CHAPTER III (A)

PRIVILEGES AND IMMUNITIES OF THE OFFICIALS OF THE SPECIALIZED AGENCIES OF THE UNITED NATIONS AND CERTAIN OTHER INTERNATIONAL ORGANIZATIONS

In the preceding chapter we have shown that international organizations are normally accorded certain privileges, immunities, and exemptions which are a *sine qua non* of their successful functioning. In this chapter we shall concern ourselves with the privileges and immunities of the agents through which these organizations act. We shall call these agents international officials. The *raison d'être* of these privileges and immunities is the assurance of unimpeded performance of functions by international officials. As compared to diplomatic agents whose privileges and immunities have evolved through centuries and have come to occupy a definite place in the law of nations, the experience with regard to international officials is rather limited. This underlines the new character of the problem with which we are going to deal. Unlike diplomatic agents, international officials are neither accredited to the government of a particular country nor are representatives of one. They are servants of the international organization in true sense of the term and act in its name. Unlike diplomatic agents, they exercise their functions not in the territory of a single but several States including sometimes their own.

Privileges and immunities granted to international officials are less sweeping as compared to those accorded to diplomatic agents under well recognized rules of international law. Prior to the Second World War, many States granted diplomatic privileges and immunities to international officials.¹ However, the constitutional instruments of international organizations established during and after the Second World War adopted the functional principle. According to the functional principle, international officials should be accorded only those privileges

¹ By diplomatic privileges and immunities is meant the whole complex of privileges and immunities granted to diplomatic agents.

and immunities which are necessary for the independent exercise of their functions. Thus, the grant of diplomatic privileges and immunities has been confined to high or senior officials only. It is contended that "there is every reason for confining full diplomatic immunity to the cases where it is really justified. Any excess or abuse of immunity and privilege is as detrimental to the interests of the international organization itself as it is to the countries who are asked to grant such immunities." 2

(i) Immunity from legal process

One of the most striking and most prized of the immunities enjoyed by international officials is the immunity from legal process. "The immunity of international institutions would be illusory if their decisions could be questioned in proceedings against members of their staffs. The immunity of all members of international staffs, irrespective of nationality or rank, in respect of acts performed by them in their official capacity and within the limits of their functions is therefore a sine qua non of the effectiveness of the immunities of the institutions themselves." 3 The immunity from legal process is also necessary to avoid harassment of international officials by way of court proceedings, civil or criminal.

The immunity from suit in case of official acts is granted ratione materiae and not ratione personae. That is, it is attached not to the person of international officials, but depends upon the intrinsic nature of the acts performed by them. Such acts are imputed to the international organization concerned. Therefore, all international officials have an unquestioned and unquestionable right to it. Section 19 (a) of the Specialized Agencies Convention stipulates that the officials of the specialized agencies shall be immune from legal process with regard to words spoken or written and all acts performed by them in their official capacity. Sub-Committee I of the Sixth Committee of the General Assembly of the United Nations, on Coordination of the
