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Summary record of the 1691st meeting

Topic:

Status of the diplomatic courier and the diplomatic bag not accompanied by the diplomatic courier

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did not have any legal character. All human activities required a measure of prudence towards others. In his view, it was essential for the Commission to be aware of that distinction between natural duties and legal obligations.

71. The CHAIRMAN, noting that there were no further comments, declared that the consideration of the Special Rapporteur's second report had been concluded.

The meeting rose at 1.05 p.m.

1691st MEETING

Wednesday, 15 July 1981, at 10.05 a.m.

Chairman: Mr. Doudou THIAM

Present: Mr. Aldrich, Mr. Barboza, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Dadzie, Mr. Diaz Gonzalez, Mr. Francis, Mr. Njenga, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Sucharitkul, Mr. Tabibi, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (A/CN.4/347 and Add.1 and 2)

[Item 8 of the agenda]

DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR

ARTICLE 1 (Scope of the present articles),

ARTICLE 2 (Couriers and bags not within the scope of the present articles),

ARTICLE 3 (Use of terms),

ARTICLE 4 (Freedom of communication for all official purposes effected through diplomatic couriers and diplomatic bags),

ARTICLE 5 (Duty to respect international law and the laws and regulations of the receiving and the transit State), and

ARTICLE 6 (Non-discrimination and reciprocity)

1. The CHAIRMAN invited the Special Rapporteur to introduce draft articles 1 to 6 (see A/CN.4/347 and Add.1 and 2, paras. 49, 211, 217, 225 and 231), which read:

Article 1. Scope of the present articles

I. The present articles shall apply to communications of States for all official purposes with their diplomatic missions, consular posts, special missions, or other missions or delegations, wherever situated, or with other States or international organizations, and also to official communications of these

missions and delegations with the sending State or with each other, by employing diplomatic couriers and diplomatic bags.

2. The present articles shall apply also to communications of States for all official purposes with their diplomatic missions, consular posts, special missions, or other missions or delegations, wherever situated, and with other States or international organizations and also to official communications of these missions and delegations with the sending State or with each other, by employing consular couriers and bags, and couriers and bags of the special missions, or other missions or delegations.

Article 2. Couriers and bags not within the scope of the present articles

1. The present articles shall not apply to couriers and bags used for all official purposes by international organizations.

2. The fact that the present articles do not apply to couriers and bags used for all official purposes by international organizations shall not affect:

(a) the legal status of such couriers and bags;

(b) the application to such couriers and bags of any rules set forth in the present articles with regard to the facilities, privileges and immunities which would be accorded under international law independently of the present articles.

Article 3. Use of terms

1. For the purposes of the present articles:

(1) "diplomatic courier" means a person duly authorized by the competent authorities of the sending State and provided with an official document to that effect indicating his status and the number of packages constituting the diplomatic bag, who is entrusted with the custody, transportation and delivery of the diplomatic bag or with the transmission of an official oral message to the diplomatic mission, consular post, special mission or other missions or delegations of the sending State, wherever situated, as well as to other States and international organizations, and is accorded by the receiving State or the transit State facilities, privileges, and immunities in the performance of his official functions;

(2) "diplomatic courier *ad hoc*" means an official of the sending State entrusted with the function of diplomatic courier for special occasion only, who shall cease to enjoy the facilities, privileges and immunities accorded by the receiving or the transit State to a diplomatic courier, when he has delivered to the consignee the diplomatic bag in his charge;

(3) "diplomatic bag" means all packages containing official correspondence, documents or articles exclusively for official use which bear visible external marks of their character, used for communications between the sending State and its diplomatic missions, consular posts, special missions or other missions or delegations, wherever situated, as well as with other States or international organizations, dispatched through diplomatic courier or the captain of a ship or a commercial aircraft or sent by post, overland shipment or air freight and which is accorded by the receiving or the transit State facilities, privileges and immunities in the performance of its official function;

(4) "sending State" means a State dispatching diplomatic bag, with or without a courier, to its diplomatic mission, consular post, special mission or other missions or delegations, wherever situated, or to other States or international organizations;

(5) "receiving State" means a State on whose territory:

(a) a diplomatic mission, consular post, special mission or permanent mission is situated, or

(b) a meeting of an organ or of a conference is held;

(6) "host State" means a State on whose territory:

- (a) an organization has its seat or an office, or
- (b) a meeting of an organ or a conference is held;

