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INTERNATIONAL LAW-JURISDICTIONAL IMMUNITY OF UNITED NATIONS EMPLOYEES-THE GUBITCHEV CASE

Melvin J. Spencer S.Ed.
University of Michigan Law School

INTERNATIONAL LAW—JURISDICTIONAL IMMUNITY OF UNITED NATIONS EMPLOYEES—THE GUBITCHEV CASE—Diplomatic officers are immune from the criminal jurisdiction of the receiving state under well-recognized principles of customary international law, which principles are said to be a part of the law of the United States.[1] As international organizations developed, certain privileges and immunities were given to their personnel by treaties or agreements and it appeared that by common consent of the family of nations their right to immunities might also come to be recognized as a principle of the law of nations.[2] As yet the United States has not recognized such a principle[3] and jurisdictional immunity here must still be provided for in the charter of the international organization or other agreement.

The *Gubitchev* case raised problems both of diplomatic immunity and of the related immunities of United Nations personnel in an unusual way. Gubitchev, a Russian diplomat, was appointed Third Secretary of the Ministry of Foreign Affairs of the Soviet Union, and was sent to the United States in 1946 on a diplomatic passport stamped with a diplomatic visa to accept a position in the United Nations Secretariat. He did not come as an emissary to the United States, was never attached to the Soviet embassy, and never performed diplomatic functions. After his appointment in the Secretariat, Gubitchev was listed by the State Department pursuant to the International Organizations Immunities Act,[4] but his name was never submitted for inclusion on the diplomatic list under the Headquarters Agreement.[5] He was arrested March 4, 1949 for violation of the espionage laws and convicted after the court had twice considered and rejected the claims of diplomatic immunity made by Gubitchev and by the Russian Government on his behalf.[6] The court held that none of the applicable agreements between the United States and the United Nations granted

[1] 4 HACKWORTH, DIGEST OF INTERNATIONAL LAW 515-532 (1942); Paquete Habana, 175 U.S. 677, 20 S.Ct. 290 (1900).

[2] See generally HILL, IMMUNITIES AND PRIVILEGES OF INTERNATIONAL OFFICIALS (1947); Preuss, "Diplomatic Privileges and Immunities of International Agents," 25 AM. J. INT. L. 694 (1931).

[3] Principal case, 84 F. Supp. 472 at 476 (1949).

[4] 59 Stat. L. 669 (1945), 22 U.S.C. (1946) §288; Exec. Order No. 9698, 11 Fed. Reg. 1809 (1946).

[5] P.L. 357, 80th Cong., 1st sess., 61 Stat. L. 756 (1947).

[6] See N.Y. TIMES, March 8, 1950, p. 1:6. Gubitchev's sentence was suspended on condition that he waive his right to appeal from the conviction, and that he be deported immediately. MICH. DAILY, March 10, 1950, p. 1:2. Cf. news item in PRAVDA, March 10, 1950: "[B]ecause of the collapse of the unfounded charges advanced against Gubitchev, the court recommended that Gubitchev leave for USSR within 2 weeks." 5 SOV. PRESS TRANS., April 1, 1950, p. 223.

immunity and that the "dispositive fact" was the certification of the State Department that Gubitchev did not enjoy diplomatic immunity. *United States v. Coplon and Gubitchev*, (D.C. N.Y. 1949) 84 F. Supp. 472, 88 F. Supp. 915 (1950).

In his opinion on the first order denying immunity, Judge Rifkind considered the United Nations Charter,[7] the International Organizations Immunities Act and the Headquarters Agreement and found that none of them conferred immunity on Gubitchev, a conclusion which the defendant later conceded. On re-argument before Judge Ryan the defendant contended that his "diplomatic" status and mission entitled him to diplomatic immunity under the law of nations; moreover, that the United States had guaranteed his diplomatic immunity by granting him a diplomatic visa, and that the determination of the State Department to the contrary did not bind the court in this instance.[8] This comment will be limited to a brief discussion of these issues.

