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DIPLOMATIC INTERCOURSE AND IMMUNITIES

REPORT

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Special Rapporteur

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DRAFT FOR THE CODIFICATION OF THE LAW RELATING TO DIPLOMATIC INTERCOURSE AND IMMUNITIES

Diplomatic intercourse in generalArticle 1

If two States possessing the right of legation are agreed on instituting permanent diplomatic relations with one another, each may establish a diplomatic mission with the other.

Article 2

1. The sending State must make certain that the person it proposes to appoint head of the mission is acceptable to the receiving State. If he is not acceptable, he shall not be appointed.

2. The receiving State may, at any time and without stating its reasons, declare the head of the mission no longer persona grata. In such case, he shall be recalled.

Article 3

1. The sending State may freely choose the other officials which it appoints to the mission, the receiving State being at liberty at any time to declare an official persona non grata without obligation to state its reasons. In such case, the official shall be recalled.

2. The members of the mission together with members of their families living under the same roof and their servants must be entered on a list to be communicated to the Ministry of Foreign Affairs of the receiving State.

Article 4

The head and other members of the mission may, with the consent of the receiving State, be chosen from among the nationals of that State.

Article 5

The receiving State may limit the size of the staff composing the mission. It may refuse to receive officials of a particular category.

Article 6

States shall agree on the class to which the heads of their missions must belong.

Article 7

Heads of missions shall be divided into two classes:

- (a) That of Ambassadors, Legates or Nuncios, accredited to Heads of States;
- (b) That of Chargés d'affaires accredited to Ministers for Foreign Affairs.

Article 8

Only Ambassadors, Legates or Nuncios shall possess the representative character.

Article 9

- 1. Diplomatic agents shall rank in their respective classes according to the date on which their arrival was officially notified.
- 2. Any change in the credentials of an agent through some circumstance or other shall not affect the order thus established.
- 3. The present regulations shall not occasion any change respecting the representatives of the Pope.
- 4. Ties of consanguinity or family alliances between Courts shall confer no rank on their diplomatic agents. The same shall apply to political alliances.

Article 10

A uniform method shall be established in each State for the reception of diplomatic agents of each class.

Article 11

In acts or treaties between several Powers which admit the alternat, the order in which the Ministers shall sign shall be decided by lot.

II. Diplomatic privileges and immunities

A. Franchise de l'hôtel: protection of archives and correspondence

Article 12

- 1. The premises of the mission, whether in a property belonging to the sending State or to the head of the mission or leased, shall be inviolable. The agents and authorities of the receiving Government may not enter the premises, save with the consent of the head of the mission or, in an extreme emergency, in order to eliminate a grave and imminent danger to human life, public health or property, or to safeguard the security of the State. In such emergencies, the authorization of the Ministry of Foreign Affairs must, if possible, be obtained.

The receiving State shall take all appropriate steps to protect the premises of the mission against any invasion or damage and to prevent any disturbance of the peace of the mission or detracting from its dignity.

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

Article 13

If the premises of the mission are the property of the sending State, they shall be exempt from all government or local dues and taxes on immovable property which do not represent compensation for services actually rendered.

The sending State or the head of the mission shall not be liable to taxation on account of premises leased for the mission.

Article 14

The receiving State shall protect the archives of the mission from any violation of their confidential character.

Article 15

When a mission has been terminated or discontinued, the receiving State, even in a case of war, shall respect and protect the premises of the mission and the property therein, together with the mission's archives.

The sending State may entrust the custody of the premises of the mission, the property therein and its archives to the mission of another State acceptable to the receiving State.

Article 16

The receiving State shall permit and protect communications by whatever means, including messengers provided with passports ad hoc and written messages in code or cipher, between the mission and the Ministry of Foreign Affairs of the sending State or its consulates and nationals in the territory of the receiving State.

The diplomatic pouch shall be exempt from inspection unless there are very serious grounds for presuming that it contains illicit articles. The pouch may be opened for inspection only with the consent of the Ministry of Foreign Affairs of the receiving State and in the presence of an authorized representative of the mission.

