

Document:-
A/CN.4/L.400

Draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. Titles and texts adopted by the Drafting Committee: titles of the four parts of the draft; articles 28 to 33 - reproduced in A/CN.4/SR.1980, paras. 52 et seq.

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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REPORT BY THE CHAIRMAN OF THE
DRAFTING COMMITTEE

ARTICLE 6

50. Mr. RIPHAGEN (Chairman of the Drafting Committee) said that the Drafting Committee had devoted five meetings to article 6 of part 2 of the draft articles.⁸ He was grateful to Mr. Calero Rodrigues for chairing those meetings.

51. The Drafting Committee had not had enough time to complete its consideration of draft article 6, but it had reached a consensus on the introductory part of paragraph 1, on the opening words of paragraph 1 (a) and on the revised text of paragraph 1 (c) and (d). There had been no agreement on paragraph 1 (b) or on the concluding part of paragraph 1 (a). Lastly, there had been a large measure of consensus on paragraph 2.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (concluded)*
(A/CN.4/400,⁹ A/CN.4/L.398, sect. D, A/CN.4/L.400)

[Agenda item 4]

DRAFT ARTICLES PROPOSED BY
THE DRAFTING COMMITTEE

ARTICLES 28 TO 33

52. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the Committee's report (A/CN.4/L.400) and the texts of articles 28 to 33 adopted by the Committee.

53. Mr. RIPHAGEN (Chairman of the Drafting Committee) said that the Committee's report set out the complete text of the draft articles proposed for adoption by the Commission on first reading. It included articles previously adopted, as well as articles 28 to 33, which had been adopted at the present session and were based on the former articles 36, 37, 39, 41, 42 and 43; the previous numbers of renumbered articles appeared in square brackets.

54. A few adjustments had been made to previously adopted articles in order to ensure greater consistency and to solve pending problems. For example, in article 3, paragraph 1 (2), which defined the "diplomatic bag", the description of the content of the bag had been brought into line with that contained in article 25. The order of articles 7 and 8 had been reversed, since it was more appropriate to place an article on the appointment of the courier before an article on his documentation. The title of article 13 had been expanded to correspond to that of article 27.

* Resumed from the 1951st meeting.

⁸ The text of draft article 6 considered by the Commission at its thirty-seventh session and referred to the Drafting Committee, as well as a summary of the discussion thereon, appear in *Yearbook ... 1985*, vol. II (Part Two), p. 20, footnote 66, and p. 22, paras. 119-126.

⁹ Reproduced in *Yearbook ... 1986*, vol. II (Part One).

ARTICLE 28 [36] (Protection of the diplomatic bag)

55. He introduced the text proposed by the Drafting Committee for article 28 [36], which read:

Article 28 [36]. Protection of the diplomatic bag

1. The diplomatic bag shall [be inviolable wherever it may be; it shall] not be opened or detained [and shall be exempt from examination directly or through electronic or other technical devices].

2. Nevertheless, if the competent authorities of the receiving [or transit] State have serious reasons to believe that the [consular] bag contains something other than the correspondence, documents or articles referred to in article 25, they may request [that the bag be subjected to examination through electronic or other technical devices. If such examination does not satisfy the competent authorities of the receiving [or transit] State, they may further request] that the bag be opened in their presence by an authorized representative of the sending State. If [either] [this] request is refused by the authorities of the sending State, the competent authorities of the receiving [or transit] State may require that the bag be returned to its place of origin.

56. Article 28, which was based on the revised text of draft article 36 submitted by the Special Rapporteur and originally entitled "Inviolability of the diplomatic bag",¹⁰ had been discussed at length and had given rise to serious differences of opinion in the Commission and in the Drafting Committee, which explained the presence of so many square brackets in the text now being proposed. The Drafting Committee had been unable to agree on the basic substantive issues involved, namely the extent to which the draft could provide for a uniform régime for all categories of bags and what such a uniform régime should be.