I. *Diplomatic Immunity of Persons on Non-Diplomatic Missions*

Diplomatic immunity is a limited exception to the general rule of territorial sovereignty and jurisdiction of states. It does not result from the fiction of exterritoriality, nor primarily from the courtesy extended to a representative of another sovereign state. Diplomatic immunity is based simply on the necessity that envoys be independent of the jurisdiction of the receiving state in order to fulfill their duties freely.[9] It has even been suggested that, "If the representative is called upon by his own sovereign to perform functions other than those of maintaining relations with the sovereign to whom he is accredited, the purpose with which the latter acquiesces in his non-subjection to the local jurisdiction ceases to operate in respect of those functions."[10] As a matter of general international practice, receiving states effectively limit the number of persons possessed of diplomatic immunities to those

[7] Art. 105, 59 Stat. L. 1031 (1945).

[8] Brief for Defendant, Crim. No. 129-158, p. 7.

[9] See Harvard Research on International Law, "Diplomatic Privileges and Immunities," 26 AM. J. INT. L. 19, 26 (1932 Supp.); OGDON, BASES OF DIPLOMATIC IMMUNITY, 166-194 (1936); Preuss, "Capacity for Legation and the Theoretical Basis of Diplomatic Immunities," 10 N.Y. Univ. L.Q. 170, 181-2 (1932).

[10] Hurst, "Diplomatic Immunities—Modern Developments," 10 BRIT. Y.B. INT. L. 1, 4 (1929). But see 2 HYDE, INTERNATIONAL LAW, 2d rev. ed., 1231 (1945), to the effect that American diplomatic officers burdened with non-diplomatic duties do not lose their diplomatic character. To terminate the immunities of an accredited diplomat, a state must give notice and a reasonable time for his departure.

whose duties require this independence by requiring acceptance of the envoy as a condition to his continued enjoyment of diplomatic status. They may also condition the grant of immunity on the publication of the envoy's name in a diplomatic list.[11] In the absence of special treaty provisions or other special circumstances, a non-accredited foreign official may not claim diplomatic immunity unless he is engaged in recognized diplomatic functions.[12]

Strictly speaking, the officers of the United Nations and the representatives of its member nations are not "diplomats" and perform no diplomatic functions.[13] The United States has, therefore, refused to recognize any principle of the law of nations which entitles them to jurisdictional immunity.[14] Our government has implemented its obligation as a signatory to the Charter of the United Nations by conferring immunity on representatives, officials and employees for acts done in their official capacity,[15] and immunity equal to diplomatic immunity on certain resident representatives of member nations.[16] The United Nations apparently does not claim or want more extensive immunities.[17] Even assuming, as the defendant claimed, that dignitaries of international organizations possessed diplomatic immunity under cus-

[11] Harvard Research on International Law, "Diplomatic Privileges and Immunities," 26 AM. J. INT. L. 19, 76-77 (1932 Supp.).

[12] In Engelke v. Musmann, [1928] A.C. (H.L.) 433, a consular secretary was accorded immunity because the British Foreign Office certified that he was working in a diplomatic capacity. See 2 HYDE, INTERNATIONAL LAW, 2d rev. ed., 1230-1234 (1945). Cf. Harvard Research on International Law, "Diplomatic Privileges and Immunities," 26 AM. J. INT. L. 43-45 (1932 Supp.) which does not attempt a precise definition of diplomatic functions and indicates that the distinction is more formal than functional. Military, naval, and commercial attachés are not actually diplomatic officers but perform diplomatic functions and are entitled to immunity on this ground. See 4 HACKWORTH, DIGEST OF INTERNATIONAL LAW 401-405 (1942).

