a) Situation for Swiss nationals

On the basis of the Vienna Convention, Switzerland does not grant any tax privileges to its nationals who are either members of permanent missions, or to permanent

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<sup>93</sup> Cf. Vettovaglia, J.-P., *op. cit.*, p. 454 ff.

<sup>94</sup> Bourgnon, E., *op. cit.*, p. 93.

residents of Switzerland (holders of residence permits B or C) (article 34 in conjunction with article 38). Thus Swiss nationals who are members of missions in Geneva are not exempt from tax.

## 2) Federal taxes<sup>95</sup>

### a) Direct federal taxation

Under the terms of the Federal Law on Direct Federal Taxation (LIFD) dated December 14, 1990 (RS 642.11) (which supersedes the Decree of the Swiss Federal Council on collection of direct federal taxes dated December 9, 1940, article 15, paragraph 1):

“Members of diplomatic missions and consular representations accredited to the Swiss Confederation, and members of the international organisations established in Switzerland and the representations thereto, are exempt from taxes provided for under federal law.”

The class of eligible persons includes all foreign<sup>96</sup> nationals holding a DFAE identity card<sup>97</sup>. Exemption from direct federal taxation does not extend to<sup>98</sup>:

- income from real property situated in Switzerland of which they may be owners or over which they may hold a life interest;
- revenue from moneys owing secured on real property situated in Switzerland or by Swiss mortgage bonds;
- proceeds from assets invested by them as owners, shareholders or partners in any business activities operating in Switzerland;
- proceeds from assets invested by them in institutions based in Switzerland;
- income from any personal business carried on in Switzerland;
- the share in profits which they may receive as members of boards of directors or governors of any corporation with headquarters in Switzerland;
- directors' attendance fees, fixed allowances and other emoluments which they may receive as members of the board of any corporation with headquarters in Switzerland;

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<sup>95</sup> Cf. Ménétreay, G., “Le statut fiscal des représentation diplomatiques et consulaires et de leur personnel” (*The Fiscal Status of Diplomatic and Consular Representations and their Staff*) *Administrative and Fiscal Law Review*, 1978, p. 1-15, 73-95.

<sup>96</sup> We have not examined the status of Swiss nationals in international organisations in this work, thus their omission is deliberate.

<sup>97</sup> The subject of the status of bearers of a letter of authority from the DFAE will not be broached here.

<sup>98</sup> Vettovaglia, J.-P., *op. cit.*, p. 454 ff.

- sums which are paid to them out of Swiss public funds in consideration for previous service.

b) Withholding tax

The Federal Law on Withholding Tax dated October 13, 1965 (RS 642.21) regulates the collection of this tax. It is called “withholding” tax, because it is withheld at source on income from capital assets, lottery winnings and insurance benefits (article 1, paragraph 1). In particular it applies to dividends and interest on bonds, current accounts and savings accounts in Switzerland. Withholding tax is always collected. Exemption is by way of a refund which the entitled person must expressly request.

Under terms of article 28 of the Law:

- “1. Foreign States are entitled to a refund on withholding tax deducted from interest on assets invested by them in Swiss banks to the extent that such assets are for the sole use and purposes of their diplomatic and consular representations.
2. International organisations and their officials established in Switzerland and members of diplomatic missions accredited to the Swiss Confederation as well as career consuls and career consular officials, are entitled to a rebate on withholding tax payable on performance of a service or benefit, if the law, conventions or custom exempt them from payment of cantonal taxes on banked securities and assets and on the interest therefrom.
3. If a foreign State does not grant reciprocal tax advantages, this concession is not granted to that State or to the members of its diplomatic and consular representations”.

The class of eligible persons is made up of the international officials and members of the permanent missions including their families, subject, however, to their not carrying on remunerative work and to their living in the same household as the principal office-holder. However, if a foreign State does not grant reciprocal conditions, this concession is not granted to members of the permanent missions.

c) Securities

According to article 34, letter d, of the Vienna Convention, Swiss assets and securities (shares, bonds, debentures, etc.), the interest and any capital gains they may produce, may be taxable in Switzerland. However, this provision is not applied. In fact, Swiss domestic legislation grants exemption from Swiss taxes on all Swiss and foreign securities to members of permanent missions and international organisations so long as they enjoy tax exemption by virtue of conventions or

customary law (cf. article 28, paragraph 2, in conjunction with article 15 of the LIFD, RS 642.11).

**d) Value-Added Tax (VAT)**

VAT was introduced in Switzerland on January 1<sup>st</sup>, 1995. By circulars dated June 2, 1995, addressed to the permanent missions<sup>99</sup> and international organisations<sup>100</sup>, the Swiss Mission notified them of the Swiss Federal Council's decision on who should benefit from exemption from VAT.

1. With effect from January 1<sup>st</sup>, 1995, the following shall be exempt from VAT on articles acquired for official use and for services rendered for official purposes: diplomatic missions, permanent missions, consular posts and international organisations having entered into a headquarters agreement with the Swiss Federal Council or an agreement on taxation providing for exemption from direct taxation.
2. The following shall also be exempt from VAT on articles acquired strictly for personal use and for services rendered on a strictly personal basis: diplomatic agents, consular officials and high-ranking officials (international officials with diplomatic rank) together with the members of their immediate family who form part of their household and who benefit from the same status as the principal office-holder, except where such persons are of Swiss nationality.