57. Paragraph 1 reproduced the text submitted by the Special Rapporteur, but contained two sets of square brackets. The phrases that were not in square brackets were simply a repetition of article 27, paragraph 3, of the 1961 Vienna Convention on Diplomatic Relations. The first phrase in square brackets referred to the concept of the "inviolability" of the bag. Some members had said that the use of that concept was not only logical, but also necessary. Others had had reservations about the inclusion of that concept because it did not appear in any of the existing relevant conventions with regard to the bag as such. The second phrase in square brackets related to electronic or technical examination of the bag. Some members had considered that it was necessary to include that phrase, which dealt with a practical contemporary issue that the 1961 and 1963 United Nations Conferences had not had to face. Others had taken the view that it should not be included or could be included only if it were qualified by a provision along the lines of paragraph 2. Still others had held that the phrase was unnecessary, since the existing conventions already excluded such examination. A minor drafting change had been made in paragraph 1: it had been thought more correct to refer to "other technical devices" than to "other mechanical devices".

58. Paragraph 2 was based on the corresponding paragraph proposed by the Special Rapporteur, but its unbracketed parts had been modelled more closely on article 35, paragraph 3, of the 1963 Vienna Convention on Consular Relations. Paragraph 2 thus now provided

¹⁰ See 1948th meeting, para. 1.

that a request could be made for the bag to be opened prior to requiring that it be sent back. The final phrase was, however, based on the Special Rapporteur's approach, not on that of the 1963 Vienna Convention.

59. Three issues on which no agreement had been reached had been indicated by square brackets. The words "or transit" had been placed in square brackets because members had not been able to agree whether a transit State should be in a position to make the request provided for in the paragraph. The word "consular" had been placed in square brackets because of the difference of opinion between those who believed that the provision of paragraph 2 on the possibility of requesting that the bag be opened should apply to all bags and those who thought that such a request could be allowed only with regard to the consular bag. The third phrase in square brackets related to the possibility that the receiving State might request that the bag be subjected to electronic examination. That provision for a "middle-step" request by the receiving State had been seen by most members as a useful addition, but one member had opposed it, believing it to be illogical and absurd, as well as contrary to existing law.

60. As to the fate of article 28, the Drafting Committee had considered three possibilities: (a) reporting back the revised text submitted by the Special Rapporteur without making any recommendation; (b) redrafting the text in order simply to reflect the *status quo*, namely a paragraph 1 repeating the 1961 Vienna Convention formula for three types of bags and a paragraph 2 repeating the 1963 Vienna Convention formula for the consular bag; (c) suggesting that no article at all should be adopted on the matter.

61. In the end, the Drafting Committee had decided that it had a duty to indicate at least those areas of agreement which did exist and those on which disagreement on substantive issues subsisted. It would be for the Commission in plenary and ultimately for Governments to decide those questions. As in the past, the second reading of the article would no doubt be greatly facilitated by the comments and observations to be submitted by Governments.

62. Finally, the title of article 28, which now read "Protection of the diplomatic bag", was tentative and would require further discussion on second reading.

63. Mr. USHAKOV said that article 28, paragraph 2, would be acceptable if it referred to the "consular bag" and to the "receiving State".

64. Sir Ian SINCLAIR said that article 36, now article 28, had been a source of difficulties from the outset. It had been his understanding that the majority of representatives in the Sixth Committee of the General Assembly had wished to have a uniform system for all types of diplomatic bags. The draft articles were in fact predicated on that approach. He had serious reservations with regard to article 28 as it now stood. It would have been preferable for the Commission to agree that the provisions of paragraph 2 should apply to all bags. It was because of the provisions of paragraph 1, and the failure to agree on them, that some phrases had been placed in square brackets.

65. Mr. KOROMA reiterated his view that article 28 was superfluous. It was the attempt to take account of new developments that had made the text of the article unacceptable to several members. All that was needed was a statement that the diplomatic bag could not be opened or detained and that it must be exempt from examination directly or indirectly. The introduction of references to electronic and other devices created a position of inequality as between States because many States simply did not possess such devices.

66. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed provisionally to adopt article 28 [36].

Article 28 [36] was adopted.

ARTICLE 29 [37] (Exemption from customs duties, dues and taxes)

67. Mr. RIPHAGEN (Chairman of the Drafting Committee) introduced the text proposed by the Drafting Committee for article 29 [37], which read:

Article 29 [37]. Exemption from customs duties, dues and taxes

The receiving State or, as the case may be, the transit State shall, in accordance with such laws and regulations as it may adopt, permit the entry, transit and departure of the diplomatic bag and shall exempt it from customs duties and all national, regional or municipal dues and taxes and related charges other than charges for storage, cartage and similar services.

68. Article 29 reproduced with only slight modification the revised text of draft article 37 submitted by the Special Rapporteur.¹¹ The usual expression "or, as the case may be" replaced the expression "or, as appropriate", and the words "and departure" replaced the words "or exit". The word "free", which had formerly qualified the words "entry, transit or exit", had been deleted, as it added nothing to the meaning and was subject to various interpretations. The concluding phrase had been brought into line with the corresponding phrase in article 36, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations.

69. The CHAIRMAN said that, in the absence of any comment, he would take it that the Commission agreed provisionally to adopt article 29 [37].

Article 29 [37] was adopted.

ARTICLE 30 [39] (Protective measures in case of *force majeure* or other circumstances)

70. Mr. RIPHAGEN (Chairman of the Drafting Committee) introduced the text proposed by the Drafting Committee for article 30 [39], which read:

Article 30 [39]. Protective measures in case of force majeure or other circumstances

1. In the event that, due to *force majeure* or other circumstances, the diplomatic courier, or the captain of a ship or aircraft in commercial service to whom the bag has been entrusted or any other member of the crew, is no longer able to maintain custody of the diplomatic bag, the receiving State or, as the case may be, the transit State shall take appropriate measures to inform the sending State and to ensure the integrity and safety of the diplomatic bag until the authorities of the sending State take repossession of it.

¹¹ *Ibid.*

2. In the event that, due to *force majeure*, the diplomatic courier or the diplomatic bag is present in the territory of a State which was not initially foreseen as a transit State, that State shall accord protection to the diplomatic courier and the diplomatic bag and shall extend to them the facilities necessary to allow them to leave the territory.

71. Article 30 was based on the revised text of draft article 39 submitted by the Special Rapporteur.¹² That text had been recast so that paragraph 1 now referred to *force majeure* or other circumstances, such as illness, which might prevent the diplomatic courier, the captain of a ship or aircraft in commercial service to whom the bag had been entrusted or any other member of the crew from maintaining custody of the bag. The emphasis had now been more appropriately placed on events such as accidents, abandonment, loss or misplacement which prevented custody of the bag from being maintained. The point was that the "guardian" of the bag had for some reason been unable to maintain custody of it. Paragraph 1 did not deal with lost or misplaced bags which had been transmitted unaccompanied through the postal service or by some other mode of transport. In such cases, the transmittal service concerned would retain responsibility for dealing with the kind of events referred to in paragraph 1. The purpose of the obligation under paragraph 1 had been brought out more clearly by the provision that the receiving State or the transit State must take appropriate measures to inform the sending State of the situation and to ensure the integrity and safety of the bag until the authorities of the sending State had regained possession of it.

72. Paragraph 2 concerned an event of *force majeure* which resulted in the courier or bag being present in the territory of a State not initially foreseen as a transit State. The proposed text specified that such a State must not only accord protection to the diplomatic courier and the diplomatic bag, but must also extend the facilities necessary to allow them to leave the territory. The commentary would explain that it was for the State on whose territory the courier and the bag were present to decide whether they were simply to be allowed to return directly to the sending State or whether they were to be allowed to continue their journey to their destination.