(7) "transit State" means a State through whose territory and with whose consent the diplomatic courier and/or the diplomatic bag passes *en route* to the receiving State;

(8) "third State" means any State other than the sending State, the receiving State and the transit State;

(9) "diplomatic mission" means a permanent mission within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

(10) "consular post" means any consulate-general, consulate, vice-consulate or consular agency within the meaning of the Vienna Convention of Consular Relations of 24 April 1963;

(11) "special mission" means a temporary mission, representing the State which is sent by one State to another with the consent of the latter for the purpose of dealing with it on specific questions or of performing in relation to it a special task;

(12) "mission" means, as the case may be, the permanent mission or the permanent observer mission;

(13) "permanent mission" means a mission of permanent character, representing the State, sent by a State member of an international organization to that organization;

(14) "permanent observer mission" means a mission of permanent character, representing a State, sent to an international organization by a State not a member of that organization;

(15) "delegation" means, as the case may be, the delegation to an organ or the delegation to a conference;

(16) "delegation to an organ" means the delegation sent by a State to participate on its behalf in the proceedings of the organ;

(17) "observer delegation" means, as the case may be, the observer delegation to an organ or the observer delegation to a conference;

(18) "observer delegation to an organ" means the delegation sent by a State to participate on its behalf as an observer in the proceedings of the organ;

(19) "delegation to a conference" means the delegation sent by a State to participate on its behalf in the proceedings of the conference;

(20) "observer delegation to a conference" means the delegation sent by a State to participate on its behalf as an observer in the proceedings of the conference;

(21) "international organization" means an intergovernmental organization;

(22) "organ" means:

(a) any principal or subsidiary organ of an international organization, or

(b) any commission, committee or sub-group of any such organ, in which States are members;

(23) "conference" means a conference of States.

2. The provisions of paragraph 1, subparagraphs (1), (2) and (3), on the terms "diplomatic courier", "diplomatic courier *ad hoc*" and "diplomatic bag" may apply also to consular courier and consular courier *ad hoc*, to couriers and *ad hoc* couriers of special missions and other missions or delegations, as well as to consular bag and the bags of special missions and other missions and delegations of the sending State.

3. The provisions of paragraphs 1 and 2 of the present article regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or the internal law of any State.

Article 4. Freedom of communication for all official purposes effected through diplomatic couriers and diplomatic bags

1. The receiving State shall permit and protect free communications on the part of the sending State for all official purposes with its diplomatic missions, consular posts and other missions or delegations as well as between those missions, consular posts and delegations, wherever situated, or with other States or international organizations, as provided for in article 1.

2. The transit State shall facilitate free communication through its territory effected through diplomatic couriers and diplomatic bags referred to in paragraph 1 of the present article.

Article 5. Duty to respect international law and the laws and regulations of the receiving and the transit State

1. Without prejudice to his privileges and immunities, it is the duty of the diplomatic courier to respect the rules of international law and the laws and regulations of the receiving State and the transit State.

2. The diplomatic courier also has a duty not to interfere in the internal affairs of the receiving and the transit State.

3. The temporary accommodation of the diplomatic courier must not be used in any manner incompatible with his functions as laid down in the present articles, by the relevant provisions of the Vienna Convention on Diplomatic Relations or by other rules of general international law or by any special agreements in force between the sending State and the receiving or the transit State.

Article 6. Non-discrimination and reciprocity

1. In the application of the provisions of the present articles, no discrimination shall be made as between States with regard to the treatment of diplomatic couriers and diplomatic bags.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present articles restrictively because of a restrictive application of that provision to its diplomatic couriers and diplomatic bags in the sending State;

(b) where States modify among themselves, by custom or agreement, the extent of facilities, privileges and immunities for their diplomatic couriers and diplomatic bags, provided that it is not incompatible with the object and purpose of the present articles and does not affect the enjoyment of the rights or the performance of the obligations of third States.

2. Mr. YANKOV (Special Rapporteur) said that in preparing his second report (A/CN.4/347 and Add.1 and 2) he had been guided by the Commission's instructions on the topic and by the recommendation in General Assembly resolution 35/163, subparagraph 4 (f). He had therefore proceeded with the formulation of a set of draft articles based on a comprehensive approach to the subject that would lead to a coherent and uniform regime governing the status of the diplomatic courier and diplomatic bag, as well as all other kinds of couriers and bags used by States. The regime would be based on the common legal ground provided by the four multilateral conventions in the field of diplomatic law concluded under the auspices of the United Nations since 1961.

