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Draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session

Extract from Volume II of the *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities (Annexes, Final Act, Vienna Convention on Diplomatic Relations, Optional Protocols and Resolutions)*

PREPARATORY DOCUMENTS

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DEFINITIONS

Article 1

For the purpose of the present draft articles, the following expressions shall have the meanings hereunder assigned to them :

(a) The "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;

(b) The "members of the mission" are the head of the mission and the members of the staff of the mission;

(c) The "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

(d) The "diplomatic staff" consists of the members of the staff of the mission having diplomatic rank;

(e) A "diplomatic agent" is the head of the mission or a member of the diplomatic staff of the mission;

(f) The "administrative and technical staff" consists of the members of the staff of the mission employed in the administrative and technical service of the mission;

(g) The "service staff" consists of the members of the staff of the mission in the domestic service of the mission;

(h) A "private servant" is a person in the domestic service of the head or of a member of the mission.

SECTION I. — DIPLOMATIC INTERCOURSE
IN GENERAL*Establishment of diplomatic relations
and missions*

Article 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

Functions of a diplomatic mission

Article 3

The functions of a diplomatic mission consist, *inter alia*, in :

(a) Representing the sending State in the receiving State;

(b) Protecting in the receiving State the interests of the sending State and of its nationals;

(c) Negotiating with the government of the receiving State;

(d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the government of the sending State;

(e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

*Appointment of the head
of the mission : agrément*

Article 4

The sending State must make certain that the agrément of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

Appointment to more than one State

Article 5

Unless objection is offered by any of the receiving States concerned, a head of mission to one State may be accredited as head of mission to one or more other States.

Appointment of the staff of the mission

Article 6

Subject to the provisions of articles 7, 8 and 10, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval.

Appointment of nationals of the receiving State

Article 7

Members of the diplomatic staff of the mission may be appointed from amongst the nationals of the receiving State only with the express consent of that State.

Persons declared persona non grata

Article 8

1. The receiving State may at any time notify the sending State that the head of the mission, or any member of the staff of the mission is *persona non grata* or not acceptable. In such case, the sending State shall, as the case may be, recall the person concerned or terminate his functions with the mission.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1, the receiving State may refuse to recognize the person concerned as a member of the mission.

Notification of arrival and departure

Article 9

The arrival and departure of the members of the staff of the mission, and also of members of their families, and of their private servants, shall be notified to the Ministry for Foreign Affairs of the receiving State. A similar notification shall be given whenever members of the mission and private servants are locally engaged or discharged.

Size of staff

Article 10

1. In the absence of specific agreement as to the size of the mission, the receiving State may refuse to accept a size exceeding what is reasonable and normal, having regard to circumstances and conditions in the receiving State, and to the needs of the particular mission.

2. The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

*Offices away from the seat of the mission**Article 11*

The sending State may not, without the consent of the receiving State, establish offices in towns other than those in which the mission itself is established.

*Commencement of the functions of the head of the mission**Article 12*

The head of the mission is considered as having taken up his functions in the receiving State either when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or when he has presented his letters of credence, according to the practice prevailing in the receiving State, which shall be applied in a uniform manner.

*Classes of heads of mission**Article 13*

1. Heads of mission are divided into three classes — namely :

(a) That of ambassadors or nuncios accredited to Heads of State;

(b) That of envoys, ministers and internuncios accredited to Heads of State;

(c) That of chargés d'affaires accredited to Ministers for Foreign Affairs.

2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

Article 14

The class to which the heads of their missions are to be assigned shall be agreed between States.

*Precedence**Article 15*

1. Heads of mission shall take precedence in their respective classes in the order of date either of the official notification of their arrival or of the presentation of their letters of credence, according to the practice prevailing in the receiving State, which must be applied without discrimination.

2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.

3. The present article is without prejudice to any existing practice in the receiving State regarding the precedence of the representative of the Pope.

*Mode of reception**Article 16*

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

*Chargé d'affaires ad interim**Article 17*

If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, the affairs of the mission shall be conducted by a chargé d'affaires ad interim, whose name shall be notified to the Ministry for Foreign Affairs of the receiving State.

*Use of flag and emblem**Article 18*

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, and on the residence and the means of transport of the head of the mission.