73. The title now referred not only to *force majeure*, but also to "other circumstances".

74. The CHAIRMAN said that, in the absence of any comment, he would take it that the Commission agreed provisionally to adopt article 30 [39].

Article 30 [39] was adopted.

ARTICLE 31 [41] (Non-recognition of States or Governments or absence of diplomatic or consular relations)

75. Mr. RIPHAGEN (Chairman of the Drafting Committee) introduced the text proposed by the Drafting Committee for article 31 [41], which read:

Article 31 [41]. Non-recognition of States or Governments or absence of diplomatic or consular relations

The facilities, privileges and immunities accorded to the diplomatic courier and the diplomatic bag under the present articles shall not be affected either by the non-recognition of the sending State or of its

Government or by the non-existence of diplomatic or consular relations.

76. Article 31 was a simplified version of the revised text of draft article 41 submitted by the Special Rapporteur.¹³ Paragraph 2 of the earlier text had been deleted because it stated the obvious and its content would be covered in the commentary.

77. Article 31 applied only to situations of non-recognition or lack of relations between a sending State and (a) a State on whose territory a special mission was received; (b) a State on whose territory the headquarters of an international organization was located; (c) a State on whose territory an international conference was held. An attempt had been made to draft the article specifically to cover those three situations, but the task had proved extremely difficult because a very heavy and detailed text would have been required. In order to avoid those problems and save time, the Drafting Committee had thought it wise to cast the safeguard clause in article 31 in broad and general terms.

78. The text no longer referred to host or receiving States or to transit States. Indeed, it had been questioned whether a transit State could be placed in the same position as a receiving or host State in the context of article 31. It had been generally agreed that the transit State might well require additional formalities, such as a visa or prior express consent to transit, before it accorded the facilities, privileges and immunities in question to a courier in transit from a sending State which it did not recognize.

79. Sir Ian SINCLAIR said that it should have been possible to draft a text that would specifically cover the three situations referred to by the Chairman of the Drafting Committee. As it now stood, article 31 had the disadvantage of being much too general and he hoped that it would be improved on second reading.

80. Mr. MAHIU said it seemed to him that the Drafting Committee had gone too far in trying to simplify article 31. The new wording might therefore lead to a debate on the scope of that provision and give rise to doubts on the part of States which did not recognize or maintain diplomatic or consular relations with a particular Government. The necessary explanations should therefore be included in the commentary. The Commission would, in any event, have to come back to the working of article 31 on second reading.

81. Mr. KOROMA suggested that the Commission should try to recast article 31 before submitting it to the Sixth Committee of the General Assembly.

82. Mr. RIPHAGEN (Chairman of the Drafting Committee) said that, at the current late stage, practical problems would make it difficult to revise article 31 in all languages.

83. Mr. REUTER said he thought that the doubts and misgivings which had been expressed were the result of the fact that the words "shall not be affected" covered both matters of law and matters of fact. He therefore

¹² *Ibid.*

¹³ *Ibid.*

suggested that those words should be replaced by “shall not be altered in principle”. The Commission would thus show clearly that it was not taking any position on the practical problems which might arise and that the principle of no change was valid only from the purely legal point of view. If that suggestion was not satisfactory, it might be explained in the commentary that various solutions had been possible.

84. Mr. USHAKOV said that the wording proposed by Mr. Reuter was unacceptable because it differed so radically from that of similar provisions contained in existing conventions. Certainly the text of article 31 needed to be clarified, and that could be done on second reading; it would, for example, have to be specified to which States article 31 applied. At the current stage, however, the Commission should refrain from drafting a text in too great a hurry.

85. Sir Ian SINCLAIR said that Mr. Reuter’s suggestion met some of his own concerns about the wording of article 31. He hoped that the commentary would reflect the Commission’s intentions with regard to that article and make it clear that its provisions did not apply to the *de facto* effects of non-recognition or absence of diplomatic or consular relations. He would be content with the matter being taken up on second reading.

