

Document:-
A/CN.4/SR.1844

Summary record of the 1844th 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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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)

[Agenda item 4]

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

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

³ *Idem*.

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)

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 (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-

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.

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

graph 1—which the Drafting Committee would take into consideration.

4. No comments had been made on the substance of paragraphs 2 and 3, but Mr. Ni (1842nd meeting) had suggested that they be merged. He himself would not favour that change, because the two paragraphs dealt with different matters: paragraph 2 described the official document to be supplied to the person entrusted with the bag, whereas paragraph 3 stated the important rule that the person entrusted with the bag was not to be considered as a diplomatic courier.

5. Most of the discussion on article 30, however, had centred on paragraph 4, the main purpose of which was to set out the obligation of the receiving State to facilitate delivery of the diplomatic bag to members of the sending State's mission. Paragraph 4 stated two rules: first, that the captain should be allowed to hand over the bag to members of the mission; secondly, that the members of the mission must be allowed access to the aircraft or ship in order to take possession of the bag. The discussion had revealed a need to redraft paragraph 4 so as to emphasize the second and more important requirement, namely free access for taking direct and unimpeded possession of the bag, without, of course, neglecting the first.

6. Mr. Ushakov (1832nd meeting) had raised the question whether the member of the sending State's mission should not have a document entitling him to take possession of the bag. State practice showed that while in Indonesia and a few other countries the member of the mission was provided with a special pass for access to the aircraft, most countries preferred to rely on the general identification card of the diplomat concerned. In any case, the matter was one to be settled by local regulations.

7. Lastly, the debate had shown that it was necessary to make provision in article 30 not only for the transport of the diplomatic bag to the receiving State, but also for its return to the sending State. At first sight, such a provision might not appear to be necessary, since on its return journey the bag would be delivered in the territory of the sending State. Difficulties could arise, however, if the diplomatic bag was carried on a foreign aircraft, and there was also the question of the obligations, if any, of the transit State when more than one airline was used. The Drafting Committee would take into consideration the various suggestions made on those points.

8. As to draft article 31, Mr. Ushakov (*ibid.*) had maintained that both that article and article 32 were unnecessary, because their substance was contained in the relevant definitions set out in article 3 as provisionally adopted. Other members, however, had held that even if articles 31 and 32 were, strictly speaking, redundant, they should be included in the draft because of the importance of their subject-matter.

9. Paragraph 1 of draft article 31 was modelled on article 27, paragraph 4, of the 1961 Vienna Convention on Diplomatic Relations, except that it used the verb form "shall bear" instead of "must bear". He had examined the corresponding provisions of more than 100 bilateral

consular conventions and had found that the words "shall" and "must" were both commonly used to convey the idea of obligation. It had been suggested that the concluding words, "of their official character", could be shortened to "of their character", since that change would not alter the meaning.

10. The discussion had shown that the concluding phrase of paragraph 2, "as well as of any intermediary points on the route or transfer points", was not essential, and the Drafting Committee would consider dropping it. It would also consider introducing a reference to any other visible markings that might be required.

11. Several members had proposed the deletion of paragraph 3, but the prevailing view had been that its substance should be retained, since a great many bilateral agreements contained provisions on the maximum size or weight of the bag. The words "shall be determined" should, however, be replaced by the words "may be determined"; he had not intended to suggest that the States concerned were under an obligation to enter into an agreement.