The messenger carrying the dispatches shall be protected by the receiving State.

Third States shall be bound to accord the same protection to dispatches and messengers in transit.

B. Privileges and immunities attaching to the person and property of a diplomatic agent

Article 17

Inviolability of a diplomatic agent as to his person

1. A diplomatic agent shall enjoy inviolability as to his person. The receiving State shall accord him all necessary facilities for the exercise of his functions, ensure his treatment with due respect and take all reasonable steps to prevent any offence against his person, freedom or dignity.
2. Inviolability shall be no bar to the exercise of the right of self-defence.

Article 18

Inviolability of the residence and property of a diplomatic agent

1. The private residence of a diplomatic agent shall enjoy the same freedom from intrusion and the same protection as the premises of the mission.
2. His property, likewise, shall be under the same protection of the receiving State.

Article 19

Third States

If a diplomatic agent passes through the territory of a third State in proceeding to take up his post or returning to his own country, or is temporarily on such territory while occupying his post, the third State shall accord him its protection, provided that it be notified of his presence.

Article 20

Immunity from jurisdiction

1. A diplomatic agent of foreign nationality shall enjoy immunity from the criminal and civil jurisdiction of the receiving State, save in the case of:
 - (a) a real action relating to private immovable property of the agent situated on the territory of the receiving State, or
 - (b) an action relating to a succession coming under the jurisdiction of the receiving State and in which the agent is involved as heir or legatee.
2. A diplomatic agent who is a national of the receiving State shall enjoy immunity from its criminal jurisdiction only.
3. A diplomatic agent cannot be compelled to appear as a witness before a court.
4. Nor can a court judgment be executed against him.

Article 21

Waiving of Immunity

1. Immunity from jurisdiction cannot be invoked if the Government of the sending State has waived such immunity. A statement to that effect by the head of the mission shall serve as evidence of waiver of immunity.
2. The instigation of legal proceedings by a diplomatic agent shall preclude him from invoking immunity of jurisdiction in respect of counter-claims germane to the principal claim.
3. Waiver of immunity of jurisdiction in respect of legal proceedings shall not be held to imply waiver of immunity regarding execution of the judgment.

Article 22

Exemption from taxation

1. A diplomatic agent of foreign nationality shall be exempt from all personal or real, government or local, dues and taxes, save
 - (a) indirect taxes,
 - (b) dues and taxes on immovable property in his private ownership on the territory of the receiving State,
 - (c) dues and taxes on income which has its source in the receiving State, and
 - (d) dues and taxes representing remuneration for services actually rendered.
2. A diplomatic agent who is a national of the receiving State shall be exempted only from dues and taxes on the emoluments he receives by reason of his office.

Article 23

Exemption from Customs duties and inspection

1. A diplomatic agent shall be exempt from Customs duties on:
 - (a) articles for the use of the mission,
 - (b) his personal effects,
 - (c) the personal effects of his family and servants, and
 - (d) effects intended for his establishment.
2. His personal baggage shall be exempt from inspection, unless there are very serious grounds for presuming that it contains goods liable to import duty.
3. Such inspection shall be conducted only in the presence of an authorized representative of the consignee.

Article 24

Persons entitled to privileges and immunities

1. The staff of the mission, including administrative and service staff, shall, if they are foreign nationals, enjoy the privileges and immunities set forth in articles 12 - 20, paragraph 1, 21, 22, paragraph 1, and 23.
2. The head of a mission and members of the staff of a mission who are nationals of the receiving State shall enjoy the privileges and immunities enumerated subject to the restrictions mentioned in articles 20, paragraph 2, and 22, paragraph 2.
3. The privileges and immunities of persons entitled in their own right shall also apply to members of their families and their private servants of foreign nationality living under the same roof.
4. Private servants who are nationals of the receiving State shall be exempt from dues and taxes on the emoluments they receive by reason of their employment.
5. For an entitled person to claim benefit of diplomatic privileges and immunities, his name must be entered on the list communicated to the Ministry of Foreign Affairs.

