

Document:-  
**A/CN.4/SR.1637**

**Summary record of the 1637th meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
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natural resource would be applied in accordance with those principles and provisions.

68. With regard to the relationship between article 1 and article 5, it was not intended to adopt any absolute definition of an international watercourse or to limit the definition to the Final Act of the Congress of Vienna (1815),<sup>21</sup> which, in scientific and other circles, was regarded as totally obsolete for the non-navigational uses of international watercourses. Nor was there any intention of adopting a more expanded definition. The intention was rather to relate the definition to the effects of the uses of the water by States sharing the watercourse. A subsidiary element of that approach was to be found in article 1, paragraph 2, where navigation was brought into the scope of the articles only in so far as it affected other uses or was affected by them. There was, in his view, a consistency between the approach of article 1, paragraph 2, and that of other articles, including article 5.

69. The CHAIRMAN said that, on the understanding that the various statements made would be reflected in the report, he would take it that the Commission was prepared to adopt article 5.

*It was so decided.*

#### ARTICLE X (Relationship between the present articles and other treaties in force)<sup>22</sup>

70. Mr. VEROSTA (Chairman of the Drafting Committee) said that article X might be placed among the final provisions of the draft. The Drafting Committee had considered that it should be included at the present stage, however, in order to reassure States about the effect on existing treaties of the final instrument that might be adopted on the basis of the draft articles. There was no intention of replacing or prejudicing other relevant treaties in force. The text was based on article 73, paragraph 1 of the 1963 Vienna Convention,<sup>23</sup> but it was tempered by the inclusion of a reference to the fact that it was without prejudice to the provisions of article 3, paragraph 3.

71. Mr. USHAKOV said that the effect of article X was nil, since the body of the article did not correspond to its title.

72. The CHAIRMAN said he took it that, on the understanding that Mr. Ushakov's comment would be recorded, the Commission was prepared to adopt article X.

*It was so decided.*

*The meeting rose at 6.20 p.m.*

<sup>21</sup> Reproduced in *Yearbook ... 1979*, vol. II (Part One), document A/CN.4/320, para. 43.

<sup>22</sup> For text, see para. 24 above.

<sup>23</sup> See 1634th meeting, foot-note 2.

## 1637th MEETING

*Friday, 18 July 1980, at 10.15 a.m.*

*Chairman: Mr. C. W. PINTO*

*Members present:* Mr. Barboza, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Diaz González, Mr. Evensen, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

#### Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (concluded) (A/CN.4/335)

[Item 6 of the agenda]

#### PRELIMINARY REPORT BY THE SPECIAL RAPPORTEUR (concluded)

1. Mr. SCHWEBEL congratulated the Special Rapporteur on his excellent report (A/CN.4/335), which was a model of scholarship, clarity and good sense. However, he remained unconvinced of the need for a protocol on the topic in question. As the Special Rapporteur had pointed out, the General Assembly had referred only to the possible elaboration of an appropriate legal instrument on the topic; besides, as was pointed out in paragraph 233 of the topical summary of the Sixth Committee's discussion on the Commission's report to the thirty-fourth session of the General Assembly (A/CN.4/L.311), some representatives had expressed serious doubts about the utility of work on the topic, because it was already adequately covered in existing agreements and because other problems regarding diplomatic immunities of a more fundamental and serious nature might deserve closer attention. He saw great cogency in that view. At a time when the gravest and most grotesque violation of diplomatic immunity in the history of international law was still being perpetrated, preoccupation with a relatively minor practice seemed all the more misplaced. Indeed, if a protocol was drafted and adopted, it was debatable how widespread its ratification would be, in view of the doubts of many States regarding the need for it.

2. As to the substance of the report, he expressed the hope that the Special Rapporteur would give most earnest thought to the question of respect for national and international law. In that connexion, Mr. Reuter (1634th meeting) had drawn the attention of the Commission to the notorious abuses of the diplomatic bag for drug trafficking and terroristic smuggling. Some years earlier, the United States of America had been constrained to indict one of its nationals, who, in contravention of United States law, had sold a large quantity of submachine guns suitable for terrorist activities to the United Nations mission, in New York, of a State whose connexions with international terrorism were notorious. The individual in question

had been convicted and vigorous representations had been made to the State concerned, which had subsequently admitted that the weapons bought had been transported in the diplomatic bag. Some of those weapons had later been returned and, at an appropriate time, the officials of the mission had been declared *persona non grata* and had left the United States. That incident represented only one of many such abuses, for which it was difficult to find a remedy.