12. With regard to draft article 32, he had accepted during the discussion the deletion of the concluding clause of paragraph 2, "and shall prosecute and punish any person under its jurisdiction responsible for misuse of the diplomatic bag". The article dealt with the content of the diplomatic bag, and his fourth report dwelt at length on the importance of that matter in relation to verification and good faith (A/CN.4/374 and Add.1-4, paras. 274-289). No legal definition of the expression "official correspondence and documents", used in paragraph 1, was to be found in any of the four major codification conventions. Article 27, paragraph 2, of the 1961 Vienna Convention merely stated: "Official correspondence means all correspondence relating to the mission and its functions." The formula "articles intended exclusively for official use" involved even greater difficulties. The intention was to refer to articles of a confidential nature, but any attempt to define what was confidential would create more problems than it would solve. In that connection, he had been asked by Mr. Ogiso (1842nd meeting) for the source of the list he had given in his report of objects which could appropriately be sent by diplomatic bag (A/CN.4/374 and Add.1-4, para. 280); the items included had been drawn from the many examples mentioned in the Commission's discussions. He advised retention of the substance of article 32, but agreed that the final clause of paragraph 2 should be deleted.

13. The purpose of draft article 33 was to set out the same requirements and the same treatment for the unaccompanied diplomatic bag as for the bag accompanied by diplomatic courier. The article, which was mainly concerned with the protection of the bag, had proved generally acceptable in substance, although Mr. McCaffrey had pointed out that for him its acceptability depended on that of article 36. It had been suggested that draft article 33 might be merged with draft article 30, but he would not recommend that change, because the two articles concerned different subjects: article 30 dealt with the status of the captain or master entrusted with the

diplomatic bag, whereas article 33 concerned the status of the bag itself.

14. In draft article 34, paragraph 1, the reference to "article 31" should be replaced by a reference to "articles 31 and 32"; he thanked Sir Ian Sinclair (1842nd meeting) for drawing his attention to that omission. The article had been criticized as being unduly detailed and the Drafting Committee would endeavour to shorten it. He wished to point out, however, that the reference to postal agreements had been introduced on the recommendation of UPU itself; moreover, the practice of States showed that many bilateral conventions provided for arrangements between postal administrations.

15. A number of useful drafting suggestions had been made in regard to paragraphs 2 and 3. The Drafting Committee would consider the possibility of deleting the whole or part of the first sentence of each of those paragraphs. The merging of paragraphs 2 and 3, although they dealt with different means of transport of the diplomatic bag, would also be considered.

16. Draft article 35 dealt with the general facilities to be accorded to all diplomatic bags. It reflected State practice. Many bilateral conventions contained provisions on the carriage and clearance of diplomatic bags and formalities relating thereto. Mr. McCaffrey (1843rd meeting) had suggested that article 35 should be moved to the beginning of part III; but since it concerned all diplomatic bags and not only unaccompanied bags, it seemed preferable to leave it where it was.

17. In conclusion, he proposed that articles 30 to 35 be referred to the Drafting Committee for consideration in the light of the comments and suggestions made during the discussion.

18. Mr. OGISO pointed out that decisions on draft articles 31 and 32 could be affected by the discussion of draft article 36. Consequently, if the Commission decided to refer draft articles 30 to 35 to the Drafting Committee, it should be on the understanding that, when discussing article 36, members could revert to articles 31 and 32.

19. The CHAIRMAN said that there would be no objection to members reverting to articles 31 and 32 during the discussion of article 36. There were many precedents for that procedure, and in any case the Drafting Committee was unlikely to consider articles 31 and 32 before the Commission had discussed article 36.

20. If there were no further comments, he would take it that the Commission agreed to refer draft articles 30 to 35 to the Drafting Committee, together with all the comments and suggestions made during the discussion.

It was so agreed.

ARTICLES 36 to 42

21. The CHAIRMAN, speaking as Special Rapporteur, introduced draft articles 36 to 42, which read:

Article 36. Inviolability of the diplomatic bag

1. The diplomatic bag shall be inviolable at all times and wherever it may be in the territory of the receiving State or the transit State; un-

less otherwise agreed by the States concerned, it shall not be opened or detained and shall be exempt from any kind of examination directly or through electronic or other mechanical devices.

2. The receiving State or the transit State shall take all appropriate measures to prevent any infringement of the inviolability of the diplomatic bag, and shall also prosecute and punish persons under its jurisdiction responsible for such infringement.