*SECTION II. — DIPLOMATIC PRIVILEGES AND IMMUNITIES**SUB-SECTION A. — MISSION PREMISES AND ARCHIVES**Accommodation**Article 19*

The receiving State must either permit the sending State to acquire on its territory the premises necessary for its mission, or ensure adequate accommodation in some other way.

*Inviolability of the mission premises**Article 20*

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, save with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission and their furnishings shall be immune from any search, requisition, attachment or execution.

*Exemption of mission premises from tax**Article 21*

The sending State and the head of the mission shall be exempt from all national, regional or municipal dues or taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

*Inviolability of the archives**Article 22*

The archives and documents of the mission shall be inviolable.

*SUB-SECTION B. — FACILITATION OF THE WORK OF THE MISSION, FREEDOM OF MOVEMENT AND COMMUNICATION**Facilities**Article 23*

The receiving State shall accord full facilities for the performance of the mission's functions.

*Free movement**Article 24*

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

*Freedom of communication**Article 25*

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher.

2. The official correspondence of the mission shall be inviolable.

3. The diplomatic bag shall not be opened or detained.

4. The diplomatic bag, which must bear visible external marks of its character, may only contain diplomatic documents or articles intended for official use.

5. The diplomatic courier shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

Article 26

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

SUB-SECTION C. — PERSONAL PRIVILEGES AND IMMUNITIES

*Personal inviolability**Article 27*

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all reasonable steps to prevent any attack on his person, freedom or dignity.

*Inviolability of residence and property**Article 28*

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of article 29, his property, shall likewise enjoy inviolability.

*Immunity from jurisdiction**Article 29*

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, save in the case of :

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of his government for the purposes of the mission;

(b) An action relating to a succession in which the diplomatic agent is involved as executor, administrator, heir or legatee;

(c) An action relating to a professional or commercial activity exercised by the diplomatic agent in the receiving State, and outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

*Waiver of immunity**Article 30*

1. The immunity of its diplomatic agents from jurisdiction may be waived by the sending State.

2. In criminal proceedings, waiver must always be express.

3. In civil or administrative proceedings, waiver may be express or implied. A waiver is presumed to have occurred if a diplomatic agent appears as defendant without claiming any immunity. The initiation of proceedings by a diplomatic agent shall preclude him from invoking immunity of jurisdiction in respect of counter-claims directly connected with the principal claim.

4. Waiver of immunity of jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgement for which a separate waiver must be made.

*Exemption from social security legislation**Article 31*

The members of the mission and the members of their families who form part of their households, shall, if they are not nationals of the receiving State, be exempt from the social security legislation in force in that State except in respect of servants and employees if themselves subject to the social security legislation of the receiving State. This shall not exclude voluntary participation in social security schemes in so far as this is permitted by the legislation of the receiving State.

*Exemption from taxation**Article 32*

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, save :

(a) Indirect taxes incorporated in the price of goods or services;

(b) Dues and taxes on private immovable property, situated in the territory of the receiving State, unless he holds it on behalf of his Government for the purposes of the mission;

(c) Estate, succession or inheritance duties levied by the receiving State, subject, however, to the provisions of article 38 concerning estates left by members of the family of the diplomatic agent;

(d) Dues and taxes on income having its source in the receiving State;

(e) Charges levied for specific services rendered;

(f) Subject to the provisions of article 21, registration, court or record fees, mortgage dues and stamp duty.

*Exemption from personal services and contributions**Article 33*

The diplomatic agent shall be exempt from all personal services or contributions.

*Exemption from customs duties and inspection**Article 34*

1. The receiving State shall, in accordance with the regulations established by its legislation, grant exemption from customs duties on :

(a) Articles for the use of a diplomatic mission;

(b) Articles for the personal use of a diplomatic agent or members of his family belonging to his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are very serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1, or articles the import or export of which is prohibited by the law of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or in the presence of his authorized representative.

*Acquisition of nationality**Article 35*

Members of the mission, not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

*Persons entitled to privileges and immunities**Article 36*

1. Apart from diplomatic agents, the members of the family of a diplomatic agent forming part of his household, and likewise the administrative and technical staff of a mission, together with the members of their families forming part of their respective households, shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 27 to 34.

