

Document:-
A/CN.4/SR.1843

Summary record of the 1843rd 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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final report. Since articles 31 and 32 had a close relationship with article 36 and in particular with the question of misuse of the bag, he would also like to know whether he was correct in understanding the phrase "intended exclusively for official use", in paragraph 1 of article 32, to refer to the words "documents or articles".

61. Also with a view to preventing misuse, it might be advisable to recommend that official correspondence and other documents and articles for official use should be contained in separate bags. Such a division would facilitate the adoption of agreed methods of inspection. He would like to know whether that possibility had ever been considered.

62. Lastly, he suggested that articles 31 and 32 should be considered in conjunction with article 36 since, in his view, it was necessary to approach the question of preventing misuse of the bag from two angles: that of inviolability and that of practical procedure.

The meeting rose at 6.05 p.m.

1843rd MEETING

Tuesday, 19 June 1984, at 10.05 a.m.

Chairman: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Balanda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Koroma, Mr. Laclea Muñoz, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Thiam, Mr. Ushakov.

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)

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 30 (Status of the captain of a commercial aircraft, the master of a merchant ship or an authorized member of the crew)

ARTICLE 31 (Indication of status of the diplomatic bag)

ARTICLE 32 (Content of the diplomatic bag)

ARTICLE 33 (Status of the diplomatic bag entrusted to the captain of a commercial aircraft, the master of a merchant ship or an authorized member of the crew)

ARTICLE 34 (Status of the diplomatic bag dispatched by postal services or other means) *and*

ARTICLE 35 (General facilities accorded to the diplomatic bag)⁵ (continued)

1. Mr. BALANDA said that, for readily comprehensible economy reasons, it was becoming increasingly common for countries in general and for developing countries in particular to employ the captain or one of the crew members of a commercial aircraft or merchant ship to dispatch diplomatic bags. He therefore welcomed the fact that the Special Rapporteur had attempted to define the status of those persons, while making it quite clear that such status was not special, but rather based on that provided for in the conventions on the codification of diplomatic law.

2. In view of the need to strike an equitable balance between the interests of the sending State, whose diplomatic bag must be dispatched safely and delivered freely and as rapidly as possible, and the legitimate interests of the receiving or transit State, the Special Rapporteur had also been right to try to provide special protection for the diplomatic bag not accompanied by diplomatic courier.

3. In his opinion, the wording of the draft articles under consideration should be simplified. They should cover only the main situations that might arise, without entering into details. Accordingly, the Special Rapporteur should, if possible, closely follow the corresponding provisions of the codification conventions, particularly with regard to draft article 32, paragraph 1. On the basis of the uniform approach on which the Commission had generally agreed at its previous session, he should, moreover, take account of the fact that the provisions being formulated should also apply to the diplomatic bags of special missions, permanent missions and delegations. Some harmonization would therefore be necessary.

4. With regard to draft article 30, paragraph 1, he agreed with the suggestion that the words "or an authorized member of the crew under his command" should be deleted to make it clear that the captain of a commercial aircraft or master of a merchant ship was responsible for the custody and transport of the diplomatic bag. It might, however, be indicated in the commentary that, in the light of State practice, the diplomatic bag could be entrusted to a member of the crew of a commercial aircraft or merchant ship.

5. Contrary to what Mr. Razafindralambo had stated (1842nd meeting), the condition laid down in article 30,

⁵ For the texts, see 1830th meeting, para. 1.

paragraph 2, would not give rise to any practical problems in the case of a break in a journey. Explanations in that connection had been provided by Sir Ian Sinclair (*ibid.*) and, in his own view, the words “official document indicating the number of packages constituting the bag” were intended to mean only a dispatch note, which would not bear the name of the captain of the commercial aircraft or master of the merchant ship and which could therefore be turned over, at the same time as the bag itself, to the captains or masters subsequently entrusted with the custody and transport of the bag.

6. Paragraph 3 was a key provision and should therefore be placed at the beginning of article 30. That provision would rule out any possibility of ambiguity because it clearly stated that the captain of a commercial aircraft and the master of a merchant ship entrusted with the custody and transport of a diplomatic bag were not considered to be diplomatic couriers. It could also not be interpreted by analogy to mean that the captain of a commercial aircraft or the master of a merchant vessel entrusted with the custody and transport of a diplomatic bag exercised the same functions as a diplomatic courier and should therefore enjoy the same preferential treatment.