Article 37. Exemption from customs and other inspections

The diplomatic bag, whether accompanied or not by diplomatic courier, shall be exempt from customs and other inspections.

Article 38. Exemption from customs duties and all dues and taxes

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

Article 39. Protective measures in circumstances preventing the delivery of the diplomatic bag

1. In the event of termination of the functions of the diplomatic courier before the delivery of the diplomatic bag to its final destination, as referred to in articles 13 and 14, or of other circumstances preventing him from performing his functions, the receiving State or the transit State shall take the appropriate measures to ensure the integrity and safety of the diplomatic bag, and shall immediately notify the sending State of that event.

2. The measures provided for in paragraph 1 shall be taken by the receiving State or the transit State with regard to the diplomatic bag entrusted to the captain of a commercial aircraft or the master of a merchant ship in circumstances preventing the delivery of the diplomatic bag to its final destination.

PART IV

MISCELLANEOUS PROVISIONS

Article 40. Obligations of the transit State in case of force majeure or fortuitous event

If, as a consequence of *force majeure* or *fortuitous event*, the diplomatic courier or the diplomatic bag is compelled to deviate from his or its normal itinerary and remain for some time in the territory of a State which was not initially foreseen as a transit State, that State shall accord the inviolability and protection that the receiving State is bound to accord and shall extend to the diplomatic courier or the diplomatic bag the necessary facilities to continue his or its journey to his or its destination or to return to the sending State.

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

1. The facilities, privileges and immunities accorded to the diplomatic courier and the diplomatic bag under these articles shall not be affected either by the non-recognition of the sending State or of its Government by the receiving State, the host State or the transit State or by the non-existence or severance of diplomatic or consular relations between them.

2. The granting of facilities, privileges and immunities to the diplomatic courier and the diplomatic bag, under these articles, by the receiving State, the host State or the transit State shall not by itself imply recognition by the sending State of the receiving State, the host State or the transit State, or of its Government, nor shall it imply recognition by the receiving State, the host State or the transit State of the sending State or of its Government.

Article 42. Relation of the present articles to other conventions and international agreements

1. The present articles shall complement the provisions on the courier and the bag in the Vienna Convention on Diplomatic Relations of 18 April 1961, the Vienna Convention on Consular Relations of 24 April 1963, the Convention on Special Missions of 8 December 1969 and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 14 March 1975.

2. The provisions of the present articles are without prejudice to other international agreements in force as between States parties thereto.

3. Nothing in the present articles shall preclude States from concluding international agreements relating to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.

22. Draft articles 36 to 39 were the last four articles of part III, relating to the status of the diplomatic bag. Draft articles 40 to 42 constituted part IV, which contained miscellaneous provisions.

23. Draft article 36 dealt with the inviolability of the diplomatic bag, which was one particular aspect of the inviolability of the official correspondence and documents of diplomatic missions provided for in article 24 and in article 27, paragraph 2, of the 1961 Vienna Convention on Diplomatic Relations. The commentary to draft article 36 was contained in his fourth report (A/CN.4/374 and Add.1-4, paras. 326-348).

24. The provision in paragraph 1 of article 36 reflected the rule in article 27, paragraph 3, of the 1961 Vienna Convention: "The diplomatic bag shall not be opened or detained." That rule stated a basic principle of customary international law recognized long before 1961. On occasion, of course, the rule of inviolability had been exploited to conceal the illicit import or export of certain articles, and incidents involving the drug traffic and terrorism warranted concern about such abuses. It was therefore necessary to protect the legitimate interests of the receiving State, although the diplomatic bag was so important for communication that a proper balance with the interests of the sending State had to be maintained.

