

Document:-
A/CN.4/L.327/Add.1

Texts proposed by the Drafting Committee: revised texts of article 2, para. 1, subpara. (c), and articles 7, 9 and 17 - reproduced in A/CN.4/SR.1692, paras. 1-8

Topic:
Treaties concluded between States and international organizations or between two or more international organizations

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>)*

30. Referring to draft article 3, he wondered whether it was advisable to include substantive rules in a definitions article. For example, in subparagraph 1 (1), the words “and is accorded by the receiving State or the transit State facilities, privileges, and immunities in the performance of his official functions” gave the impression that situations in which such facilities, privileges and immunities were not accorded would not be covered by the definition. Similar comments could be made about subparagraphs (2) and (3) and, to some extent, subparagraph (7). Also, the wording of subparagraph (7) appeared to have no precedent. Although the relevant multilateral conventions on diplomatic law contained provisions concerning a visa where such was necessary, the effect of those provisions was not the same as that of subparagraph 1 (7), which required the consent of the transit State.

31. A further point about subparagraph 1 (1) was that, while it was certainly possible to use the diplomatic courier for the transmission of official oral messages, in such circumstances the diplomatic courier would himself constitute the diplomatic bag, in which case the words referring to the transmission of an official oral message would appear to be inconsistent with some of the earlier wording of that subparagraph.

32. In subparagraph 1 (3), it seemed a little strange to apply the words “in the performance of its official function” to the diplomatic bag. Moreover, some clarification was needed as to whether the words “dispatched through diplomatic courier or the captain of a ship or a commercial aircraft or sent by post, overland shipment or air freight” were meant to refer to an unaccompanied diplomatic bag or to a bag carried by the captain of a ship or aircraft.

33. With regard to draft article 6, subparagraph 2 (b), wording similar to that had admittedly been used in the Convention on Special Missions, but he doubted whether it would have any point in regard to the present topic, since the agreements it contemplated were essentially bilateral, not multilateral; it was difficult therefore to imagine their affecting the enjoyment of the rights or the performance of the obligations of third States.

34. He observed, lastly, that the use of the words “may apply” in draft article 3, paragraph 2, called for clarification.

35. Mr. ALDRICH said that the Special Rapporteur’s oral presentation had done much to alleviate his uncertainty as to why the General Assembly and the Commission had considered the topic of such importance, given the body of law which already existed. However, while there were advantages in having one set of rules to cover all official communications, it might not be possible to achieve that result except by diminishing the protection accorded to such communications by existing law. Moreover, it remained to be seen whether Governments would agree that the privileges and immunities it currently

accorded to official communications with diplomatic missions should be extended to communications with consular posts and other missions.

36. He had reservations about the exclusion from the scope of the topic, under draft article 2, of couriers and bags used for official purposes by international organizations. While he realized that the inclusion of international organizations within the scope of the draft articles might present some difficulties, the extent of those difficulties should be ascertained before any firm decision was taken on the subject.

37. The use of the expression “third States” in draft article 6, subparagraph 2 (b) was not advisable, since it was a defined term; it would be preferable to use a term such as “other States”.

38. Mr. USHAKOV said that he wholeheartedly approved the contents of the report, which set forth clearly certain basic data. The Special Rapporteur had succeeded in showing that under contemporary international law the various types of courier used by the sending State and its missions abroad had identical status, and that a global approach could therefore be adopted in defining that status.

39. The report also showed that, with one exception, the consular bag, the legal status of the diplomatic courier was uniform. Under article 35 of the 1963 Vienna Convention, however, consular posts were authorized to use the diplomatic courier and bag. The Commission should therefore seek to prepare a draft that was applicable to all types of courier and bag.

40. The proposed article 1 was the logical consequence of the Special Rapporteur’s analysis. It suffered from a certain ambiguity, however, in that paragraph 1 provided that the draft would apply to “communications of States . . . employing diplomatic couriers and diplomatic bags”, while paragraph 2 stipulated that it also applied to communications with certain missions enumerated. That formulation seemed to indicate that the expression “diplomatic courier” did not cover all couriers and that different articles should be drafted for the various categories—which seemed to contradict the idea of a global approach. The notion of the diplomatic courier itself should therefore be defined at the beginning of the draft articles, so as to indicate clearly what its scope was.