7. In accordance with the uniform approach adopted by the Commission, article 30, paragraph 4, should specify that the diplomatic bag could be delivered not only to the authorities of diplomatic missions, but also to those of consular posts and delegations.

8. Draft article 31, paragraph 1, which related to the visible external marks of the official character of the diplomatic bag, should be combined with paragraph 2, which referred to the visible indication of the diplomatic bag's destination and consignee. Whether or not it was accompanied by a diplomatic courier, the diplomatic bag must always bear visible external marks indicating the sender and the consignee. The intermediary or transfer points on the route of the diplomatic bag did not, however, have to be indicated because the route might have to be changed owing to unforeseen circumstances.

9. Under article 31, paragraph 3, the States concerned would have full freedom to determine the maximum size or weight of the diplomatic bag to be allowed. That was, as other members of the Commission had pointed out, a complex problem because it related directly to the definition of the diplomatic bag, which, according to the relevant provisions of the codification conventions, consisted of official documents and “articles” intended for official use. Such articles could take various forms. One way of solving the problem would be to limit the definition of the diplomatic bag to official documents only and to exclude “articles”. He was, however, not in favour of such a solution because the diplomatic bag had already been defined in international legal instruments and, in particular, in the 1961 Vienna Convention on Diplomatic Relations. He suggested that the draft articles should determine the maximum size and weight of the diplomatic bag to be allowed and leave it to the States concerned to agree on any other size or weight. On the basis of the consultations held by UPU, the Commission could, for example, either set a maximum authorized weight of 10 kilograms or request the views of States in the matter. In

any event, it would have to determine the maximum size and weight of the diplomatic bag in order to avoid the problems referred to by the Special Rapporteur (1830th meeting) and Mr. Jagota (1842nd meeting).

10. Draft article 32, paragraph 1, was necessary, but as other members had pointed out, there were two reasons why paragraph 2 was not: first, because States could not always exercise control over abuses of the diplomatic bag by their agents, for such abuses always took place without the knowledge of the competent authorities; secondly, because, at the international level, it was difficult to control the activities carried out by States in their own territories. It would therefore not be easy to give effect to the provisions of paragraph 2. If that paragraph was retained, it should include a safeguard clause which would be based on article 36, paragraph 2, of the 1961 Vienna Convention and provide that the diplomatic bag could be opened in case of doubt about its contents. In his view, however, it would be preferable simply to delete paragraph 2.

11. Draft article 33 was unnecessary because its contents were covered by articles 31, 32 and 35 to 39, relating to the status of the diplomatic bag itself. The means by which the bag was dispatched was not important enough to warrant an entire provision.

12. Draft article 34 might be merged with the provisions that preceded it or, possibly, with draft article 35. The important thing was to protect the diplomatic bag during transport as such; the means by which it was transported did not warrant special attention.

13. Although he agreed in principle with the provision of draft article 35, he thought that the Commission should explain, at least in the commentary, that that article did not refer to additional obligations of the receiving or transit State, which had to accord all necessary facilities in any case and discharge their responsibilities in the event of damage to the diplomatic bag, in accordance with the relevant rules in force, such as the conventions adopted by UPU and IMO.

14. Mr. EL RASHEED MOHAMED AHMED thanked the Special Rapporteur for his clear and informative report (A/CN.4/382), the general trend of which he endorsed. Associating himself with Mr. Balanda's remarks, he said that the incident in which a young policewoman had lost her life in the United Kingdom and to which Sir Ian Sinclair had referred at the previous meeting had caused much alarm in his own country. Only one month previously the President of the Democratic Republic of the Sudan had revealed that, notwithstanding the ban imposed by the Government in accordance with Islamic law, certain diplomatic missions in Sudan had imported alcohol and similar beverages. It was clear that the bullet with which the young policewoman had been shot in the United Kingdom and the alcohol that had reached Sudan had been brought into those countries by diplomatic bag. The smuggling of arms did not perhaps affect Britain and other European countries so much, since arms could easily be detected and security was tight enough to neutralize any attempt to cause trouble or stage a *coup d'état*, but that was not the case in many parts of the third world.

15. Inspection of the diplomatic bag was therefore essential and could be carried out either by opening it and taking an inventory of the contents or by screening it. That did not mean that the contents would be seized by the receiving State. To prove its bona fides, the sending State should agree to such inspection.

