

Document:-  
**A/CN.4/SR.1903**

**Summary record of the 1903rd meeting**

Topic:  
**<multiple topics>**

Extract from the Yearbook of the International Law Commission:-  
**1985, vol. I**

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46. Mr. FRANCIS said that, in principle, he had no objection to referring articles 14 and 15 to the Drafting Committee, on the understanding that the Committee would take no action on them for the time being. He was convinced that, if the situation had not been as it was, the Special Rapporteur would have gone further in articles 14 and 15. The Special Rapporteur had said that, although the international community had recognized the concept of international crime, there was no general consensus on the consequences of such crimes. He had been right not to go further in articles 14 and 15, because article 19 of part I of the draft already attributed criminal responsibility to States and the General Assembly had been asked to determine whether a State could be a subject of law under the draft Code of Offences against the Peace and Security of Mankind. If the Commission went further, it might prejudice the decision to be taken by the General Assembly. The Drafting Committee should therefore be requested to refrain from taking up articles 14 and 15.

47. Mr. USHAKOV supported the Special Rapporteur's suggestion that articles 7 to 16 should be referred to the Drafting Committee.

48. The CHAIRMAN said that the Commission had had a comprehensive discussion on State responsibility. Some concrete suggestions had been made and there had been broad agreement on draft articles 1 to 13. He agreed with the Special Rapporteur that, since articles 5 and 6 had already been referred to the Drafting Committee, articles 7 to 16 should also be referred to it. A wide exchange of views had been held on articles 14 and 15 and the Drafting Committee would have ample material for reflection. He thought that the Committee could be requested to consider articles 14 and 15 in the light of the comments made in the Commission. If it made concrete proposals on those articles, they would be useful to the Commission and the Sixth Committee of the General Assembly, and could be used by the Special Rapporteur in preparing his next report. He therefore suggested that the Commission should refer articles 7 to 16 to the Drafting Committee, on the understanding that the results of its work on articles 14 and 15 would be used by the Special Rapporteur, who might submit appropriate formulations in his next report.

49. Mr. RIPHAGEN (Special Rapporteur) said that the Chairman's suggestion was a workable one. It did not seem likely that the Drafting Committee would be able to discuss articles 14 and 15 during the current session. It should be informed that those articles involved special difficulties, but that it would be useful if it could make concrete proposals. He therefore supported the Chairman's suggestion.

50. The CHAIRMAN said that the mere fact of referring the articles to the Drafting Committee implied that they would not be discussed by the Commission at its next session until the Committee had made its recommendations. Members would then be free to discuss the articles and express their views on them. Articles 14 and 15 would be considered by the Drafting Committee if it had time. The Special Rapporteur would participate in the work of the Committee and take account of its discussions in his next report. The Commission should not still be

in doubt about the need to harmonize its work on State responsibility with that on the draft Code of Offences against the Peace and Security of Mankind. It was with an awareness of that need that articles 14 and 15 were being referred to the Drafting Committee.

51. If there was no objection, he would take it that the Commission agreed to refer articles 7 to 16 to the Drafting Committee.

*It was so agreed.*

*The meeting rose at 5.55 p.m.*

## 1903rd MEETING

*Friday, 14 June 1985, at 10.35 a.m.*

*Chairman:* Mr. Satya Pal JAGOTA

*Present:* Chief Akinjide, Mr. Al-Qaysi, Mr. Arango-Ruiz, Mr. Balanda, Mr. Barboza, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed, Mr. Flitan, Mr. Francis, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ogiso, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Thiam, Mr. Tomuschat, Mr. Ushakov, Mr. Yankov.

**Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (A/CN.4/382,<sup>1</sup> A/CN.4/390,<sup>2</sup> A/CN.4/L.382, sect. C, ILC(XXXVII)/Conf.Room Doc.2 and Add.1)**

[Agenda item 5]

DRAFT ARTICLES SUBMITTED BY  
THE SPECIAL RAPporteur<sup>3</sup>

SIXTH REPORT OF THE SPECIAL RAPporteur  
ARTICLES 23\* AND 36 TO 43\*\*

\* Resumed from the 1864th meeting (*Yearbook ... 1984*, vol. I, pp. 298-300, paras. 1-22).

\*\* Concerning articles 36 to 42, resumed from the 1847th meeting (*ibid.*, pp. 191 *et seq.*).

<sup>1</sup> Reproduced in *Yearbook ... 1984*, vol. II (Part One).

