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Protection of International Personnel Abroad. Law and Practice Affecting the Privileges and Immunities of International Organization. By Carol McCormick Crosswell.

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in Surrogate's Court. The authors point out with telling effect the impossibility of reconciling decisions like *Matter of Lawrence*⁶ with the plain language of Section 591.⁷ But, in general, it must be confessed that progress is being made and, with the able assistance of Messrs. Cohen and Karger, the path of the appellant becomes increasingly safer.

Turning to architectural changes which the authors have made in the current edition, there are two which will be especially helpful to the bar. The separate section on appeals in criminal cases should prove to be of immeasurable assistance to those confronted with those problems, and the inclusion of a set of forms serves a purpose which cannot be denied even by those who pretend to scoff at the use of a form book. Nor should a review of this book omit a word of commendation for a splendid index.

If *A Guide to the Perplexed* be an appropriate sub-title for this volume, let it be said that the authors have succeeded in guiding the perplexed practitioner to an authoritative conclusion.

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PROTECTION OF INTERNATIONAL PERSONNEL ABROAD. LAW AND PRACTICE AFFECTING THE PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATION. By Carol McCormick Crosswell. New York: Oceana Publications, 1952, Pp. vii, 198.

Mrs. Carol McCormick Crosswell has written a very timely book which fills a need in the American literature of recent International Law. Basdevant's classic, *Les Fonctionnaires internationaux* is still important, but, published in 1931, is somewhat out of date. In the last two years, two German monographs have been published on the subject: one by Barandon (*Die Rechtsstellung der internationalen Functionäre*) (*in Deutsche Landesreferate* for the IIIrd Congress for Comparative Law, pp. 955) and the other by Kordt (*in Festschrift für E. Kaufman*, pp. 191 ff). Thus, we have now our own book on the subject. Mrs. Crosswell's book has eleven chapters which deal with the following subjects:

6. 297 N. Y. 596, 75 N. E. 2d 269 (1947).

7. Cohen & Karger, pp. 114-118. The most recent example of this trap is *Matter of Mittelstaedt*, 128 N. Y. L. J. 951 (Oct. 27, 1952), appeal dismissed in memorandum decision handed down Oct. 24, 1952. on ground appeal was taken from wrong paper.

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International organizations and their basic documents; the juridical personality of international organizations including general legal status, property, funds and assets, waiver of immunity; privileges and immunities of international organizations, containing a discussion of taxation, communications, inviolability, and freedom from financial control; privileges and immunities of officials of international organizations, including a discussion on general status, travel facilities, additional privileges and immunities, and deportability; legal actions affecting international organization officials, particularly service of process, arrest of officials, and extending to an analysis of cases involving arrest of officials; taxation of officials, national service obligations, representatives of members to international organizations with service of process problems, waiver of immunity, especially waiver and withdrawal of immunity; experts on missions for international organizations, and other persons connected with international organizations. The chapters are followed by a "Conclusion" and then by a discussion on the privileges and immunities of the NATO organizations including a discussion on the agreement between the NATO powers regarding the status of their forces. An appendix presents the text of the General Convention on the Privileges and Immunities of the United Nations; the so-called Headquarters Agreement between the United Nations and the United States of America; a Convention on the Privileges and Immunities of the Specialized Agencies, the Federal International Organizations Immunities Act, and the above mentioned NATO Agreements.

Just when this reviewer was going to put his thoughts on the book on paper, the newspapers—See N. Y. Times of November 12, 1952, P. 1—published the news that two members of the Senate Judiciary Committee had suggested that "the United Nations be ousted from its New York headquarters unless the international organization rid itself of 'spies and saboteurs'." A member of this reviewer's seminar on International Law asked him whether this could legally be done. The instant book does not directly answer the question. However, from the wealth of material offered by the book, an answer could be derived. Article 105 of the UN Charter, extends to the UN ("The Organization") such privileges and immunities as are necessary for the fulfillment of its purposes. The so-called General Convention of 1946 declared that the premises of the United Nations shall be inviolable and that the United Nations shall enjoy for its communications and other media of activities the same measure of immunity as diplomatic missions of foreign Governments. One must not overlook the fact, however, that this country has not yet ratified the General Convention, whereas thirty-nine other Members of the U. N. have done so.

But the United States is a party to the so-called Headquarters Agreement and the Congress has not only approved it but enacted its provisions into municipal law by P. L. 357, of August 4, 1947. Section 7 of the latter expressly extends the control of the federal, state and local laws of the U. S. to the Headquarters District. Furthermore, the same section provides that the federal, state, and local courts of the U. S. shall have jurisdiction over acts done and transactions taking place in the Headquarters District. It is true that this section provides that the United Nations shall have the power to make regulations operative within the Headquarters District for the purpose of establishing therein conditions in all respects necessary for the full execution of its function, and that no federal, state, or local law or regulation of the U. S. which is inconsistent with the regulations of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the Headquarters District. But I cannot agree with the author's statement that the U. N. itself has the power to decide by its own regulations on the questions of extra-territoriality. The word extra-territoriality is not an unambiguous one. As far as it connotes the meaning of an exemption of local jurisdiction, it does not reach beyond the restricted exemption stated in the above quoted article 105 of the U. N. Charter. In addition the Headquarters Agreement provides for international arbitration in case a dispute between the U. N. and the U. S. arises as to whether such a regulation was authorized by the Agreement.