Article 25

Duration of privileges and immunities and end of mission

1. Any person entitled to diplomatic privileges and immunities shall enjoy them from the moment when he presents himself at the frontier of the receiving State on proceeding to take up his post or, if already on its territory, from the moment when his appointment is notified to the Ministry of Foreign Affairs.
2. When the functions of a person enjoying privileges and immunities have come to an end, his immunity shall subsist with respect to acts performed by him in the exercise of his functions as a member of the mission. Otherwise, his privileges and immunities shall cease at the moment when he leaves the country or on expiry of a reasonable period in which to leave the country, but shall subsist until that time even in case of war.
3. The receiving State, even in case of war, must facilitate the departure at the earliest possible moment of persons enjoying privileges and immunities and place at their disposal the necessary means of communication for themselves and their property.

Article 26

Nationality of children

The receiving State shall not impose its nationality upon the child of a person enjoying diplomatic privileges, solely by reason of the birth of such child upon its territory.

III. Duties of a diplomatic agent

Article 27

It is the duty of any person enjoying diplomatic privileges and immunities to conduct himself, notwithstanding those privileges and immunities, in a manner consistent with the internal order of the receiving State, complying with the laws and regulations from which he is not exempted under these regulations, provided that they do not impede the exercise of his functions.

Article 28

If a person enjoying privileges and immunities fails to discharge his duty under article 27, the receiving State may ask for his recall or, if essential for the maintenance of order or the safeguarding of the security of the State, may take measures appropriate to those ends, including restraint on the liberty of the agent, without however causing him bodily harm.

COMMENTARY

I. Background to the Commission's study of the question

1. The International Law Commission, at its first session, included the subject of diplomatic intercourse and immunities in its list of topics of international law provisionally selected for codification, without however placing it among those to be given priority.⁽¹⁾

2. In a letter to the Secretary-General dated 7 July 1952, the acting permanent representative of the Federal People's Republic of Yugoslavia to the United Nations requested the inclusion of the following item in the provisional agenda of the seventh regular session of the General Assembly:

"Giving priority to the codification of the topic "Diplomatic intercourse and immunities" in accordance with article 18 of the Statute of the International Law Commission."⁽²⁾

3. In an explanatory memorandum transmitted to the Secretary-General later, the Yugoslav representative stated inter alia:⁽³⁾

"Of late the violations of the rules of diplomatic intercourse and immunities have become increasingly frequent Such a situation makes it imperative to undertake, with all the necessary urgency, the task of codifying the rules of international law relating to diplomatic intercourse and immunities and thus to confirm definite and precise rules of international law."

4. On 29 October 1952, the Yugoslav representative submitted a draft resolution whereby the General Assembly would recommend that the International Law Commission "undertake the codification of the topic "Diplomatic intercourse and immunities" as a matter of priority.

(1) Report of the International Law Commission covering its first session, General Assembly, Official Records, Fourth Session, Supplement No.10 (A/925), paragraph 15.

(2) General Assembly, Official Records, Seventh Session, Annexes, Agenda item 58 document A/2144.

(3) ibid., document A/2144/Add.1

(4) ibid., document A/C.6/L.248

6. The question was considered by the Sixth Committee of the General Assembly.⁽¹⁾ During its consideration, various amendments to the Yugoslav draft resolution were proposed.

7. It was, for instance, proposed that the scope of the draft be extended to include consular intercourse and immunities,⁽²⁾ the right of asylum,⁽³⁾ the protection of premises and archives and the selection and recall of staff.⁽⁴⁾

8. All these proposals were rejected⁽⁵⁾ and in the resolution submitted by the Sixth Committee to the General Assembly and adopted by the latter on 5 December 1952, the International Law Commission was requested:

"as soon as it considers it possible, to undertake the codification of the topic "Diplomatic intercourse and immunities", and to treat it as a priority topic."⁽⁶⁾

9. In the preamble to the resolution, the Assembly expressed:

"its desire for the common observance by all governments of existing principles and rules and recognized practice concerning diplomatic intercourse and immunities, particularly in regard to the treatment of diplomatic representatives of foreign States."

