

Document:-
A/CN.4/SR.1747

Summary record of the 1747th meeting

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:-
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term "destination", used by the Special Rapporteur, because in most cases, although the diplomatic bag was addressed to an ambassador or a head of mission, it was rarely delivered to him personally.

63. He considered paragraph 2 of article 14 unnecessary, mainly because it was very difficult to see how a diplomatic courier could be declared *persona non grata* prior to the commencement of his functions.

64. He believed that the draft articles would inevitably have to be based on provisions relating to professional diplomatic couriers and on specific provisions concerning diplomatic couriers *ad hoc* or any other persons who might transport a diplomatic bag.

The meeting rose at 1.05 p.m.

1747th MEETING

Friday, 16 July 1982, at 10 a.m.

Chairman: Mr. Paul REUTER

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (concluded)
(A/CN.4/347 and Add.1 and 2,¹ A/CN.4/359 and Add.1, A/CN.4/L.339, ILC(XXXIV)/Conf. Room. Doc. 4)

[Agenda item 7]

DRAFT ARTICLES SUBMITTED BY THE
SPECIAL RAPPORTEUR (concluded)

ARTICLES 1 to 14² (concluded)

1. Mr. McCaffrey expressed particular appreciation of the summary of the Commission's work on the topic given by the Special Rapporteur in his third report (A/CN.4/359 and Add.1, paras. 3 *et seq.*), which had been of great value to him personally as a new member. He congratulated the Special Rapporteur on his heroic endeavour to breathe life into a subject which to himself was virtually inanimate. Like other members, he saw the advantage of having a single set of rules on the matter and of filling gaps in existing conventional law. However, he was not entirely convinced that the project was so pressing as to justify running any risk of setting up contradictions with existing conventional regimes. It was therefore necessary to proceed very cautiously indeed. That was particularly true in areas where the rules on the status of the diplomatic courier and the diplomatic bag were either very general or non-existent.

2. He noted that the Special Rapporteur had referred in paragraph 3 of his third report to the desirability of

elaborating such rules through codification and progressive development of international law and to the importance of elaborating rules on the status of the diplomatic courier *ad hoc* and the unaccompanied diplomatic bag. To the extent that the Commission was seeking to fill gaps or render existing rules more specific, it should take great care to investigate existing practice thoroughly and not to make unwarranted generalizations on the basis of bilateral regimes.

3. He approved the general structure of the draft articles that was set out in paragraph 10 of the third report. He noted however that the term "third State" was used in referring to the provisions of part IV of the draft. That term had an accepted meaning in treaty law, and it might therefore be best to replace it by a term such as "treaty State".

4. Turning to the draft articles, he said that the use of the words "or with each other" in article 1 implied a fairly broad scope for the draft. In his view, the Commission needed more information as to whether that was warranted.

5. With regard to draft article 2, he agreed with Mr. Calero Rodrigues (1746th meeting) that it seemed inappropriate to exclude international organizations from the draft articles. He believed the Commission should give some consideration to the extent to which the draft articles might apply to them.

6. As far as draft article 3 was concerned, he agreed with Sir Ian Sinclair's suggestion (*ibid.*, para. 48) that the word "to" in subparagraph 1 (1) should be replaced by the words "to or from". Subparagraph 1 (3) should perhaps include a reference to the diplomatic courier *ad hoc*. The definition of "receiving State" in subparagraph 1 (5) would be clearer if the words "and which is the destination of the diplomatic bag" were added at the end of the definition. He too thought that the definition of "transit State" in subparagraph 1 (6) should cover the passage of a diplomatic bag *en route* from the receiving State. He agreed with Sir Ian Sinclair's suggestion (*ibid.*) that subparagraphs 1 (7) to 1 (10) should be combined. In regard to paragraph 2, he shared Mr. Riphagen's view (1746th meeting) that the word "may" should be avoided; a phrase including the words "except as otherwise provided in the present articles" might perhaps be used at that point. He had spoken of the need for caution; the Commission should take particular care in deciding what couriers and bags the draft should cover, despite the trend of opinion which favoured an all-embracing formula of the kind referred to by the Special Rapporteur in paragraph 15 of his report.