2. Members of the service staff of the mission who are not nationals of the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, and exemption from dues and taxes on the emoluments they receive by reason of their employment.

3. Private servants of the head or members of the mission shall, if they are not nationals of the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over such persons in such a manner as not to interfere unduly with the conduct of the business of the mission.

*Diplomatic agents who are nationals of the receiving State**Article 37*

1. A diplomatic agent who is a national of the receiving State shall enjoy inviolability and also immunity from jurisdiction in respect of official acts performed in the

exercise of his functions. He shall enjoy such other privileges and immunities as may be granted to him by the receiving State.

2. Other members of the staff of the mission and private servants who are nationals of the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over such persons in such a manner as not to interfere unduly with the conduct of the business of the mission.

*Duration of privileges and immunities**Article 38*

1. Every person entitled to diplomatic privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In the event of the death of a member of the mission not a national of the receiving State, or of a member of his family, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country, and the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall be levied only on immovable property situated in the receiving State.

*Duties of third States**Article 39*

1. If a diplomatic agent passes through or is in the territory of a third State while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in case of any members of his family enjoying diplomatic privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1, third States shall not hinder the passage of members of the administrative, technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers in transit the same inviolability and protection as the receiving State is bound to accord.

**SECTION III. — CONDUCT OF THE MISSION
AND OF ITS MEMBERS TOWARDS
THE RECEIVING STATE**

Article 40

1. Without prejudice to their diplomatic privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. Unless otherwise agreed, all official business with the receiving State entrusted to a diplomatic mission by its government shall be conducted with or through the Ministry for Foreign Affairs of the receiving State.

3. The premises of a diplomatic mission must not be used in any manner incompatible with the functions of the mission as laid down in the present draft articles, or by other rules of general international law, or by any special agreements in force between the sending and the receiving State.

**SECTION IV. — END OF THE FUNCTION
OF A DIPLOMATIC AGENT**

Modes of termination

Article 41

The function of a diplomatic agent comes to an end, *inter alia* :

(a) If it was for a limited period, then on the expiry of that period, provided there has been no extension of it;

(b) On notification by the government of the sending State to the government of the receiving State that the diplomatic agent's function has come to an end (recall);

(c) On notification by the receiving State, given in accordance with article 8, that it considers the diplomatic agent's function to be terminated.

Facilitation of departure

Article 42

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities to leave at the earliest possible moment, and must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

Protection of premises, archives and interests

Article 43

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled :

(a) The receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;

(b) The sending State may entrust the custody of the premises of the mission, together with its property and archives, to the mission of a third State acceptable to the receiving State;

(c) The sending State may entrust the protection of its interests to the mission of a third State acceptable to the receiving State.

SECTION V. — NON-DISCRIMINATION

Article 44

1. In the application of the present rules, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place :

(a) Where the receiving State applies one of the present rules restrictively because of a restrictive application of that rule to its mission in the sending State;

(b) Where the action of the receiving State consists in the grant, on the basis of reciprocity, of greater privileges and immunities than are required by the present rules.

SECTION VI. — SETTLEMENT OF DISPUTES

Article 45

Any dispute between States concerning the interpretation and application of this Convention that cannot be settled through diplomatic channels shall be referred to conciliation or arbitration or, failing that, shall, at the request of either of the parties, be submitted to the International Court of Justice.

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**Draft Articles on Special Missions adopted by the
International Law Commission at its twelfth
session**

Article 1. — Definitions

1. The expression "special mission" means an official mission of state representatives sent by one State to another in order to carry out a special task. It also applies to an itinerant envoy who carries out special tasks in the States to which he proceeds.

2. The expression "1958 draft" denotes the draft Articles on Diplomatic Intercourse and Immunities prepared by the International Law Commission in 1958.

Article 2. — Applicability of section I of the 1958 draft

Of the provisions of section I of the 1958 draft, only articles 8, 9 and 18 apply to special missions.

*Article 3. — Applicability of sections II, III and IV
of the 1958 draft*

1. The provisions of sections II, III and IV apply to special missions also.

2. In addition to the modes of termination referred to in article 41 of the 1958 draft, the functions of a special mission will come to an end when the tasks entrusted to it have been carried out.