3. The main issues dealt with in his second report were the scope of the draft articles; the problems involved in defining the terms "diplomatic courier", "diplomatic courier *ad hoc*" and "diplomatic bag";

and the tentative formulation of general principles relating to the legal protection of the diplomatic courier, to his obligations under international law and under the laws and regulations of receiving and transit States, and to non-discrimination and reciprocity in the treatment of the diplomatic courier and the diplomatic bag.

4. At the present stage, he had placed particular stress on surveying the legislative background of the question of the diplomatic courier and the diplomatic bag, in order to give the Commission an idea of the basic elements of the topic and enable it to identify any existing gaps and determine how much common basis there was for uniform and coherent treatment of diplomatic and other couriers and bags. He had emphasized the multilateral conventions on diplomatic law concluded under the auspices of the United Nations; that made it clear that, in preparing his second report, he had used an inductive method involving an analysis of the diplomatic courier and diplomatic bag as they had evolved through codification.

5. The question of the scope of the draft articles was significant because the rules being formulated would apply not only to the diplomatic courier and diplomatic bag but possibly to all other kinds of couriers and bags used by States for official communications. He had therefore determined the extent to which it could be said, in fact and in law, that the same rules applied to both diplomatic and all other kinds of official couriers and bags. In doing so, he had decided on an approach which did not require the introduction of new concepts, for that might cause States apprehension, but was based on assimilation. That involved examining the 1961 Vienna Convention on Diplomatic Relations,¹ identifying the essential elements of that convention with regard to the status of the diplomatic courier and the diplomatic bag and ascertaining how far they were mirrored in the other three multilateral conventions dealing with the couriers and bags in question. It thus became possible to determine whether or not they formed a common legal basis for the uniform treatment of all kinds of couriers and bags.

6. In considering the scope of the draft articles, his first objective had been the elaboration of a set of general and specific rules governing the status and functions of couriers in the service of all kinds of missions of sending States in relation to various kinds of bags. His second objective had been to devise a formula for applying the regime governing the diplomatic courier and the diplomatic bag to all types of couriers and bags used by States for official communications. The assimilation of the latter to the former would require a common denominator, derived by comparative analysis from the relevant provisions

of the multilateral conventions and other international agreements on diplomatic law.

7. In paragraphs 20 to 41 of his second report he had reviewed the multilateral conventions which could serve as the legal basis for a uniform regime governing the status of the courier and the bag. Article 27 of the 1961 Vienna Convention contained the most relevant provisions, since it spelt out the scope of application of the principle of freedom of communication for all official purposes; it covered not only missions of sending States, "wherever situated", but also the diplomatic courier *ad hoc*, and it referred to the possibility that a diplomatic bag might be entrusted to the captain of a commercial aircraft. The adoption of article 27 of that convention had represented a significant contribution to the codification and progressive development of diplomatic law. It had ensured general recognition of the principle of free communication for all official purposes between sending States and their missions, between those missions themselves and between sending States and other States or international organizations. It thus constituted a comprehensive and uniform regime governing the legal status of the diplomatic courier and the diplomatic bag; since in addition it referred to the diplomatic courier *ad hoc* and the use of diplomatic bags entrusted to the captain of a commercial aircraft, it could be said to encompass all the various types of couriers and bags.

8. Article 35 of the 1963 Vienna Convention on Consular Relations² was modelled almost entirely on article 27 of the 1961 Vienna Convention. The status of the consular courier and the facilities, privileges and immunities accorded to him were the same as those accorded to the diplomatic courier. Paragraph 1 of article 35 of the 1963 Vienna Convention did, of course, provide that a consular post could employ diplomatic or consular couriers and diplomatic or consular bags. The status of the consular bag was the same as that of the diplomatic bag, except that paragraph 3 of article 35 provided that if the competent authorities of the receiving State had serious reason to believe that the bag contained something other than correspondence, documents or articles intended exclusively for official use, they could request that the bag be opened.

9. The departure from article 27 of the 1961 Convention represented by article 35, paragraph 3, of the 1963 Convention had perhaps been due to the fact that, when the 1963 Convention was adopted, State practice in regard to consular couriers and bags had not been very abundant. Article 28 of the 1969 Convention on Special Missions³ was modelled entirely on article 27 of the 1961 Vienna Convention,

¹ See United Nations, *Treaty Series*, vol. 500, p. 95. Hereinafter called "1961 Vienna Convention".

