

Document:-
A/CN.4/SR.1826

Summary record of the 1826th meeting

Topic:
**Status of the diplomatic courier and the diplomatic bag not accompanied by the
diplomatic courier**

Extract from the Yearbook of the International Law Commission:-
1984, vol. I

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protection, the result would be to defeat the whole purpose of the diplomatic bag.

45. A number of drafting proposals had been made for draft article 20, paragraph 1, which should be referred to the Drafting Committee. As for paragraph 2, he would be prepared to accept the suggestion to delete the concluding phrase "and shall prosecute and punish persons responsible for such infringements", or alternatively to accept Mr. Ni's proposal to insert the words "when appropriate" after the word "shall".

46. The drafting proposals regarding article 21 should also be referred to the Drafting Committee and careful consideration should be given to the suggestions for harmonizing draft article 21 with draft article 15 or for combining draft articles 21 and 19. However, the substance of article 21 had to be retained; otherwise, there would be a gap in the draft, since the courier, more particularly in view of the difficult conditions in which he had to work, needed protection for his temporary accommodation.

47. The observations made in connection with draft article 22 were similar to those concerning draft articles 20 and 21. With regard to draft 23, on the subject of immunity from jurisdiction, he stressed that the Commission would not be fulfilling its task properly if it failed to provide for immunity from jurisdiction for the diplomatic courier. It must be emphasized that the degree of immunity specified in draft article 23 was the same as that for a member of the administrative and technical staff of a delegation. There was no justification for depriving the courier of the immunity from criminal jurisdiction enjoyed by staff in that grade. As for immunity from civil and administrative jurisdiction, it followed the pattern of the existing codification conventions.

48. Apart from the various drafting suggestions made on individual articles, the Drafting Committee would also deal with the suggestions for reordering the various provisions.

49. Mr. USHAKOV proposed that draft articles 20 to 23 should be referred to the Drafting Committee for consideration in the light of the discussion.

*It was so agreed.*⁸

The meeting rose at 1.05 p.m.

⁸ For consideration of draft articles 20 and 21 as proposed by the Drafting Committee, see 1862nd meeting, paras. 69-90; for draft article 22, see the decision by the Commission, *ibid.*, para. 92; for consideration of draft article 23 as proposed by the Drafting Committee, see 1863rd meeting and 1864th meeting, paras. 1-22.

1826th MEETING

Wednesday, 23 May 1984, at 10 a.m.

Chairman: Mr. Sompong SUCHARITKUL

Present: Chief Akinjide, Mr. Balanda, Mr. Calero Rodrigues, Mr. Díaz Gonzáles, Mr. Evensen, Mr.

Francis, Mr. Jacovides, Mr. Jagota, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Razafindralambo, Sir Ian Sinclair, Mr. Thiam, Mr. Ushakov, Mr. Yankov.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (*continued*)
(A/CN.4/374 and Add.1-4,¹ A/CN.4/379 and Add.1,² A/CN.4/382,³ A/CN.4/L.369, sect. E, ILC (XXXVI)/Conf. Room Doc.3)

[Agenda item 4]

DRAFT ARTICLES SUBMITTED BY THE
SPECIAL RAPPORTEUR⁴ (*continued*)

ARTICLES 24 TO 29

1. The CHAIRMAN invited the Special Rapporteur to introduce draft articles 24 to 29, which read:

Article 24. Exemption from personal examination, customs duties and inspection

1. The diplomatic courier shall be exempt from personal examination, including examination carried out at a distance by means of electronic or other mechanical devices.

2. The receiving State or the transit State shall, in accordance with such laws and regulations as it may adopt, permit the entry of articles for the personal use of the diplomatic courier and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services.

3. The personal baggage of the diplomatic courier shall be exempt from inspection, unless there are serious grounds for believing that it contains articles not covered by the exemptions referred to in paragraph 2 of this article, or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the receiving State or the transit State. In such cases inspection shall be carried out only in the presence of the diplomatic courier.

Article 25. Exemption from dues and taxes

The diplomatic courier shall be exempt from taxes, dues and charges, personal or real, national, regional and municipal, except for indirect taxes of a kind which are normally incorporated in the price of goods or services and charges levied for specific services rendered.

