

Document:-
A/CN.4/L.317

Draft articles on jurisdictional immunities of States and their property. Texts adopted by the Drafting Committee: articles 1 and 6 and titles of parts 1 and 2 of the draft - reproduced in document A/CN.4/SR.1634, para.43

Topic:
Jurisdictional immunities of States and their property

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

courier. From a tactical point of view, however, he feared that the use of the expressions "official courier" and "official bag" might draw the attention of Governments to the reality of international life. For besides diplomatic and consular relations, there was a whole network of para-diplomatic and para-consular relations, so that Governments might have a reaction of anxiety at the continually increasing number of diplomatic couriers and diplomatic bags. Enormous amounts of correspondence left ministries of foreign affairs every day by diplomatic bag, and it was hardly surprising that that situation, even if it did not worry ambassadors, was a matter of concern to customs personnel and those responsible for territorial security or anti-terrorist brigades. He was therefore in favour of qualifying both the courier and the bag as "diplomatic" in the articles to be drafted by the Commission. At the same time, comparisons could be made with the existing conventions in order to prepare Governments for a possible extension in the draft articles.

37. If the draft articles became a convention, its links with the four existing conventions would have to be specified, which would be sure to raise delicate problems. It was regrettable that the 1969 Convention on Special Missions and the 1975 Vienna Convention had obtained few ratifications, and that the 1963 Convention had obtained fewer than the 1961 Vienna Convention. That was one more reason to take the precaution of stating, not that the Commission would confine its work to the diplomatic courier and the diplomatic bag, but that it would start with those two concepts, which were the most important and the most certain, though it might subsequently extend them.

38. In general, he approved of the plan proposed by the Special Rapporteur for the draft articles, but he hoped that the study of the general provisions, like that of the miscellaneous provisions, would only take place after all the specific questions had been examined. As some Governments still doubted the advisability of drafting articles on the subject, it was important to convince them of it before proceeding to the general and miscellaneous provisions.

39. With regard to the many specific questions listed in the plan proposed by the Special Rapporteur, he only wondered whether the Commission was prepared to consider the following question: should it be accepted that diplomatic bags, whether accompanied or not, could be examined by equipment which revealed their contents by means of X-rays, or even by means of rays capable of fogging any suspicious photographic film they might contain? It was well known that the diplomatic bag was sometimes used to carry espionage material.

40. While it was true that principles should be declared, as the Special Rapporteur had intimated, the content of the articles envisaged by the Commission should nevertheless be specified first. A principle as basic as that of non-discrimination was not always applied in practice. If that principle was declared,

should it be deduced that a State could claim that it had been subjected to a discriminatory measure if its diplomatic bag was required to be opened, when no similar case had occurred for many years? Was there discrimination if four ambassadors from countries situated in a troubled region of the world were called upon by the State to which they were accredited to open their diplomatic bags, whereas about a hundred other ambassadors accredited to the same State were not so called upon? Only when the content of the draft articles had been specified would it be possible to formulate such a general principle as that of non-discrimination.

41. Finally, he pointed out that the Third United Nations Conference on the Law of the Sea had been seized of a proposal derogating from the principle of freedom of the high seas in the case of traffic in narcotic drugs.⁷ That issue was not without importance for the topic under consideration, since events had shown that the diplomatic services of poor countries could even engage in drug trafficking to finance their secret services.

Jurisdictional immunities of States and their property (continued)* (A/CN.4/331 and Add.1, A/CN.4/L.317)

[Item 5 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE

42. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the texts adopted by the Committee of draft articles 1 and 6, which had been referred to it for consideration.

43. The proposed texts of those articles (A/CN.4/L.317) read:

Article 1. Scope of the present articles

The present articles apply to questions relating to the immunity of one State and its property from the jurisdiction of another State.

Article 6. State immunity

1. A State is immune from the jurisdiction of another State in accordance with the provisions of the present articles.

2. Effect shall be given to State immunity in accordance with the provisions of the present articles.

ARTICLE 1⁸ (Scope of the present articles)

44. Mr. VEROSTA (Chairman of the Drafting

* Resumed from the 1626th meeting.

⁷ "Informal Composite Negotiating Text/Revision 2", drawn up in April 1980 by the President of the Third United Nations Conference on the Law of the Sea and by the Chairmen of the main committees of the Conference (A/CONF.62/WP.10/Rev.2 and Corr.2-5).

⁸ For consideration of the text initially submitted by the Special Rapporteur, see 1622nd and 1623rd meetings, 1624th meeting, paras. 1-27, 1625th and 1626th meetings.