With effect from July 1<sup>st</sup>, 1995, relief on VAT for institutions and persons entitled will be applied at the point of delivery by the sales or service staff for amounts from Sfr. 100 upwards.

**3) Cantonal and municipal taxation**

**a) Income and wealth tax**

Members of permanent missions shall not be subject to cantonal or municipal taxes on income or wealth<sup>101</sup>.

The Law of Geneva on Public Contributions dated November 9, 1887 (article 7, as amended on April 1<sup>st</sup>, 1959) states that:

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<sup>99</sup> Note from the Swiss Mission (MP no 1) dated 2 June 1995.

<sup>100</sup> Note from the Swiss Mission (OI no 1) dated 2 June 1995.

<sup>101</sup> Cf. Vettovaglia, J.-P., *op. cit.*, p. 455.

“The following shall, to the extent provided by the conventions, agreements and arrangements entered into with public international organisations, be exempt from tax on income and wealth:

- a) the international organisations;
- b) the members of the Boards or Councils, the representatives and the officials of international organisations;
- c) the representative of foreign States and the official of the delegations of these States to the international organisations”.

Private real property situated in Switzerland and the income therefrom are generally speaking taxable unless the person benefiting owns the property on behalf of the sending State (article 34, letter b, of the Vienna Convention).

In the same way, industrial and commercial investments in a business situated in Switzerland, in a Swiss partnership or company and the income deriving therefrom are generally speaking taxable in Switzerland as income and wealth, in accordance with article 34, letter d, of the Vienna Convention.

b) Inheritance and gift taxes

Under the terms of the Vienna Convention (article 34, letter d, and article 39, paragraph 4, last sentence), these taxes come under the scope of cantonal law. They may be collected on the estate of a person benefiting from privileges and immunities, who died in Switzerland, except on such personal property as was only in Switzerland by virtue of the presence of the deceased in the country, namely, his furniture, porcelain, silver, etc., and such cash as is necessary for running his household (bank accounts and postal cheque accounts).

In 1995, the canton of Geneva and the canton of Vaud decided to extend this tax exemption to the estates of every member of a permanent mission and, as a consequence, to those of officials in international organisations with which Switzerland had entered into a headquarters agreement, so long as such persons had been on active service at the time of their death, and were not Swiss nationals, or permanent residents of Switzerland prior to their taking up office. This exemption applies to personal movable property, but does not cover real or immovable property.



Gifts between living persons do not qualify for any tax privilege. In addition, persons entitled to these privileges are not exempt from inheritance or gift tax on any estates or settlements which may revert to them<sup>102</sup>.

c) Tax on consumption (indirect taxation)

Members of missions and international officials are not exempt from indirect taxation - namely that which is levied on items other than the regular income of the taxpayer, in particular on consumption with no obvious counterpart - and therefore are not able to request the repayment of such tax where it is included in the price. Switzerland has never reimbursed this tax to persons benefiting from tax advantages on transactions carried out in Switzerland.

4) Dues in remuneration for specific services rendered

By virtue of article 34, letter e, of the Vienna Convention, a diplomatic agent is bound to pay taxes and dues for services rendered.

a) Dog licence

Exemption from this tax is granted. However, a fee is charged to cover the cost of the dog's identity disc where this is applicable (Geneva). In the opinion of the DFAE, this fee qualifies as remuneration for a specific service rendered (article 34, letter e, Vienna Convention).

b) Tolls

Tolls for the use of roads, tunnels and bridges, and port taxes, landing or airport taxes and charges for parking vehicles on the public highway are payable<sup>103</sup>. The *vignette* (windscreen sticker to allow the car to be driven on Swiss motorways) which was introduced by Ordinance on September 12, 1984, (RS 741.72), is considered by the DFAE<sup>104</sup> to be a tax similar to a Swiss motorway toll, and from the point of view of the Vienna Convention a tax collected in remuneration for a specific service rendered, as per article 34, letter e.

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<sup>102</sup> Cf. *Ménétry, G., op. cit., p. 79.*

<sup>103</sup> *Vettovaglia, J.-P., op. cit., p. 459.*

<sup>104</sup> *DFAE Notice dated December 5, 1984 to diplomatic missions accredited to Berne. Bourgnon, E., op. cit., p. 99.*

c) Ministry of Justice fees

Fees for issuing official documents (fees for registration of births, marriages and deaths, legalisation of documents, fees for registration on the register of marriage systems and at the land registry, court fees, etc.) are due by all persons benefiting from tax privileges<sup>105</sup>.

d) Temporary residence tax

This tax is levied only for periods of residence in hotels or secondary residences (but not in the principal place of residence) and is not subject to exemption. Thus, persons benefiting from tax privileges in Switzerland who are on vacation or holidaying in a Swiss canton or town where the tax laws require payment of such a temporary residence tax, must pay it in full.

e) Hunting, fishing and arms licences

No exemption may be requested of the cantonal authorities who issue these licences. Payment must be made in full as the fees are deemed to be a tax in remuneration of specific services rendered as per article 34, letter e, of the Vienna Convention.

f) School and university tax

Based on the Law of Geneva dated May 25, 1973, on the Encouragement for Education, schoolchildren and students whose parent or guardian is neither a resident nor a taxpayer in the canton of Geneva are not entitled to free education.