25. It was relevant to recall the history of article 27 of the 1961 Vienna Convention. That article had had its origin in article 25 of the draft on diplomatic intercourse and immunities, in the commentary to which the Commission had explained the reasons for the unqualified statement of the rule of inviolability of the diplomatic bag (*ibid.*, para. 332). In his fourth report, he had also mentioned the long discussions which had preceded the adoption of the article (*ibid.*, paras. 329-331).

26. It was significant that, at the United Nations Conference on Diplomatic Intercourse and Immunities, in 1961, a number of proposals designed to restrict the inviolability of the diplomatic bag had been rejected. The Conference had thus upheld the unconditional character of that inviolability. Article 35, paragraph 3, of the 1963 Vienna Convention on Consular Relations, however, after stating that

3. The consular bag shall be neither opened nor detained.
added:

Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

27. Nevertheless, most bilateral consular conventions, including those concluded after the 1963 Vienna Convention had entered into force, specified that the consular bag was inviolable and could be neither opened nor detained by the authorities of the receiving State. The recognition of the principle of unconditional inviolability of diplomatic and consular bags thus appeared to be the prevailing trend in the recent practice of States.

28. As noted in the fourth report (*ibid.*, paras. 340-341), Bahrain, Kuwait and the Libyan Arab Jamahiriya had entered reservations to article 27, paragraph 3, of the 1961 Vienna Convention, under which the diplomatic bag could not be opened or detained. Those reservations had evoked a strong reaction from a number of countries on the ground that they were contrary to the principle of inviolability. That was an indication that, despite concern about possible misuse of the bag, unconditional inviolability was regarded as the basic principle.

29. Draft article 36 was modelled on article 27 of the 1961 Vienna Convention. He had not forgotten that article 35 of the 1963 Vienna Convention provided for a different régime, but the 1969 Convention on Special Missions and the 1975 Vienna Convention on the Representation of States had reverted to the régime of the 1961 Vienna Convention.

30. The first clause of paragraph 1 of draft article 36 stated the basic principle of the inviolability of the bag; a second clause had been added to meet the concern of some States by giving them the option to agree otherwise. Under bilateral arrangements, the prevailing régime was that of unconditional inviolability, but there were a number of bilateral consular conventions and other instruments which provided that the bag could be opened if there was serious reason to believe that it contained articles other than those stipulated in the instrument concerned.

31. As he understood the principle of inviolability, the protection to be afforded to the diplomatic bag should be such as to prevent any abuse whatsoever. Because of the rapid advances in technology, however, it was now possible to ascertain the contents of a bag without actually opening it, so that there could be a dual régime, with inequality between the countries which possessed the necessary technical equipment and those which did not. It was in the light of that fact that paragraph 2 of article 36 had been drafted. He would, however, suggest the deletion of the phrase "and shall also prosecute and punish persons under its jurisdiction responsible for such infringement".

32. There were, of course, other possibilities. For instance, a paragraph could be added along the lines of article 35, paragraph 3, of the 1963 Vienna Convention to cover the bag used by consular posts. He had also considered the possibility of providing in the draft for States to

make a choice between the provisions of the different conventions to which they had acceded. That would have the advantage of offering more safeguards, while at the same time having a deterrent effect, so that a bona fide sending State would have nothing to fear if it abided by the rules. On the other hand, there could be delays, disputes and suspicion.

33. Another possibility would be to apply the consular bag procedure to all kinds of diplomatic bags. But that would be a serious deviation from the principle laid down in article 27 of the 1961 Vienna Convention, which was one of the most universally accepted of the multilateral conventions sponsored by the United Nations. Moreover, it would not be in accordance with current State practice.

34. Yet another possibility would be to work out a formula distinguishing between the treatment of a diplomatic bag containing only confidential material, which would enjoy unconditional inviolability, and that of a bag containing documents and articles for official use that were not confidential, which could, in certain circumstances, be opened at the request of the authorities of the receiving State in the presence of representatives of the sending State or, if such a request was refused, be returned to the country of origin. But serious consideration would have to be given to the question of who would make the distinction.