16. The maximum size and weight of the diplomatic bag should be determined according to the nature of its contents. That would not be a derogation from the treaty law embodied in the four codification conventions or an infringement of the inviolability of the diplomatic bag. Rather, it would be an endeavour to fill the interstices in the law. It would also be in line with recent trends in international law. The Commission was, after all, currently considering exceptions to State immunity and it was even in the process of creating something akin to tortious liability for acts not prohibited by international law.

17. As Mr. Razafindralambo had pointed out (1842nd meeting), third world countries were not always able to send a courier with the bag and had to depend on available means of transport. It was therefore essential to introduce measures to ensure the safe delivery of the bag. In that connection, he noted that Sudan, like Spain, followed the practice of appointing a member of the crew to look after the bag.

18. Lastly, he agreed that the order of the draft articles should be changed to deal first with the status and contents of the diplomatic bag and then with the status of the diplomatic courier.

19. Mr. McCAFFREY said that for the reasons he had stated (1832nd meeting) in connection with draft article 30, it might be unnecessary to refer specifically to crew members in draft article 33. He recognized that certain States might follow the practice of entrusting diplomatic bags to crew members, but the deletion of such a reference would not, in his view, prevent that practice from continuing, provided that it was made clear in the commentary that it was a possibility open to States.

20. He agreed with the suggestion made by Mr. Calero Rodrigues (*ibid.*) that the draft would be clearer if article 33, rather than article 30, paragraph 4, provided that the necessary facilities should be accorded to members of missions, consular posts or delegations to enable them to take delivery of or to deliver the bag. He trusted that the Drafting Committee would bear that suggestion in mind. He also agreed that the acceptability of article 33 would depend ultimately on what was done with articles 35 to 39, to which article 33 referred.

21. As to draft article 34, he was of the opinion that paragraph 1 should refer to article 32, as well as to article 31. He also thought that the first sentence of both paragraph 2 and paragraph 3 of article 34 could be deleted: they did not really add anything to the draft and the Commission was concerned not to encumber the articles unnecessarily. If those sentences were deleted, the second sentences of paragraphs 2 and 3 could then be consolidated either as a new paragraph 2 of article 34 or as an addition to article 35.

22. Draft article 35 was acceptable to him, subject to

the possibility of combining it with the second sentences of paragraphs 2 and 3 of article 34. With regard to the position of article 35, which embodied a general principle, he proposed that the order of the provisions on facilities should be reconsidered to determine whether it might not be preferable for general provisions to precede specific applications of that principle.

23. Mr. REUTER recalled that, early in the discussion of the topic under consideration, he had suggested that it might be wiser to rearrange the draft articles, since it would be much more logical and, above all, more acceptable to many Governments to start by defining the status of the diplomatic bag and then go on to that of the diplomatic courier. That question was a basic one because the courier was, after all, only one means by which the diplomatic bag could be dispatched. Many Governments would have misgivings about the draft articles because they would have the impression that the Commission was trying to increase the number of persons who would benefit from freedoms and privileges and about whom they were, wrongly or rightly, somewhat distrustful. That question, however, would arise only during the second reading of the draft articles.

24. He welcomed the fact that specific matters of detail had been raised during the discussion, particularly with regard to the transport of the diplomatic bags of developing countries and the handing over of the packages constituting the diplomatic bag from one person to another during a journey. Since it was, for example, quite obvious that the captain of a commercial aircraft or the master of a merchant ship entrusted with the custody and transport of a diplomatic bag was appointed to perform that function not in his personal capacity, but in an official capacity, it should also be made clear that a member of the crew of a commercial aircraft or merchant ship entrusted with the custody and transport of a diplomatic bag was also appointed in an official capacity, in other words that the crew member in question had to be authorized by the captain or master to ensure the custody and transport of the diplomatic bag. That, too, was an important question because members of the crew of a commercial aircraft or a merchant ship were, for obvious security reasons, subject to strict discipline and came under the authority of the captain or the master.

25. Another question which might be regarded as a matter of detail, but which was in fact a matter of substance, was that of the maximum size and weight of the diplomatic bag to be allowed. In that connection, it was, above all, necessary to define exactly what was meant by the term "diplomatic bag". According to article 31 as proposed by the Special Rapporteur, which was based on the corresponding provision of the 1961 Vienna Convention on Diplomatic Relations, the diplomatic bag was not a physical object in itself; it was a collection of packages, and it was the packages—not the bag—that bore the external marks of their character.