3. Diplomatic immunities were of the utmost importance for the conduct of diplomatic relations and must be observed, but consideration must be given, not only to enhancing those immunities, but also to what could be done to eliminate abuses of the diplomatic bag. It was important to be realistic and to refrain from seeking excessive immunities. He did not see why the diplomatic bag should not be subject to routine airport security inspection procedures, provided such procedures did not involve opening the bag. Nor was it clear why a diplomatic courier carrying a weapon should not be obliged to declare it, and perhaps to surrender it temporarily before boarding an aircraft. Although that might be regarded as an infringement of his immunities, it should be recognized that certain couriers of certain States might be pursuing their duties in derogation of diplomatic immunities and international law. The international system should not lend its support to such attacks on its very fabric.

4. Mr. FRANCIS associated himself with the sentiments expressed by other speakers concerning the excellence of the Special Rapporteur's report.

5. The two basic aims of the work on which the Commission was engaged should be, first, to eliminate abuses of the diplomatic bag and abuses by diplomatic couriers, as far as they were known to exist; and secondly, to develop the law, taking account of existing situations. He noted that, in the last sentence of his report, the Special Rapporteur suggested that all means of communication for official purposes through official couriers and official bags should enjoy the same degree of international legal protection. In that connexion, he referred to Mr. Bedjaoui's remarks (1636th meeting) on the difficulties of certain third world countries in which couriers were not an established institution and official bags were not confined to the categories of the four basic conventions. For example, a bag covered by the 1961 Vienna Convention<sup>1</sup> might be prepared for despatch on a particular day, but for reasons of urgency might have to be opened in order to remove basic confidential documents and hand them to a courier. In the case of a mission to the United Nations in New York, confidential papers might be removed from a bag covered by the 1975 Vienna Convention<sup>2</sup> and transferred to the consular bag. Consequently, the Special Rapporteur's call for a uniform approach was very welcome to all

third world countries. The inviolability of a State's correspondence was no less indivisible than its sovereignty. The lack of judicial decisions on the subject could be regarded as an advantage, since it was better for the law to develop on the basis of actual State practice than on the basis of controversial doctrine.

6. Referring to the questions on which the Special Rapporteur sought guidance from the Commission, he said it would be useful to adopt a definition of the diplomatic bag and the diplomatic courier. A definition of the functions of the courier would also be helpful in the application of a future convention.

7. With regard to the structure of the draft articles, quite clearly, the future instrument should include some of the general principles embodied in the other basic conventions on the subject. Mr. Bedjaoui had expressed the view that it would be advisable to begin by stating general principles concerning freedom of communication and respect for the laws and regulations of the receiving State, while Mr. Reuter had maintained that principles could be enunciated after the treatment of the two main elements of the draft. In his own view, there was room for both approaches. The basic principles could be stated at the outset, after which would follow the treatment of the two main elements and the enunciation of the other general principles.

8. As to the points raised in paragraphs 57 to 60 of the report, he had no difficulty with the terms "official courier" and "official bag". But in the light of Mr. Reuter's comment that States might be reluctant to accept the change to those terms at once, it might be preferable to retain the terms "diplomatic courier" and "diplomatic bag", placing the word "diplomatic" in quotation marks and indicating that it was intended to cover all similar functions.

9. He had no difficulty with the approach outlined in paragraphs 59 and 60 of the report, which contained all the elements necessary to enable the Commission to proceed with the draft articles.

10. Mr. QUENTIN-BAXTER expressed appreciation to the Special Rapporteur for his preliminary report, which helped to focus awareness on the issues involved. As previous speakers had pointed out, an important concern in dealing with such a narrow and practical subject was the need to maintain a balance between the sovereignty of a State and its control over its own territory, on the one hand, and its duty to other States, on the other hand. In the field in question, the solution to that problem could not be found by lawyers alone, but also required technical expertise.