The Swiss Mission informed the permanent missions and international organisations by note dated September 15, 1981, of the application of a tax on university students. On January 10, 1984, the Swiss Mission further informed them of the application of a tax on children attending public secondary schools in Geneva where the parent or guardian or such child or children was exempt from income and wealth tax.

“International” pupils and students are therefore on an equal footing with pupils from the rest of the Swiss Federation (Swiss citizens with permanent residence in another canton) whose parent or guardian is not permanently resident in Geneva.

g) Taxes and duty on motor vehicles

Those benefiting from an exemption to pay these are in the following categories:

- the head of mission, members of the directorate (DFAE card, type B);

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<sup>105</sup> Vettovaglia, J.-P., *op. cit.*, p. 460.

- diplomatic staff, high-ranking official (DFAE card, type C);
- administrative and technical staff, professional category staff (DFAE card, type D);
- members of the families of the above categories so long as they are holders of a card in the same series as the principal entitled person.

They are exempt from the annual tax on motor vehicles. However, they are still liable to pay taxes and fees involved in obtaining licence plates and registration of the vehicle.

**h) Radio and television recording and entertainment licence**

The Ordinance dated March 16, 1992 on radio and television (ORTV) provides under article 105, paragraph 1, letter b, that the heads of mission, diplomatic staff, administrative and technical staff (provided they are not of Swiss nationality) of diplomatic representations, of the permanent missions and consular posts, shall be exempt from payment of this licence fee. International officials of whatever rank are not, however, exempt.

**i) Hospital tax**

Hospital tax is a tax levied under internal law and, under international law is a payment due by diplomatic agents and international officials of any category, as payment in exchange for services rendered by the public authorities<sup>106</sup>. Geneva puts foreign diplomats and international officials with tax privileges on the same footing as other citizens of the Swiss Confederation, even where their place of permanent residence is in the canton of Geneva.

**j) Street-cleaning and repairs, lighting, and water charges**

In the opinion of the DFAE, these charges are considered to be in payment for specific services rendered in terms of article 34, letter e of the Vienna Convention. Charges for household rubbish collection are applied to every person, including those benefiting from tax privileges; in some municipalities, this tax is deducted automatically at source. The DFAE considers that household rubbish collection, lighting and the supply of water are specific services rendered giving rise to remuneration<sup>107</sup>, the payment of which is not a tax as such.

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<sup>106</sup> Cf. Vettovaglia, J.-P., *op. cit.*, p. 460.

<sup>107</sup> Cf. Vettovaglia, J.-P., *op. cit.*, p. 463.

k) Tax in lieu of service

Article 35 of the Vienna Convention provides that:

“The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting”.

This point was challenged by the authorities in a municipality in the canton of Vaud which attempted to oblige a diplomat holding office in Geneva to fulfil the obligation of doing fire service. It was the DFAE’s opinion that in this case, the fire brigade could be construed as falling into the categories defined in article 35.

Thus, no tax in lieu of service may be charged to from any person expressed to have an exemption to perform such service.

l) Mooring dues

The DFAE has classed these dues as a payment in respect of specific services rendered by the public authorities<sup>108</sup> and as such, they are payable by diplomatic agents and all categories of international official.

m) Cable television network fees

In this instance again, these fees are without any doubt<sup>109</sup> payments in respect of specific services rendered and are due by all categories of diplomatic agent and international official.

5) Tax position for retired persons

Members of a permanent mission and international officials who, on retirement, remain in Switzerland become ordinary taxpayers.

### Section III Customs privileges

Article 36, paragraph 1 of the Vienna Convention provides that:

“The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on

a) articles for the official use of the mission;

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<sup>108</sup> Cf. Advice from DDIP to the Swiss Mission dated May 23, 1993.

<sup>109</sup> In this connection see Salmon, J., *op. cit.* p. 336 no 491.

- b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment”.

In order for Switzerland to fulfil its obligations as Host State, the Swiss Federal Council promulgated an Ordinance dated November 13, 1985, relating to customs privileges for international organisations, for the States in their relations with these organisations, and for special missions of foreign States (RS 631.145.0)<sup>110</sup>.

This order regulates the question of customs privileges for members of permanent and special missions and is based on those granted to international officials. The following equivalencies are provided:

- the heads of mission together with members of their families who are part of their household should have the same facilities as international officials of directorate level;
- members of the diplomatic staff of mission together with members of their families who are part of their household should have the same facilities as the high-ranking officials in international organisations;
- members of the administrative and technical staff and the members of the service staff should have the same facilities as the other civil servants or officials (professional category and general services staff).

1) Heads of mission and members of the directorate

Heads of mission and members of the directorate together with members of their families who are part of their household are entitled to import all articles intended for their personal use (except building materials), free of duty.

2) Members of diplomatic staff and high-ranking officials

Members of the diplomatic staff and high-ranking officials together with members of their families who are part of their household are entitled to import the following articles intended for their personal use, free of duty:

- a) new or used furniture, for the purposes of setting up house the first time; this facility may only be used once during a period of 5 years from the date of taking up their functions;

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<sup>110</sup> *The Customs Department in Geneva is qualified to handle questions relating to international organisations and their members and to permanent missions and their members.*

- b) all other articles, except building materials but including articles for domestic use acquired separately from those relating to initial establishment, in accordance with letter (a) of the aforementioned Ordinance.