<sup>2</sup> Reproduced in *Yearbook ... 1985*, vol. II (Part One).

<sup>3</sup> The texts of the draft articles considered by the Commission at its previous sessions are reproduced as follows:

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

Article 8 (revised) and articles 9 to 17, 19 and 20, and commentaries thereto, provisionally adopted by the Commission at its thirty-sixth session: *Yearbook ... 1984*, vol. II (Part Two) pp. 45 *et seq.*

Articles 24 to 35, referred to the Drafting Committee at the Commission's thirty-sixth session: *ibid.*, pp. 21 *et seq.*, footnotes 84 to 90 and 93 to 97.

Article 23 and articles 36 to 42, submitted at the Commission's thirty-fifth and thirty-sixth sessions: *ibid.*, pp. 21 and 25-27, footnotes 82 and 98 to 104.

1. The CHAIRMAN invited the Special Rapporteur to introduce his sixth report on the topic (A/CN.4/390), which contained the annotated and, in some cases, revised texts of draft articles 23 and 36 to 43. The draft articles read as follows:

*Article 23. Immunity from jurisdiction*

1. The diplomatic courier shall enjoy immunity from the criminal jurisdiction of the receiving State or the transit State.

2. He shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State or, as the case may be, the transit State in respect of all acts performed in the exercise of his functions. This immunity shall not extend to an action for damages arising from an accident caused by a vehicle the use of which may have involved the liability of the courier where those damages are not recoverable from insurance.

3. No measures of execution may be taken in respect of the diplomatic courier, except in cases where he does not enjoy immunity under paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person, temporary accommodation or the diplomatic bag entrusted to him.

4. The diplomatic courier is not obliged to give evidence as a witness in cases involving the exercise of his functions. He may be required to give evidence in other cases, provided that this would not cause unreasonable delays or impediments to the delivery of the diplomatic bag.

5. Any immunity of the diplomatic courier from the jurisdiction of the receiving State or the transit State does not exempt him from the jurisdiction of the sending State.

*Article 36. Inviolability of the diplomatic bag*

1. The diplomatic bag shall be inviolable at all times and whenever it may be in the territory of the receiving State or the transit State; unless 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. Nevertheless, if the competent authorities of the receiving State or the transit State have serious reason to believe that the bag contains something other than official correspondence, documents or articles intended for official use, referred to in article 32, they may request that the bag be returned to its place of origin.

*Article 37. Exemption from customs inspection, 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 the diplomatic bag and shall exempt it from customs and other inspections, 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*

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 in the event of termination of the functions of the diplomatic courier, which prevents him from delivering the diplomatic bag to its destination, or in circumstances preventing the captain of a commercial aircraft or the master of a merchant ship from delivering the diplomatic bag to an authorized member of the diplomatic mission of the sending State.

*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 provisions of the present articles are without prejudice to the relevant provisions in other conventions or those in international agreements in force as between States parties thereto.

2. Nothing in the present articles shall preclude States from concluding international agreements relating to the status of the diplomatic courier and the diplomatic bag confirming or supplementing or extending or amplifying the provisions thereof.

*Article 43. Declaration of optional exceptions to applicability in regard to designated types of couriers and bags*

1. A State may, without prejudice to the obligations arising under the provisions of the present articles, when signing, ratifying or acceding to these articles, designate by written declaration those types of couriers and bags to which it wishes the provisions to apply.

2. A State which has made a declaration under paragraph 1 of this article may at any time withdraw it.

3. A State which has made a declaration under paragraph 1 of this article shall not be entitled to invoke the provisions relating to any of the excepted types of couriers and bags as against another State Party which has accepted the applicability of those provisions.

2. Mr. YANKOV (Special Rapporteur) said that the main objective of his sixth report (A/CN.4/390)

\* Text unchanged.

was to submit to the Commission certain proposals for resumption of the consideration of draft articles 23 and 36 to 42 and for consideration of the new draft article 43, entitled "Declaration of optional exceptions to applicability in regard to designated types of couriers and bags". With the exception of draft article 43, all the other texts had been under consideration by the Commission since its thirty-fifth session and, in preparing his sixth report, he had concentrated not so much on the draft articles themselves as on the attitudes of Governments, as expressed in the debates in the Sixth Committee at the thirty-ninth session of the General Assembly (A/CN.4/L.382, sect. C). In the light of those discussions, he had reconsidered the texts of some of the draft articles and was now submitting them in revised form.