7. For instance, in draft article 4, paragraph 1, the words "as well as between those missions" might be too broad for the scope of the draft. He agreed with Mr. Díaz González (*ibid.*) that passage as well as communication should be referred to in paragraph 2 of the article.

¹ Reproduced in *Yearbook ... 1980*, vol. II (Part One).

² For the text, see 1745th meeting, footnote 7.

8. Paragraph 1 of draft article 5 left the impression that the sending State must respect the internal law of the receiving State in matters unconnected with the diplomatic bag; obviously that was not the intention, but the point should be clarified. He shared the view that the expression “in the discharge of his functions” in paragraph 2 could be deleted and that paragraph 3 might be superfluous.

9. He suggested that the opening clause of draft article 6, paragraph 2, should be reworded to read: “However, no discrimination shall be considered to have occurred”. A more important point was that the expression “third States” in subparagraph 2 (b) of the article might usefully be replaced by the term “other States”.

10. Draft article 7 was similar in formulation to the opening part of article 27, paragraph 5, of the 1961 Vienna Convention on Diplomatic Relations. That paragraph used the term “an official document” but did not speak of “passport” as well. He appreciated that the courier might need more than one document, but that point could perhaps be taken care of in the commentary and the wording of the 1961 Convention used for the text of the article.

11. In regard to draft article 8, he too had a problem with the word “freely”, and he shared Mr. Riphagen’s views (*ibid.*) on the words “and are admitted to perform their functions”.

12. Draft article 9 was a provision that was not in any of the four codification conventions adopted in the field of diplomatic law, so far as he knew; it should perhaps provide for an objection by the receiving State. The point did not seem to be covered by draft article 14, and he thought it bore scrutiny.

13. He shared the view that the word “should” in draft article 10, paragraph 1, ought to be altered to “shall”, although it was important not to depart too much from article 8 of the 1961 Vienna Convention, which dealt with the same subject. Paragraph 3 of draft article 10 might be made a little more specific by the insertion, in the opening clause, of the words “to consent” after the word “right”.

14. In connection with draft article 12, Mr. Ushakov (*ibid.*) had rightly drawn attention to the need to distinguish between the functions of the diplomatic courier and his privileges and immunities: his functions started when he received the diplomatic bag, whereas his privileges and immunities commenced when he entered the territory of the transit or receiving State. He shared the view that an article on the commencement of the functions of the diplomatic courier might not be necessary at all, but if the article was retained, the word “crossing” should be replaced by the word “entering”.

15. In regard to draft article 13, it had been remarked that the completion of the task of the diplomatic courier might not take place until his return to the sending State, even if another bag was not collected, and so his privileges and immunities would presumably apply until

his return. That point should perhaps be clarified. He shared the view that the article should distinguish between a diplomatic courier *ad hoc* and a regular diplomatic courier.

16. He too thought that draft article 14, paragraph 2, was unnecessary, but if it was retained, the word “shall” seemed too strong.

17. Mr. KOROMA said that in conventional law the topic had not received the consideration it now deserved, bearing in mind the increasingly dynamic nature of international relations, the inviolability and confidentiality of diplomatic messages, the need to elaborate rules on the status of the diplomatic courier *ad hoc*—an institution to which developing countries were resorting more and more—and the question of the unaccompanied bag. Moreover, it seemed to be the view of the Commission that such matters should be regulated in the interests of friendly relations and co-operation among States. The pragmatic approach to the topic adopted by the Special Rapporteur, based on international conventions and State practice, had enabled him to strike the right balance in the draft articles between the diplomatic interests of the sending State and the legitimate security interests of the receiving and transit States. In that connection, the sending State must respect international law as embodied in the internal law of the receiving and transit States.

