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PREPARATORY COMMISSION OF THE UNITED NATIONS.

COMMITTEE 5:

RECOMMENDATION ON PRIVILEGES AND IMMUNITIES

(This document is a revision of Document FC/LEG/34
and FC/LEG/38)

The Preparatory Commission:

1. INSTRUCTS the Executive Secretary to invite the attention of the Members of the United Nations to the fact that under Article 105 of the Charter the obligation to accord to the United Nations, its officials and the representatives of its Members all privileges and immunities necessary for the accomplishment of its purposes, operates from the coming into force of the Charter and is therefore applicable even before the General Assembly has made the recommendations referred to in paragraph 3 of this Article, or the conventions there mentioned have been concluded.
2. RECOMMENDS that the General Assembly, at its First Session, make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of Article 105 of the Charter or propose conventions to the Members of the United Nations for this purpose.
3. TRANSMITS for the consideration of the General Assembly the Study on Privileges and Immunities, submitted by the Executive Committee, and its annex and the draft convention on privileges and immunities annexed hereto.
4. CONSIDERS that the details of diplomatic privileges and immunities to be accorded to members of the International Court of Justice when engaged upon the business of the Court, and the

privileges and immunities of agents, counsel, and advocates of parties before the Court, necessary to the independent exercise of their duties, at the seat of the Court and elsewhere, should be determined after the Court has been consulted, and

RECOMMENDS that until further action has been taken the rules applicable to the members of the Permanent Court of International Justice should be followed.

5. RECOMMENDS that the privileges and immunities of specialized agencies contained in their respective constitutions should be reconsidered, and if found necessary, negotiations opened for co-ordination in the light of any convention ultimately adopted by the United Nations, and in regard to the considerations set forth in the following extract from the appendix to Section 5 of Chapter V of the Report by the Executive Committee, to which a few words in italics have been added:-

"5. There are many advantages in the unification, as far as possible, of the privileges and immunities enjoyed by the United Nations and the various specialized agencies. On the other hand, it must be recognized that not all specialized agencies require all the privileges and immunities which may be needed by others. No specialized agency would, however, require greater privileges than the United Nations itself, although in some cases by reason of their particular functions, certain of the specialized agencies may require privileges of a special nature which are not required by the United Nations. The privileges and immunities, therefore, of the United Nations might be regarded as a maximum within which the various specialized agencies should enjoy just such privileges and immunities as the proper fulfilment of their respective functions may require. It should be a principle that no immunities and privileges, which are not really necessary, should be asked for."

DRAFT CONVENTION ON PRIVILEGES
AND IMMUNITIES

WHEREAS Article 104 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes and

WHEREAS Article 105 of the Charter of the United Nations provides that the Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes and that representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization and

WHEREAS by a resolution of the General Assembly adopted on it was decided to propose a convention with a view to determining the details of the application of the aforesaid Articles and

WHEREAS the present convention was drawn up and approved by a resolution of the General Assembly adopted on.....

Introductory Article

1. The present convention is open to accession on behalf of every Member of the United Nations.
2. Accession shall be effected by a deposit of an instrument with the Secretary-General of the United Nations and the convention shall take effect as regards each Member as from the date of deposit of its instrument of accession.
3. The Secretary-General shall inform all Members of the United Nations of the deposit of each accession.
4. It is understood that, when an instrument of accession is deposited on behalf of any Member, this Member will have taken such action as is necessary in its own territories for the purpose of giving effect under its own laws to the terms of the present convention.

5. The present convention shall continue in force as between the Organization and every Member which has deposited an instrument of accession for so long as that Member remains a Member of the Organization unless, by agreement, other provisions are substituted for the provisions of the present Convention. The Secretary-General may conclude with any Member or Members supplementary agreements, approved in each case by the General Assembly, amending, so far as that Member or those Members are concerned, the provisions of the present Convention.

Article 1.

The Organization shall possess full juridical personality and in particular, the capacity;

- (a) to contract;
- (b) to acquire and dispose of immovable and movable property;
- (c) to institute legal proceedings.

Article 2.

1. The Organization, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that in any case it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.

2. The premises of the Organization shall be inviolable. The property and assets of the Organization wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and from any other form of seizure, whether by executive, administrative or legislative action or otherwise.

3. The archives of the Organization and in general all documents, belonging to it or held by it, shall be inviolable wherever located.

4.

(a) Without being restricted by financial controls, regulations or moratoria of any kind.

(i) the Organization may hold funds or currency of any kind and operate accounts in any currency;

(ii) the Organization shall be free to transfer its funds from one country to another or within any country and to convert any currency held by it into any other currency.

(b) In exercising its rights under (a) above the Organization shall pay due regard to any representations by the national authorities of any Member insofar as effect can be given to such representations without detriment to the financial interests of the Organization.

Article 3.

1. The Organization its assets income and other property shall be:-

(a) exempt from all direct taxes; ⁺⁺ it is understood, however, that the Organization cannot claim exemption from taxes which are, in fact, no more than charges for services rendered.