26. Two separate problems thus had to be taken into account. The first related to transport constraints. It should be stated as a general principle that the maximum authorized size or weight of the packages, not of the bag, was defined in accordance with the rules applicable to the

means of transport used. If a package was unusually heavy or large, it would have to be covered by an agreement between the sending State and the service employed to transport it. The second problem was whether the provision of article 31, paragraph 3, was designed to guarantee respect for the provision of article 32, paragraph 1. That substantive issue would have to be dealt with at a later stage during the consideration of article 36, relating to the inviolability of the diplomatic bag. He was entirely convinced that very large articles dispatched under cover of the diplomatic bag would give rise to objections. Article 31 should therefore refer only to the maximum weight or size allowed by the rules that governed the means of transport used.

27. If the term “diplomatic bag” was taken in the strict sense, the wording of certain articles—article 34, for example—would have to be amended. Paragraph 3 of that article referred to the “bill of lading” which indicated the official status of the diplomatic bag. In his view, postal administrations concerned themselves not with the concept of the “diplomatic bag”, but rather only with packages which were of a diplomatic nature, but which were not grouped unless they happened to be in the same mail-bag. In such a case, the diplomatic bag would consist of a single package and the bill of lading would be the document for that package.

28. Many countries which had to dispatch diplomatic bags over long distances and which did not have their own national airline or ships flying their flag nevertheless made the landing of aircraft belonging to foreign airlines and even the operation of those foreign airlines subject to administrative authorizations. It therefore had to be specified in such authorizations that foreign airlines were under an obligation to accept diplomatic bags and deliver them safely.

29. Although he did not think that the Commission should enter into such details, he would point out that some countries which were not developing countries and which, because of their geographical location, had no communication problems did not use the postal services to dispatch urgent or valuable articles. They used private services, which were, of course, more expensive, but which delivered such articles safely and speedily.

30. Sir Ian SINCLAIR said that, if his understanding had been correct, Mr. Jagota had said (1842nd meeting) that it would help to avoid some grave abuses of the diplomatic bag if the draft included a specific provision dealing with its maximum size and weight. He was not entirely persuaded by the arguments that Mr. Jagota had advanced. Setting limits would not prevent such abuses as sending drugs through the diplomatic bag, given the enormous profits to be made from the sale of relatively small amounts. There were also a number of practical problems that could be envisaged. If, for example, it was decided to refurbish and refurnish the British Embassy in Paris and to send the furniture and other articles required for that purpose across the Channel by sea in a container, the container would, in theory, constitute a diplomatic bag, since it would contain solely articles intended for official use; if it was decided to rebuild an embassy in a remote post where building materials were not

available locally, something more than a small package would be needed to send out the necessary materials. In his view, such problems could not be solved multilaterally by setting a maximum limit for the size or weight of the diplomatic bag, but should be left to bilateral regulation between sending and receiving States.

31. Mr. USHAKOV said he would like to enhance the status of the diplomatic courier, which was not, as some had claimed, inferior to that of the diplomatic bag. That was all the more true in that the diplomatic courier was referred to expressly in article 27, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations as one of the appropriate means of communication between the Government and the other missions and consulates of the sending State, wherever situated. The diplomatic bag was only an abstraction: it could be dispatched by any means of transport. The diplomatic courier could, for his part, carry a verbal message. Moreover, as some members of the Commission had pointed out, confidential official documents were not, in principle, dispatched by post or by any other means of transport: they were entrusted to a diplomatic courier. The diplomatic courier's function was not outdated. It would therefore be rather strange if, as Mr. Reuter had proposed, the draft articles started with the status of the diplomatic bag.

32. Even if the captain of a commercial aircraft or the master of a merchant ship entrusted with the custody and transport of a diplomatic bag was not considered to be a diplomatic courier, he exercised functions that were, at least between the point of departure and the authorized point of entry where he handed over the diplomatic bag, very similar to those of the diplomatic courier. Article 30 as proposed by the Special Rapporteur was therefore of great importance in that regard.

33. Mr. JAGOTA said that, while he supported article 31, paragraph 3, it had not been his intention to suggest that the provision on the size and weight of the diplomatic bag should be mandatory. In the absence of a prescribed size or weight, however, the contents of the bag would be a matter of guesswork and that would lead ultimately to a request for inspection. He had therefore indicated that the matter would best be left to State practice and that article 31, paragraph 3, should be regarded as being more in the nature of a directive.

34. Mr. McCAFFREY, referring to the somewhat novel suggestion by Mr. Ushakov that the diplomatic courier rather than the diplomatic bag was the primary means of diplomatic communication, pointed out that many States did not in fact use professional couriers. For financial reasons or on grounds of expediency, the unaccompanied diplomatic bag had become the usual means of communication for those States, and that fact had to be taken into account.