18. With regard to the scope of the draft articles, the Special Rapporteur had suggested that they should apply to communications not only between the sending State and its missions abroad, but also between those missions themselves.³ It would be interesting to know what the position would be where a diplomatic bag was transmitted directly to the Minister for Foreign Affairs of one country while he was in another country.

19. In regard to draft article 3, the Special Rapporteur (1745th meeting) had stated that the captain of a ship or aircraft was not a courier within the meaning of the articles. If so, it would perhaps be best to substitute the word “conveyance” or “transmission” for the word “transportation” in subparagraph 1 (a). It would be helpful if the Special Rapporteur would consider the status and obligations of the captain of a ship or aircraft whenever he had custody of a diplomatic bag. Such persons were being increasingly used to convey or transmit a diplomatic bag, and it was only proper that their activities in that connection should be examined, if not regulated.

20. Draft article 4 concerned the safe and expeditious delivery of diplomatic messages and the inviolability of their confidential character, and should be reworded to bring out three ideas more clearly.

21. With regard to draft article 9, he wondered what its implications would be for the requirement that a courier must respect the laws of the receiving and transit

³ *Yearbook ... 1980*, vol. II (Part One), p. 241, document A/CN.4/335, para. 42.

States. For instance, what would the position be if the courier did not know the contents of the diplomatic bag? He was firmly convinced that the diplomatic bag should be completely inviolable and that the receiving and transit States should be under a duty to protect it from any interference. His concern was to prevent the status of the diplomatic bag from being abused, since that could have serious implications for international relations. If there were grounds for suspicion about the bag's contents, it should be returned to the sending State.

22. He would like to know the Special Rapporteur's views on the status of a courier during an armed conflict and whether he thought that point should be covered by the draft. The customary law of his own country, Sierra Leone, recognized the inviolability of a courier even during armed conflict.

23. The draft should certainly distinguish between the privileges and immunities of a professional courier and those of a courier *ad hoc*; the former should retain his privileges and immunities until he returned from whence he came and the latter until the bag had been delivered.

24. Mr. MAHIOU congratulated the Special Rapporteur on the clarity, logic and precision of his third report (A/CN.4/359 and Add.1). The topic was of unquestionable importance, given the increasing number of exchanges of diplomatic couriers and bags. The Commission's concern should be to supplement and clarify the existing rules and perhaps harmonize them to some extent, thus helping to identify a number of common rules.

25. Referring to the draft articles, he said that in the final analysis the topic involved four types of relations: relations between the sending State and its various missions; relations between the missions themselves; direct relations between the sending State and the receiving State in cases where the former had no mission in the latter; and the relations between the sending State and international organizations. He noted from articles 1 and 2 that the two last-mentioned categories had been excluded from the scope of the draft. The explanations provided by the Special Rapporteur (1745th meeting) and the observations made by members of the Commission had tended to justify that exclusion. However, in the case of direct communications between the sending State and the receiving State, the conventions to which reference had been made, particularly the 1961 Vienna Convention on Diplomatic Relations, might not suffice to safeguard freedom of communication and the inviolability of the diplomatic courier and the diplomatic bag; if that was so, those conventions would perhaps need to be supplemented. It would be most helpful if the Special Rapporteur would provide some clarification of the matter. With regard to the exclusion from the scope of the draft of couriers and bags used for all official purposes by international organizations, he realized that the situation of international organizations differed from that of States, but he felt that the question would have to be settled sooner or later.

26. He shared the view of those members of the Commission who believed that draft article 3 could be simplified further. Where terms were to be defined in exactly the same way as they had been in an existing convention, it might be sufficient if, instead of repeating the definitions word for word, the article simply referred to the relevant conventions; where, however, a term was to be defined differently, the article might give the definition in full, even if the difference was only slight. Article 3 raised another problem, that of harmonization, not only of the terms defined in the draft articles with similar terms appearing in the reference conventions, but also of the terms used within the draft itself. Like Mr. Ni (1746th meeting), he considered that article 3, subparagraph 1 (a), for example, should be harmonized with article 11.