86. Mr. TOMUSCHAT said that he also endorsed Mr. Reuter’s helpful suggestion; but unfortunately it would not change the fact that the wording of article 31 was much too general.

87. Mr. ROUKOUNAS said that, during the general debate (1951st meeting), he had questioned the validity of article 41, now article 31. Having heard the presentation of and comments on the provision, he maintained his reservations.

88. Mr. KOROMA suggested that article 31 should be left as it stood and that it should be accompanied by a suitable commentary.

89. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed provisionally to adopt article 31 [41] as it stood, on the understanding that it would be accompanied by a suitable commentary.

Article 31 [41] was adopted.

ARTICLE 32 [42] (Relationship between the present articles and existing bilateral and regional agreements)

90. Mr. RIPHAGEN (Chairman of the Drafting Committee) introduced the text proposed by the Drafting Committee for article 32 [42], which read:

Article 32 [42]. Relationship between the present articles and existing bilateral and regional agreements

The provisions of the present articles shall not affect bilateral or regional agreements in force as between States parties to them.

91. Article 32 was now composed of one paragraph, whereas the text on which it was based, the revised draft article 42 submitted by the Special Rapporteur,¹⁴ had

had three. Two paragraphs had been deleted and the third had been amended.

92. Paragraph 1 of the earlier text had stated that the present articles “shall complement” the provisions of the four relevant codification conventions. The Drafting Committee had found that the word “complement” could give rise to varying interpretations and believed that the draft should not go into the complex area of treaty law concerning the application of successive treaties relating to the same subject-matter. It had thought that it would be wiser to leave that matter aside, since guidance might be provided by article 30 of the 1969 Vienna Convention on the Law of Treaties.

93. Paragraph 3 of the earlier text had been deleted because its content was already covered by article 6, paragraph 2 (b).

94. Paragraph 2 of the earlier text formed the basis for the article now being proposed. The words “shall not affect”, which had been used instead of the words “are without prejudice to”, were taken from article 73, paragraph 1, of the 1963 Vienna Convention on Consular Relations. The broad formulation in the original paragraph 2 had been changed because most members of the Drafting Committee had thought it likely that one or more of the four relevant codification conventions would in fact be affected by other provisions of the present draft, and in particular by article 28. State practice with regard to consular couriers and bags was, moreover, evidenced primarily in bilateral agreements. The possibility of there being relevant regional agreements had also been recognized; such agreements would not be affected by the provisions of the draft.

95. One member of the Drafting Committee had disagreed with the use of the term “bilateral or regional agreements” and had urged that the text should be based on that of article 73, paragraph 1, of the 1963 Vienna Convention so as to avoid arguments *a contrario*. That member had also been unable to agree that any of the provisions of the present draft could be said to “affect” the four codification conventions as such.

96. The title had been brought into line with the new content of the article.

97. Mr. USHAKOV said that, as it now stood, article 32 might imply that the future convention would be prejudicial to some agreements in force—and that was impossible under the law of treaties. He could, moreover, not agree with the members of the Drafting Committee who took the view that the words “regional agreements” could mean any bilateral agreements except agreements of a universal character. The idea reflected in article 32 was therefore acceptable, but the text itself was not.

98. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed provisionally to adopt article 32 [42] subject to the reservations formulated by Mr. Ushakov.

Article 32 [42] was adopted.

¹⁴ *Ibid.*

ARTICLE 33 [43] (Optional declaration)

99. Mr. RIPHAGEN (Chairman of the Drafting Committee) introduced the text proposed by the Drafting Committee for article 33 [43], which read:

Article 33 [43]. Optional declaration

1. A State may, at the time of expressing its consent to be bound by the present articles, or at any time thereafter, make a written declaration specifying any category of diplomatic courier and corresponding category of diplomatic bag listed in paragraph 1 (1) and (2) of article 3 to which it will not apply the present articles.