Article 26. Exemption from personal and public services

The receiving State or the transit State shall exempt the diplomatic courier from all personal and public services of any kind.

¹ Reproduced in *Yearbook ... 1983*, vol.II (Part One).

² Reproduced in *Yearbook ... 1984*, vol.II (Part One).

³ *Idem.*

⁴ The texts of the draft articles considered by the Commission at its previous sessions are reproduced as follows:

Arts.1-8 and commentaries thereto, provisionally adopted by the Commission at its thirty-fifth session: *Yearbook ... 1983*, vol.II (Part Two), pp. 53 *et seq.*

Arts.9-14, referred to the Drafting Committee at the Commission's thirty-fourth session: *ibid.*, p. 46, footnotes 189 to 194.

Arts.15-19, referred to the Drafting Committee at the Commission's thirty-fifth session: *ibid.*, pp. 48-49, footnotes 202 to 206.

Article 27. Exemption from social security provisions

The diplomatic courier shall be exempt from the social security provisions which may be in force in the receiving State or the transit State with respect to services rendered for the sending State.

Article 28. Duration of privileges and immunities

1. The diplomatic courier shall enjoy privileges and immunities from the moment he enters the territory of the receiving State or the transit State in order to perform his official functions.

2. If the official functions of a diplomatic courier come to an end, his privileges and immunities shall normally cease when he leaves the territory of the receiving State or, as applicable, the transit State, or on the expiry of a reasonable period in which to do so. However, with respect to acts performed by the courier in the exercise of his official functions, immunity shall continue to subsist.

Article 29. Waiver of immunity

1. The sending State may waive the immunity of the diplomatic courier from jurisdiction. The waiver of immunity may be authorized by the head or a competent member of the diplomatic mission, consular post, special mission, permanent mission or delegation of that State in the territory of the receiving State or transit State.

2. The waiver must always be express.

3. The initiation of proceedings by the diplomatic courier shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

5. If the sending State does not waive the immunity of the diplomatic courier in respect of a civil suit, it shall make every effort to settle the matter justly.

2. Mr. YANKOV (Special Rapporteur) said that draft articles 24 to 27 dealt with the various exemptions accorded to the diplomatic courier, while draft articles 28 and 29 related to the duration of facilities, privileges and immunities and to waiver of immunity.

3. The concept of exemptions had not been defined in the four codification conventions, nor had it even been identified as a specific and distinct notion. It none the less constituted an important component of the body of privileges and immunities accorded to members of missions, consular posts or delegations. The term "exemption", was, of course, used in some of the provisions of those conventions, sometimes with a shade of meaning slightly different from that of "immunity". "Exemption" appeared to have the legal meaning of a right which was granted to a person and relieved that person from certain legally binding duties otherwise incumbent upon everyone under the legal system in question. Thus, under diplomatic and consular law, an exemption entailed special rights, accorded by the receiving State and creating a régime of privileged treatment involving non-application of certain local laws or regulations to the persons enjoying such treatment.

4. Traditionally, exemptions had been granted not as a result of legally binding obligations, but rather as a matter of courtesy, usually on the basis of reciprocity. His fourth report (A/CN.4/374 and Add.1-4, paras.145 *et seq.*) gave a brief account of the evolution that had

taken place in the codification and progressive development of diplomatic law, from the concept of privileges based on comity or courtesy to that of legally binding rules of international law. In that respect, the 1961 Vienna Convention on Diplomatic Relations had marked a most important step forward.

5. As far as the diplomatic courier was concerned, the exemptions were determined by functional necessity, an aspect that was much more apparent in the case of the courier than in that of diplomatic agents or members of missions, consular posts or delegations. Accordingly, because of the very nature of the functions of the diplomatic courier, the model employed was the status of the technical and administrative staff of a mission. Hence, for the purposes of the draft, the provisions of the various codification conventions, and the rules broadly recognized in State practice, had had to be adapted to the requirements of the diplomatic courier.

6. Among the various exemptions recognized by the codification conventions, he had identified four which were relevant to the status of the diplomatic courier (*ibid.*, para. 148) and, in varying degrees, were of practical significance with regard to the courier's functions. For example, exemption from customs inspection was particularly relevant because the courier's main task was to carry the diplomatic bag, which contained confidential material and official communications, to its destination.