27. Articles 4 and 5 stated two fundamental principles, first, that of freedom of communication for all official purposes effected through diplomatic couriers and diplomatic bags, and second, the duty to respect international law and the laws and regulations of the receiving and the transit States. The balance between those two articles should be strengthened by imposing on the receiving State the duty to permit and protect free communication, for all official purposes, by means of diplomatic couriers and diplomatic bags. As far as the French text of article 14 was concerned, the beginning of paragraph 1 should be amended to read: "*L'Etat de réception doit permettre et protéger, sur son territoire, ...*".

28. He shared the doubts expressed about the words at the end of draft article 8 "and are admitted to perform their functions on the territory of the receiving State or the transit State". It was debatable whether they were absolutely necessary, and he hoped the Special Rapporteur would clarify the point.

29. In regard to draft article 12, Mr. Ushakov (*ibid.*) had quite rightly drawn a distinction between the functions of the diplomatic courier and the privileges and immunities to which he was entitled. It was important that the draft should specify the privileges and immunities enjoyed by the diplomatic courier and the precise moment at which he could invoke them. In some circumstances, for example when he required a visa, the diplomatic courier should perhaps be accorded certain facilities even before entering the territory of the receiving or the transit State. The appointment of a diplomatic courier surely entailed an immediate duty on the part of the receiving or the transit State to facilitate the granting of his visa. That was one practical problem that must be dealt with.

30. Draft article 13 raised the question for him, like Mr. Francis (1745th meeting), of the exact situation of the diplomatic courier once the diplomatic bag had been delivered to its destination. It might be argued that, once that had been done, there was no longer any particular reason to accord the diplomatic courier privileges and immunities. On the other hand it could also be argued that, once the bag had been delivered to its

destination, the diplomatic courier required protection on the return journey to the sending State, in order to prevent freedom of communication by means of the diplomatic bag from being jeopardized. That was a situation which called for consideration and one in which Sir Ian Sinclair's observation (1746th meeting) regarding the distinction between professional and *ad hoc* diplomatic couriers took on full meaning. Subparagraph (d) of the article had initially seemed to him unnecessary, but on reflection he realized that it would have to be read in connection with other provisions on the status of the diplomatic courier and the diplomatic bag. The Special Rapporteur would presumably clarify that point in dealing with subsequent articles. For the time being, he would keep an open mind on whether the subparagraph was necessary or not.

31. Mr. STAVROPOULOS endorsed the observations made by Mr. Ni (*ibid.*) and Mr. Mahiou on article 13, subparagraph (d). Quite apart from the matter of the courier's function ending on his death, it was important to determine what would happen to the bag itself.

32. Mr. MALEK warmly congratulated the Special Rapporteur on the excellence and clarity of his third report. The revised draft article 1 was a great improvement on the original text (A/CN.4/347 and Add.1 and 2, para. 49), which to some extent had lacked cohesion because it had been divided into two paragraphs; it now assimilated the couriers and bags of consular posts, special and other missions and delegations with diplomatic couriers and bags in a single paragraph. But the form of the article should perhaps be changed to reflect more closely the title of the draft articles, namely, the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The article might be drafted on the following lines:

"The present articles shall apply to diplomatic couriers and diplomatic bags, as well as to consular couriers and bags and to couriers and bags of special missions, permanent missions or delegations, when used in communications of States for all official purposes with their diplomatic missions, consular posts, special missions, permanent missions or delegations, wherever situated, and also in official communications of these missions and delegations with the sending State or with each other".

