

Document:-
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Diplomatic Intercourse and Immunities - Revised draft articles proposed by the Special Rapporteur, Mr. A. E. F. Sandstrom

Topic:
Diplomatic intercourse and immunities

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DIPLOMATIC INTERCOURSE AND IMMUNITIES

[Agenda item 3]

DOCUMENTS A/CN.4/116/ADD.1 AND 2¹

Draft articles concerning diplomatic intercourse and immunities²

Articles proposed by A. E. F. Sandström, Special Rapporteur

Document A/CN.4/116/Add.1

[Original text: French]

[21 May 1958]

SECTION I. DEFINITIONS

Article 1 (new)

The text submitted by the Netherlands Government (A/3859, annex, sect. 14), subject to the addition in sub-paragraph (d) of the phrase: "including military, naval and air attachés and other specialized attachés".

Article 1A

Article 1 of the Commission's draft unchanged.²

Article 2

Article 2 of the Commission's draft, subject to the deletion of the words "the Government of" in sub-paragraphs (a), (c) and (d) (or at least in sub-paragraph (a)).

Article 3

No change.

Article 3A

With the consent of each receiving State the head of a mission may in addition be appointed head of mission in one or more other States.

Article 4

Paragraph 1. Article 4 of the Commission's draft, subject to the omission of the word "other".

Paragraph 2. A new paragraph reading as follows:

"2. The arrival and departure of the members of the mission, together with the members of their households, shall be notified to the Ministry of Foreign Affairs of the receiving State. Similarly, a notification shall be required for members of the mission and private servants engaged and discharged in the receiving State."

¹ Document A/CN.4/116 entitled "Diplomatic intercourse and immunities: summary of observations received from Governments and conclusions of the Special Rapporteur" is published in mimeographed form only.

² The text of the draft articles adopted by the International Law Commission (to which the present text refers) is contained in chapter II of the report of the Commission on its ninth session (A/3623).

Article 5

A diplomatic agent may be appointed from among the nationals of the receiving State only with the express consent of that State, *unless it has waived that condition.*

Article 6

Paragraph 1. In the English text, the words "according to circumstances" should be replaced by the words "as the case may be".

Paragraph 2. In the French text, the word "un" should be inserted between the words "dans" and "délai".

Article 7

Paragraph 1. In the English text, substitute the word "normal" for the word "customary".

Paragraph 2. In the first sentence the words "and on a non-discriminatory basis" should be deleted. The second sentence should read: "In the case of military, naval or attachés, the receiving State may require their names to be submitted beforehand for its approval".

Paragraph 3. A new provision, if necessary, reading as follows:

"The sending State may not, without the consent of the receiving State, establish offices in places other than the place where the mission is established."

Article 8

The receiving State shall decide whether the head of the mission is entitled to take up his functions in relation to that State when he has notified his arrival and a true copy of his credentials has been accepted by the Ministry of Foreign Affairs of the receiving State, *or (only) when he has presented his letters of credence.*

Article 9

Paragraph 1. Add at the end of the paragraph: "by the head of the mission before his departure or otherwise by the Government of the sending State".

Paragraph 2. This paragraph should be deleted.

Article 10

It is proposed that the article begin as follows: "For purposes of precedence and etiquette heads of missions . . .".

In sub-paragraph (b) the words "other persons" may be kept, or replaced by "internuncios".

Article 11

States shall mutually agree the level of their diplomatic representation at each other's capitals.

Article 12

Paragraph 1. Substitute the words "according to the rules prevailing in" for the words "according to the rules of the protocol in".

Paragraphs 2 and 3. No change.

Article 12A

See the Italian Government's observations (A/3859, annex, sect. 10).

Article 13

No change.

Article 14

No change.

Article 14A

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

SECTION II

Article 15

The receiving State shall either permit the sending State to acquire on its territory the premises necessary for its mission, or facilitate as far as possible adequate accommodation in some other way for the mission, including the staff thereof.

Article 16

Paragraph 1. Insert the word "official" before the word "premises" (whether they are owned by or leased to the sending State).

Paragraphs 2 and 3. No change.

Paragraph 4. A new provision reading as follows:

"4. Since the real property of the mission is subject to the laws of the country in which the said property is situated, it shall be the duty of the sending State, notwithstanding the inviolability of the premises of the mission, to co-operate in every way in the carrying out of public works, such as the widening of roads. The receiving State shall pay prompt and adequate compensation or, if necessary, place other appropriate premises at the disposal of the sending State."