2. Any declaration made in accordance with paragraph 1 shall be communicated to the depositary, who shall circulate copies thereof to the Parties and to the States entitled to become Parties to the present articles. Any such declaration made by a Contracting State shall take effect upon the entry into force of the present articles for that State. Any such declaration made by a Party shall take effect upon the expiry of a period of three months from the date upon which the depositary has circulated copies of that declaration.

3. A State which has made a declaration under paragraph 1 may at any time withdraw it by a notification in writing.

4. A State which has made a declaration under paragraph 1 shall not be entitled to invoke the provisions relating to any category of diplomatic courier and diplomatic bag mentioned in the declaration as against another Party which has accepted the applicability of those provisions to that category of courier and bag.

100. Article 33 was based on the revised text of draft article 43 submitted by the Special Rapporteur.¹⁵ It followed the general approach reflected in the earlier text, but had been formulated in a more precise manner; a new paragraph had also been added. Some members of the Drafting Committee had said that the article appeared to undermine the purposes of codification in the area, namely to provide uniform rules for all couriers and bags. It had nevertheless been recognized that such a provision could assist in obtaining a broader measure of government support for the draft as a whole.

101. Paragraph 1 had been recast in the light of the debate in plenary to provide that a State could specify any category of courier and corresponding category of bag to which it would not apply the present articles. The use of the words "corresponding category of diplomatic bag" was intended to make it clear that a State could not decide to apply the present articles to the consular courier, for example, but not to the consular bag. The categories of couriers and bags chosen for non-application must correspond to each other. Other drafting changes had been made for the sake of clarity and precision.

102. Paragraph 2, which was new, contained the necessary procedural elements for the application of paragraph 1. The first sentence provided that a declaration would be communicated to the depositary, who would circulate copies thereof to the parties and to the States entitled to become parties to the present articles. That sentence was based on article 23, paragraph 1, of the 1969 Vienna Convention on the Law of Treaties. The second sentence indicated that a declaration made by a contracting State would take effect upon the entry into force of the present articles for that State. The term "Contracting State" had the meaning provided for in

article 2, paragraph 1 (f), of the 1969 Vienna Convention, which referred to "a State which has consented to be bound by the treaty, whether or not the treaty has entered into force". The third sentence provided for a different period of time in the case of a declaration made by a "Party", which was, according to article 2, paragraph 1 (g), of the 1969 Vienna Convention, "a State which has consented to be bound by the treaty and for which the treaty is in force". In such a case, the articles would already have entered into force for the State concerned and its declaration would represent a change in its previous application of the articles. It had thus been thought necessary and fair to provide for a three-month "waiting period" before the declaration took effect.

103. Paragraph 3 was based on paragraph 2 of the text submitted by the Special Rapporteur, but the end of the sentence had been amended to make it clear that a withdrawal of a declaration had to be made "by a notification in writing".

104. Paragraph 4 was based on paragraph 3 of the text submitted by the Special Rapporteur, but its wording had been brought into line with that of paragraph 1. The title of the article had been shortened and now read simply: "Optional declaration".

105. Mr. FLITAN said that the purpose of the draft articles was to complement the four codification conventions referred to in article 3 and that the Commission could not make any changes in the régime established by those instruments. He was therefore in favour of the deletion of draft article 33, which specifically authorized amendments to the provisions of those conventions; that would, moreover, contradict the fact that some of those provisions were reproduced in the present draft.

106. Mr. YANKOV (Special Rapporteur) said that, in order to avoid any confusion with regard to the question of reservations as referred to in article 23, paragraph 1, of the 1969 Vienna Convention on the Law of Treaties, the commentary should make it clear that the optional declaration provided for in draft article 33 could in no way be regarded as a reservation, either in terms of its nature or in terms of its operation. If reference was to be made to the 1969 Vienna Convention, it would be more appropriate to mention article 77, paragraph 1 (e), on the functions of depositaries.

107. Mr. MAHIU said that paragraph 3 would require further clarification because paragraph 2 set a time-limit for a declaration made by a party, whereas paragraph 3 set no time-limit at all for the withdrawal of a declaration made under paragraph 1.