7. He wished to reiterate that all the exemptions set forth in draft articles 24 to 29 were a reflection of the status of the administrative and technical staff of missions and delegations. In no case had he introduced any element of full diplomatic immunity. For certain purposes, article 37 of the 1961 Vienna Convention on Diplomatic Relations granted members of administrative and technical staff treatment almost similar to that of diplomatic agents. Since he had taken that article as his model, it naturally followed that, again for certain purposes, the diplomatic courier would be granted some diplomatic exemptions.

8. Draft article 24, on exemption from personal examination, customs duties and inspection, was intended to protect the courier from personal examination, including examinations of his papers, other than the official document attesting to his status. In addition, the courier would be exempt from customs regulations relating to inspection of personal baggage, and entry of articles for his personal use would be permitted, free of customs and similar duties.

9. Since the rules governing the admission of persons and goods into a country pertained to State sovereignty and fell under national jurisdiction, and since protective measures in the matter related to the security and other legitimate interests of the State, exemptions from such rules and measures had to be precise and specific. As to the applicability of those exemptions to the diplomatic courier, the question arose of how far functional necessity justified the various exemptions set forth in the codification conventions. The underlying legal justification for granting the courier such exemptions was the

principle of freedom of communication and the need to safeguard the confidential nature of his task. Accordingly, the prevailing practice favoured the granting of exemptions on the basis of reciprocity. Of course, the receiving or transit State could also extend further facilities as a matter of courtesy.

10. One problem regarding customs inspection was the use of certain sophisticated methods. Hence draft article 24 had to cover examination carried out at a distance by means of electronic or other mechanical devices. Some Governments, in their written comments, had suggested that an inspection of that kind did not infringe inviolability or immunity. With technical progress, however, it was now possible to have a more detailed picture than that provided by a mere X-ray examination and he was not at all convinced that the devices in question could be used without disregard for the inviolability of the diplomatic bag and the confidentiality of the communications carried by the diplomatic courier. Another point was that not all States had the capability of producing or obtaining those sophisticated devices, and the technologically advanced States enjoyed an obvious advantage in that regard.

11. The point of departure for the exemption from customs duties, taxes and related charges was article 36 of the 1961 Vienna Convention on Diplomatic Relations, together with prevailing State practice. Examinations required by quarantine regulations, however, should normally be conducted in the presence of the diplomatic courier or of a member of the diplomatic mission of the sending State.

12. The application of those general rules to the diplomatic courier obviously had to be circumscribed within the confines of functional necessity and he had drawn on the rules on free entry of articles for official or personal use and the exemption from customs duties set forth in article 36 of the 1961 Vienna Convention (*ibid.*, para. 158), an approach that was supported by State practice and also by many national laws and regulations. The case-law on the matter was relatively limited, but most of the known cases endorsed the rule of exemption from customs duty, taxes and inspection for diplomatic couriers.

13. Draft article 25, on exemption from dues and taxes, was based on a rule contained in article 34 of the 1961 Vienna Convention, but one which had already been applied prior to 1961, albeit on the basis of reciprocity. The terms of article 34 had been reproduced in subsequent codification conventions and also embodied in many bilateral treaties. Draft article 25 was patterned on the privileges and immunities applicable to administrative and technical staff and incorporated only the two exemptions laid down in article 34 (a) and (e) of the 1961 Vienna Convention.

14. Draft article 26 dealt with the exemption from personal and public services which applied to the administrative and technical staff of a diplomatic mission under article 37, paragraph 2, of the 1961 Vienna Convention. As far as the courier was concerned, any imposition of such services would run directly counter to

the proper discharge of his mission of delivering the diplomatic bag safely and speedily. The draft article thus embodied a rule which was supported by long-standing practice, customary diplomatic law and treaty law.