[13] Harvard Research on International Law, "Diplomatic Privileges and Immunities," 26 AM. J. INT. L. 19, 43 (1932 Supp.); Kunz, "Privileges and Immunities of International Organizations," 41 AM. J. INT. L. 828, 841 (1947); 1 OPPENHEIM-LAUTERPACHT, INTERNATIONAL LAW, 7th ed., 703-705, 734-740 (1948). But cf. "Havana Convention on Diplomatic Officers," 22 AM. J. INT. L. 142 (1928 Supp.).

[14] 4 HACKWORTH, DIGEST OF INTERNATIONAL LAW 422-3 (1942). Although the opinion was limited to "officials" or "agents," Judge Rifkind in the principal case construed it to include "representatives." 84 F. Supp. 472 at 476.

[15] International Organizations Immunities Act, 59 Stat. L. 669 at §7 (b). Gubitchev's act of espionage was obviously not performed in his official capacity, or he would have been entitled to the protection of the act.

[16] Headquarters Agreement, 61 Stat. L. 756 at §15.

[17] See United Nations Charter, Art. 105: "Representatives . . . and officials . . . shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions. . . ." Both Mr. Lie and Mr. Hov stated that Gubitchev was not entitled to immunity. N.Y. TIMES, March 8, 1949, p. 3:3; March 13, 1949, p. 1:6.

tomary international law, it might be argued that the two agreements under which immunity is granted simply restate existing principles;[18] or, if there is a conflict, that the explicit provisions of the agreements prevail in United States courts.[19] Furthermore, the right to claim or waive immunity belongs to the organization itself, not to the officer or employee.[20]

The claim of Gubitchev was anomalous. He claimed diplomatic status and immunity because of his original appointment by the U.S.S.R.,[21] and explained his non-accreditation by the United States and his non-association with a diplomatic mission by the fact that he was sent to the United Nations, not to our government. But diplomatic immunity of non-accredited persons is the result of functional necessity, and Gubitchev claimed neither diplomatic nor international functions which would warrant his being granted immunity, even as a courtesy, in the absence of applicable treaty provisions. In essence he claimed that Russia could create diplomatic privileges and immunities in the United States simply by characterizing Gubitchev a "diplomat" and sending him to work in the United Nations, regardless of his actual duties. Neither the United Nations nor the United States recognizes such a broad and potentially dangerous power in member nations, all of whom agreed to the charter limitation to "such privileges and immunities as are necessary for the independent exercise of their function. . . ."[22]

[18] The "Modus Vivendi" between the League of Nations and Switzerland provided for immunity from civil and penal jurisdiction for top officials and immunity for official acts for officials of the second category. Art. VII (1926), unofficial translation in HILL, IMMUNITIES AND PRIVILEGES OF INTERNATIONAL OFFICIALS 138 (1947). See 46 MICH L. REV. 381 (1948).

[19] The Over the Top, (D. C. Conn. 1925) 5 F (2d) 838, 842; 1 OPPENHEIM-LAUTERPACHT, INTERNATIONAL LAW, 7th ed., 40, (1948). Treaties are construed if possible to conform to principles of international law. 5 HACKWORTH, DIGEST OF INTERNATIONAL LAW 230-1 (1942).

[20] City of New Rochelle v. Page-Sharp, 91 N.Y.S. (2d) 290 (1949), 44 AM. J. INT. L. 418 (1950). See International Organizations Immunities Act, 59 Stat. L. 669 at §7 (b); Convention on Privileges and Immunities of United Nations, §§14, 20 (1946). The United States has not acceded to the Convention, except as referred to in the Headquarters Agreement, 61 Stat. L. 756 at §26.

[21] Principal case, 88 F. Supp. 915 at 917. Gubitchev claimed that retention of his position in the Russian diplomatic service was not inconsistent with acceptance of employment on United Nations staff. A United Nations spokesman stated that this dual status was possible. N.Y. TIMES, DEC. 6, 1949, p. 7:2.

[22] United Nations Charter, Art. 105 (2), 59 Stat. L. 1031 (1945).