11. One question that arose, for example, was whether a diplomatic bag could be subjected to an airport security inspection without compromising the secrecy of the communications it contained. Another question was that of agricultural regulations. In an

<sup>1</sup> See 1634th meeting, foot-note 1.

<sup>2</sup> *Ibid.*, foot-note 4.

isolated country such as his own, the introduction of certain plant and animal diseases could cripple vital areas of the economy. Consequently, all individuals entering the country were subjected to strict inspection. As far as drug trafficking was concerned, the New Zealand authorities had learned that to maintain standards less stringent than those of other countries was to invite the use of one's own country as a centre for the distribution of drugs to other parts of the world. In view of all the technical problems involved, it was difficult to believe that a conference of States could deal with the type of instrument contemplated without the support of technical experts. Indeed, if the Special Rapporteur himself required such assistance, every effort should be made to provide it through the United Nations system.

12. He regarded the subject as both important and interesting.

13. Mr. TSURUOKA, after associating himself with the congratulations addressed to the Special Rapporteur, said that his position had not changed in regard to the need to draft an international legal instrument on the subject before the Commission. But that could not be done unless both freedom of communication and the security of the receiving and transit States were taken into account. What the Special Rapporteur had said on the subject was reassuring, since it was proposed to use empirical and inductive methods to draw up a pragmatic instrument. That instrument would merely be intended to fill gaps, some of which could give rise to abuses; and it would be worded in such a way that the majority of States could become parties and apply it.

14. The reason why the Commission had to resort to empirical methods was that it did not represent particular political interests, but acted for the international community as a whole and must avoid any excessive schematization, which might meet with fierce opposition. In short, it was necessary to act with caution, not to lose sight of the practical nature of the enterprise, and not to adopt over-ambitious aims. The slightest exaggeration in the protection of freedom of communication could lead to abuses. As a diplomat, he was convinced that Governments would not be interested in a legal instrument that was not of an eminently practical nature. As the Special Rapporteur had drawn attention to that danger, however, he was not unduly anxious about it.

15. Mr. THIAM observed that many different points of view had been expressed on one of the questions raised in the Special Rapporteur's excellent report: that of the use of the expressions "diplomatic courier" and "diplomatic bag" or "official courier" and "official bag". Personally, he thought that question could only be decided when the work had made further progress. Above all, it was important to decide how to reconcile freedom of communication with the rights of the receiving State. It seemed quite easy to state an appropriate principle, but it would probably be

extremely difficult to ensure its observance. The Special Rapporteur should endeavour to show how the application of such a principle could be given practical effect. Otherwise it would be difficult to draft a convention which had any chance of being applied.

16. In general, he approved of the structure proposed for the draft by the Special Rapporteur, but he wondered whether some important questions listed under the heading "Miscellaneous provisions" (A/CN.4/335, para. 60) ought not to be studied under another heading. Those questions included: obligations of the receiving State; obligations of the transit State; obligations of the third State in cases of *force majeure*; respect for the laws and regulations of the receiving State; non-discrimination; and relationship to existing conventions. One would expect to find less important questions under the heading "Miscellaneous provisions".

17. Lastly, he would like the Special Rapporteur to clarify the meaning of the word "facilities", which occurred several times in the items listed in the proposed structure. That term was of a diplomatic rather than a legal nature. Where, then, was the boundary between the "facilities" and the rights accorded to a diplomatic courier? If it was only a question of facilities, there was no need for codification, but if it was a question of rights, their exact content must be determined.

18. Mr. DÍAZ GONZÁLEZ congratulated the Special Rapporteur on his clear and honest report.

19. Reference had already been made to the debate in the Sixth Committee at the thirty-fourth session of the General Assembly, concerning the utility of drafting a legal instrument on the topic. There had been a marked divergence of views. A large majority had considered that the provisions of the existing conventions constituted an adequate framework for the regulation of the subject. In his opinion, it would be preferable to urge States to respect and apply the provisions of those conventions, in accordance with international law and current practice.

20. As Mr. Bedjaoui had observed at the previous meeting, the topic was of the utmost importance to countries that were unable to afford the luxury of regular diplomatic couriers. Moreover, there were countries in which neither freedom of expression nor inviolability of either official or private correspondence existed. In such countries, the only relatively sure method of prompt communication was by means of the diplomatic courier and diplomatic bag. Even so, as Mr. Reuter had pointed out, it was possible, using modern techniques, to inspect the contents of an unaccompanied diplomatic bag without leaving any external sign that the bag had been violated. Consequently, the only way to guarantee the secrecy of correspondence was by means of the diplomatic courier, with or without a diplomatic bag.