10. In pursuance of this resolution the International Law Commission decided at its sixth session to begin work on the item and appointed Mr. A.E.F. Sandström Special Rapporteur.⁽⁷⁾

I. Delimitation of the topic

11. In drawing up, at its first session, the list of topics provisionally selected for codification, the International Law Commission had included the subject of "Consular intercourse and immunities" as a separate topic. Although the question is somewhat akin to that of diplomatic intercourse and immunities, the two may

(1) Report of the Sixth Committee, paragraph 3, ibid., document A/2252.

(2) ibid., paragraphs 19 and 30.

(3) ibid., document A/C.6/L.251

(4) Official records of the General Assembly, Seventh Session, Sixth Committee, 315th meeting, paragraph 7.

(5) Report of the Sixth Committee, document A/2252, paragraph 32.

(6) Resolution 685 (VII).

(7) Report of the International Law Commission covering the work of its sixth session, General Assembly, Official Records, Ninth Session, Supplement No.9 (A/2693), paragraph 73. Cf. Report of the Commission covering the work of its fifth session, General Assembly, Official Records, Eighth Session, Supplement No. 9 (A/2456).

very well be examined separately, and this, as can be seen from the list prepared was the Commission's intention. That being so, and in view of the discussion, and of the decisions taken, at the General Assembly in 1952, the Rapporteur considers that there can be no question of undertaking in this context the study of consular intercourse and immunities.

11. One question very often dealt with in conjunction with diplomatic immunities in theoretical writings is the problem of the immunities granted to international bodies and their principal agents. In view of the attitude taken by the Assembly however, this question, which has its own distinct features and is a subject of special interest to the United Nations, will also be disregarded. The subject of this study will, therefore, be only diplomatic intercourse and immunities in the strict sense of the terms.

12. The question of asylum is in much the same position as the question dealt with in paragraph 10. The Commission had also envisaged this topic as a separate item. The Sixth Committee of the seventh Session of the General Assembly was of the same view, as can be judged from its rejection of the amendment to include the topic in the work which the International Law Commission was to be recommended to undertake under the Yugoslav draft resolution.⁽¹⁾ Admittedly, the topic "Diplomatic intercourse and immunities" also involves the question, in connexion with "Franchise de l'hôtel", of whether and in what circumstances a diplomatic mission may give asylum to a person under prosecution for an offence. This matter should not however, be dealt with separately and may very well await the study of the general question of asylum. The Rapporteur therefore proposes to disregard the matter in this report.

13. On the other hand, no sweeping conclusions can be drawn from the fact that the Sixth Committee of the seventh session of the General Assembly rejected amendments to the Yugoslav draft resolution which would have added to the International Law Commission's terms of reference questions such as the protection of premises and archives, and selection and recall of staff. Since such questions form part of the subject under consideration, there was no point in mentioning them separately. They will accordingly be dealt with in their proper place.

(1) Official Records of the General Assembly, Seventh Session, Sixth Committee, 316th meeting, paragraph 66.