² See General Assembly resolution 2530 (XXIV) of 8 December 1969, annex.

however, as were articles 27 and 57 of the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.⁴

10. Paragraphs 42 to 44 of his report dealt with the question of the applicability of an assimilation provision to all kinds of couriers and bags used by States for official purposes. The analytical survey of the relevant provisions of the four multilateral conventions revealed common legal ground for comprehensive and coherent treatment of all types of couriers and bags used by States for official communications. The provisions of those conventions had been widely applied in State practice and appeared in a large number of bilateral conventions on diplomatic law. The applicability of the rules relating to the status of the diplomatic courier and the diplomatic bag to the status of all other couriers and bags used by States was thus a reality of law and practice which needed only to be given expression in an appropriate provision.

11. One limitation on the scope of the draft articles, however, was that they would not apply to couriers and bags used by international organizations. The reasons for that were that the four multilateral conventions under consideration did not contain rules applicable to couriers and bags used by international organizations; and that, although existing agreements and conventions constituted a reliable basis for applying the rules relating to couriers and bags used by States to couriers and bags used by international organizations, the provisions of those agreements and conventions had not been incorporated into a single international convention. He was therefore of the opinion that the study of the topic under consideration should be confined to the legal status of couriers and bags used by States. His draft article 2 dealt with couriers and bags outside the scope of the draft articles.

12. Introducing draft article 1, on the scope of the draft articles, he said that paragraph 1 was designed to guarantee the implementation of the principle of freedom of communication through the diplomatic courier and the diplomatic bag, and provided for a broad network of means of official communication. Paragraph 2 was an explicit and descriptive assimilation provision which made the rules relating to the diplomatic courier and the diplomatic bag applicable to couriers and bags used by consular posts and other missions and delegations. Although that provision could have been drafted more concisely, he had submitted it in a somewhat elaborate form in order to make his intentions clear straightaway.

13. In article 2, paragraph 1 stated that the articles would not apply to couriers and bags used by international organizations, and paragraph 2 was a safeguarding clause inspired by article 3 of the 1969 Vienna Convention on the Law of Treaties.⁵

14. A major problem to be solved was the definition of the terms "diplomatic courier", "diplomatic courier *ad hoc*" and "diplomatic bag". As he had pointed out in paragraph 55 of his report, they were closely related to the *sedes materiae* of the topic and had only been partially defined in existing multilateral conventions. In dealing with that problem, he had examined the *travaux préparatoires* and relevant provisions of the four multilateral conventions in the field of diplomatic law, as well as State practice in the matter. His objectives had been to identify the main features of the legal status of the diplomatic courier, the diplomatic courier *ad hoc* and the captain of an aircraft or ship entrusted with the transportation and delivery of a diplomatic bag, and to determine whether the definitions of those kinds of couriers had any common features, particularly with regard to official functions and credentials and the scope of facilities, privileges and immunities.

15. Paragraphs 58 to 122 of his report contained a detailed analysis of the provisions of the relevant multilateral conventions that concerned the definition of the terms "diplomatic courier" and "diplomatic courier *ad hoc*". Article 27 of the 1961 Vienna Convention had provided him with a very reliable basis for the definition of the term "diplomatic courier", given in paragraph 121 of his report. Paragraph 122 described the main elements that might be included in a definition of the term "diplomatic courier *ad hoc*".

16. In order to arrive at a definition of the term "diplomatic bag" (A/CN.4/347 and Add.1 and 2, paras. 123–186), he had once more analysed State practice and the *travaux préparatoires* and relevant provisions of the multilateral conventions and, in particular, article 27 of the 1961 Vienna Convention. In identifying the main elements of the legal status of the diplomatic bag and other bags used by the sending State for official communications, he had paid particular attention to the diplomatic bag not accompanied by diplomatic courier (*ibid.*, paras. 174–183). Paragraphs 187–210 concerned other terms used in the draft articles. All the terms were defined in article 3.

17. The third main issue dealt with in his second report was the formulation of general principles, which were enunciated in draft articles 4, 5 and 6. Those draft articles were only tentative in nature, and their purpose was to provoke an exchange of views in the Commission.

⁴ See *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 207. The convention is hereinafter called "1975 Vienna Convention".