3. At the Commission's thirty-sixth session, the Drafting Committee had proposed the following text for draft article 23:

*Article 23 [18]. Immunity from jurisdiction*

[1. The diplomatic courier shall enjoy immunity from the criminal jurisdiction of the receiving State or the transit State.]

2. He shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State or, as the case may be, the transit State in respect of all acts performed in the exercise of his functions. This immunity shall not extend to an action for damages arising from an accident caused by a vehicle the use of which may have involved the liability of the courier where those damages are not recoverable from insurance.

3. No measures of execution may be taken in respect of the diplomatic courier, except in cases where he does not enjoy immunity under paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person, temporary accommodation or the diplomatic bag entrusted to him.

[4. The diplomatic courier is not obliged to give evidence as a witness.]

5. Any immunity of the diplomatic courier from the jurisdiction of the receiving State or the transit State does not exempt him from the jurisdiction of the sending State.

4. The extensive debate on draft article 23 in the Sixth Committee (*ibid.*, paras. 141-159) had centred mainly on the question of immunity from criminal jurisdiction (paragraph 1) and to some extent on exemption from the obligation to give evidence as a witness (paragraph 4). No new substantive arguments had been advanced in support of either of the opposing views on paragraph 1, which were described in some detail in the sixth report (A/CN.4/390, paras. 16-17). The possible options regarding paragraph 1 were: (a) to maintain the text of the paragraph as proposed by the Drafting Committee; (b) to delete paragraph 1, and possibly the whole of the article; or (c) to alter paragraph 1 by adding the words "except for serious offences" or "in respect of all acts performed in the exercise of his functions". He was recommending adoption of the paragraph in its present form, in the light of prevailing State practice and also of the fact that, whereas there were many instances of involvement of permanent diplomatic personnel in acts constituting breaches of the

criminal law of a receiving or transit State, no such instances could readily be found in the case of diplomatic couriers.

5. It was common practice to accord diplomatic couriers the same immunities as those extended to the administrative and technical staff of diplomatic and consular missions and members of their families and households. The time factor, in other words the brevity of the diplomatic courier's stay in the receiving State or transit State, was not *per se* a legal or material reason for failing to accord the courier such immunities. He shared the view expressed by some representatives in the Sixth Committee that paragraph 1 of draft article 23 should be in line with the provisions of article 16, on the diplomatic courier's personal inviolability, already adopted by the Commission on first reading. It was, of course, for the Commission to decide both on the substance and the drafting of paragraph 1, but as one who had been deeply involved in the study of the problem over the past few years he felt obliged to advocate the utmost caution in introducing at the present stage any changes which might have far-reaching implications for values established in accordance with long-standing practice.

6. Paragraphs 2, 3 and 5 of draft article 23 appeared to enjoy general support and he accordingly proposed their adoption without change. However, his proposed revised text of paragraph 4 departed from the original draft to a significant extent: on the one hand, the diplomatic courier's immunity from the obligation to give evidence as a witness was limited to cases involving the exercise of his functions, and on the other, an important exception was that, when the diplomatic courier was required to give evidence in other cases, that should not interfere unreasonably with the normal exercise of his official functions.

7. Draft article 36, too, had been the subject of much discussion, both in the Commission and in the Sixth Committee. The inviolability of the diplomatic bag was, of course, a most important issue and could be said to represent the foundation of the whole edifice being constructed in the draft articles. The advocates of absolute inviolability of the bag referred to article 24 and article 27, paragraphs 2 and 3, of the 1961 Vienna Convention on Diplomatic Relations, whereas the advocates of conditional inviolability invoked article 35, paragraph 3, of the 1963 Vienna Convention on Consular Relations.

8. Another problem area was the use of electronic and other devices for screening the diplomatic bag's contents, and there again opinion was divided as to the advantages and disadvantages of the procedure. One Government which had set up a special parliamentary commission to look into the matter had drawn attention to the risk to the security of confidential correspondence that would result from possible reciprocal action. In the light of the differing views and of State practice in the matter, as well as of the fact that a number of States provided in bilateral consular conventions for the absolute inviolability of the consular bag, he had come to the conclusion that, on balance, it would be wisest to abide by the well-

established rule of absolute inviolability, while possibly providing for some flexibility in its application.