(b) exempt from customs duties in respect of articles imported by the Organization for its official use and in respect of publications issued by it. It is however understood that articles imported free of customs duty will not be sold in the country into which they were imported except under conditions agreed with the authorities of that country.

++ The sub-committee considered that it may be desirable to define the expression "direct taxes" but did not feel able to perform this task, which requires the assistance of revenue experts.

2. While the Organization cannot in principle claim exemption from sales taxes and excise duties, which form part of the price of goods sold nevertheless in cases where the Organization is making large purchases for official use of goods on which such taxes and duties have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of tax or duty.

Article 4.

Provisions regarding communication facilities and facilities for purchases - left to Committee 8.

Article 5.

1. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the Organization shall be accorded while exercising their functions and during their journey to and from the place of meeting, the following privileges and immunities:

(a) immunity from legal process of any kind;

(b) immunity from immigration restrictions, alien registration and national service obligations;

(c) the same facilities as regards exchange restrictions as are accorded to representatives of the Governments of Members visiting the country;

(d) the same immunities and facilities as regards their personal baggage as are accorded to diplomatic envoys.

2. As a means of securing complete freedom of speech and independence in the discharge of their duties, the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the Organization shall be accorded immunity from legal process in respect of all acts

done and words spoken or written by them in the discharge of their duties as such.

3. The provisions of paragraphs 1(a) and (b) and of paragraph 2 of this Article cannot be invoked by any person against the authorities of the country of which he is a national or of which he is or has been the representative nor when the Member which he represented has waived the immunity in question.

4. In this Article the expression representatives shall be deemed to include all Delegates and Deputy Delegates, advisers, technical experts, and secretaries.

Article 6.

1. All officials* of the Organization shall:
 - (a) be immune from legal process with respect to acts performed by them in their official capacity;
 - (b) be exempt from taxation on the salaries and emoluments paid to them by the Organization;
 - (c) be immune from national service obligations;
 - (d) be immune, together with their spouses and minor children, from immigration restrictions and alien registration;
 - (e) be accorded the same privileges as regards exchange facilities as are accorded to the officials of comparable ranks forming part of the diplomatic missions to the government of x;
 - (f) be given together with their spouses and minor children the same repatriation facilities as diplomatic agents in time of international crisis.
2. In addition the Secretary-General, all Assistant Secretaries-General, their spouses and minor children shall be accorded the

*

By this word it is intended to cover all ranks of the Secretariat and all those who have to make the declaration of loyalty to the Organization referred to inbut not to include local employees, such as office cleaners, motor car drivers etc.

privileges and immunities, exemptions and facilities accorded to diplomatic envoys, their wives and infant children in accordance with international law, but shall not be entitled to invoke immunity from legal process as regards matters not connected with their official duties, before the courts of the country of which they are nationals.

Article 7.

1. The Organization may issue United Nations passports to its officials.* All United Nations passports shall be recognized and accepted as passports.
2. Applications for visas from the holders of such passports when accompanied by a certificate that they are travelling on the business of the Organization, shall be dealt with with the minimum of delay. In addition the holders of United Nations passports shall be granted facilities for speedy travel.
3. Similar facilities to those specified in paragraph 2 above shall be accorded to experts and other persons who, though not officials of the United Nations, have a certificate that they are travelling on the business of the Organization.
4. The Secretary-General, Assistant Secretaries-General, and Directors travelling on United Nations passports on the business of the Organization shall be granted the same facilities as are accorded diplomatic envoys.

Article 8.

It is understood that privileges and immunities are granted to officials in the interests of the Organization and not for the benefit of the officials themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official

*
See footnote on page 7.

in any case where, in his opinion, such immunity can be waived, without prejudice to the interests of the Organization.

2. The Organization shall co-operate at all times with the appropriate authorities to facilitate the proper administration of justice, secure the execution of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this convention. In particular the Secretary-General will ensure that the drivers of all official motor cars of the Organization and all officials who own or drive motor cars shall be properly insured against third party risks.*

3. The Organization shall make provision for appropriate modes of settlement of:

- (a) disputes arising out of contracts or other disputes of a private law character to which the Organization is a party;
- (b) disputes involving any official of the Organization, who by reason of his official position enjoys immunity, if such immunity has not been waived by the Secretary-General.

Article 9.

Freedom of travel to the seat of the Organization for the press, representatives of non-governmental Organizations and private individuals - (Committee 8)

Article 10.

The provisions of Article 7 may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

*
If it is decided that the internal regulations of the Organization shall contain provisions to this effect this sentence could be omitted.

Article 11.

All differences arising out of the interpretation or application of the present Convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If the dispute is between the Organization on the one hand and a Member on the other hand, a request shall be made for an advisory opinion in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The advisory opinion of the Court shall be accepted by the parties to the dispute as a binding decision in the same manner as a judgment.