⁵ *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5), p. 287.

18. The principle of freedom of communication, embodied in article 4, had been universally recognized in key provisions of the existing multilateral conventions as the foundation of modern diplomatic law.

19. With regard to article 5, the four multilateral conventions he had analysed contained no explicit provisions about the duty of diplomatic couriers to respect international law and the laws and regulations of the receiving or the transit State. However, article 41, paragraph 1, of the 1961 Vienna Convention contained the words "Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State". In paragraphs 222 to 224 of the report he had explained what was meant by the duty of a diplomatic courier to respect the laws and regulations of the receiving or the transit State and not to interfere in its internal affairs.

20. As indicated in paragraphs 226 to 230 of the report, the principle of non-discrimination and reciprocity embodied in article 6 was based mainly on article 47 of the 1961 Vienna Convention and article 49 of the Convention on Special Missions, and stemmed from the fundamental principle of the sovereign equality of States. The link between non-discrimination and reciprocity in the treatment of diplomatic agents in general and in the treatment of diplomatic couriers in particular would provide a solid basis for a viable set of rules governing the status of all types of couriers and bags.

21. The provisional adoption by the Commission of the draft articles which he had submitted might serve as a basis for further work on the articles of Part II of the topic, relating to the status of the courier, and Part III, relating to the status of the bag. He would welcome any criticism and suggestions from the Commission as a guide for his future work.

22. Mr. CALLE Y CALLE said that the office of diplomatic courier was an important institution and the task involved no less so. The status accorded to it guaranteed total inviolability of the person and the bag, and it was that inviolability which was responsible for the protection and privileges accorded to the courier.

23. In his second report, Mr. Yankov had analysed the development of the concept of the courier inductively. The overriding impression was that practice tended to establish uniformity of treatment for the various categories of courier, as was apparent from the many multilateral conventions and bilateral treaties that laid down the rules governing relations between States and their missions abroad. The global approach which the report advocated therefore seemed justified.

24. The notions of "official courier" and "official bag", which had already been proposed in the preliminary report, merely seemed to involve new names for an established fact. Probably, therefore, it would be best to keep to the usual terminology, particularly as the adjective "diplomatic" did not

restrict the scope of the Commission's study to the relations of States with their embassies but, on the contrary, extended it to all external relations of States, since diplomatic life encompassed relations between the State and its embassies, consulates, permanent missions, delegations to conferences, special missions, and so on.

25. The subject under consideration was directly connected with the hallowed principle of the freedom of States to communicate with their missions, for which the guarantee of secrecy and absolute protection was required. The contents of the bag should therefore enjoy total immunity. Article 35 of the 1963 Vienna Convention was anomalous in that respect. The 1975 diplomatic conference which had led to the conclusion of the 1975 Vienna Convention had refused to provide for the possibility of opening the bag.

26. He hoped that Mr. Yankov would be able to prepare a draft that would provide proper protection for couriers and for the institution of the diplomatic bag, the special nature of which was attested by the affixing of the sender's official seal and by the status of the addressee.

27. In the text of article 1, the words "or [and] with other States or international organizations" meant that the articles would apply not only to a State's communications with its missions abroad but also to its communications with other States or international organizations. He did not think that was the scope which the Commission had initially intended the draft articles to have.

28. Article 2 stipulated that the draft did not apply "to couriers and bags used for all official purposes by international organizations". He considered that the words "or any other subject or international law" should be added to that phrase in both paragraphs of the article so as to extend the protection of the safeguarding clause to subjects of international law that enjoyed special status—for example, the Palestine Liberation Organization, which was recognized by the General Assembly, took part in its sessions and was represented at the United Nations, and the United Nations Council for Namibia.

29. Mr. RIPHAGEN, referring to draft article 1, said that he had been surprised to find that the articles were to cover communications between States. It was his understanding that use of the diplomatic bag and diplomatic courier was confined to communications between States and their organs or between such organs themselves. Some clarification of that point would therefore be useful, particularly since, in the event of communications taking place between diplomatic missions of two States, the receiving State might find itself in the position of a transit State. Such a situation would create no problem if the transit State had the same obligations as a receiving State, but that might not always be the case.

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

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

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

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

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

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

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

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

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

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

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

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

The meeting rose at 1 p.m.

1692nd MEETING

Thursday, 16 July 1981 at 10.05 a.m.

Chairman: Mr. Doudou THIAM

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