35. The most appropriate approach, in his view, would be to follow article 27 of the 1961 Vienna Convention, perhaps adding a reservation to take account of the régime under article 35 of the 1963 Vienna Convention.

36. Turning to draft article 37, he pointed out that an account of the historical background to the provision and the relevant State practice was given in his fourth report (*ibid.*, paras. 350-354). The rule stated in the article was of long-standing application and practical significance. Its basis was the principle of inviolability and the functional necessity of providing for safe and quick delivery of the diplomatic bag. Although the 1961 Vienna Convention and the other relevant conventions contained no specific provision on the subject, the rule could be derived from the general principle of inviolability. He also referred the Commission to article 16, paragraph 2, of the draft articles on diplomatic intercourse and immunities submitted in 1957, which stated expressly that "The diplomatic pouch shall be exempt from inspection" (*ibid.*, para. 351). In the absence of suspicion of misuse of the diplomatic bag, the rule had never created any particular difficulty, and it had always been applied in diplomatic practice.

37. Draft article 37 did not specify the scope of the exemption in detail; that might perhaps be done in the commentary. Broadly speaking, it covered customs inspection, all clearance procedures and any inspection carried out at points of entry and exit or in transit. His understanding of the practical significance and scope of the exemption from inspection was supported by an impressive body of State practice, which he mentioned in his report (*ibid.*, para. 353). Almost all the bilateral conventions to which he had referred contained express provisions to the same effect.

38. The exemptions provided for in draft article 38 had not encountered any difficulty in practical application.

As stated in the report (*ibid.*, para. 356), from being based on *comitas gentium* and reciprocity, they had evolved through customary law to become a conventional rule of modern international law, though the principle of reciprocity was still an inherent part of the operation of the rule. The object of the exemptions was, again, safe and quick delivery of the bag, and their legal foundation was in conformity with article 36, paragraph 1, of the 1961 Vienna Convention. Charges for services such as storage and cartage would, of course, be levied: that too was in accordance with the main codification conventions. The scope of draft article 38 extended to exemption from fiscal dues and taxes levied on the export and import of goods, and related charges for customs clearance. There was abundant practice in that area, to which reference was made in the report (*ibid.*, paras. 358-359).

39. Draft article 39 provided for protection of the bag when the functions of the diplomatic courier terminated before he had delivered it, for instance if he were incapacitated from natural causes. In those circumstances it was incumbent on States to assist each other as an expression of solidarity. Even greater care was needed in the case of the unaccompanied bag, which was provided for in paragraph 2 of the article, since it would not have the protection of the dedicated services of the courier.

40. Part IV of the draft articles (Miscellaneous provisions) was of a very tentative character and limited in scope. It covered three main issues: (a) the obligations of third States which became transit States as a consequence of *force majeure* or fortuitous event (art. 40); (b) the treatment of the courier and the bag in the case of non-recognition of States or Governments, absence or severance of diplomatic or consular relations, armed conflict or state of war (art. 41); (c) the relation between the draft articles under consideration and the codification conventions (art. 42). There were a number of other matters that could be dealt with in part IV: for instance, reservations, especially in regard to participation in conventions and obligations assumed by transit States; settlement of disputes arising out of the interpretation or application of the draft articles; special rules relating to state of war or armed conflict; and final clauses. If he had not seen fit to cover them, it was because he believed that a selective approach would assist the Commission.

41. For the purposes of draft article 40, he had drawn a distinction between a "transit State" as defined in article 3, paragraph 1 (5), and a "third State". For the reasons stated in his report (*ibid.*, para. 370), he considered it preferable to avoid the term "third State" in that context. As he had explained (*ibid.*, paras. 376-377), the term "transit State" would cover a State in whose territory the diplomatic courier or unaccompanied diplomatic bag was compelled to stay as a result of *force majeure* or some fortuitous event. The problem that then arose was whether the State in question should accord the facilities that would have been accorded by the receiving or transit State initially envisaged. Article 40 was proposed for the Commission's consideration on that basis.