21. With regard to the proposal to use the term "official" instead of "diplomatic", it was not the official nature of the correspondence which guaranteed the inviolability of the bag or the protection of the courier. The basis of the guarantee was to be found in the privileges and immunities enjoyed by States in respect of their permanent diplomatic missions, consular missions, special missions, and delegations to international organizations. All documentation, of whatever nature, sent by States to their agents abroad or received from them, could be regarded as official. Venezuela, like other Latin-American countries with which it had concluded special agreements, maintained a military air courier service to the capitals of various Latin-American countries. For obvious reasons, he preferred the term "diplomatic" to describe the bag and courier, rather than the term "official".

22. The Special Rapporteur's report was comprehensive and contained all the elements necessary for beginning the process of codification. He wondered, however, how far the Commission could go in drafting a set of articles that would constitute a legal instrument without duplicating or amending the existing conventions. The General Assembly should be asked to decide how far it wished the Commission to proceed in that direction.

23. Mr. RIPHAGEN associated himself with the views expressed by previous speakers in congratulating the Special Rapporteur on his report.

24. Referring to the proposed structure of the draft articles (A/CN.4/335, para. 60), he said it might be preferable to deal with questions in their order of importance. The two principles constituting the whole basis of the topic were respect for the laws and regulations of receiving and transit States and freedom of communication between sending States and their official representatives abroad. The first principle should be included at the beginning of the draft, rather than in a later section, as proposed in the report. He noted that item 6 under heading V (Miscellaneous provisions) contained no reference to respect for the laws and regulations of the transit State, or to international law in general. Those two elements should be included.

25. The most important point concerning freedom of communication was the status of the bag. Other elements, such as the privileges and immunities of the courier were functionally dependent on that status—a fact that should be reflected in the structure of the draft. The next most important point was the treatment of the bag. Most frequently, the bag was entrusted to the captain of a commercial aircraft or ship, an item which had been placed at the end of section IV of the proposed structure.

26. After dealing with the status of the bag, the draft should take up the questions of the courier *ad hoc*, the official courier, and their personal privileges and immunities. Next should follow articles on the inviol-

ability of means of transport used in the performance of official functions and, in so far as necessary, the inviolability of private accommodation.

27. He was fully confident that, under the guidance of the Special Rapporteur, it would be possible to arrive at a practical solution.

28. Sir Francis VALLAT associated himself with the sentiments expressed by previous speakers in congratulating the Special Rapporteur on his report.

29. In general, he supported the structural approach outlined by Mr. Riphagen, and urged the Special Rapporteur to give it serious consideration. He also shared the doubts expressed by Mr. Schwebel and associated himself with the views expressed by Mr. Reuter at the 1634th meeting.

30. He wished to emphasize the advisability of not changing the title of the topic by using the term "official" instead of "diplomatic" to describe the courier and the bag. The Commission should begin by considering any problems which might arise in respect of the diplomatic courier and the diplomatic bag.

31. The structure of the draft, as proposed in the report, could lead to the consideration of excessive detail, which could be dangerous in the process of codification. He had always maintained that the Commission could succeed in its work only if it concerned itself solely with general rules and principles, avoiding questions of detail, which could be dealt with in *ad hoc* conventions. He urged the Special Rapporteur to bear that consideration in mind in dealing with the topic.

32. Mr. USHAKOV said he was extremely satisfied with the report under discussion, which gave an adequate account of the subject-matter to be codified. The terminology used in the various existing conventions to designate couriers and bags was very varied, but it was clear that the situation was the same in each case. It was important, therefore, first, to regroup the existing rules and secondly, to fill the gaps revealed by practice.

33. There was an intensification of diplomatic and other relations, which increased the number of couriers and bags; that trend might well cause concern. Moreover, abuses had been committed, there would be more abuses and established rules would continue to be broken. That should not deter the Commission, however, from codifying the subject under discussion. Abuses and violations had never replaced the law, and it was precisely the lack of strict legal rules adapted to the circumstances that gave rise to abuses and violations. It had to be presumed that every new legal rule would be obeyed, as otherwise law would be meaningless. Consequently, the Commission should not pay too much attention to the fears expressed by certain Governments.