The duty free import of furniture is conditional upon the entitled person having his place of permanent residence in Switzerland.

Under terms of article 36, paragraph 2, of the Vienna Convention: “The personal baggage of a diplomatic agent shall be exempt from inspection ...”. There are certain limits which also apply to international officials with diplomatic status, as we shall see further on.

3) Other officials, members of administrative, technical and service staff of the missions

Foreign nationals who move their place of permanent residence to Switzerland may, on first setting up house in the country, import new or used household effects, including foodstuffs, alcoholic drink and tobacco intended for their personal use. They may avail themselves of this facility only once, except where they return to Switzerland after an absence of three years at least.

Duty free admission of such items is limited to the reasonable needs of the person benefiting from the facility, and those of the members of his family who form part of his household.

4) Inspection of baggage

Members of the directorate, high-ranking officials, and members of their families who form part of their household are also exempt from inspection of their personal baggage, unless there are serious grounds for believing that such baggage may contain articles not intended for official or personal use, or of which the export or import is prohibited by Swiss federal law.

5) Transfer, sale or assignment of goods admitted free of import duty

No article admitted free of duty may be sold, transferred or assigned in Switzerland, whether against payment or free of charge, without prior authorisation from the relevant customs authority and without the corresponding import duty being paid in full.

**6) Acquisition of vehicles<sup>111</sup> admitted free of import duty**

**a) Vehicles intended for members of the director, high officials, heads of mission and members of the diplomatic staff**

Where their place of permanent residence is Switzerland, these persons are entitled to import or purchase free of import duty, a vehicle for their own personal use, under a restricted agreement, once every three years. In addition, they may acquire a second vehicle under an unrestricted agreement<sup>112</sup>. If the first vehicle is sold, the restricted agreement benefit may be transferred to the second vehicle, or may be re-used for the import or purchase of a new vehicle.

Private motor cars, motor-boats and aircraft which the applicant has used abroad for a period of at least six months prior to his taking up office in Switzerland may be imported free of duty in accordance with article 13 (household removals) of the Ordinance dated July 10, 1926 relating to the law on Customs (OLD) (RS 631.01).

**b) Vehicles intended for other officials, administrative and technical staff, and service staff of the permanent missions**

Where the place of permanent residence of such persons is in Switzerland, they may import or purchase free of duty, a private motor car or a motor-boat intended for their personal use, on setting up house for the first time or on their return to Switzerland after an absence of at least three years.

These facilities may be used only once, and the import or the purchase should take place within five years of the date of taking up office. These vehicles may not be transferred (sold or assigned) in Switzerland for a period of three years without payment of duty in full.

Private motor cars, motor-boats and aircraft which the applicant has used abroad for a period of at least six months prior to his taking up office in Switzerland may be imported free of duty in accordance with article 13 (household removals) of the Ordinance dated July 10, 1926 relating to the law on Customs (OLD) (RS 631.01).

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<sup>111</sup> Here "vehicle" may mean a private motor car, motor boat or, if the case arises, private aircraft.

<sup>112</sup> An unrestricted agreement entails the right to make use of a vehicle that has not been cleared by customs for as long as the keeper of the vehicle is the owner thereof. The vehicle may be exported, but in the event it is sold in Switzerland, duty must be paid whatever the length of time the vehicle has been in Switzerland.

c) **Termination of office whilst remaining resident in Switzerland**

Should the keeper of a vehicle imported free of duty cease to qualify for the benefits granted whilst remaining permanently resident in Switzerland, the vehicle in question is liable for payment of import duty.

7) **Duty-free fuel**

Procedure relating to the distribution of duty-free petrol to exempt persons was contained in an Agreement dated August 31, 1949 and August 28, 1950, between the Swiss Customs Authorities and the Director of the European Office of the United Nations. This agreement set out the procedure relating to the import, storage and distribution of duty-free petrol intended for motor vehicles belonging to the international organisations established in Geneva, to their high-ranking officials, and to the permanent representatives of the member States. An additional Protocol was signed on August 28, 1950.

Amongst other things, this agreement provides that the import, storage and distribution may be entrusted to a Swiss importer who would act for and on behalf of the European Office of the United Nations.

In this instance, the UN appointed Shell (Switzerland) as distributor, not only for the international organisations and their members who are entitled to duty-free fuel (members of the directorate and high officials), but also for the permanent missions and the members of the permanent missions who are entitled to this benefit (heads of mission and members of the diplomatic staff)<sup>113</sup>.

Duty-free fuel is reserved for the principal office-holder only and does not include members of his family. The special fuel card is distributed by the Purchasing and Transport Department of UNOG<sup>114</sup> to all entitled persons, and is only valid for vehicles belonging to the principal office-holder that are registered in his name and intended for his personal use.

8) **Duty-free shop**

In 1995, the Swiss authorities decided to approve the opening of a duty-free shop in Geneva<sup>115</sup> in order to facilitate the purchase of tax-free goods intended for the immediate, personal needs of diplomatic agents, career consular officials,

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<sup>113</sup> The Agreement lists the persons entitled to this benefit under article 9.

<sup>114</sup> (Section des achats et des transports). Cf. additional Protocol, paragraph 1, amending paragraph 2 of article 1 of the Agreement.