42. The provision in draft article 41 had appeared in a codification convention for the first time in 1975, when it

had been incorporated in the Vienna Convention on the Representation of States. The purpose was to ensure that the status of the diplomatic courier and the diplomatic bag would not be affected in cases where diplomatic relations had been severed or did not exist. At the Headquarters of the United Nations in New York, for example, there were a number of missions of States which were not recognized by the host country, but which used diplomatic bags. The references to the "host State" in draft article 41 should be deleted in view of developments in the Drafting Committee.

43. He recognized that, in draft article 42, he had not exhausted a highly complex problem. In any drafting exercise aimed at resolving that problem, more problems automatically arose. That was especially true of legal instruments such as the four codification conventions and the present draft articles, which could be regarded as playing an "umbrella role" for more specific arrangements. While his proposed solution might be over-simplified, he wished to underline three basic points: first, that the draft articles were complementary to the four main codification conventions; secondly, that the draft articles should not prejudice any other international agreements in force; thirdly, that the draft articles should not prevent States from concluding international agreements on the topic under consideration. There was a temptation to set ground rules, as it were, on the diplomatic courier and the diplomatic bag, but draft article 42 had a far more modest purpose.

44. The set of draft articles which he had submitted was not exhaustive, but he understood that the Commission was in favour of a reduction rather than an increase in their number.

45. Sir Ian SINCLAIR noted that, in the Special Rapporteur's fourth report (A/CN.4/374 and Add.1-4, paras. 340-341), the United Kingdom was included in a list of countries which had objected to certain reservations to article 27, paragraph 3, of the 1961 Vienna Convention on Diplomatic Relations. That was not entirely accurate. The United Kingdom had indeed raised an objection to the reservation entered by Bahrain, but not to those entered by Kuwait, the Libyan Arab Jamahiriya and Saudi Arabia. As a result of recent events in London, the Foreign Affairs Committee of the House of Commons had set up an investigation into the question of diplomatic privileges and immunities under the 1961 Vienna Convention and had addressed a written request to the Foreign and Commonwealth Office for answers to a number of questions. The text of a memorandum from the Foreign and Commonwealth Office, with which he had been provided, explained why the United Kingdom had not registered a formal objection in respect of the Libyan reservation to article 27, paragraph 3, of the 1961 Vienna Convention and also referred to the reservation entered by Bahrain.

46. The CHAIRMAN, speaking as Special Rapporteur, said that Sir Ian Sinclair was quite right. The main point he had wished to make, however, was that both reservations had derogated from the strict rule laid down in article 27, paragraph 3, of the 1961 Vienna Convention.

The meeting rose at 1 p.m.

1845th MEETING

Thursday, 21 June 1984, at 10 a.m.

Chairman: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Balanda, Mr. Barboza, 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.1² 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)

- ARTICLE 36 (Inviolability of the diplomatic bag)
- ARTICLE 37 (Exemption from customs and other inspections)
- ARTICLE 38 (Exemption from customs duties and all dues and taxes)
- ARTICLE 39 (Protective measures in circumstances preventing the delivery of the diplomatic bag)
- ARTICLE 40 (Obligations of the transit State in case of *force majeure* or fortuitous event)
- ARTICLE 41 (Non-recognition of States or Governments or absence of diplomatic or consular relations) *and*
- ARTICLE 42 (Relation of the present articles to other conventions and international agreements)⁵ (continued)

1. Mr. BALANDA said that the two key provisions of the draft articles were article 36 and its corollary, article 37.
2. He recalled that diplomatic relations were based on a presumption of mutual trust and that the presumption held true until proven otherwise. Such trust was therefore not absolute or irrefragable. International relations

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³ *Idem*.

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⁵ For the texts, see 1844th meeting, para. 21.