34. What was important at that point was to draw up the list of questions to be studied, and where that was

concerned he had no comments to make on the structure proposed by the Special Rapporteur.

35. The CHAIRMAN, speaking as a member of the Commission, said that he endorsed the comments made by Mr. Bedjaoui and Mr. Tabibi (1636th meeting). While he had no objection to the Special Rapporteur's proposed structure, he was somewhat attracted by Mr. Riphagen's suggestions in that regard.

36. Viewing the matter essentially from the position of a receiving State, he fully agreed that only such facilities, privileges and immunities as were required for their functions should be accorded to the diplomatic courier and bag. The courier's central exemptions should be those of personal inviolability and immunity from arrest and detention; any further exemptions would have to be considered very carefully. The bag should not normally be opened or detained, but where there were strong grounds for believing that unauthorized material was being carried, the general rule should be that, subject to the normal procedures, it could be opened or examined in some other way.

37. A definition of the courier and bag would be very useful. So far as the courier *ad hoc* was concerned, he noted that, while the report referred to the obligations of the receiving State and the transit State, it made no reference to the obligations of the courier towards the transit State, which, in his view, were equally important. Furthermore, he considered that, in cases where privileges, immunities and facilities were conferred on a courier *ad hoc*, they should not be deemed to exclude the privileges, immunities and facilities to which he might be entitled otherwise than under the articles. In other words, an ambassador on mission, when acting as a courier *ad hoc*, should also enjoy the privileges, immunities and facilities of a diplomat in transit.

38. Mr. YANKOV (Special Rapporteur), summing up the discussion, said that the comments made by members would greatly assist him in his further work.

39. He was gratified to note that there had been general recognition of the importance of the codification and progressive development of international law relating to the status of the diplomatic courier and bag. He had recently been reminded of the practical problems involved when, having met two couriers at Sofia airport, he had taken the opportunity to sound out their views; he had been interested to find that some of the issues they had mentioned, particularly the need for increased protection and security, had been raised in the Commission. Mr. Bedjaoui, for example, had underlined the need for a response to the unprecedented growth of international communications and had stressed that the dialectics of modern diplomatic intercourse added new dimensions to the problem. Mr. Quentin-Baxter had spoken of the practical importance of the economic aspects of the problem, as well as of technical know-how. Mr. Diaz

González, while emphasizing the importance of the existing conventions for countries which could not afford professional couriers, had nonetheless recognized the need for a set of draft articles.

40. Other speakers, however, had expressed certain reservations, urging caution and warning against an unduly ambitious or academic approach. Reference had been made to the need for preventive and other measures to counteract possible abuses. While that was a very real problem, the Commission's task was to draft rules that would not only prevent such abuses but would also create a viable and effective framework designed to promote international co-operation and to reduce the likelihood of difficulties and disputes.

41. It had been suggested that the subject was not perhaps the most pressing one in the field of diplomatic law. While that was admittedly so, the Commission's task was not only to react to urgent problems, but also to work in a broader context. It therefore seemed to him that the status of the diplomatic courier and bag warranted the Commission's attention and that, if it could fill in the existing gaps, it would be making a positive contribution to international law.

42. Several comments had been made regarding the method to be adopted in carrying out the study and preparing the draft articles from which he noted that there was general support for an empiric and pragmatic approach based on the four existing conventions. One problem was how to strike a balance between the general rules and the specific technicalities involved. Another problem, to which he had already referred, both in his report and in his oral presentation, was how to strike a balance between the secrecy requirements of the sending State and the security and other legitimate requirements of the receiving and transit States, having regard, on the one hand, to the possibility of abuses and, on the other hand, to the new facilities offered by sophisticated technology for verifying the contents of the bag.