<sup>115</sup> Cf. Circulars from the Swiss Mission dated November 13, 1995 (OI no 8) and (MP no 8).



international officials with diplomatic status and foreign delegates with a rank equivalent to that of a diplomatic agent.

Entitled persons may acquire goods there, limited to their own personal, immediate needs. Persons benefiting from customs privileges retain the right to import goods free of duty, directly or to order<sup>116</sup>.

## Section IV Other privileges and prerogatives

### 1) Exemption from social security and welfare legislation

Article 33, paragraph 1, of the Vienna Convention provides that:

“1. Subject to the provisions of paragraph 3 of this article (*the diplomatic agent as employer of private domestic staff*), a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.”

#### a) Welfare insurance

The heads of mission, the members of the diplomatic staff, members of the administrative and technical staff (by virtue of article 37 paragraph 2), the members of the domestic staff (by virtue of article 37, paragraph 3, last sentence) of the permanent missions are exempt from the social security system in the Host State. Consequently, they are exempt from inclusion in the following schemes:

- **AVS - Assurance vieillesse et survivants** (old-age and surviving dependants insurance);
- **AI - Assurance invalidité** (disability insurance);
- **AC - Assurance chômage** (unemployment benefit insurance);
- **APG - Allocations pour perte de gain** (loss of earnings benefit);
- **LPP - Prévoyance professionnelle, vieillesse, survivants et invalidité obligatoire** (compulsory occupational provident fund for old-age and disability pension, also benefiting surviving dependants).

On the basis of the headquarters agreements<sup>117</sup>, international officials who are not Swiss nationals<sup>118</sup> are not subject to this legislation either. As for the organisations themselves, they are not subject to this legislation as an employer.

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<sup>116</sup> Cf. Ordinance dated 13.11.1985 relating to the customs privileges of the international organisations, the States in their relations with these organisations and the special missions of foreign States (RS 631.0). See also, for Berne, the Ordinance dated 22.08.1989 relating to the customs privileges for diplomatic missions in Berne and consular posts in Switzerland.

<sup>117</sup> Cf. for example, article 16 of the WTO Agreement.

By article 33, paragraph 2, of the Vienna Convention, the exemptions provided also include private servants. Domestic staff who are employed exclusively by an employer benefiting from the privileges and immunities, are exempt from contributing to these schemes, provided that they are not Swiss nationals or permanent residents of Switzerland and that they fulfil the condition with regard to cover under the social security system in their country of origin or a third party State (that is to say, that they pay contributions to such scheme and are entitled to benefits thereunder).

When these conditions are not met, the said domestic staff are compulsorily enrolled under the Swiss social security system and their employers are obliged to pay the employers' contribution (*part patronale*).

The legislators take the view that a member of a permanent mission or an international official who is an employer of domestic household staff should be subject to the requirements of the AVS law relating to employers (cf., article 33, paragraph 3, of the Vienna Convention).

b) Federal law on sickness insurance (LAMal)

On January 1<sup>st</sup>, 1996, the Federal law on sickness insurance dated 18 March 1994 came into effect (LAMal) (RS 832.10). It introduced compulsory health-care insurance, and an optional daily sick-pay allowance. This insurance is compulsory for every person resident in Switzerland and must be taken out within three months of his taking up residence or of his birth in Switzerland.

Under article 3, paragraph 2 of LAMal, the Federal Council may exempt certain categories of person from this insurance, such as, in particular, representatives of foreign States and officials of international organisations. The Council did this by Ordinance dated June 27, 1995, on sickness insurance (OAMal) (RS 832.102). Under article 6, first paragraph, it is provided that:

- members of diplomatic missions, permanent missions and consular posts, and members of their families who are accompanying them, are not obliged to insure themselves;
- the same applies to international officials and members of their families.

The people listed above may, however, request enrolment in the sickness insurance scheme within six months of the date on which they received their DFAE identity card (*carte de légitimation*) (article 7, paragraph 6, OAMal).

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<sup>118</sup> The status of international officials with Swiss nationality is governed by an exchange of letters between the DFAE and each organisation.

Under article 6, paragraph 3, OAMal, former international officials and members of their family may, at their request, be exempted from compulsory insurance under this scheme if they are covered under their former organisation's health insurance scheme and it entitles them to similar medical treatment in Switzerland.

The private domestic staff of members of mission and international officials are subject to LAMal.

## **2) Access to the Swiss job market for spouses and children (Ci Permit)**

A new system enabling certain designated persons to carry on remunerative work came into force on November 1<sup>st</sup>, 1995, as a result of the Swiss Federal Council decision to modify the Ordinance dated October 6, 1986, limiting the number of foreigners (OLE) (RS 823.21).

Spouses of members of diplomatic missions, permanent missions, and consular posts, and of international officials, together with the unmarried children of such persons who entered Switzerland before the age of 21 years in order to keep the family together, have access to the Swiss job market provided they are resident in Switzerland and live as part of the household of the principal office-holder.

A special permit, Ci, is issued for this purpose by the relevant authority on production of a service contract or a job offer or a declaration stating the intention to work as a self-employed person.

A certificate is required before the Ci Permit can be issued and is obtained from the Swiss Mission. Amongst other things, this document certifies that the bearer is not subject to the foreign worker quota, nor to the principle of priority of resident workers.