I. Bases of the traditional rules; guiding principles of the draft

1. Most of the existing rules on the subject have been formed by custom and tradition. Some rules have been hallowed by multilateral conventions, such as the rules of precedence laid down by the Congresses of Vienna and Aix-la-Chapelle⁽¹⁾ and the more comprehensive regulations of the 1928 Havana Convention on Diplomatic Officers⁽²⁾. Other rules have been established by bilateral treaties and yet others by national legislation.
2. Numerous theoretical studies⁽³⁾ have been made of the subject and many draft regulations prepared by scientific institutes and scholars⁽⁴⁾.
3. From the theoretical standpoint, the main interest lies in the bases of diplomatic privileges and immunities.
4. In that connexion various opinions have been voiced, one of which can be summed up under the heading of "exterritoriality", according to which things are to be regarded as if the diplomatic agent were outside the territory of the State to which he is accredited.⁽⁵⁾
5. Others seek to base diplomatic privileges and immunities on the fact that the diplomatic agent represents the majesty of the State or of the Prince. Any affront to the ambassador would hence, be regarded as an injury to the dignity of the State or of the sovereign which sent him. A kindred theory is that which attributes such privileges and immunities to the fact that the diplomatic agent represents a sovereign State and that it is only by respecting the full independence of the agent that one can respect the State which sent him. Another theory in the same group seeks to base immunities on the fact that any trespass against the dignity and independence of the diplomatic representative might lead to international complications and even to war.⁽⁶⁾

1) See, inter alia, Genet, Traité de Diplomatie et de Droit Diplomatique, Vol. I, p.267.

2) Harvard Draft Convention on Diplomatic Privileges and Immunities, American Journal of Internal Law, Supplement, Vol.26 (1932), p.175.

3) See bibliographies e.g. ibid., p.32; and Oppenheim, International Law, Vol. I, at head of the various chapters.

4) See American Journal of International Law, Supplement, Vol.26 (1932), Annexes, pp.144 et seq.

5) See Genet, op. cit., Vol.1, pp.417 et seq, and the authors he quotes.

6) See Montell Ogdon, Juridical Bases of Diplomatic Immunity, Washington, 1936, Chap.V, p.105.

19. Finally, another theory seeks to explain immunities by the fact that a diplomatic agent is part of the machinery for maintaining relations between two governments, his privileges being conditioned and limited by that end.⁽¹⁾

20. The theory of extritoriality has been strongly criticized, one reproach levelled against it being that it explains nothing. The term, it is maintained, has been used rather in a figurative sense; thus implicitly rejecting the theory that the residence of the agent is outside the territory in which it is situated. Nor, according to another argument, does the theory bear any relation to the facts. Taken literally, the theory enjoys little support nowadays, though there are some exceptions.⁽²⁾ Several authors still accept the term in a figurative sense as merely indicating that the agent concerned may assert certain privileges which, generally speaking, put him beyond reach of the authority of the State in which he is residing, without however implying a fictitious presence outside that State.⁽³⁾

21. The theories mentioned in paragraph 18 and which may be classed under the heading "Representative character theory" likewise do not provide an entirely satisfactory explanation of the phenomenon. There are two sovereignties involved and it does not automatically follow that one should give way to the other. Furthermore, the representative character of a diplomatic agent is a very vague guide in determining the extension of the privileges. There is, accordingly, less and less tendency to invoke such theories.

22. The functional or "demands of the office" theory (paragraph 19) has also been criticized and can scarcely be said to explain the extension of the privilege. Very often, when a concrete problem is broached, it involves begging the question.

(1) See International Law, The Collected Papers of Sir Cecil Hurst, London, 1950, p.115.

(2) Genet, op.cit., Volume I, pp.417 et seq.

(3) See J.P.A. François, Règles générales du droit de la paix, Recueil des Cours de l'Académie de Droit international de La Haye, 1938, IV, p.146; Sir Cecil Hurst, op.cit., p.145; Oppenheim, op.cit., p.711, Strisower, L'extritorialité et ses principales applications, Recueil des Cours de l'Académie de Droit international de La Haye 1923, pp.233, et seq.

Nevertheless, there is a trend in government thinking towards following this line of argument and tending to restrict diplomatic privileges accordingly.

4. In connexion with all these theories, it must also be remembered that on certain points, exemption from taxation and Customs duties for instance, many authors maintain that the practice followed is not a rule of law but a concession made out of courtesy. If this is so, the position from the theoretical standpoint becomes even vaguer.

4. Whatever the value of the theories may be, however, it is quite probable that the development of the rules on the subject has been greatly influenced by arguments such as the theory of extraterritoriality and even more so perhaps that of the "representative character", the extent of the privileges to be granted having been determined in the light of the ideas of bygone centuries and social conditions which no longer exist.