108. Mr. YANKOV (Special Rapporteur) said that the Drafting Committee had discussed the point raised by Mr. Mahiou. It was his own understanding that a withdrawal of an optional declaration would restore the normal position of the articles, so that there would be no need for any notification. That point could be explained in the commentary.

109. Mr. KOROMA said that he had some reservations with regard to article 33.

¹⁵ *Ibid.*

110. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed provisionally to adopt article 33 [43].

Article 33 [43] was adopted.

TITLES OF THE FOUR PARTS OF THE DRAFT ARTICLES

111. Mr. RIPHAGEN (Chairman of the Drafting Committee) said that, from the outset, the Special Rapporteur had proposed that the draft should be divided into parts, but the matter had been left pending until further progress had been made. Now that the complete draft had been prepared, the Drafting Committee proposed that the articles should be divided into the following four parts:

Part I. General provisions: articles 1 to 6;

Part II. Status of the diplomatic courier and the captain of a ship or aircraft entrusted with the diplomatic bag: articles 7 to 23;

Part III. Status of the diplomatic bag: articles 24 to 29;

Part IV. Miscellaneous provisions: articles 30 to 33.

The titles of the four parts of the draft articles were adopted.

ADOPTION OF THE DRAFT ARTICLES ON FIRST READING

112. The CHAIRMAN, noting that the first reading of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier had been completed, suggested that the Commission should adopt the whole set of draft articles.

The draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier were adopted on first reading.

TRIBUTE TO THE SPECIAL RAPPORTEUR

113. Mr. REUTER, speaking also on behalf of many other members of the Commission, proposed the following draft resolution:

“The International Law Commission,

“Having adopted provisionally the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier,

“Desires to express to the Special Rapporteur, Mr. Alexander Yankov, its deep appreciation for the outstanding contribution he has made to the treatment of the topic by his scholarly research and vast experience, thus enabling the Commission to bring to a successful conclusion its first reading of the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.”

The draft resolution was adopted.

114. Mr. YANKOV (Special Rapporteur) sincerely thanked all the members of the Commission for their appreciation of his efforts in what had, in fact, been a

collective undertaking by the Commission and its Drafting Committee. He was most grateful to the Secretariat for the valuable assistance it had given him in his work.

The meeting rose at 1.20 p.m.

1981st MEETING

Friday, 4 July 1986, at 10 a.m.

Chairman: Mr. Doudou THIAM

Present: Chief Akinjide, Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Flitan, Mr. Francis, Mr. Illueca, Mr. Jacovides, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Tomuschat, Mr. Ushakov, Mr. Yankov.

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

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

CHAPTER II. Jurisdictional immunities of States and their property (A/CN.4/L.403 and Add.1 and 2 and Add.2/Corr.1)

A. Introduction (A/CN.4/L.403)

Section A was adopted.

B. Consideration of the topic at the present session (A/CN.4/L.403)

Section B was adopted.

C. Tribute to the Special Rapporteur, Mr. Sompong Sucharitkul (A/CN.4/L.403)

Section C was adopted.

D. Draft articles on jurisdictional immunities of States and their property (A/CN.4/L.403/Add.1 and 2 and Add.2/Corr.1)

SUBSECTION 1 (Texts of the draft articles provisionally adopted by the Commission on first reading) (A/CN.4/L.403/Add.1)

2. Mr. USHAKOV said that the reservations he had expressed in connection with the draft articles, both at previous sessions and at the present session, were still entirely valid.

Section D.1 was adopted.

SUBSECTION 2 (Texts of draft articles 2 (paragraph 2), 3 (paragraph 1), 4 to 6 and 20 to 28, with commentaries thereto, provisionally adopted by the Commission at its thirty-eighth session) (A/CN.4/L.403/Add.2 and Corr.1)

Commentary to article 2 (Use of terms)

Paragraph (1)

Paragraph (1) was approved.