The regulatory power of the U. N. is restricted to matters "within the Headquarters District"; but is the legal existence of the headquarters within the territory of the U. S. not guaranteed by Conventional International Law to which the U. S. is a party? The Headquarters Agreement is binding upon the U. S. A. inasmuch as §23 expressly says: "The seat of the United Nations shall not be removed from the Headquarters District unless the United Nations should so decide." Such a removal is not subject to the "veto", for it does not turn upon a question affecting international peace and security. At most, one could say that the decision of the General Assembly on the Seat of the U. N. is an "important" question requiring a two-thirds majority of the members present and voting.

The Federal International Organizations Immunities Act of 1945 reserves to the President of the U. S. "the power in the light of the functions performed by any such international organization, by appropriate Executive order to withhold or withdraw from any such organization or its officers or employees any of the privileges, exemptions, and immunities or to condition or limit the enjoyment by any such organization of its officers or employees of any

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such privilege, exemption, or immunity." "The President is authorized, if in his judgment such action should be justified by reason of the abuse by an international organization or its officers and employees of the privileges, exemptions, and immunities provided [in the Act] or for any other reason, at any time to revoke the designation of any international organization under this section, whereupon the international organization in question shall cease to be classed as an international organization for the purposes of this title [*i. e.* of the Act]."

But these powers are subject to the limitations placed upon it by Conventional International Law. In addition, the "Agreement" is a law subsequent to the Act of 1945 and, therefore, even by legislative principles, stronger than the latter.

Another question concerns the control of our municipal law, by virtue of §7 of the Headquarters Agreement, over transactions of the U. N. within the U. S. A. We should be grateful if the author supplied us—in another study—with an analysis of this Conflict of Laws problem which is important for questions of employments, leases, repair contracts and the like and might also cast light on the law controlling tortious liabilities.

The discussion (pp. 87 ff) on the waiver of immunity is very clear and implemented with case material. It is, of course, to be left to each author to decide on the question of whether a subject should be discussed on a topical or on an organizational basis. The book prefers the latter method, which makes it more difficult to compare the various privileges and immunities (which vary upon the various status of the organizational classes to which individuals belong) with one another. The author states correctly (p. V): "As these privileges and immunities differ in important respects from those accorded sovereign States and their transactions under international law and practice, it is convenient to distinguish them by using the term 'international privileges and immunities' rather than the term diplomatic privileges and immunities". One has to distinguish the former from the latter because the latter are general and unlimited while the former are restricted to functional acts and are, therefore, extremely limited. Within the class of international privileges, one may distinguish (pp. v ff) four types; depending on the organization, the representatives of the members to the U. N., then the representatives of members to Specialized Agencies, and finally the officials (the staff) of the organizations. The distinction becomes particularly important with respect to arrest. The author discusses excellently the Gubitchev, Mudroch, and the Korean Employees Cases (pp. 57-69). It was in the Gubitchev case that the State Department expressed

the correct view that "under international law and the laws of the United States, except for individuals covered by Section 15 of the Headquarters Agreement between the United States and the United Nations, an individual is not entitled to claim diplomatic status and immunities unless he is a foreign official, accredited to the Government of the United States, notified to the Department of State and accepted by the Department of State for this purpose or as a member of the family, staff or retinue of such official." The cited provision (§15) restricts the full diplomatic privileges and immunities—inside or outside the Headquarters District—to those representatives of members to the U. N. who are principal permanent representatives of member states whose Governments are recognized by the U. S. A., provided they have the rank of an ambassador or a minister plenipotentiary. Resident members of their staffs and other principal representatives of states enjoy that status only upon a special agreement to be concluded with our Government. Representatives of Governments which are not recognized by the U. S. are not granted *de jure* those privileges and immunities outside of the Headquarters District. The book does not mention it but it might be worth noting that thus the highly disputed question of which legal effects the recognition of a government has, finds a positive answer at least for the question of privileges and immunities.

Judge Hackworth has written a Foreword to the book in which he appraises its great value. One can heartily agree with him and also with his statement that the author's treatment of the subject is factual and objective. It may be that the author in her suppression of personal views went perhaps a little too far. Some readers of such a scholarly book like to be not only instructed but also stimulated by a good dose of criticism. Purely political views on international law offer a splendid opportunity for pungent criticism. This reviewer expects that the excellent book which should be widely read, particularly also by members of Congress,—see *supra*—, will very soon call for a second edition.

A further suggestion for the next edition would be to add exact dates to the quoted acts and materials, and to enlighten the readers not too familiar with the International volapuk, called first-letter abbreviations.

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