33. He associated himself with the general agreement reached at the preceding session of the Commission with regard to draft article 2, although he was not entirely convinced by the arguments advanced so far in support of the exclusion of international organizations from the scope of the articles. He shared the view expressed at the preceding session by a number of members of the Commission that draft article 2 should refer to "other subjects of international law" as well as to international organizations, in order to ensure that the interests of entities such as the Palestine Liberation Organization were safeguarded.⁴

34. The CHAIRMAN, speaking as a member of the Commission, joined with other speakers in congratulating the Special Rapporteur on the excellent quality of his work. He noted that the observations made by members of the Commission concerning the draft articles had mainly been of a drafting nature. That showed that the Commission had before it a set of articles which was already highly developed. He shared the view that the main purpose of the draft articles was to widen the ambit of the privileges and immunities of the diplomatic courier. However, given the decreasingly enthusiastic reception accorded to the four codification conventions on diplomatic law, he was not sure whether States would support that objective. Their comments and observations would to some extent determine the nature of the draft. If some Governments expressed reluctance to accept certain ideas, the draft must be very specific and not be confined, as some members of the Commission had recommended, to stating a number of rather vague general principles.

35. The title of the draft articles called for consideration of the status of both the diplomatic courier and the diplomatic bag, whether accompanied by a diplomatic courier or not. As yet, few of the draft articles referred to the unaccompanied diplomatic bag, and he assumed that the Special Rapporteur would propose some provisions on that subject later. The reference to "external marks" in article 3, subparagraph 1 (3), foreshadowed such rules, for if a diplomatic bag bore no external marks, it was not inviolable. While he was prepared to accept that the captain of a ship or aircraft should be regarded as a diplomatic courier, he was more inclined to think of a diplomatic bag dispatched through the captain of a ship or aircraft as being an unaccompanied diplomatic bag.

36. Numerous comments had been made about the protection of the diplomatic courier. The question most frequently raised was the source of that protection. Did it derive from the status enjoyed by the diplomatic courier independently of the bag, or from the bag itself? In the past, the protection of the diplomatic courier had been guaranteed by the status of the courier and not by that of the bag. Any rule that attributed the source of protection to the bag itself would raise problems. For example, what would become of the status of the courier once he had delivered the bag to its final destination?

37. Referring to article 8, some members of the Commission had questioned whether the words "and are admitted to perform their functions on the territory of the receiving State or the transit State" should be retained. His own question was, what authority would decide on that admission and what would the terms of admission be? The Special Rapporteur had explained (A/CN.4/359 and Add.1, para. 90) that there was not necessarily any approval procedure. In that case, when did the admission take place? If by virtue of his nationality or of the regulations governing the movement of persons between the sending and receiving States, the courier travelled freely, the receiving State would not be

⁴ *Yearbook ... 1981*, vol. I, p. 259, 1691st meeting, para. 28 (Mr. Calle y Calle), and p. 275, 1693rd meeting (Mr. Tabibi).

informed of his movements in advance; when the courier declared that he was accompanying a diplomatic bag, the external marks would assume their full importance, since it was at that moment that his status would begin to apply. If on the other hand the courier required a visa, it could be argued that the functions of the diplomatic courier began in an incidental manner as soon as the visa was obtained. Certain other provisions of the draft, such as those relating to the nationality of the diplomatic courier, assumed considerable importance in relation to the question of the movement of the courier. Articles 13 and 14 should be recast in both substance and form after careful consideration of that point.

38. Mr. YANKOV (Special Rapporteur), summing up the discussion, said that he had been encouraged by the critical observations made by members, both on the subject in general and on individual draft articles. They would be very useful to him in his future work. With regard to general issues, there was an obvious need to fill existing gaps; the more he had studied State practice, and above all recent practice, the more justification he had found for doing so. One extremely important observation had been that the Commission should take care not to produce a set of rules that would be inconsistent with existing regimes or would create a different kind of regime. He assured members that one of his primary objectives had been to rest his codification on the sound basis of the four codification conventions on diplomatic law adopted under United Nations auspices, which, even though some of them were still not binding on States, none the less provided a framework of law. It was significant that an impressive number of States had ratified the 1961 and 1963 Vienna Conventions. He had also taken care not to make unjustified generalizations on the basis of bilateral treaties. All the sixty or so bilateral treaties he had examined confirmed the principles and rules embodied in those conventions, and some even employed their wording.