II. *Effect of Grant of Diplomatic Visa on Right to Diplomatic Immunity*

Probably the most substantial argument advanced by the defendant on re-argument concerned the diplomatic visa granted to Gubitchev by the American embassy in Russia. It was contended that Gubitchev's diplomatic passport proved his diplomatic character and gave notice thereof to the United States, and that our government had guaranteed recognition here of that status and immunity by granting him the visa.[23] Judge Ryan held, however, that the visa did not of itself constitute a grant of diplomatic immunity, because the Regulations provide for issuance to non-diplomatic persons.[24] The State Department has a practice of extending diplomatic privileges and immunities to some non-diplomatic persons as a matter of courtesy.[25] Quite possibly the Regulations were simply intended to list all persons who might be extended diplomatic immunity either as a courtesy or as a right under international law. In the absence of a declaration of the State Department as to the status of particular individuals the practice provided by the Regulations has little value in determining the effect of a diplomatic visa issued thereunder.

The effect of the diplomatic visa could have been more satisfactorily explained by reference to its significance in customary international law. Passports and visas are primarily travel documents and it is doubtful if they confer any substantive rights, in the absence of special treaty provisions, which are recognized in international law.[26] They merely evidence the identity or status of the bearer. Although in United States practice a diplomatic passport is both a travel document and a certificate of the official identity of the bearer,[27] it is not the source of his status. Obviously his appointment, accreditation, acceptance, and duties give him diplomatic status. The diplomatic passport is at most only prima facie evidence of the diplomatic status of the bearer.

[23] Brief for Defendant, 6-7.

[24] Principal case, 88 F. Supp. 915 at 920. The court relied also on the certification of the State Department. 22 CODE FED. REGS. §40.4 (A) (1949) lists 15 classes of aliens eligible to receive diplomatic visas.

[25] DEPT. OF STATE AIDE–MEMOIRE, April 28, 1949. See the principal case, 88 F. Supp. 915 at 919. See also 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW 452 (1942).

[26] Diplock, "Passports and Protection in International Law," 32 GROT. SOC. TRANS. for 1946, 42 at 58 (1947). Cf. 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW 435-6 (1942).

[27] 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW 452 (1942).

At an earlier period in England passports were issued to non-nationals to show that the bearer had permission to travel in the issuing state. Visas came to be used as convenient substitutes for this kind of passport.[28] They simply permitted and facilitated the travel of the bearer, but did not constitute a grant of special protection. Here again, the right to protection which exists under international law arises from the nationality or status of the individual. As a matter of municipal law, the right to enter a state may be conditioned on the possession of whatever document it pleases, or not conditioned at all.[29] The United States has chosen to facilitate official intercourse through the use of diplomatic visas, but does not in so doing guarantee diplomatic status and immunities to persons receiving diplomatic visas, in the absence of any treaty or agreement. Such immunities result only from the recognition by the State Department of the active diplomatic status of the individual, either through an *agréation*, formal reception of the envoy, or in the case of delegates to the United Nations the special procedure provided in the Headquarters Agreement. The diplomatic visa is simply an endorsement on a diplomatic or equivalent passport authorizing the bearer's entry into the United States as a non-immigrant.[30] It recognizes the authenticity of the passport and in practice it may also be an acknowledgment that the bearer is prima facie entitled to recognition as a diplomat. But the acknowledgment is not conclusive since the diplomatic visa may be cancelled or revoked under certain circumstances.[31] It seems clear that neither diplomatic passports nor diplomatic visas stamped thereon confer in themselves any rights recognized in international law.[32]

[28] Diplock, "Passports and Protection in International Law," 32 GROT. SOC. TRANS. for 1946, 42 at 50 (1947); WHEATON, INTERNATIONAL LAW, §224 footnote (1886 text).

[29] Diplock, "Passports and Protection in International Law," 32 GROT. SOC. TRANS. for 1946, 42 at 57 (1947).

[30] See Immigration Act of 1924 as amended, 43 Stat. L. 154, 8 U.S.C. (1946) §§203, 215.