## **3) Acquisition of real property (i.e., land and/or buildings)**

### **a) Principles**

Article 2 of the Federal Law on the Acquisition of Buildings by Persons Abroad (LFAIE) dated December 16, 1983 (RS 211.412.41), provides that the acquisition of real property by persons abroad, that is natural persons who are not entitled to settle in Switzerland, is subject to authorisation by the relevant cantonal authority.

The Ordinance applying this law<sup>119</sup> provides that “natural persons not entitled to settle in Switzerland” means persons who do not hold a C permit entitling them to settle. This is the case for international officials and members of the missions.

b) Exceptions for international officials

International officials who hold a DFAE identity card are not subject to authorisation and may freely acquire real property where they are able to prove a 10-year period of uninterrupted residence in Switzerland. They are then classed as being in possession of a permit to settle.

The qualifying period is reduced from 10 to 5 years for international officials who are nationals of the following countries: Andorra, Belgium, Denmark, Finland, France, Germany, Great Britain, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, United States and the Vatican. These countries have signed bilateral agreements or treaties with Switzerland, or apply reciprocal arrangements for Swiss citizens on the subject of settlement.

For international officials resident in Switzerland for less than 5 or 10 years, the acquisition of real property is subject to an authorisation depending on the case<sup>120</sup>.

c) Exception for members of the missions

Members of the missions with diplomatic status and holders of a DFAE identity card B or C, and consular officials of the consular posts with a DFAE identity card, may be authorised to acquire real property. They must be able to show how long they have been or will be in office<sup>121</sup>.

d) Procedure

Where acquisition is subject to authorisation, application must be made to the relevant cantonal authority, namely:

in the canton of Geneva : Department of Economic Affairs (***Département de l’Economie publique***);

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<sup>119</sup> Federal Ordinance on the Acquisition of Buildings by Persons Abroad dated October 1<sup>st</sup>, 1984, came into force on January 1<sup>st</sup>, 1985 (OAIE) (RS 211.412.411).

<sup>120</sup> For the conditions to be met, cf. directives for interpretation of the LFAIE, Department of Economic Affairs, Republic and Canton of Geneva 1996.

<sup>121</sup> For the conditions to be met, cf. abovementioned directives.

in the canton of Vaud :        **Secretariat of the Land Commission II, Vaud Chamber of Agriculture (*Commission foncière II, Secrétariat, Chambre vaudoise d'agriculture*).**

#### **4) Vehicle licensing and registration**

##### **a) Special “CD” licence plates**

In accordance with the Ordinance regulating the Admission of Persons and Vehicles to Road Traffic dated October 27, 1976 (OAC) (RS 741.51), article 86, paragraph 1 provides that the initials “CD” are intended for:

- service vehicles of the diplomatic missions and motor vehicles of the members of the diplomatic staff of these missions (letter a);
- service vehicles of the permanent delegations to the international organisations and motor vehicles of the members of the diplomatic staff of these delegations (letter b);
- service vehicles of the international organisations and motor vehicles of the highest-ranking international officials in these organisations (letter c).

The blue<sup>122</sup> “CD” diplomatic plates are, therefore, reserved for the heads of mission and the diplomatic staff of the permanent mission and for the service vehicles belonging to it; and for the members of the directorate and high-ranking officials in an international organisation, and for the service vehicles belonging to it.

“AT” plates are intended solely for vehicles of the administrative and technical staff of the diplomatic missions in Bern. Cars belonging to [Geneva-based] members in this category of staff are licensed with ordinary plates.

##### **b) Allocation of licence plates**

Members of the permanent missions and international officials should apply for vehicle licence plates in the canton in which they have their place of residence.

Officials or members of permanent missions residing in France do not qualify for Swiss licence plates (neither diplomatic, nor ordinary).

Once the customs formalities have been completed, application for licence plates should be made within a year of entry into Switzerland at the latest. In the meantime, and provided that their foreign car insurance policy remains valid,

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<sup>122</sup> Green “CD” plates are allocated to the embassies in Berne.

applicants may continue to drive in Switzerland with foreign licence plates if they hold a valid national driver's licence<sup>123</sup>.

c) Ordinary plates

As a rule, members of the diplomatic staff of the permanent missions and the missions themselves should licence their cars with diplomatic plates ("CD"). Requests for exceptions to obtain ordinary plates should be presented to the Swiss Mission who will forward them to the Office of the Federal Attorney General which is the body authorised to take the decision. Ordinary plates are rarely granted, for security reasons.

d) Various formalities and compulsory inspection tests

In 1995, the Swiss Federal Council decided to alter the conditions relating to approval for use on the Swiss roads of vehicles belonging to international organisations and their members and to permanent missions and their members. The Swiss Mission informed those whom this concerned by circular dated July 12, 1995 addressed to the international organisations<sup>124</sup> and to the permanent missions<sup>125</sup>.

These conditions related to vehicles belonging to:

- the international organisations, the diplomatic missions and consular posts;
- the high-ranking officials (officials with diplomatic status) and other officials of the international organisations, provided that such persons were neither Swiss nationals nor had had Switzerland as their place of permanent residence prior to taking up office;
- the members of the diplomatic and permanent missions (diplomatic staff, administrative and technical staff and service staff), provided that such persons were neither Swiss nationals nor had had Switzerland as their place of permanent residence prior to taking up office;
- the members of consular posts (consular officials, consular employees and service staff), provided that such persons were neither Swiss nationals nor had had Switzerland as their place of permanent residence prior to taking up office.

