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PREPARATORY COMMISSION OF THE UNITED NATIONS

COMMITTEE 5:

PRIVILEGES AND IMMUNITIES

The Secretariat submits for the information of the Delegates a text of the report of the Rapporteur of Committee IV/2 of the Conference of the United Nations at San Francisco as approved by the Committee and as presented to the Commission on Judicial Organization.

Privileges and Immunities

The Committee recommends for inclusion in the Charter the following text:

I. (a) The Organization shall enjoy in the territory of each of its members such privileges and immunities as are necessary to the fulfilment of its purposes.

(b) Representatives of the members of the Organization and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary to the independent exercise of their functions in connection with the Organization.

II. The General Assembly may make recommendations with a view to determining the details of the application of the foregoing provisions or may propose conventions to the members of the Organization for this purpose.

Paragraph I (a) of this proposed article refers to the Organization considered as a distinct entity. In so doing it covers all the agencies of the Organization, that is, the agencies or authorities established by the Charter, as well as the other bodies and organisms which might subsequently be established by virtue of the powers conferred by the Charter. By way of examples of such bodies and organisms, we may point to those to be established by the General Assembly, the Security Council, and the Economic and Social Council, as contemplated by Chapters V, VI and IX of the Dumbarton Oaks Proposals. Therefore there have been excluded from the provisions contemplated in the proposal of the Committee those agencies not belonging to the Organization, although they may have been brought into connection or relation with the Organization through application of the Charter. Paragraph I (b) refers to: (1) the representatives of the states members of the Organization; (2) the officials (functionaries, etc.) of the Organization and of its organs, authorities, or agencies referred to in paragraph I (a).

In order to determine the nature of the privileges and immunities, the committee has seen fit to avoid the term "diplomatic" and has preferred to substitute a more appropriate standard, based, for the purposes of the Organization, on the necessity of realizing its purposes and, in the case of the representatives of its members and the officials of the Organization, on providing for the independent exercise of their functions.

Paragraph II of the draft article empowers the General Assembly to formulate, if it deems it useful, recommendations leading to the determination of the details of application of the provisions in paragraph I. Should it be appropriate, such recommendations could apply only to those members who, for instance, might have weightier obligations owing to the fact that the Organization or its organs happen to have establishments on their territory. These recommendations may, if this method is found opportune, assume the form of a convention (agreement, *modus vivendi*, etc...) proposed by the General Assembly to a member, to be concluded between the two. Naturally the recommendations of the Assembly might differ according to the particular circumstances of the states to which they would be addressed. On the other hand, the possibility is not excluded of a general convention to be submitted to all the members. Paragraph II only provides a power which the General Assembly may or may not exercise. It does not impair the provisions of paragraph I. This latter sets forth a rule obligatory for all members as soon as the Charter becomes operative. In the opinion of the Committee, this rule should apply under any circumstances, its authority being in no way subordinated to the exercise by the Assembly of the power specified in paragraph II.

The draft article proposed by the committee does not

specify the privileges and immunities respect for which it imposes on the member states. This has been thought superfluous. The terms privileges and immunities indicate in a general way all that could be considered necessary to the realization of the purposes of the Organization, to the free functioning of its organs and to the independent exercise of the functions and duties of their officials; exemption from tax, immunity from jurisdiction, facilities for communication, inviolability of buildings, properties, and archives, etc. It would moreover have been impossible to establish a list valid for all the member states and taking account of the special situation in which some of them might find themselves by reason of the activities of the Organization or of its organs in their territory. But if there is one certain principle it is that no member state may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens, financial or other.