35. The provisions of article 27, paragraph 1, of the 1961 Vienna Convention had been referred to by Mr. Ushakov in support of his approach. Actually, that paragraph did not mention the diplomatic bag at all. It referred to “all appropriate means” of communication to be used by a diplomatic mission. Surely no one could

conclude on that basis that the diplomatic bag did not constitute a means of communication.

36. For his part, he shared the view of the members who considered the diplomatic courier to be a mere vehicle for delivering the diplomatic bag or any other message that constituted the bag. Reference had been made to the possibility of a verbal message or a mere letter being sent by diplomatic courier. Normally, a communication of that kind would be conveyed by a diplomatic agent acting as an *ad hoc* courier. In most cases, moreover, the diplomatic courier had no idea of the contents of the diplomatic bag he was carrying.

37. In that connection, he drew attention to draft article 11, which the Commission had provisionally adopted and which the Drafting Committee had amended in form, but not in substance. That article dealt with the functions of the diplomatic courier and focused on the diplomatic bag. It stated expressly that the functions of the diplomatic courier consisted in taking care of and delivering to its destination the diplomatic bag of the sending State.

38. For all those reasons, it would be dangerous to place undue emphasis on the diplomatic courier and to detract from the importance of the diplomatic bag. Moreover, since many States did not use professional couriers, any attempt to reduce the emphasis on the diplomatic bag and to focus attention on the diplomatic courier would deter a great many Governments from accepting the draft articles.

39. Mr. THIAM said that, since the articles under consideration were acceptable in substance and required only drafting changes, he would comment only on the question of the maximum size and weight of the diplomatic bag to be allowed. During the discussion of that question, dealt with in draft article 31, paragraph 3, there had been a tendency wrongly to broaden the concept of the diplomatic bag. The entire system built up around the bag was, however, designed to protect the confidential nature of its contents. It would therefore be going too far to extend such protection to articles such as gifts from one Government to another or building materials required for the construction of an embassy. Gifts were in no way confidential and did not require special protection. The transport of building materials originating in the sending State and designed to give an embassy a distinctive national style had nothing to do with the diplomatic bag; it could, if necessary, be the subject of derogations or exemptions granted by the receiving State. In the final analysis, the aim was, as stated in draft article 32, to prevent abuses of the diplomatic bag. The diplomatic bag had to retain its original purpose, which was to ensure the safe transport of official correspondence and documents and articles intended exclusively for official use. The concept of the diplomatic bag had to be interpreted restrictively and article 31, paragraph 3, was therefore fully justified.

40. Sir Ian SINCLAIR said that, although Mr. Jagota's explanation of the suggestion he had made at the previous meeting had dispelled any doubts he himself might have had, he thought it would be a mistake to

imagine that a limitation of the size or weight of the diplomatic bag would help to overcome the serious abuses which had been mentioned. When the Commission came to consider draft article 36, it would find that the basic problem still existed. The statements made during the discussion and all the available evidence showed that even an ordinary diplomatic bag could contain small articles that were wholly illicit, such as a small consignment of drugs or three of four revolvers.

41. When he had given examples of very heavy packages, such as containers, he had not in any way been suggesting that they would normally be used as diplomatic bags. Although he fully agreed with Mr. Thiam that the basic purpose of the diplomatic bag was to convey diplomatic documents and confidential material, the fact remained that bulky articles for official use might occasionally be dispatched through the diplomatic bag. That possibility had to be taken into account.

42. Quite obviously, therefore, the problem of abuses could not be solved by placing limitations on the size or weight of the diplomatic bag. That was a matter that could without much difficulty be settled bilaterally by the sending State and the receiving State. The problem the Commission faced was whether the draft articles should contain a provision on the subject. He had doubts on that score, but if a provision was included, he urged that it should be framed in discretionary terms. On no account must it appear to be mandatory, as article 31, paragraph 3, did. The Drafting Committee should therefore review the wording of that paragraph to make it clear that it was a discretionary provision.

43. Mr. QUENTIN-BAXTER, referring to the relationship between the diplomatic bag and the diplomatic courier, said that, as he saw it, the matter was clearly governed by the terms of draft article 11, which expressly stated that the duty of the diplomatic courier was to take care of the diplomatic bag. The courier was thus the custodian of the bag. If all members did not share that view, they would be creating a great risk for the draft articles now under discussion.