Article 17

The sending State shall be exempt from all national, regional and municipal dues and taxes which would be leviable upon it as owner or tenant of the premises used for the purposes of the mission, other than dues and taxes which represent payment for services actually rendered. The same exemption shall be granted if the head or another member of the mission has acquired or leased the premises on behalf of the sending State.

Article 18

No change.

Article 19

Paragraph 1. The text of the Commission's draft article.

Paragraph 2. A new paragraph reading as follows:

"2. If the receiving State maintains different rates of exchange, the mission shall enjoy the most favourable rate."

Article 20

The receiving State shall ensure to all members of the mission freedom of movement and travel in its territory. Nevertheless, the receiving State may, for reasons of national security, issue laws and regulations prohibiting or regulating entry into specifically indicated places or regions, provided that these are not so extensive as to render freedom of movement and travel illusory.

Article 21

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 of the sending State and with its consulates in the receiving State, the mission may employ all appropriate means, including diplomatic couriers and dispatches in code or cipher.

2. The diplomatic bag, which may contain only diplomatic documents or articles of a confidential nature intended for official use, shall be furnished with the sender's seal and bear a visible indication of its character. The diplomatic bag may not be opened or detained.

3. The expression "diplomatic courier" means a person who carries a diplomatic bag and who is for this purpose furnished with a document (courier's passport) testifying to his status. If such a person is travelling exclusively as a diplomatic courier he shall enjoy personal inviolability during his journey and shall not be liable to arrest or detention, whether administrative or judicial.

4. If a mission wishes to make use of a wireless transmitter belonging to it, it must apply to the receiving State for special permission. Provided that the regulations applicable to all users of such communications are observed, such permission shall not be refused.

Article 21A

The sending State shall be exempt from dues and taxes on the fees and charges recovered by the mission in the course of its official duties.

Article 22

Delete paragraph 2.

Article 23

Paragraph 1. Insert the word "official" before the word "premises".

Paragraph 2. The Special Rapporteur's view concerning the observations expressed on paragraph 2 is as follows: The inviolability which the property of the diplomatic agent enjoys should, according to article 24, paragraph 3, cease in proceedings in which the agent cannot invoke immunity from jurisdiction. It has been suggested that, in the case contemplated by article 24, paragraph 1(c), it is likewise impossible to invoke inviolability

for the purpose of the protection of his papers and correspondence. To go thus far would, however, jeopardize the confidential nature which official papers and correspondence of the mission should possess. To bring out this distinction, the text proposed by the Netherlands Government for article 23, paragraph 2, might be adopted.

Paragraph 2 should read as follows:

"2. His papers, correspondence and, except as provided in article 24, paragraph 3, his property, likewise, shall enjoy inviolability."

Article 24

Paragraph 1. In sub-paragraph (a), for the words "held by the diplomatic agent in his private capacity and not on behalf of his Government for the purposes of the mission" substitute the words "unless he holds it on behalf of his Government for the purposes of the mission".

In sub-paragraph (b), after the word "succession" insert the words "arising in the receiving country".

Paragraph 2. Insert at the end of the sentence the words "except in cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1".

An alternative is proposed by the Italian Government (A/3859, annex, sect. 10).

Paragraph 3. No change.

Paragraph 4. In the first sentence delete the words "to which he shall remain subject in accordance with the law of the State".

Article 25

Paragraphs 1 and 2. No change.

Paragraph 3. For the words "In civil proceedings" read "In civil or administrative proceedings".

Paragraph 4. Insert the words "or administrative" after the word "civil".

Article 26

Provided that he is not a national of the receiving State, a diplomatic agent shall be exempt in the said State from all dues and taxes, personal or real, national, regional or municipal, save:

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

(b) Dues . . . mission; [No change.]

(c) Estate, succession or inheritance duties levied by the receiving State, subject to the provisions of article 31 concerning estates left by members of the family of the diplomatic agent;

(d) Add at the end: "and on property situated in the receiving State other than the furniture and personal effects of the diplomatic agent and his family";

(e) Charges . . . rendered; [No change.]

(f) Registration, court or record fees, mortgage dues and stamp duty.

Article 26A

The diplomatic agent shall be exempt from all personal contributions in money or in kind.