39. Mr. Ushakov (1746th meeting) had suggested that the articles should be based on a global notion of the courier and the bag. Such a notion had in fact been recommended in his preliminary report,⁵ but he had decided, in the light of the comments made in the Commission and the Sixth Committee, and for practical reasons, that it would be better to use terms that were widely recognized than to introduce notions that could create problems. The terms of draft article 1 and draft article 3, paragraph 2, might require improvement, however, in order to express more satisfactorily the assimilation formula suggested in his third report (A/CN.4/359 and Add.1, para. 14).

40. As he understood it, the notion of communication had two aspects, one relating to means of communication and the other to a network of communications. In regard to means, the notion was derived basically from article 27 of the Vienna Convention on Diplomatic

Relations and from State practice. It covered public postal, telephone, telex and radio services and, in addition, official correspondence and messages in code and cipher carried in a sealed pouch by a diplomatic courier. In the sense of a network of communications existing between the sending State and its missions abroad or between the missions themselves, the notion was reflected in the Commission's commentary to the draft article that had become article 35 of the Vienna Convention on Consular Relations. The relevant passages of the commentary were reproduced in his second report (A/CN.4/347 and Add.1, para. 8).

41. There was an abundance of State practice which showed that the network of communications was something permanent, particularly in consular functions. An example of the practice as embodied in a treaty was article 12 of the Consular Convention between the United States of America and the People's Republic of China, signed in Washington on 17 September 1980,⁶ which provided that a consulate should be entitled to exchange communications with its Government, with diplomatic missions of the sending State and with other consulates of the sending State wherever situated. That was an almost standard provision, as was evident from the sixty or so bilateral conventions dating back to 1950 which he had examined. He read out a list of the conventions in question for the information of members. Though his own experience as a former ambassador was limited, it seemed to him that inter-mission communication was quite extensive. The fact that Governments had deemed it necessary to provide for it in bilateral treaties was an indication that many countries practised it.

42. The issues raised by Mr. Reuter's remarks concerning the status of the diplomatic bag would be dealt with in part III of the draft. Turning to comments made on individual articles, he said that draft article 1 was basically an attempt to describe a uniform and comprehensive set of rules, based on the relevant provisions of the four codification conventions and State practice, that would apply to all couriers and bags. In reply to the point made by Mr. Ogiso (1746th meeting) in connection with article 3, he said that the codification conventions did not differentiate in treatment between consular couriers and other types of couriers. He read out the text of an objection raised by the United Kingdom at the United Nations Conference on Consular Relations to a proposal made by Japan which had turned on the treatment to be afforded to consular couriers; the objection, reproduced in his second report (A/CN.4/347 and Add.1, para. 83) had made it clear that acceptance of the proposal would have resulted in the existence of two categories of courier with different degrees of inviolability. The United Kingdom had found that unacceptable and the Conference had agreed. Moreover, some bilateral consular conventions stipulated explicitly that consular couriers had the same status as diplomatic

⁵ *Yearbook ... 1980*, vol. II (Part One), p. 245, document A/CN.4/335, para. 62.

⁶ *International Legal Materials* (Washington, D.C.), vol. XIX, No. 5 (September 1980), pp. 1119 et seq.

couriers. Mr. Malek had made an interesting proposal (para. 32 above) for redrafting article 1 in a way that would place greater emphasis on couriers and bags; he hoped the Drafting Committee would give it careful consideration.