44. Another important question raised during the debate related to the role of the diplomatic bag itself, in connection with which he agreed with Mr. Thiam and other members. The real test of articles 31 to 35 would come when the Commission considered articles 36 and 37. The decisions which the Commission would take on articles 36 and 37 would therefore affect practically all the other articles of the draft.

45. Although a limitation of the size of the bag would not dispose of the problem of security, a wide-open concept of an unlimited bag would in some ways destroy the very character of what the Commission was trying to protect. Since the function of the diplomatic bag was to act as a conveyance for diplomatic documents having some degree of confidentiality, it would be dangerous for the Commission to envisage certain limits being exceeded. It should be borne in mind that the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1969 Convention on Special Missions contained articles providing for methods of conveying various articles under privilege with some degree of

immunity from inspection. There were also, of course, certain circumstances in which it might be convenient and expedient to use the diplomatic bag in ways that went beyond its fundamental character as a means of dispatching confidential diplomatic material; but however convenient such enlarged uses of the diplomatic bag might be, they should not be allowed to detract in any way from the essential use of the bag for diplomatic documents.

46. With regard to draft article 31, paragraph 3, he agreed that, although bilateral relations could be helpful in allowing a relaxed view of the proper content of the diplomatic bag, he did not think that that point had to be reflected in the draft articles. Under bilateral agreements, States would in any case be able to grant one another more favourable treatment than the provisions of the future convention would allow. He therefore urged that the Commission should take care not to suggest a type of diplomatic bag that would call into question its function as a means of conveying diplomatic material.

47. Mr. USHAKOV said that, in his view, there was no point in discussing the question of the size and weight of the diplomatic bag, particularly if it was accompanied by a diplomatic courier. No matter what means of transport the diplomatic courier used, there would be limits on the size and weight of the bag. If he travelled by train or, in particular, by aeroplane, he would not be able to carry a very large bag on board. Moreover, it was not the diplomatic bag, but rather special arrangements between the sending State and the receiving State that were usually used for dispatches by slower means of transport.

The meeting rose at 12.40 p.m.

1844th MEETING

Wednesday, 20 June 1984, at 10.05 a.m.

Chairman: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Balanda, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Evensen, Mr. Jagota, Mr. Laclea Muñoz, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Ogiso, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Sir Ian Sinclair, Mr. Stavropoulos, Mr. Thiam, Mr. Ushakov.

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)

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DRAFT ARTICLES SUBMITTED BY THE SPECIAL RAPPORTEUR⁴ (continued)

ARTICLE 30 (Status of the captain of a commercial aircraft, the master of a merchant ship or an authorized member of the crew)

ARTICLE 31 (Indication of status of the diplomatic bag)

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ARTICLE 33 (Status of the diplomatic bag entrusted to the captain of a commercial aircraft, the master of a merchant ship or an authorized member of the crew)

ARTICLE 34 (Status of the diplomatic bag dispatched by postal services or other means) *and*

ARTICLE 35 (General facilities accorded to the diplomatic bag)⁵ (concluded)

1. The CHAIRMAN, speaking as Special Rapporteur to sum up the discussion on draft articles 30 to 35, expressed his appreciation to members for their most useful comments and suggestions. The discussion had not revealed any marked differences in approach to the substance of the draft articles, and their practical importance had been widely recognized. The debate had shown a general feeling that some of the draft articles should be made more concise and brought closer to the text of the corresponding articles of the four codification conventions. The remarks had centred mainly on the extent to which it was desirable to go into detail. That criticism would be taken into account, for although the technical nature of the subject-matter made it necessary to go into detail in some of the provisions, the draft might perhaps have gone too far in that direction. The Drafting Committee would take due account of the suggestions made.

2. Draft article 30 had given rise to much discussion, and it had been suggested that the reference to an "authorized member of the crew" should be deleted. Of course, the term "authorized" meant authorized by the captain of the commercial aircraft or the master of the merchant ship concerned. If the reference to an "authorized member of the crew" was dropped from the article, however, it would have to be retained in the commentary, because it reflected an existing practice of States. In the case of very large aircraft, it was not feasible to give the captain an additional responsibility, and the sending State usually entrusted the diplomatic bag to an authorized member of the crew or, in some cases, to an airline official.

3. There had been a number of drafting suggestions—in particular for shortening the last part of para-

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⁵ For the texts, see 1830th meeting, para. 1.