5. The functional or "demands of the office" theory belongs to a more recent epoch and is more in line with modern conceptions of the basis of legal institutions. But, if there is a temptation to apply it, it must be remembered that the need for the agent to be vested with a large measure of prestige and dignity in order properly to perform his task is also a major element in the demands of his office.

26. That being so, any change in the commonly accepted rules is hardly to be recommended in the absence of serious reasons. The General Assembly resolution, too, refers to the Assembly's desire for "the common observance by all Governments of existing principles and rules and recognized practices concerning diplomatic intercourse and immunities, particularly in regard to the treatment of diplomatic representatives of foreign States",

27. On most aspects of the subject there is a consensus of opinion such as is not always to be encountered, and circumstances are thus most propitious for codification.

28. There are, however, some points on which opinions differ. On those points account should be taken of what may be regarded, under the new social conditions, as essential in the interests of the office as such. This would allow its fair share of influence to the restrictive tendency referred to in paragraph 22.

IV. Comments on various articles of the draft

29. Comments have been made only on articles representing something new, or where a definite stand has been taken on a controversial point.

30. As for the terms employed, their meaning is generally clear from the text itself. The only expression requiring a few words of explanation is the term "diplomatic agent". This has been chosen as a neutral designation for the official representing his State in another country in diplomatic relations between the two. It refers primarily to the head of the mission.

Chapter I

Diplomatic intercourse in general

31. The Rapporteur took the view that in any codification of the matter, the Regulation of the Congresses of Vienna and Aix-la-Chapelle concerning precedence among diplomatic agents must be included, with one modification which will be commented on under article 7, and with the addition of some general rules mainly relating to the selection of the staff of diplomatic missions.

Article 1

32. This article serves as an introduction to the subject and states the generally accepted rules that the establishment of a diplomatic mission presupposes the consent of the receiving State. Reference is frequently made to a right of legation, which is supposed to give the State general authority in principle to establish a mission with another State. It is generally agreed, however, that such a right does not exist in the sense that the other State is bound to accept the establishment of the mission. The phrase "possessing the right of legation" is used in the article in the sense that a State is qualified to institute diplomatic relations with another State, a right possessed by any independent State.

Article 3

33. The rule stated in the second paragraph of this article has been conceived with the object of avoiding any misunderstanding as to whether a particular person is really an official of a mission.

Article 5

34. The Rapporteur thought it advisable, in view of recent incidents, to include the rules appearing in this article. They are based on the fact that the consent of the receiving State is required for a mission to be established.

Article 6 - 11

articles 6 - 11 the rules laid down in the Regulation of the Congresses of Vienna and Aix-la-Chapelle are reproduced unchanged, except as regards article 7.

The Congress of Vienna, in 1815, established three different classes of diplomatic characters: the first, that of Ambassadors, Legates or Nuncios, and that of Envoys, Ministers or other persons accredited to Heads of State; and the third, that of Chargés d'Affaires, accredited to Ministers for Foreign Affairs. The Congress of Aix-la-Chapelle in 1818, instituted a fourth class, that of Resident Ministers, coming in order of precedence between the second and third classes established by the Congress of Vienna.

The advisability of revising the classification of diplomatic agents as established by those Congresses had already been discussed during the work of the Commission undertaken by the League of Nations.

The Committee of Experts for the Progressive Codification of International Law entrusted the study of the question to a sub-committee with Mr. Guerrero, Judge of the International Court of Justice, as Rapporteur.

The findings of the Sub-Committee, after studying the question, were that the classifications of Vienna and Aix-la-Chapelle were mainly inspired by the desire "to ensure a higher rank for the representatives of the great Powers", and that the so-called representative character, attributed under article 2 of the Regulation to ambassadors, legates or nuncios only, had ceased to exist at that time and a fortiori at the time of the study, and that the "sovereign no longer a crowned head placed at the apex of supreme power".

