

Document:-
A/CN.4/L.396

Draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. Text adopted by the Drafting Committee: article 23 - reproduced in A/CN.4/SR.1930, para. 27

Topic:
Status of the diplomatic courier and the diplomatic bag not accompanied by the diplomatic courier

Extract from the Yearbook of the International Law Commission:-
1985, vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

21. The words "human rights and fundamental freedoms" in paragraph 2 (e) (iii), to which Mr. Balanda had referred, were the ones normally used in international instruments. Since self-determination had, moreover, come to be considered as an individual human right, exercised collectively, the Drafting Committee had agreed that the Special Rapporteur should include a reference to that effect in the commentary to article 5.

22. Referring to Mr. Koroma's observations concerning the definitions of the term "injured State" in paragraphs 1 and 2, he said that the use of the words "In particular" at the beginning of paragraph 2 was intended to make it quite clear that the list of examples contained in the paragraph was not exhaustive. The Drafting Committee had originally intended to have the definition as an introductory clause to the other examples, but had then realized that it would be virtually impossible to include all the examples in one article and had decided to draft two paragraphs, one containing a general definition and the other setting out the most important examples. Nevertheless, in both paragraphs, an effort had been made to identify the injured State as the State whose right had been infringed.

23. As to paragraph 3, he said that the conclusion that, in the event of an international crime, all States were injured States flowed logically from article 19 of part 1 of the draft. Mr. Roukounas had proposed that a distinction should be drawn between directly injured and indirectly injured States, a point which had also been made in the Commission and in the Drafting Committee in respect of both international crimes and international delicts. The Drafting Committee had considered that, as far as international crimes were concerned, any distinction should be drawn in the articles dealing with the legal consequences of international crimes. That was why the reference to articles 14 and 15 had been included in square brackets.

24. Mr. REUTER, referring to the punctuation marks and the use of the word "or" in paragraph 2 (e) (i), (ii) and (iii), said that the French text, which had been drafted in conformity with treaty practice, was entirely acceptable.

25. Mr. LACLETA MUÑOZ said that he could find no fault with the punctuation and layout of the Spanish text of article 5, which were in conformity not only with correct usage, but also with legal practice.

26. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to adopt article 5 provisionally on first reading, together with the consequential changes to other articles set out in the Drafting Committee's explanatory note (A/CN.4/L.395) and referred to by the Chairman of the Committee (1929th meeting, para. 44).

It was so agreed.

Article 5 was adopted.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (concluded)
(A/CN.4/390,³ A/CN.4/L.382, sect. C, A/CN.4/L.396, ILC(XXXVII)/Conf.Room Doc.2 and Add.1)

[Agenda item 5]

DRAFT ARTICLES PROPOSED BY THE
DRAFTING COMMITTEE (concluded)*

ARTICLE 23 and ARTICLES 28 and 29 (concluded)

ARTICLE 23 [18] (Immunity from jurisdiction)

27. The CHAIRMAN invited the Chairman of the Drafting Committee to present article 23 [18] as proposed by the Drafting Committee (A/CN.4/L.396), which read:

Article 23 [18]. Immunity from jurisdiction

1. The diplomatic courier shall enjoy immunity from the criminal jurisdiction of the receiving State or, as the case may be, the transit State in respect of all acts performed in the exercise of his functions.

2. He shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State or, as the case may be, the transit State in respect of all acts performed in the exercise of his functions. This immunity shall not extend to an action for damages arising from an accident caused by a vehicle the use of which may have involved the liability of the courier where those damages are not recoverable from insurance.

3. No measures of execution may be taken in respect of the diplomatic courier, except in cases where he does not enjoy immunity under paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person, temporary accommodation or the diplomatic bag entrusted to him.

4. The diplomatic courier is not obliged to give evidence as a witness in cases involving the exercise of his functions. He may be required to give evidence in other cases, provided that this would not cause unreasonable delays or impediments to the delivery of the diplomatic bag.

5. The immunity of the diplomatic courier from the jurisdiction of the receiving State or the transit State does not exempt him from the jurisdiction of the sending State.

28. Mr. CALERO RODRIGUES (Chairman of the Drafting Committee) said that, by adopting article 23, the Commission would be in a position to forward to the General Assembly a complete set of draft articles, from article 1 to article 35, without gaps or provisions appearing in square brackets. At the Commission's next session, the Drafting Committee should be in a position to examine the remaining articles which had been proposed by the Special Rapporteur and referred to it, namely articles 36, 37 and 39 to 43. He paid tribute to the Special Rapporteur and to the members of the Drafting Committee for the dedication and spirit of co-operation they had shown in the work on the topic.

29. As in the case of the articles previously proposed by the Drafting Committee on the topic, article 23 bore two numbers, the first being the number originally assigned by the Special Rapporteur in his

³ Reproduced in *Yearbook ... 1985*, vol. II (Part One).

* Resumed from the 1913th meeting.