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<sup>123</sup> Cf. Vettovaglia, J.-P., *op. cit.*, p. 471.

<sup>124</sup> Note from the Swiss Mission dated July 12, 1995 (OI no 3).

<sup>125</sup> Note from the Swiss Mission dated July 12, 1995, (MP no 3).

The new regulations allow registration of these vehicles in Switzerland with practically no restrictions, if they are approved for international use<sup>126</sup>. However, prior to allocation of number plates and vehicle licence, the vehicles will be tested for safety and road-worthiness.

These vehicles are exempt from regular inspection and anti-pollution tests. The vehicle licence issued in respect of such vehicles will be stamped accordingly.

Any vehicle imported under this preferential system must either be re-exported or sold to another person who is also entitled to benefit from the system. If, however, such a vehicle requires licensing by a person who is not entitled to this benefit, for example, in the event of a sale, it is necessary to prove that the vehicle complies with Swiss regulations on exhaust emissions.

#### **5) Reserved parking places on the public highway**

Swiss law does not allow foreign diplomatic missions or international organisations the right to reserved parking places on the public highway. There is nothing, either, in the Vienna Convention which could justify such an exception to the law. The only persons in Switzerland entitled to make exception to this rule are officers on police duty where there is no other appropriate parking place. Furthermore, persons benefiting from privileges and immunities may not claim any right to park their cars in prohibited places where they might cause an obstruction to the flow of traffic.

#### **6) Costs incurred in towing away vehicles**

The owner (permanent mission, international organisation, holder of diplomatic status) of a vehicle with “CD” plates remains liable for payment of the costs incurred in towing the vehicle away. In such a case, the DFAE considers that removal of the car is not only the consequence of a parking offence, but is a case of necessity. Having it towed away is required by traffic conditions and as such, it is equivalent to an order in the public interest.

#### **7) Persons entitled to drive a vehicle with “CD” plates**

Only those with diplomatic status may drive a private car with “CD” plates. Members of the family, if they enjoy the same status as the principal office-holder, may also drive a vehicle with “CD” licence plates.

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<sup>126</sup> *This may be proved either by the vehicle registration document and the registration plates (including “Z” plates) of the vehicle’s country of origin, or by a document from the manufacturer giving the technical data necessary for registration.*

The professional chauffeurs of the missions and international organisations, the heads of mission and members of the directorate, are authorised to drive official cars fitted with “CD” licence plates.

#### **8) Access to precincts of Geneva-Cointrin Airport**

Access to the airport precincts is regulated by the Geneva-Cointrin Airport Authority. Only those persons holding a DFAE pink identity card type B or C may, on presentation of their card, gain access to the transit lounges and satellites through the passenger channels.

### **Section V Start and end of diplomatic privileges and immunities**

#### **Start**

Under article 39, paragraph 1, of the Vienna Convention:

“Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed”.

According to Swiss practice, privileges and immunities start as soon as Swiss Mission has been notified of the appointment of a member of a mission or of an international official.

#### **End**

Article 39, paragraph 2, of the Vienna Convention provides that:

“When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist”.

At the end of his functions, all privileges and immunities cease as soon as a member of a permanent mission or an international official has crossed the Swiss border or, if he does not leave the country immediately, at the expiry of a reasonable period (courtesy period) extended to him by the Swiss Mission, either at his own request or at that of his mission or organisation.



**Immunity continues to subsist even after his departure for acts performed by him in the exercise of his official functions. As for the decision to waive immunity, the decision of whether an act is official or not is a matter for the organisation, or the Ministry of Foreign Affairs to which the person belongs, to decide.**

## CHAPTER V THE “DIPLOMATIC” INSTITUTIONS

### 1) The Mediator

The office of the Mediator was created on May 31, 1995<sup>127</sup> by the Council of State of the Republic and Canton of Geneva, with the intention of assisting the peaceful settlement of private law disputes in which persons benefiting from diplomatic or consular privileges and their service staff<sup>128</sup> may become embroiled.

When a dispute arises between two parties of whom at least one benefits from privileges and immunities, either party may apply to the Mediator prior to proceedings in the civil courts. The Mediator hears both parties, who appear before him voluntarily. He attempts to bring them to resolve their differences in accordance with the spirit of the Vienna Convention and the law of nations, with especial attention to the preservation of their dignity. Appearance before the Mediator in no way implies waiver of the jurisdictional immunity to which one party may be entitled. The parties appear in person, but may be accompanied by an attorney.

The Mediator's services are provided free of charge. Proceedings are confidential. The Mediator is, therefore, entitled not to proceed with any matter if the dispute is already in the public domain or to relinquish jurisdiction should this occur in the course of proceedings.

### 2) Geneva Welcome Center

The information and reception centre for internationals in Geneva is a non-profitmaking association<sup>129</sup> established under Swiss private law formed jointly by the Swiss Confederation and the Republic and canton of Geneva.

The aim of the centre is to encourage social and cultural integration of international staff posted to Geneva, and to facilitate their administrative integration by assisting them in their relations with the relevant public authorities, and with Geneva's civilians. The Welcome Center also makes a large contribution to developing and consolidating Geneva's role as host to international organisations.