The meeting rose at 1 p.m.

1692nd MEETING

Thursday, 16 July 1981 at 10.05 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Dadzie, Mr. Díaz González, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr.

Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Ushakov, Mr. Verosta, Mr. Yankov.

Question of treaties concluded between States and international organizations or between two or more international organizations (concluded)* (A/CN.4/339 and Add.1-7, A/CN.4/341 and Add.1, A/CN.4/327/Add.1 and 2)

[Item 3 of the agenda]

DRAFT ARTICLES PROPOSED BY THE DRAFTING COMMITTEE (concluded)

ARTICLE 2, SUBPARA. 1(c), AND ARTICLES 7, 9 AND 17 (concluded)

1. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that, in response to the request made by the Commission at its 1682nd meeting, the Drafting Committee had considered a number of drafting suggestions made by a member of the Commission.

2. On the basis of those suggestions, the Committee had made a number of drafting changes (see A/CN.4/L.327/Add.1) to the four articles under consideration. In addition to ensuring greater conformity with the wording of articles adopted subsequently, the changes brought the texts concerned closer to the text of the corresponding articles of the Vienna Convention.¹

3. In article 2, subparagraph 1 (c),² the words “between one or more States and one or more international organizations” had been deleted, as had the word “such” before the words “a treaty” in the latter part of the subparagraph.

4. In article 7, subparagraph 2 (b),³ the expression “international conference” had been qualified by the addition of the words “of States in which international organizations participate”, as in article 9. In addition, the words “one or more” before the words “States” and “international organizations” had been deleted.

5. In subparagraph 2 (c) of the same article, the words “between one or more States and” had been replaced by “within”, in view of the adoption of the new article 5.

6. Finally, in subparagraphs 2 (d) and (e) of article 7, the words “one or more” before “States” had been replaced by “the accrediting”.

7. In article 9, paragraph 2,⁴ the words “one or more” had been deleted.

8. In article 17, paragraph 1,⁵ the words “or, as the case may be, the other contracting organizations and the contracting States” had been inserted before the words “so agree”.

Article 2, subpara. 1 (c), and articles 7, 9 and 17, as amended, were adopted.

ARTICLE 2, SUBPARA. 1 (d), ARTICLE 5, AND ARTICLES 19 TO 26 (A/CN.4/L.327/Add.2)

9. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the general considerations he had explained at the beginning of the discussion of the articles proposed by the Committee (see 1681st meeting, paras. 1-4) were also of relevance to the articles under consideration.

ARTICLE 5⁶ (Treaties constituting international organizations and treaties adopted within an international organization)

10. Mr. DÍAZ GONZÁLEZ (Chairman of the Drafting Committee) said that the Committee proposed the following text for article 5:

Article 5. Treaties constituting international organizations and treaties adopted within an international organization

The present articles apply to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.

11. The title and text of the draft article reproduced those of article 5 of the Vienna Convention, with the exception of the words “Convention applies”, which had been replaced by the words “articles apply”.

12. During the first reading of the draft, the Commission had not considered the inclusion of such a provision to be necessary in regard to treaties to which international organizations were parties. However, at the present stage in the Commission’s work, and for the sake of completeness, the Committee had concluded that it might be useful to insert such a provision, even though the eventualities to which the article referred might not, in practice, occur with any great frequency. The possibility should not be altogether excluded of an international organization being a party to a treaty which was the constituent instrument of another international organization, or the possibility of an international organization being a party to a treaty adopted within an international organization.

Article 5 was adopted.

ARTICLE 2 (Use of terms), subpara. 1 (d) (“reservation”)

* Resumed from the 1682nd meeting.

¹ See 1644th meeting, footnote 3.

² For text, see 1681st meeting, para. 6.

³ *Idem*, para. 21.

⁴ *Idem*, para. 24.

⁵ *Idem*, para. 54.

⁶ See 1646th meeting, paras. 41-44.