43. In connection with article 2, it had been suggested that the draft articles should apply to couriers and bags of international organizations, or of other subjects of international law such as national liberation movements. He recalled that the preliminary report had made a recommendation along those lines.⁷ However, that had not appeared to be the general view of the Commission at its previous session, although opinions in favour of the articles doing so had been expressed both in the Commission itself⁸ and in the Sixth Committee. The door was of course open to that, and he hoped members would make their precise views on the subject known. Perhaps the Commission might consider placing a provision at the end of the draft articles which would serve the purpose.

44. Article 3 had been the subject of many comments. The suggestion that the words "to or from" should replace the word "to" in subparagraph 1 (1) was an interesting one. Proposals had been made to reduce the number of terms, for instance through a cumulative provision referring to the definitions employed in the codification conventions concerned. In that connection he wished to point out that the 1969 Convention on Special Missions and the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, unlike the 1961 and 1963 Vienna Conventions, were not yet in force. In reply to the point raised by Mr. Koroma about the word "transportation", he said that the use of that term followed previous practice in legal provisions on the subject. Referring to the comment by Mr. Díaz González (1746th meeting) concerning the use of the words "special occasion or occasions" in the definition of the term "diplomatic courier *ad hoc*", he explained that his intention had been to spell out fully the meaning of the expression "*ad hoc*"; if the words were redundant, they could be removed by the Drafting Committee.

45. Mr. Riphagen (*ibid.*) had raised a valuable point in connection with article 3, paragraph 1 (6). It was true that the receiving State was not always the final destination of the bag. To meet the point, he suggested replacing the words "receiving State" by the words "their destination" or the word "to" by the words "from or to". In connection with the comment by Mr. Mahiou about harmonization of terms, it might help if the drafting of paragraph 2 of article 3, which contained the important assimilation formula, was improved; for example, the words "may also apply" might be replaced by the words "shall also apply as appropriate". That matter deserved further study. He agreed with the

observations by Mr. Ni (*ibid.*) and Mr. McCaffrey regarding the use of the term "third State". The Commission might either define the term "third State" in article 3 or substitute the term "other States" for "third States" in article 6, subparagraph 2 (b).

46. In regard to article 4, he had already spoken about the notion of communication. He had decided to use the term "permit and protect" in paragraph 1 because it was a standard expression used in all the four codification conventions and it therefore ensured uniformity. Concerning Mr. Riphagen's point (*ibid.*) about the duty of the sending State, the purpose of articles 4 and 5 was to strike a balance between the rights and the obligations of the sending and receiving States. The sending State might give its courier explicit instructions to respect the requirements of the receiving State. The expression "in the discharge of his functions" in draft article 5, paragraph 2, had been meant to refer to the period during which the courier was performing his functions; perhaps that wording should be reconsidered.

47. Article 6 had raised observations of a drafting nature, which could be considered by the Drafting Committee. Some members had raised objections to the use of the word "freely" in article 8; the wording of that article had been based on that of the four relevant codification conventions and he had not wished to depart from it. It had been suggested that the last clause of the article, "and are admitted to perform their functions on the territory of the receiving State or the transit State", might be unnecessary. That clause concerned the main function of a courier, which was to act in the territory of another State; in any case, the *agrément* of the receiving or the transit State had to be given in cases where a visa was required. The clause warranted further consideration.

48. Articles 9, 10 and 14 concerning multiple appointment and nationality of a diplomatic courier and *persona non grata* were highly relevant to the status of the courier and had been modelled on relevant provisions of the four codification conventions. In reply to the point raised by Mr. McCaffrey concerning an objection by the receiving State to a multiple appointment, he said that he believed that consent was necessary. In connection with article 10, there had been a proposal to change "should" to "shall" in paragraph 1, but the word "should" was used in all the four codification conventions, providing the sending State with the option to appoint a non-national. He would reconsider paragraph 4, which was felt by Mr. Riphagen to be too strong or not sufficiently clear.

49. With regard to article 11, he agreed that its terminology should be harmonized with that used in article 3, paragraph 1 (1). As to replacing the word "destination" by the word "recipient", he believed that "destination" was more appropriate. Mr. Ushakov (1746th meeting) had expressed doubts about the necessity of article 12, but the question of the duration of the courier's functions was the basis of the duration

⁷ See footnote 5 above.