15. The exemption from social security provisions, dealt with in draft article 27, was comparatively recent, for it had originated in a proposal made by the Luxembourg delegation at the United Nations Conference on Diplomatic Intercourse and Immunities, in 1961, and had led to the adoption of article 33 of the 1961 Vienna Convention. The same rule had been adopted without difficulty for consular staff in article 48 of the 1963 Vienna Convention on Consular Relations and was also reflected in article 32 of the 1969 Convention on Special Missions and in articles 32 and 62 of the 1975 Vienna Convention on the Representation of States. Hence there was good reason to apply the same rule to diplomatic couriers and to afford to them treatment similar to that extended by a receiving or transit State to any official of the sending State temporarily in their territory.

16. Draft articles 28 and 29 were both concerned with the duration of privileges and immunities. Draft article 28 dealt with duration in its strict sense, in other words with the problem of ordinary termination, while draft article 29 covered a special form of termination, namely that of waiver. Both types of termination had important legal implications that deserved careful examination.

17. Draft article 28 raised the question of the duration of the functions and the duration of the privileges and immunities of the diplomatic courier, and the problem of the relationship between those two closely connected, though legally distinct issues was not an easy one. In the matter of prescribing the duration of immunities, there were a number of different doctrines. One possible formula was to state that the courier should enjoy his privileges and immunities "during the journey", yet that formula could lend itself to restrictive interpretations (*ibid.*, para. 182). The 1961 Vienna Convention, for its part, specified in article 27, paragraph 5, that the diplomatic courier enjoyed protection "in the performance of his functions" and article 39 contained important provisions on the commencement and end of the privileges and immunities. The rule proposed in draft article 28 was that the courier would enjoy privileges and immunities from the moment of entry into the territory of the receiving or transit State in order to perform his official functions and they would normally cease when he left the territory of the State in question or on the expiry of a reasonable period in which to do so.

18. Prior to the United Nations Conference on Diplomatic Intercourse and Immunities, in 1961, there had been a great deal of diversity in State practice and legal theory regarding the commencement and end of diplomatic privileges and immunities. In the case of commencement, the emphasis had sometimes been placed on notification of appointment, sometimes on entry into the territory of the receiving State and sometimes on the submission of credentials. The 1961 Vienna Convention had adopted the formula put forward by the Commission and had taken as a point of reference the moment when the diplomatic agent entered the territory of the receiving

State in order to take up his post or, if already in its territory, when his appointment was communicated to the receiving State.

19. Article 39, paragraph 2 of the 1961 Vienna Convention stated that privileges and immunities normally ceased when the functions of the person enjoying them came to an end. That provision, however, contained the following proviso: "However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist." Article 53 of the 1963 Vienna Convention on Consular Relations was even more explicit on that important point, providing in paragraph 4: "However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time." A similar proviso for the diplomatic courier had, of course, been included in draft article 28.

20. Since the codification conventions did not contain any special provisions regarding the duration of the facilities, privileges and immunities accorded to the diplomatic courier, a rule on the subject should be included in the present draft. He had accordingly proposed draft article 28.

21. Draft article 29 dealt with waiver of immunity, which constituted voluntary submission to the jurisdiction of the receiving State and therefore directly affected the duration of the immunity. It could thus be considered as a form of suspension or termination of immunity from the jurisdiction of the receiving State. He had taken into consideration the Commission's work on the topic of the jurisdictional immunities of States and their property but had found few cases because of the nature of the issues involved. He had taken as a starting-point article 32 of the 1961 Vienna Convention on Diplomatic Relations and the corresponding provisions of the other codification conventions, namely article 45 of the 1963 Vienna Convention on Consular Relations, article 41 of the 1969 Convention on Special Missions and articles 31 and 61 of the 1975 Vienna Convention on the Representation of States. The main problems were, first, who was entitled to waive immunity; secondly, the form in which waiver should be effected; and thirdly, determining the scope of the waiver.

22. On the first question, article 32, paragraph 1, of the 1961 Vienna Convention stipulated that the immunity from jurisdiction of the members of the mission "may be waived by the sending State". The question therefore arose of the authority which would effect the waiver: it could be the central authority, namely the Ministry of Foreign Affairs, or the head of mission or other competent diplomatic agent, or even the actual member of the mission involved. The possible solutions depended essentially upon the domestic laws and regulations of the States concerned and the procedural rules of the local judicial authority. The rule set forth in article 32, paragraph 1, of the 1961 Vienna Convention applied to the diplomatic courier and was restated in paragraph 1 of draft article 29, which also went on to specify that waiver could be authorized by the head or a competent member of the diplomatic mission, consular post, special mission, permanent mission or delegation of the sending State.