43. As Mr. Riphagen had observed, there was in fact an interplay between two basic principles: freedom of communication and respect for the laws of the receiving State. To those two principles, however, should be added a third, namely, respect for the rules of international law. He agreed with Mr. Francis that uniformity of approach was a basic requirement for the effective legal protection of official communications. He also agreed with Mr. Pinto on the importance of the functional approach, which he had sought to underline in his report and oral presentation by explaining that the purpose of the facilities, privileges and immunities accorded to the courier and the bag was not to benefit the person, but to create the conditions necessary for the normal and effective performance of the functions concerned.

44. It was clear from the discussion that the prevailing view was that the question of the form of the draft articles should be left for States to decide at a

later stage. Although Mr. Reuter had suggested that the possibility of a convention which would supplement the existing conventions should not be excluded *a priori*, he had nevertheless expressed himself in favour of the more cautious approach advocated in the report and supported by other speakers.

45. Mr. Schwebel had raised the question of the possible response of States to the legal instrument ultimately adopted. That was always a problem in the preparatory stages of codification work, but the Commission should not confine itself to describing existing practices and rules; it should endeavour to go further even at the risk that the international community might challenge its endeavour.

46. He had found the Commission's discussion on the scope and content of the topic particularly useful. His own understanding, based on the reports of the Working Group (A/CN.4/335, paras. 10 *et seq.*), was that a comprehensive approach should be adopted with a view to preparing a coherent set of draft articles; the problem was how to achieve that comprehensive approach while avoiding over-generalization. As Mr. Diaz González had rightly pointed out, official correspondence covered many different kinds of communication between a Government and its missions abroad. It was therefore necessary to evolve some formula covering all such communications.

47. He noted that, in general, the Commission did not favour the introduction of the new concept of the "official courier" and "official bag", which he had suggested merely as a working hypothesis. The concept of the diplomatic courier and diplomatic bag could perhaps therefore be retained, but accompanied by a clause along the lines of those embodied in article III (section 10) of the Convention on the Privileges and Immunities of the United Nations,<sup>3</sup> article IV (section 12) of the Convention on the Privileges and Immunities of Specialized Agencies<sup>4</sup> and article 72 of the Vienna Convention of 1975.

48. He could not, however, overlook the plain fact that, given the same circumstances, couriers and bags must enjoy the same protection. From his own experience as an ambassador, he knew only too well that the problems involved for a mission to the United Nations in New York were infinitely more complex than those for, say, a diplomatic mission in London. It was particularly important, when instructions and documents were awaited concerning an important resolution to be adopted at an international conference, that all the means of communication should enjoy the same protection. He did not think there was any real dispute over the fundamental issue; the problem was rather to find a solution which took account of the need for uniformity, without raising undue alarm by introducing new notions. As Mr. Francis had said, what was needed was a legal umbrella.

49. It was Mr. Reuter who had first referred to possible abuses and to the need to provide a legal framework for their prevention and control, although all subsequent speakers had emphasized the importance of the problem, and Mr. Evensen, at the previous meeting, had even suggested that a special draft article should be prepared on the legal consequences of such abuses. He did not dispute that such abuses were merely the tip of the iceberg, and he recognized the difficulty of arriving at a consensus formula. He considered, however, that it should be pointed out to States that their concern about security should be matched by concern about the safe and rapid delivery of their communications.

50. He welcomed the emphasis which certain members had placed on the need for a definition of the courier and bag, and noted that Mr. Evensen had also suggested that special articles determining the functions of the diplomatic courier should be drafted.

51. With regard to the structure of the draft articles, as explained in paragraph 60 of the report, his suggestions were purely tentative, and a more limited approach could certainly be considered at that initial stage. Mr. Reuter had suggested that the Commission should not deal with general principles until draft articles on specific issues had been prepared, while other members had favoured a degree of flexibility. The main problem was how to express the ideas involved; after that had been done, it could be decided whether a cautious or a bold approach was indicated. The heading "Miscellaneous provisions" was intended to cover a variety of issues, and its precise content would have to be determined at a later stage.

52. It had also been suggested that it would perhaps be preferable to deal first with the bag and then with the courier. The existing conventions, however, dealt with the courier first, which had a certain logic. What really mattered, however, was the content and presentation of the draft articles.