⁸ See footnote 4 above.

of his facilities, privileges and immunities, as explained in his third report (A/CN.4/359 and Add.1, paras. 111-113). The commencement of the courier's functions, as opposed to the moment of their acknowledgement by the receiving State, was a point that deserved careful consideration.

50. Article 13, subparagraph (a), was important for differentiating between the status of a courier *ad hoc* and a professional courier. According to international law, a courier *ad hoc* ceased to enjoy privileges and immunities upon the completion of his task. He would gladly delete subparagraph (d), to which some members had objected; however, the point it dealt with should come to the forefront in connection with the status of the bag, in part III. As members had pointed out, not only the courier's death but also his complete incapacitation and the situation envisaged by article 14, paragraph 2, were relevant to the status of the bag.

The meeting rose at 12.45 p.m.

1748th MEETING

Monday, 19 July 1982, at 3 p.m.

Chairman: Mr. Paul REUTER
later: Mr. Leonardo DÍAZ GONZÁLEZ

Draft report of the Commission on the work of its thirty-fourth session

1. The CHAIRMAN invited the Commission to consider its draft report, chapter by chapter, starting with chapter II.

Mr. Díaz González, first Vice-Chairman, took the chair.

CHAPTER II. Question of treaties concluded between States and international organizations or between two or more international organizations (A/CN.4/L.344 and Add.1-6)

A. Introduction (A/CN.4/L.344)

Paragraphs 1-30

Paragraphs 1-30 were adopted.

Paragraphs 31-33

2. Sir Ian SINCLAIR, supported by Mr. McCAF-FREY, proposed the replacement, in the English text, of the word "consensus" in the first sentence of paragraph 31 and in the third sentence of paragraph 32 and of the word "consensualism" in the first sentence of paragraph 33, by the word "consensuality".

It was so decided.

Paragraphs 31 to 33, as amended, were adopted.

Paragraphs 34 to 44

Paragraphs 34 to 44 were adopted.

Section A, as amended, was adopted.

B. Recommendation of the Commission (A/CN.4/L.344)

Paragraph 45

Paragraph 45 was adopted.

Paragraph 46

3. Mr. ILLUECA said that he agreed with the recommendation in paragraph 46 that the General Assembly should convene a conference to give the draft articles the status of a convention. In that connection, he wished to express his admiration and gratitude to the Special Rapporteur and to thank the members of the Bureau and the staff of the Codification Division as well. The work done on the question of treaties concluded between States and international organizations or between two or more international organizations, the principal topic for consideration at the Commission's thirty-fourth session, represented a noteworthy contribution to international law. Unfortunately, recent events in Latin America, which were leading the countries of that region to adopt a new and radical orientation in their relations within the American continent and with the rest of the world, had prevented him from participating earlier in the work of the Commission. The second preambular paragraph of General Assembly resolution 1505 (XV) was surely an invitation to the Commission to pursue its task of codification and progressive development of international law without losing sight of world occurrences of great importance which might necessitate the adoption of new rules.

Paragraph 46 was adopted.

Paragraph 47

Paragraph 47 was adopted.

Paragraph 48

4. Sir Ian SINCLAIR said that, in view of the persuasive reasons given in paragraph 47 for recommending to the General Assembly that the draft articles should be given the form of a convention, the second sentence in paragraph 48, which might create the impression that the Commission was seeking to establish a *jurisprudence constante*, should be deleted.

It was so decided.

Paragraph 48, as amended, was adopted.

Paragraph 49

5. Mr. REUTER (Special Rapporteur), referring to the French version, proposed that in the third sentence the word "*déciderait*" should be replaced by the word "*décide*", which was more positive; it could be left to the Secretariat to make any necessary changes in the other language versions.

Paragraph 49, as amended, was adopted.