23. As to the method of waiving immunity, paragraph 2 of draft article 29 stated that the waiver "must always be express", a provision that was in keeping with the rule embodied in all the existing codification conventions. Another important point was that the requirements for the validity of the waiver and the other procedural rules must conform to the rules and regulations of the State of the forum (*ibid.*, para. 200). As to the scope and implications of waiver, article 32 of the 1961 Vienna Convention included immunity from criminal, administrative and civil jurisdiction. In that regard, draft article 29 contained rules for the diplomatic courier that were similar to those applicable to the administrative and technical staff of missions.

24. In respect of civil and administrative proceedings, article 32, paragraph 4, of the 1961 Vienna Convention drew a distinction between waiver of immunity from jurisdiction and waiver of immunity in respect of execution of the judgment. A separate waiver was required for the purpose of execution. That rule had been well-established in customary international law and had been confirmed by State practice. There had been some criticism of that "double-waiver" requirement, which was said to defeat the purpose of the waiver of immunity from jurisdiction in respect of civil proceedings. Nevertheless, those criticisms had not found any echo in State practice since 1961 and the provision in question had been incorporated both in the 1969 Convention on Special Missions and in the 1975 Vienna Convention on the Representation of States. In the circumstances, he had incorporated the rule in paragraph 4 of draft article 29.

25. Lastly, paragraph 5 of draft article 29 embodied a rule taken from article 31 of the 1975 Vienna Convention on the Representation of States, which required the sending State either to waive the immunity of the diplomatic courier in respect of a civil suit or, as an alternative, to make every effort to settle the matter justly.

26. Sir Ian SINCLAIR said that, in the context of its consideration of draft articles 24 to 29, it was important for the Commission to know what the current legal position was. In that connection, he referred to the most recent edition of *Satow's Guide to Diplomatic Practice*, which contained a statement to the effect that the only privileges or immunities accorded to the courier were those that were essential for the unimpeded transit of the bag, namely personal inviolability and immunity from arrest and detention.⁵ Again, in his fourth report (A/CN.4/374 and Add.1-4, para. 149), the Special Rapporteur admitted that "there are no specific provisions in this field with special reference to the status of the courier", which meant that the draft articles before the Commission constituted progressive development of international law.

27. Referring first to draft article 24, and considering solely the position of the diplomatic courier, he noted that under article 27, paragraph 5, of the 1961 Vienna Convention on Diplomatic Relations, the diplomatic courier enjoyed personal inviolability—a concept which signified that he should be afforded protection and

⁵ 5th edition (London, Longman, 1979), pp.117-118, para. 14.31.

should not be impeded in the performance of his official functions. Was the diplomatic courier impeded if, like anybody else wishing to board an aircraft, he was required to undergo the customary examination carried out "by means of electronic or other mechanical devices" designed to detect the presence of metal? He, for one, happened to think not. The vast majority of people enjoying privileges and immunities willingly complied with the checks carried out on all passengers who travelled by air. Theoretically, they might be entitled to invoke their inviolability, but they were no doubt aware that, if they did so, any airline could refuse to accept them. It would therefore be quite wrong to convey the impression that diplomatic couriers were to be treated as a special case by conferring upon them an exemption which, in practice, was not insisted upon for diplomatic agents, who enjoyed a much fuller range of privileges and immunities.

28. For those reasons, he was strongly opposed to paragraph 1 of draft article 24. One solution would be simply to delete it. Another would be to qualify the exemption from personal examination in the same way as exemption from inspection of personal baggage was qualified in paragraph 3 of draft article 24; that would involve deleting paragraph 1 but amplifying paragraph 3 to read:

"The diplomatic courier shall be exempt from personal examination and his personal baggage shall be exempt from inspection, unless there are serious grounds for believing that he is carrying or that his personal baggage contains articles not covered by the exemptions referred to in paragraph 2 of this article, or articles the import or export of which is prohibited by law or controlled by the quarantine regulations of the receiving State or the transit State. Any inspection of personal baggage shall be carried out only in the presence of the diplomatic courier."