[31] 22 CODE FED. REGS. §40.14 (1949). Grounds for cancellation are obtaining the visa by fraud, misrepresentation, or in other improper manner, or inadmissibility of the holder into the United States.

[32] See 1 HACKWORTH, DIGEST OF INTERNATIONAL LAW 338-9 (1942). Issuance of diplomatic visas to representatives of an unrecognized government (Russia) were said by the Secretary of State to constitute neither precedent nor recognition of the existing regime in Russia. The State Department has also expressed the opinion that, ". . . [S]uch an official [of the League of Nations] would customarily be given a diplomatic visa on the basis of his diplomatic passport and accorded the courtesies usually extended to holders of such passports. You will appreciate the fact, however, that *no assurance can be given that such a visa would be regarded as entitling the holder to the privileges and immunities of a diplomatic officer. . . .*". 1 FOREIGN RELATIONS OF THE UNITED STATES (1927), p. 414 (1942). (Emphasis added).

III. *Conclusiveness of a Certification by the State Department*

It has become uniform practice for courts in the United States to accept as conclusive the certification of the State Department that an individual enjoys diplomatic status. A practical reason is that, ordinarily, recognition by the State Department is the best evidence of accreditation by our government.[33] Moreover, the judiciary defer to the decisions of the executive branch of the government on political questions. Since the Constitution commits the conduct of foreign affairs to the executive department, diplomatic status is said to be a political question which should be decided exclusively by the executive.[34] Gubitchev argued that neither of these considerations justified the application of the rule of conclusiveness in his case because he did not claim immunity through accreditation to our Government; hence the State Department had no official knowledge or concern about his status. But the State Department conducts our relations with the United Nations, and is in fact directly concerned with the status of foreign personnel under our agreements with the United Nations.[35]

The wisdom of giving conclusive effect to declarations by the State Department of facts peculiarly within its knowledge is unquestionable. But the courts increasingly tend to be bound also by conclusions of law submitted by the State Department, which practice has provoked some criticism.[36] Ordinarily, the conclusion of exemption from juris-

[33] United States v. Liddle, (D.C. Pa. 1808) F.C. 15, 598. In Sullivan v. State of Sao Paulo, (C.C.A. 2d, 1941) 122 F. (2d) 355, the court communicated with the State Department until it elicited a statement that the defendant was entitled to sovereign immunity. The court then deemed that to be at least the best possible evidence. Cf. Musmann v. Engelke, [1928] 1 K.B. 90 at 103.

[34] United States v. Ortega, (C.C.A. Pa. 1825) 27 Fed. Cas. No. 15,971. Letters from the Secretary of State and the testimony of the chief clerk of the department of state, recognizing an assaulted chargé d'affaires as a diplomatic official were there held to answer conclusively arguments of non-immunity. The Court in In re Baiz, 135 U.S. 403, 10 S.Ct. 854 (1890) denied a claim of immunity, giving some significance to the absence of a certificate of the State Department. The Court said that such a certificate would have been enough to entitle the claimant to immunity. See also Carrera v. Carrera, (App. D.C., 1949) 174 F. (2d) 496.

[35] The International Organizations Immunities Act, 59 Stat. L. 669 at §8 requires acceptance by the Secretary of State as a condition precedent to the immunities therein contained. Section 15 of the Headquarters Agreement necessitates agreement among the Secretary-General, the United States, and the member nation concerned as to what resident personnel other than the principal resident representative of a member nation shall be accorded the same immunities as diplomatic envoys.