53. Mr. Thiam had asked what was meant by the word "facilities" and where the boundary between "facilities" and legal obligations lay. The word "facilities" in fact appeared in a number of conventions: specifically, in article 25 of the 1961 Vienna Convention and article 28 of the 1963 Vienna Convention.<sup>5</sup> As he understood that word, it did indeed denote an obligation on the part of the receiving and transit States to facilitate the functions in question. The Working Group had also favoured that word, since it had been thought that it would cause less alarm than the expression "privileges and immunities" and that it was necessary to place the courier and bag on an equal footing with diplomatic agents. He understood Mr. Thiam's concern, however, and would reconsider the matter.

54. He agreed on the importance of the courier *ad hoc* and the status of the unaccompanied bag. He had

<sup>3</sup> United Nations, *Treaty Series*, vol. 1, p. 20.

<sup>4</sup> *Ibid.*, vol. 33, p. 270.

<sup>5</sup> See 1634th meeting, foot-note 2.

also taken note of the relationship of the topic with other conventions and in particular with article 73 of the 1963 Vienna Convention and article 3 of the 1975 Vienna Convention.

55. In conclusion, he thanked members of the Commission and the secretariat for their assistance.

56. The CHAIRMAN thanked the Special Rapporteur, on behalf of the Commission, for his report and oral presentation.

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

[Item 5 of the agenda]

**DRAFT ARTICLES PROPOSED BY THE  
DRAFTING COMMITTEE (concluded)**

**ARTICLE 6 (State immunity)<sup>6</sup> (concluded)**

57. The CHAIRMAN reminded members that at the 1634th meeting the Commission had heard the report of the Chairman of the Drafting Committee and had adopted draft article 1, subject to certain reservations regarding points of substance and drafting. The Commission had then considered draft article 6. There had been clear criticism of the presentation of the principle of State immunity, and a request had been made for the inclusion in the Commission's report of an alternative version of that principle. There had also been criticisms relating to the difficulty of reaching a conclusion without the fuller background provided by the commentaries to be incorporated in the report, which was not yet before the Commission.

58. In view of that situation, he suggested that the Commission should adopt draft article 6 as proposed by the Drafting Committee, on the understanding that members would have an opportunity, when the report was before them, to ensure that their views were adequately recorded.

*It was so decided.*

*The meeting rose at 1 p.m.*

\* Resumed from the 1634th meeting.

<sup>6</sup> For text, see 1634th meeting, para. 43.

**Draft report of the Commission on the work  
of its thirty-second session**

1. The CHAIRMAN invited the Commission to consider its draft report on its thirty-second session, beginning with Chapter IV.

**CHAPTER IV. *Question of treaties concluded between States  
and international organizations or between two or more  
international organizations* (A/CN.4/L.314 and Add.1 and  
Add.1/Corr.1)**

**A. Introduction**

Paragraphs 1–4

*Paragraphs 1–4 were approved.*

Paragraph 5

2. Sir Francis VALLAT proposed that the words "the final codification", in the third sentence, should be replaced by the words "the final instrument of codification".

*It was so decided.*

*Paragraph 5, as amended, was approved.*

Paragraphs 6–9

*Paragraphs 6–9 were approved.*

*Section A, as amended, was approved.*

**B. Draft articles on treaties concluded between States and  
international organizations or between international organi-  
zations**

**TEXT OF ARTICLES 61–80 AND ANNEX, WITH COMMENTARIES  
THERETO, ADOPTED BY THE COMMISSION AT ITS THIRTY-  
SECOND SESSION**

**PART V. Invalidity, termination and suspension of the operation  
of treaties**

**SECTION 3. Termination and suspension of the operation of  
treaties**

**ARTICLES 61–64**

**Commentary to article 61 (Supervening impossibility of perfor-  
mance)**

Paragraph (4)

3. Mr. REUTER (Special Rapporteur), referring to the penultimate sentence, said he had originally thought that some members wished article 73 to state a general reservation. But since neither the Commission nor the Drafting Committee had adopted a general formula for that article, he proposed that the penultimate sentence be deleted; as a consequential amendment, the word "Accordingly" at the beginning of the next sentence should also be deleted.

*It was so decided.*

*The commentary to article 61, as amended, was  
approved.*

**1638th MEETING**

**Tuesday, 22 July 1980, at 10 a.m.**

**Chairman:** Mr. C. W. PINTO

**Members present:** Mr. Barboza, Mr. Diaz González, Mr. Evensen, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.