Article 27

1. The receiving State shall, in accordance with such regulations as it shall prescribe, grant exemption from

customs duties and from all prohibitions and restrictions in respect of the import or subsequent re-export of:

(a) Articles for the official 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 this article.

3. For the purposes of paragraph 1, the expression "customs duties" shall mean all dues and taxes payable on imports or re-exports.

4. The provisions of this article shall not apply to articles the traffic in which is specifically prohibited by the laws of the receiving State for reasons of public morality, safety, health or order.

Article 28

1. Apart from the diplomatic agent, the members of his family who form part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities mentioned in articles 22 to 27. Even if they are nationals of the receiving State, they shall be entitled to the benefit of these privileges and immunities if they are also nationals of the sending State.

2. If they are not nationals of the receiving State, the members of the administrative, technical and service staff of the mission shall enjoy immunity in respect of acts performed in the course of their duties, and shall also be exempt from dues and taxes on the emoluments they receive by reason of their employment. They shall in addition enjoy such privileges and immunities as are granted to them by agreement between the parties concerned on the basis of reciprocity.

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 shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, any jurisdiction assumed by the receiving State shall be exercised in such a manner as will avoid undue interference with the conduct of the business of the mission.

Article 29

A person enjoying diplomatic privileges and immunities shall not, by virtue of the laws of the receiving State, acquire the nationality of that State against his will.

Article 30

Paragraph 1. The text of the Commission's draft article.

Paragraph 2. A new paragraph reading as follows:

"2. A member of the administrative and technical staff of the mission, a member of the service staff or a private servant of the head or of a member of the mission who is a national of the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, any jurisdiction assumed by the receiving State shall be exercised in such a manner as will avoid undue interference with the conduct of the business of the mission."

Article 31

Paragraph 1. The last sentence should be amended to read: ". . . from the moment when his appointment is notified to and accepted by the Ministry of Foreign Affairs." (In contradiction with article 4?).

See also the Italian proposal (A/3859, annex, sect. 10).

Paragraph 2. The paragraph should begin as follows: "2. When the functions of a person enjoying privileges and immunities have come to an end, exemption from customs dues shall cease. The other privileges and immunities . . .".

Paragraph 3. The following sentence should be added at the end: "Estate, succession and inheritance duties shall be levied only on immovable property situated in the receiving State".

Article 32

Paragraph 1. The paragraph should begin as follows: "1. If a diplomatic agent or some other member of a diplomatic mission or a member of their families enjoying diplomatic privileges and immunities passes through . . .".

Paragraph 2 should read as follows:

"2. Third States shall accord to dispatches and other communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State. They shall accord to diplomatic couriers in transit the same inviolability and protection as the receiving State."

Article 33

No change.

Article 34

According to the commentary, the communication is addressed to the Government of the sending State, but it may be addressed to the head of the mission.

Article 35

A new sentence should be added: "The withdrawal of property shall be subject to the exemption laid down in article 31, paragraph 3".

Article 36

Sub-paragraph (a). In accordance with the Netherlands proposal (A/3859, annex, sect. 14), delete the words "even in case of armed conflict" and add a new article, as follows:

"Article 36 A

"In case of the outbreak of an armed conflict, the receiving State shall respect and protect the premises of the mission, together with its property and archives during a reasonable period as mentioned in article 31, paragraph 2".

Alternatively sub-paragraph (a) might be amended as proposed and the situation arising in case of armed conflict dealt with in the commentary.

Sub-paragraph (b) and (c). Substitute the words "accepted by" for the words "acceptable to".

Additional provisions

In keeping with the Luxembourg Government's proposals with regard to the application of social legislation (A/3859, annex, Sect. 13), the following article is submitted:

"The members of the mission and the members of their families who form part of their households shall be exempt from the social security legislation in force in the receiving State, provided that they are not nationals of that State.

"If a member of the mission or a private servant of a member of a mission is subject to such legislation, his employer shall, if the legislation so directs, pay the contributions payable in pursuance of the said legislation."

Document A/CN.4/116/Add.2

[Original text: French]

[27 May 1958]

ADDITIONAL ARTICLES PROPOSED BY THE
SPECIAL RAPPORTEUR

Article . . .

If a State applies a rule of the draft narrowly, the other States shall not be bound, vis-à-vis that State, to apply it more liberally.

Article . . .

Two or more States may agree to extend the privileges and immunities referred to in the draft and the classes of persons qualifying for the benefit thereof.