Of the two possible solutions he preferred the latter, which would respond more readily to the anxieties many Governments felt regarding illicit traffic in foreign currency, drugs and arms. He had no objection of substance to paragraph 2, which seemed to accord broadly with State practice, nor did he experience any real difficulty with paragraph 3, subject to possible amalgamation with paragraph 1.

29. Draft article 25 was based on article 34 of the 1961 Vienna Convention but incorporated only two of the exceptions provided for under that article. The effect was to confer more favourable treatment upon the diplomatic courier than upon the diplomatic agent. That was not all, however, for the diplomatic agent enjoyed exemption from dues and taxes only in the State where he was a member of the diplomatic mission, whereas the diplomatic courier appeared *prima facie* to enjoy such exemption in any receiving or transit State to which he happened to pay a fleeting visit. The courier would likewise appear to enjoy such exemption even in the State of which he was a national or in which he was ordinarily resident for tax purposes. Perhaps the Special Rapporteur would clarify whether that was in

fact the intention, although the very far-reaching consequences of such an interpretation could admittedly be mitigated by the terms of draft article 28. But assuming, for instance, that a diplomatic courier invested in real estate in one of the receiving or transit States which he visited regularly, was he to be exempt from any taxes, dues or charges connected with that transaction? He very much doubted whether the Special Rapporteur intended that particular exemption to be operative worldwide, something which would be quite unprecedented; in his view, no real case could be made out for such an exemption. In that connection, he knew of instances in which individuals faced with criminal charges or civil claims in the United Kingdom had sought and obtained an appointment enjoying diplomatic privileges and immunities precisely for the purpose of trying to plead immunity from such charges and claims. Other members of the Commission were doubtless acquainted with similar cases. Furthermore, the Special Rapporteur's proposal would provide ample opportunity to potential tax evaders, of whom there were all too many in the world.

30. Draft article 25 was also unnecessary. In his fourth report (*ibid.*, para. 167), the Special Rapporteur stated that the diplomatic courier's short stay in a given country would preclude the exercise of rights relating to immovable property or private income that might be subject to taxation. Even if it were unlikely that a diplomatic courier would seek to take advantage of such exemptions, it did not necessarily follow that the exemption should be granted. It could equally well be argued that there was no need to accord the exemption at all. No proper case had been made out for allowing fiscal exemptions for the diplomatic courier. Should any members of the Commission have doubts on that score, they need only consult the Treasury or Revenue Department in their own country. There was nothing in the Special Rapporteur's report to suggest that diplomatic couriers had suffered in the past from the absence of such exemptions and, accordingly, they would not suffer if article 25 were simply deleted.

31. Somewhat similar considerations applied to draft articles 26 and 27. So far as draft article 26 was concerned, he wondered whether the concept of inviolability would not cover the point. In substance it was acceptable that, provided he was not a national of or resident in a receiving or transit State, the diplomatic courier should not be obliged to perform personal or public services in those States, since any requirement of any kind could obviously interfere with his functions. In that connection, the Special Rapporteur stated in his fourth report (*ibid.*, para. 173) that, in practice, the courier's short sojourn in a given country would restrict the probability of him being required to perform such obligations, the conclusion being that an exemption was justified. Again, however, the opposite could equally well be inferred for the reasons he had already given in connection with article 25.

32. Lastly, with regard to draft article 27, the diplomatic courier should not, of course, be expected to pay social security contributions in the receiving or transit States, provided he was not a national of or resident in either of those States; but was the Special Rapporteur aware of any case in which a receiving or transit

State had tried to subject a diplomatic courier to such liability? If the answer to that question was in the negative, precisely because the diplomatic courier's short stay meant that he did not fall within the scope of national legislation in the matter, he wondered whether draft article 27 was really necessary.

33. Mr. McCaffrey said that, prior to the entry into force of conventional law, exemptions had been accorded to the diplomatic courier largely on the basis of reciprocity and as a matter of diplomatic courtesy, a courtesy extended to the State and not to the diplomatic courier *per se*. Accordingly, the basic issue was one of functional necessity, namely which privileges and immunities were necessary in order to ensure freedom of communication as provided for under article 27 of the 1961 Vienna Convention on Diplomatic Relations.

