as in the new book which is more likely to promote that process by which the common law, in the words of Lord Mansfield[7] (when he was Mr Solicitor-General), 'works itself pure'.

H. A. J. FORD*

International Immunities, by C. WILFRED JENKS (Oceana Publications, New York, and Stevens & Sons Ltd, London, 1961), pp. i-xxxviii, 1-178. Australian price £2 9s. 6d.

This book deals with the privileges and immunities both of international organizations and of the officers in their service. There was a time not so long ago when the subject was virtually unknown. The League of Nations Covenant contained a brief reference in its Article 7 (4) and (5) to the diplomatic privileges and immunities of members' representatives and of League officials when engaged on the business of the League, as well as to the principle of the inviolability of the organization's property. These provisions, by reason of their inclusion in the Covenant, bound League members. However, membership of the League was far from universal, and questions of detail had been left unsolved. As the author rightly said, the subject remained in its infancy in the period before the United Nations and its agencies were set up. Since then it has quickly reached the status of a somewhat boisterous adulthood. The main question which remains in the reviewer's mind is whether the aim of uniformity should not be pursued further. As it is, the law will be found in a very great variety of international conventions, agreements and protocols, some of a multilateral, others of a bilateral character. At times problems have been left open: agreement could not be reached, or it did not appear to require settlement.

On pages xxi-xxxi the author lists the international conventions and other agreements which form the main basis for the law in this field. The most prominent among them is the General Convention on the Privileges and Immunities of the United Nations which was approved by the United Nations General Assembly in 1946. It is in force today for two-thirds of member states (in 1960 of the then 90 members of the United Nations, 62 had ratified the Convention). Australia is a party to this Convention by passing the Commonwealth International Organizations (Privileges and Immunities) Act.[1] On the other hand, Australia has never become a party to the other major convention in this field, the Convention on the Privileges and Immunities of the Specialized Agencies. Unfortunately this convention is in force only for one-third of member states of the United Nations. Yet many of the points in issue are regulated by the agreements between individual specialized agencies and the members of these agencies. What do these conventions and general agreements deal with? Generally, the extent of jurisdictional immunity, the question of the inviolability of the organization's premises, the protection of property and assets of the organization, the inviolability of its archives and other documents, the questions of international *laissez-passer*, and then generally the international legal position of the organization's officials. Prominent among the questions normally settled with regard

[7] *Omychund v. Barker* (1744) 1 Atk. 21, 33.

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[1] No. 72 of 1948.

to them is their immunity from legal process, their position with regard to taxation, and their national service obligation.

Other important types of agreement are the headquarters agreements and host agreements regulating the relationship between the state in which the organization has its main or regional headquarters and the organization itself. The agreement of the United States with the United Nations, of Switzerland with the United Nations, the I.L.O. and the W.H.O., of France with UNESCO are the most prominent ones in this field.

The need for clarification of the law with regard to international organizations and their officers arises mainly from the sudden upsurge of these organizations since the end of World War II. Today many persons in many countries are engaged in some work or activity for an international organization. One of the main problems facing juridical advisers of governments was from the start whether the old analogy of diplomatic immunity and international immunity (which the League of Nations Covenant specifically endorsed) should be maintained. It had always been criticized as basically wrong, and the wide variety of functions now exercised by the many organizations renders it even more unsuitable. In the numerous conventions, agreements, statutes and regulations dealing with the immunities of the organizations the basic test which has been applied is now the functional test. Those immunities which were considered essential for the organizations have been clarified and largely consolidated. On the other hand, the general tendency has been to restrict the extent of immunities granted to individuals. The number of persons who have been granted full personal immunity has been strictly limited, on a basis both of function and status. The general tendency of legal thinking has been critical of all forms of immunity, largely as a result of the state's growing activity as international trader. The separation of immunities of international organizations and their officers from the immunities of a state and its representatives is therefore of special value.

The author first deals with general questions common to all international immunities since the growth of international organizations began. The two main parts of the book then are devoted to the immunities of international organizations, and to the immunities of officers in their service. The final part of the book deals with problems of the future in this sector of international law. Among the numerous problems raised by the author in the main part of the book, two may be singled out here for their present-day importance. The first is the position of the neutralized state which is the host state to an international organization and to its officers. Switzerland, which apart from Austria is the only state which falls into this category, went to great lengths to ensure that it would not incur any international responsibility as a consequence of the organization's activity. In the drafting of international agreements (especially with the I.L.O.) and of statements of its representatives, this concern is clearly expressed (page 27). Austria greatly benefited from this experience when negotiating its agreement with the International Atomic Energy Agency (pages 28-29).