It found the credentials by which ambassadors and ministers plenipotentiary were accredited to be absolutely identical, there being no longer any reason, therefore, to place ambassadors in a higher category than ministers.

The Sub-Committee accordingly proposed that "ambassadors, legates or nuncios should be included in the same class and designation with envoys or ministers plenipotentiary, including resident ministers".

Chargés d'affaires, on the other hand, should, in the Sub-Committee's opinion, "continue to form a class apart because their credentials are given by the Minister for Foreign Affairs and are addressed to Ministers for Foreign Affairs".

42. Since adoption of the term "minister plenipotentiary" might appear to be somewhat derogatory to existing ambassadors, the Sub-Committee proposed the title of "ambassador" to designate the representatives of the first three categories of the regulation of Vienna as completed by the Aix-la-Chapelle Protocol.

43. After governments had given their views on the question, the Committee of Experts declared that "for the moment it does not feel it can declare an international regulation on this subject matter to be realisable".

44. In view of subsequent developments and, in particular, the very wide extension since the Second World War of the practice of designating representatives of States abroad as ambassadors, the reform contemplated in the time of the League now seems justified.

Chapter II

Diplomatic privileges and immunities

A. Franchise de l'hôtel: protection of archives and correspondence

Article 12

45. Though the exceptions to the franchise have perhaps not so far been formulated, it seems clear to the Rapporteur that the receiving State cannot tolerate the commission of the gravest crimes on the premises of a diplomatic mission or allow those premises to become a danger to the public. In his opinion, the officers of the receiving State should have the right, under the conditions stated, to enter the premises.

Article 16

46. The exception to the rule enunciated in paragraph 2 of this article can quite clearly be subject to abuse. On the other hand, it seems reasonable for the receiving State to be able to take steps against abuse of freedom of correspondence

privileges and immunities attaching to the person and property of the
diplomatic agent

Article 19

Third States

A claim has been made that the diplomatic agent should enjoy all his privileges and immunities when on the territory of a third State in the circumstances indicated in the text of this Article. This claim has no support in law, however, and it seems excessive that a third State which is only indirectly implicated in the diplomatic relations between the States directly concerned should on that score be bound to accord the agent, for example, immunity from jurisdiction. While it is admittedly in the interest of the whole family of nations to facilitate diplomatic intercourse in general between States, it would seem to be enough to include a reminder that a third State in which a diplomatic agent of another State is in transit or making a temporary stop should afford him its protection and to rely for the rest on the courtesy with which a diplomatic agent will no doubt be treated.

Article 20

Immunity from jurisdiction

Regarding immunity from jurisdiction, all are agreed on granting the diplomatic agent immunity from criminal jurisdiction.

In the matter of civil jurisdiction, there is a marked tendency to restrict immunity as far as the two cases mentioned in the text are concerned.

It has even been suggested that immunity should not be granted in the case of proceedings concerning transactions undertaken in the pursuit of commercial activities, it being mentioned that immunity is not granted with such exceptions in view. Against this it is argued, quite rightly, it would appear, that immunity is granted to obviate the loss in prestige and dignity that a diplomatic agent might suffer if he could be summoned before a court and that this militates against any restriction such as that suggested. The remedy for such difficulties would be to draw the attention of the government represented by the agent in question or, possibly, to ask for the recall of the agent in question. There is, however, in the Rapporteur's opinion, another relevant circumstance that may affect the extension of immunity to civil causes. The implications of changes in nationality completely according to whether there is a competent court

elsewhere or not. If such a court exists, a judgment can be obtained in settlement of a dispute. If, however, there is no other court, there is no means of settling the dispute.

52. In the two cases excepted in the proposed text, immunity from jurisdiction would mean that there would be no competent court. This justifies the exceptions to immunity from civil jurisdiction.