[36] This tendency has been particularly apparent where the immunities of foreign sovereigns and their property are in issue. See Jessup, "Has the Supreme Court Abdicated One of its Functions?" 40 AM. J. INT. L. 168 (1946); 97 UNIV. PA. L. REV. 79 (1948). But cf. Lyons, "The Conclusiveness of the 'Suggestion' and Certificate of the American State Department," 24 BRIT. Y. B. INT. L. 116 (1947). Mr. Lyons has also described the analogous practice in England; Lyons, "The Conclusiveness of the Foreign Office Certificate," 23 BRIT. Y. B. INT. L. 240 (1946).

diction follows automatically if the certification of immunity by the State Department is accepted, and the court has no alternative but to dismiss the action.[37] In the principal case, however, the State Department certified that Gubitchev did not enjoy diplomatic status. Although the court called this the "dispositive fact," the precise weight which it gave to the certification is not clear. The court considered the arguments of the defendant and refuted them, apparently not content to rely completely on the "dispositive fact." Judicial review in this situation is clearly desirable and probably will not embarrass the executive in its conduct of foreign affairs.[38] Denial by the State Department of a claim to immunity subjects the claimant at least prima facie to the jurisdiction of the court. The court is then free to inquire into the claims without interfering with diplomatic intercourse, because our Government has already decided that the claimant is not a recognized diplomat. Perhaps, in addition, the judiciary can prevent embarrassment to the State Department, if it appears that the State Department overlooked a valid basis for the claim.[39]

An even stronger case for judicial review exists where United Nations personnel are involved. The status of United Nations officials and delegates in the United States is determined exclusively by agreements and statutes.[40] The construction and application of statutes and treaties is ultimately a judicial function, and executive interpretation is highly persuasive but not conclusive.[41] Moreover, the general policy embodied in the pertinent agreements is not subject to unilateral change by the executive department or by the courts;[42] hence it is hard to see how the courts could embarrass the executive by a judicial determination of questions of law arising under the agreements. In the principal case, the first opinion of the court dealt with all the possible

[37] See 1 OPPENHEIM-LAUTERPACHT, INTERNATIONAL LAW, 7th ed., 724-5 (1948).

[38] But see Republic of Mexico v. Hoffman, 324 U.S. 30, 65 S.Ct. 530 (1944).

[39] In the case of Wolf von Igel [FOREIGN RELATIONS OF THE UNITED STATES 807 at 810 (1916 Supp.)], Secretary of State Lansing intimated strongly that diplomatic immunity might not protect von Igel because of the gravity of the crimes charged. Authorities seem unanimous to the contrary. 2 HYDE, INTERNATIONAL LAW, 2d rev. ed., 1266-7 (1945); HERSEY, INTERNATIONAL PUBLIC LAW 288 (1912); 4 HACKWORTH, DIGEST OF INTERNATIONAL LAW 515-527 (1942); 4 MOORE, INTERNATIONAL LAW DIGEST 631-635 (1906).

[40] The United States refuses to recognize any right of immunity existing under customary international law. Principal case, 84 F. Supp. 472 at 476 (1949).

[41] Charlton v. Kelly, Sheriff, 229 U.S. 447 at 468, 33 S.Ct. 945 (1913); Sullivan v. Kidd, 254 U.S. 433 at 442, 41 S.Ct. 158 (1921); 2 HYDE, INTERNATIONAL LAW, 2d rev. ed., 1484 (1945). Cf. 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW 48-9 (1942). The Headquarters Agreement on approval by Congress has the full legal effect of a treaty. 15 DEPT. STATE BULL. 1068 (1946).

[42] See 5 HACKWORTH, DIGEST OF INTERNATIONAL LAW 268-269 (1942).

statutory sources of immunity. Similar cases, however, categorically approve the rule of conclusiveness, although they generally cite the applicable agreement and take notice that in fact the person claiming immunity is covered thereby.[43]

This tendency to give conclusive effect to State Department decisions is not wholly justified by the terms of the Headquarters Agreement. Section 7(c) vests jurisdiction in federal, state, and local courts over acts done in the Headquarters District, except as otherwise provided in the agreement. Section 13(b)(1) contemplates deportation proceedings which may be instituted with the approval of the Secretary of State. On the other hand, the agreement provides for settlement of disputes between the United States and the United Nations concerning the construction or application of the agreement "by negotiation or other agreed mode of settlement," by arbitration, or by advisory opinion of the International Court of Justice, which is then made binding in the arbitration. This provision, however, does not touch disputes between the United States and other member nations and had no application to the principal case. None of the provisions of the Agreement necessitate the abdication of judicial functions by the courts.