34. He wondered whether there was not a slight tendency in draft article 24 to assimilate the courier to the diplomatic agent and whether anything was added by the Special Rapporteur stating in his fourth report (A/CN.4/374 and Add.1-4, para. 154) that one of the two grounds for exemption from personal examination provided for under paragraph 1 of the draft article was recognition of the diplomatic courier's official functions. The other ground, inviolability of the courier's person, was of course important to ensure unimpeded transmission of the diplomatic bag, but the form which such inviolability should take was a separate matter requiring close examination.

35. Furthermore, none of the four codification conventions apparently provided any precedent for the exemption from personal examination laid down in paragraph 1 of draft article 24. In his own country, the standard practice was for the courier to be subjected to the usual metal detector test at the airport. He very much doubted whether that detained the diplomatic courier or whether there was any need for an exemption from such a practice, or indeed requirement, on the basis of the inviolability of the courier's person. In any event, it was ultimately for the airline to decide whether or not the courier could board the aircraft. Possibly, therefore, the paragraph should be reconsidered, along the lines suggested by Sir Ian Sinclair.

36. With regard to paragraph 2 of draft article 24, his personal preference was for the wording of article 35, paragraph 1, of the 1969 Convention on Special Missions, which underlined the discretionary nature of the receiving State's power to limit the entry of articles for personal use and to grant exemption from customs duties, taxes and related charges.

37. Draft articles 25, 26 and 27 were based on provisions in the codification conventions which, to his mind, were largely inapplicable in the case of the diplomatic courier, given the itinerant nature of the latter's functions. His first reaction had been to question the need for draft article 25, but he also had doubts regarding the basic notion that the diplomatic courier's exemption from taxes should be no less than that for the members of a diplomatic mission. It was not the status of the diplomatic courier but his peripatetic duties which made

it highly improbable that he would be in any State sufficiently long for the matter to become a practical problem. There was also the question of exemption from taxes. In view of the courier's short stay in a given country and in the absence of some profit motive unrelated to the performance of his functions, was the courier likely to become involved in a situation in which it would be necessary for him to be exempted from taxes and would such exemption materially assist him in the performance of his task? That seemed questionable. Moreover, would income tax apply? Even by the very strict standards applied in the United States of America, the fact that a diplomatic courier would be said to have earned a portion of his income while in a receiving or transit State would not make him subject to taxation in that State, but only in the State of his nationality or residence. It might therefore be as well to restrict the scope of draft article 25 to an exemption, if any, from taxes, dues and charges levied by the receiving or transit State. The first part of the article might therefore be reworded to read: "The diplomatic courier shall be exempt from taxes, dues and charges of the receiving or transit State of a personal or real, national, regional and municipal nature, except for . . .". He was making that suggestion without prejudice to his own view that the article did not seem really necessary.

38. With regard to draft article 26, no problems regarding the rendering of personal and public services had been cited, and it was doubtful whether the matter called for regulation. Once again, the very limited duration of a courier's stay in a given State posed the question of the circumstances in which a State would try to press a diplomatic courier into service. For his own part, he had arrived at a conclusion diametrically opposed to that of the Special Rapporteur. Furthermore, the exemptions laid down in draft article 26 were amply covered by other articles, including draft article 4, on freedom of official communication, draft article 17, on freedom of movement, and draft article 20, on personal inviolability. He would like to know from the Special Rapporteur whether any relevant problem had in fact arisen in the case of a courier.

39. He too wondered, for reasons stated by Sir Ian Sinclair, whether draft article 27 was really required. Admittedly, a precedent could be found in the codification conventions, but a precedent that was entirely inapposite in the case of a diplomatic courier, whose sojourn was by definition very short. Presumably, article 37 of the 1961 Vienna Convention on Diplomatic Relations, under which not only administrative and technical staff but also service staff were exempt from social security arrangements, would apply to the diplomatic courier as well, in which case there would be no need for draft article 27. More important from the legal standpoint was the fact that a requirement to make social security contributions would not interfere with freedom of movement and, hence, with the performance of the courier's task. It therefore seemed unnecessary, functionally, to provide for such an exemption, and he would propose that draft article 27 be deleted.

The meeting rose at 1 p.m.