The other problem concerns the possible use of international immunities as a cover for subversive activities. On the basis of cases which have gone before the courts, in particular the Administrative Tribunal of the

United Nations, the author lists a number of important principles which ought to guide the international organizations in the administration of their functions (page 30). The case of the *U.S. v. Coplon and Gubitchev*[2] shows that employment by the United Nations does not accord the officer any status akin to that of a diplomat. Gubitchev, who was charged with conspiracy and espionage, was in fact a Soviet citizen who had entered the United States on a diplomatic passport *en route* to his position on the United Nations Secretariat. However, he was never received as an envoy of the U.S.S.R., he was never notified to the United States as attached to the Soviet Embassy, and he never acted in a diplomatic capacity in the United States. Nor was his name among those submitted by the United Nations Secretary to the United States for inclusion in the list of members of United Nations delegations who, under the Headquarters Agreement, are entitled to diplomatic privileges and immunities. The United States District Court in New York had little difficulty, under these circumstances, to hold that Gubitchev was not entitled to any international immunity. His position with the United Nations Secretariat was that of an engineer, and the activity which formed the basis of the charge against him was conspiracy with Miss Coplon as to espionage. The fact that Gubitchev's gaol sentence was never served but was suspended on condition of his leaving the United States never to return may have been due to some political bargain and does not concern the legal position.

That courts these days do not tend to a wide interpretation of any immunity becomes evident also from *In Re Poncet,*[3] a decision of the Swiss Federal Tribunal, which found that the immunity of the United Nations as a garnishee was no bar to an order for the attachment of a judgment debtor not personally covered by the jurisdictional immunity. Such an order would not be enforceable against the United Nations, but would have the effect of a finding of liability on the basis of which, in pursuance of agreements in force, the United Nations might agree to take the measures required for the purpose of satisfying the creditor (page 38).

On the question of asylum in premises of international organizations, the great variety of provisions in conventions and agreements is disturbing (page 51). To have to conclude that, apart from specific provisions, the question must be considered as still open is a most serious abdication of duties. The same applies to provisions against racial and other discrimination.

Other serious gaps are admitted by the author himself with regard to the position of members of arbitral tribunals, and of inter-American Tribunals (pages 100-101).

Great progress was achieved in the last few years in regulating the extent of immunity of international armed forces. The law here is based strictly on agreements, especially those covering forces of the North Atlantic Treaty Organization (NATO Status of Forces Agreement) and of the United Nations Emergency Force in Egypt. A basic agreement was also concluded with regard to the United Nations Emergency Force in Egypt. However, the reviewer is in agreement with the author (page 110) that there is still not a sufficient basis of experience on which to found

[2] [1949] *Annual Digest and Reports of Public International Law Cases* 293.
[3] [1948] *Annual Digest and Reports of Public International Law Cases* 346.

any firm conclusions concerning the future status of the immunities of international armed forces. However, the traditional International Law principle set out by Oppenheim in his first edition and maintained by his later editors that whenever armed forces are on foreign territory in the service of their home state, they are exterritorial, is now so much amended by special agreements that its continued unreserved existence must be doubted.

In his final chapter the author takes pride in the extent of uniformity which had been achieved. It is natural that complete uniformity is neither possible nor desirable in a régime of immunities which is based on a great number of instruments of different kinds, negotiated by different parties at different times. However, uniformity could be aimed at to a far greater degree. Differences today appear sometimes to be merely accidental consequences of drafting, which could be rendered more uniform.

His long attachment to international organizations has given the author a greater practical insight into the problems of international immunities than other international lawyers might have. The book here reviewed aimed merely at one, though an important, aspect of corporate personality in International Law. According to the Introduction (page xxxviii), corporate personality and legal capacity of international organizations which are often dealt with in the same instruments as immunities are to be covered by the author in a separate volume still in preparation. The decision of the International Court of Justice in the *Reparation for Injuries Suffered in the Service of the United Nations Case*[4] will form a major platform for the author's thesis. We may look forward with keen interest to the appearance of that volume.

J. LEYSER*

The General Assembly of the United Nations, by SYDNEY D. BAILEY (Stevens and Sons Ltd, London, 1960), pp. i-xx, 1-332. Australian price £2 2s.

The Charter of the United Nations contains a small number of provisions dealing with what has become in effect the organization's most important organ, its General Assembly. There are, in addition, the Assembly's Rules of Procedure, and there is now available a considerable body of practice accumulated over the past sixteen years. The author of this study which has been published under the auspices of the 'Carnegie Endowment for International Peace' is a journalist who was associated with United Nations work and who has widely written on international affairs. He shows his background in his easy style and his enthusiastic approach to the problems which silence of the Charter and unexpected changes have often posed. Questions such as the meaning of 'intervention' in matters of domestic jurisdiction (Article 27), and the limits of 'discussion' and 'recommendation' (Articles 10 and 11) were bound early to lead to serious doubt and disagreement.

The author deals with the procedure adopted by the General Assembly mainly on the basis of his personal observation of the fourteenth meeting of the body in 1959, when assistance by the Carnegie Endowment enabled

[4] [1949] I.C.J. Reports 174.

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