IV. *Conclusion*

The political consequences of the *Gubitchev* case have overshadowed the problems of international and municipal law that it presented. Congressional apprehension of further security leaks in the State Department has resulted in renewed accusations and investigations, which have weakened public confidence in our foreign policy and in the people who are responsible for its execution. Secretary of State Acheson was accused of "bungling" the affair because he had Gubitchev's sentence suspended.[44] The case provided excellent propaganda for the Russian press, which charged that the evidence was illegally obtained,[45] that the decision violated basic principles of inter-

[43] Tsiang v. Tsiang, 86 N.Y.S. (2d) 556 (1949); Friedborg v. Santa Cruz, 86 N.Y.S. (2d) 360 (1949); City of New Rochelle v. Page-Sharp, 91 N.Y.S. (2d) 290 (1949); Curran v. City of New York, 77 N.Y.S. (2d) 206 (1947). In the Friedborg case the court held that it was deprived of jurisdiction over the Chilean permanent representative to the United Nations and his wife by the Headquarters Agreement, construed in conjunction with the provision of the Judicial Code which vested original and exclusive jurisdiction over actions against ambassadors of foreign states in the Supreme Court. In Westchester County v. Ranollo, 67 N.Y.S. (2d) 31 (1946), the court held the driver of Sec.-Gen. Lie's automobile not entitled to immunity under the International Organizations Immunities Act, but stated that the question of immunity should be decided by the State Department, not by the courts.

[44] N.Y. TIMES, March 11, 1950, p. 5:1.

[45] See United States v. Coplon, (D.C. N.Y. 1950) 88 F. Supp. 921.

national law, that the court subserved the purposes of the Department of Justice, and that the court recommended Gubitchev's departure because the charges of the prosecution collapsed.[46] One writer suggested that the grave violation of international law justified Russian reparation or reprisal against citizens or diplomatic officers of the United States.[47] Diplomatic relations between our government and Russia must inevitably have become more strained than ever because of the refusal of the State Department to accede to the Russian claim of immunity.

The decision of the principal case restricts the immunities of United Nations personnel, in accordance with the mutual understanding of our government and the United Nations, to those provided for in the Headquarters Agreement and the International Organizations Immunities Act.[48] The dangers which would result from exempting a large number of employees of the United Nations from local jurisdiction are apparent. In view of the fact that the policies concerning jurisdictional immunities are spelled out in these agreements, it seems clear that the courts are competent to determine questions of immunity arising thereunder, and should not in all cases accept as conclusive the word of the State Department. That the judiciary refuses to exercise its jurisdiction may be in part another manifestation of the present trend toward "realism" and power politics, and away from "sterile" principles of international law.[49]

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[46] See 2 CURRENT DIGEST OF THE SOVIET PRESS, March 18, 1950, p. 30:1; 5 SOVIET PRESS TRANSLATIONS, April 1, 1950, p. 223, supra, note 6.

[47] Professor Korovin, Russian expert in international law. N.Y. TIMES, April 28, 1949, p. 16:7.

[48] Although the United States has not yet acceded to the Convention on Privileges and Immunities of the United Nations, 43 AM. J. INT. L. 1 (1949 Supp.), the Convention is defined in section 1 (c) of the Headquarters Agreement, "as acceded to by the United States." Section 26 provides that the Agreement and the Convention shall be treated as complementary. Apparently, these provisions are not considered as incorporating the Convention into the Headquarters Agreement or as an accession by implication.

[49] Josef L. Kunz discusses the general trend in "The Swing of the Pendulum: From Overestimation to Underestimation of International Law," 44 AM. J. INT. L. 135 (1950).