53. The question arises, however, whether the same consideration should not serve as basis for another exception. When the diplomatic agent is a national of the receiving State there will not usually be any competent civil court in another country. It is on the other hand, inadmissible that there should be no means of settling any legal dispute involving him. The receiving State's interest in ensuring the possibility of reaching a judicial decision would seem to prevail over the sending State's interest in having its agent vested with full immunity, all the more so as, from the standpoint of the community of nations, the practice of appointing nationals of receiving States as diplomatic agents, which at present is extremely rare, does not seem one to be encouraged.

54. In view of the foregoing considerations, the Rapporteur proposes adopting the exceptions indicated in the text to the immunity from civil jurisdiction of foreign diplomatic agents and refusing such immunity entirely to agents who are nationals of the receiving State.

Article 22

Exemption from taxation

55. Exemption from taxation is generally regarded as an immunity dictated by courtesy. National legislations differ greatly on the question. The rule proposed by the Rapporteur seems to constitute a reasonable minimum, the States concerned being at liberty to agree on more comprehensive exemption.

Article 23

Exemption from Customs duties and inspection

56. The observations made in connexion with article 22 apply equally to this article.

Article 24

Persons entitled to privileges and immunities

57. (paragraph 1) The question of what persons are entitled to diplomatic privileges and immunities has given rise to controversy.

8. It has been suggested that only members of the diplomatic staff of the mission, and their families, as opposed to the administrative and service staff, should enjoy such privileges. All the officials of the mission are, however, necessary for the performance of its task and it would sometimes be difficult to distinguish between the various categories of officials. It seems more reasonable to treat the whole mission from abroad as a unit and to grant privileges at least to all those members of the mission staff who are foreign subjects.
9. (paragraph 2) When the head of the mission is a national of the receiving State, the latter is clearly at liberty to make its agr  ation conditional on renunciation of whatever immunities it sees fit.
10. Regarding staff members who are nationals of the receiving State, practice gives little guidance. Obviously, one might consider placing even greater restrictions on privileges in their case. Since they are part of the society of the country in which they work, and it must be exceptional for them to hold appointments, other than administrative or service ones, it might appear natural to accord them only the privileges and immunities strictly necessary for the performance of their duties, i.e. in the exercise of their functions and as regards their official acts. Nevertheless, to safeguard the untroubled and even flow of the mission's work, it is desirable for them to enjoy the full protection accorded to foreign staff with the modifications implied in article 20, paragraph 2, and article 22, paragraph 2. Paragraph 2 of article 24 has been drafted with this in mind.
61. (paragraphs 3 and 4) All are agreed in acknowledging that the benefit of privileges and immunities must be extended to the members of the families of entitled persons living under the same roof.
62. A much more debatable question is that of how to treat the private servants, chauffeurs, for instance, of entitled persons. On the one hand, it may be claimed that the services they perform, having no direct bearing on diplomatic intercourse, require no special protection. On the other hand, their services facilitate the task of the members of the mission. They have often been brought out with the mission and, by virtue of that fact, their employer and the head of the mission have incurred responsibility for them. Legal action against them can also have repercussions on their employer or the mission. Practice rather supports the idea that they should enjoy the privileges of their employers and the Rapporteur has come to a similar conclusion. The grounds for including private servants

apply rather to those who are foreign subjects. As for servants who are nationals of the receiving State and generally recruited locally, it seems excessive to accord them special status except as regards their wages, which should be exempted from taxation. Indeed, in the practice of States there is a strong tendency to exclude them from the benefit of other diplomatic privileges. Paragraphs 3 and 4 have been drawn up in the light of these considerations.

63. (paragraph 5) Regarding this paragraph, see article 3 and the comment on that article.

CHAPTER III

Duties of a diplomatic agent

64. Possession of diplomatic immunity does not mean that the privileged person is above the laws and regulations of the receiving State. On the contrary, his privileges have their counterpart in a moral duty at least to comply with those laws and regulations, as far as this can be done without impeding the performance of his duties, and generally to behave in a manner consistent with the internal order of the State. The Rapporteur felt it desirable to include a reminder of this duty and of the penalties which may attend failure to perform it.