The services provided by the Welcome Center are intended for all members of the permanent missions and consulates established in Geneva, members of the international organisations situated in Geneva, members of the international non-governmental organisations established in Geneva, delegates to the international

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<sup>127</sup> Decree of the Council of State dated May 31, 1995.

<sup>128</sup> Cf. circulars from the Swiss Mission sent to the missions and organisations on August 7, 1995.

<sup>129</sup> Association in terms of article 60 ff of the Swiss Civil Code.

conferences which take place in Geneva and journalists accredited to Geneva or who are passing through in order to cover international conferences.

The Center was inaugurated and became fully operational on May 8, 1996.

### **3) The Diplomatic Committee**

The Diplomatic Committee adopted its Memorandum and Articles of Association on September 13, 1989. It is a consultative committee of good offices, whose object is to maintain good relations with the Host State and to find solutions to the problems encountered by the permanent missions and their members.

The Committee consists of two representatives, of ambassadorial rank, from each geographical region, and a representative from China. The Chairman of the Committee is elected from its members for a period of one year. He is selected for his personal capabilities and on the basis of rotation by geographical area. The Chairman is assisted by a Vice-Chairman who becomes Chairman of the Committee the following year. A representative from the Host State as well as the Director General of the United Nations Office in Geneva (UNOG) attend the Committee meetings.

The Committee deals with problems of a general nature, such as those relating to tax exemptions, privileges and immunities, domestic problems, public transport, insurance, etc.

It raises matters of concern with the Host State or with the Director General of UNOG, and proposes solutions to remedy the situations encountered. The Committee is also authorised to broach subjects connected with article IV of the headquarters agreement between the United Nations Organisation and the Swiss Federal Council relating to the legal status of the representatives of the members of the United Nations Organisation. The Committee also consults with the Host State in order to examine security matters affecting the permanent missions. It meets regularly at the invitation of its Chairman or at the request of a UN-member country or of the Director General of the United Nations Office in Geneva.

## CONCLUSION

The system of privileges and immunities applied to the international organisations in Switzerland and to the permanent missions in Geneva, has, as we have seen, been put together in stages, bit by bit, as and when history required.

In the conclusion to his work on the privileges and immunities granted to foreign diplomatic missions and the international organisations in Switzerland in 1949, Georges Perrenoud remarked that, contrary to what he had heard and read in the legal commentaries and theory of the day, “the system granted by the Swiss Federal Council has not undergone any reduction, the very reverse in fact, it has grown in some areas”. This remark holds true some forty-odd years later, as we approach the end of 1997. The system of privileges and immunities which Switzerland applies to the international organisations and their international officials, the permanent missions, the permanent representatives, the special missions, the observers and their members, has gradually been extended and added to, particularly since 1995. The result is that now Switzerland, as one of the principal Host States, and Geneva, as one of the cities in the world renowned for its welcome and hospitality, are in a position to offer the best conditions, facilities and accommodation, thanks to the combined efforts of the federal and cantonal authorities.

Perhaps the only negative side to this growth and evolution (but which could not have been avoided) is the complexity of the system. However, if this brief presentation has made the system more accessible to those who encounter it in their duties, it will have achieved its purpose.

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## ABBREVIATIONS

ASDI	<i>Annuaire suisse de droit international</i>	Swiss International Law Yearbook
ATF	<i>Arrêts du Tribunal fédéral suisse</i>	Decrees of the Swiss Federal Court
CDI	<i>Commission du droit international de l'ONU</i>	International Law Commission of the United Nations Organisation
CF	<i>Conseil fédéral suisse</i>	Swiss Federal Council
DDIP	<i>Direction du droit international public du Département fédéral des affaires étrangères</i>	Directorate of Public International Law, Federal Department of Foreign Affairs
DFAE	<i>Département fédéral des affaires étrangères</i>	Federal Department of Foreign Affairs
FJS	<i>Fiches juridiques suisses</i>	Swiss Law Reports
FF	<i>Feuille fédérale suisse</i>	Official Gazette of the Swiss Confederation
JAAC	<i>Jurisprudence des autorités administratives de la Confédération</i>	Case Law of the Administrative Authorities of the Swiss Confederation
MP	<i>Mission permanente</i>	Permanent Mission
O	<i>Ordonnance</i>	Ordinance
OI	<i>Organisation internationale</i>	International Organisation
ONG	<i>Organisation non gouvernementale</i>	NGO Non-governmental Organisation
ONU	<i>Organisation des Nations Unies</i>	UNO United Nations Organisation
ONUG	<i>Office des Nations Unies à Genève</i>	UNOG United Nations Office at Geneva
RCADI	<i>Recueil des cours de l'Académie de droit international</i>	Collection of lectures from the International Law Academy
RO	<i>Recueil officiel des lois et ordonnances de la Confédération Suisse (dès 1874) et Recueil des lois fédérales (dès 1948)</i>	Official Collection of the Law and Ordinances of the Swiss Confederation (since 1874) and Collection of Federal Law (since 1948)
RS	<i>Recueil systématique du droit fédéral suisse</i>	Systematic Collection of Swiss Federal Law
SDN	<i>Société des Nations</i>	League of Nations
TF	<i>Tribunal fédéral</i>	Federal Supreme Court

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