9. Accordingly, he was proposing a revised text for article 36 to which the following additional changes should be made in paragraph 1: the word "whenever" should be replaced by "wherever", and the words "in the territory of the receiving State or the transit State" should be deleted. The deletion of the reference to the territory of the receiving State or of the transit State avoided giving the impression that the same degree of inviolability should not be accorded to the diplomatic bag on the high seas or in airspace above the high seas. Paragraph 2 of article 36 was formulated on the basis of a significant body of practice which suggested that a provision specifying the return of the bag to its place of origin in the event of serious suspicion as to its contents was preferable to one requiring the bag to be opened.

### Co-operation with other bodies

[Agenda item 11]

#### STATEMENT BY THE OBSERVER FOR THE ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

11. The CHAIRMAN, on behalf of all members, extended a very warm welcome to Mr. Sen, Secretary-General of the Asian-African Legal Consultative Committee, and invited him to address the Commission.

12. Mr. SEN (Observer for the Asian-African Legal Consultative Committee) conveyed the greetings of the Asian-African Legal Consultative Committee (AALCC) to the Commission and expressed the hope that the Chairman of the Commission, who as India's representative had contributed to the development of AALCC, would be able to honour AALCC by his presence at its next session. He also expressed appreciation to Mr. Sucharitkul, who had represented the Commission at the AALCC session at Kathmandu in February 1985.

13. In a year that marked the thirtieth anniversary of the Bandung Conference and the fortieth anniversary of the creation of the United Nations, it was fitting to depart from the customary annual review of AALCC work and attempt to give a broad overview of its activities, which spanned three decades.

14. AALCC had been established in 1956, following the Afro-Asian Conference in Bandung, and had held its first session in 1957. Initially, there had been seven member countries, but that number had since risen to 40, with two permanent observers.

15. The development of AALCC could be traced back through three stages. The first stage covered the years from 1957 to 1967, when AALCC activities had been confined to matters of a strictly legal consultative nature. It was a period when Governments, after independence, had needed advice on the formulation

of policies, and among the subjects referred to AALCC had been diplomatic relations, sovereign immunity as relating to trade transactions, extradition, the status of aliens, dual nationality, enforcement of foreign judgments, refugees, international rivers and even State responsibility. AALCC had also been required under its statutes to consider matters that were before the Commission, and hence an official relationship with the Commission had been established early on. In the first stage of its existence, AALCC meetings had followed the broad pattern of the Commission's meetings, using a skeleton secretariat with functions that had been confined to the preparation of background papers. AALCC had, however, already started to participate in a number of plenipotentiary conferences.

16. During the second stage, from 1968 to 1979, the emphasis had shifted to preparing countries for participation in United Nations conferences. The Committee's main contribution had been in connection with the law of the sea, for which it had prepared background material. It had also served as a forum for consultation and, ultimately, for interregional co-operation. By that time its meetings had been based on the pattern not of those of the Commission, but of those of plenipotentiary conferences. AALCC sessions had been shortened and supplemented by a large number of group and sub-committee meetings, and its membership had increased from 12 to 38. It had opened its doors to observers from all over the world. Following the United Nations Conference on the Human Environment (Stockholm, 1972), it had become involved in environmental matters. The secretariat had started to provide member Governments with advice on their problems, initiated training programmes for government officials and instituted the practice of holding meetings of legal advisers, two of which had been presided over by the present Chairman of the Commission, in 1978 and 1979.

17. The third stage had begun with the twenty-first session of AALCC, in 1980. Many important policy decisions had been taken at that time and two areas had become the main focus of activity: economic co-operation and broader co-operation with the United Nations. In the area of economic co-operation, the Committee had prepared standard commodity contracts, made contributions to liner conferences in the context of its relations with UNCTAD and established relations with UNCITRAL that had led to the establishment of regional arbitration centres in 1978 and 1979. Two ministerial meetings held in 1980 and 1981 had resulted in closer practical co-operation in several areas: one area concerned technical support for global negotiations; another related to investment protection and hence wider co-operation with the World Bank, in which connection model drafts for investment protection agreements had been finalized; and a third area involved the pattern of co-operation in the field of industrialization, which had brought AALCC into direct contact with UNIDO. AALCC was also involved in promotional meetings between investors and prospective countries of investment. A first meeting on the subject had been held in New York in 1984 and three more were scheduled for 1985. Furthermore, it had been felt

necessary to foster some form of judicial co-operation, particularly in regard to Western Asia, where many people were interested in entering into contracts or taking up employment. An inter-sessional meeting, in which a number of interested organs and countries would be participating, was to be held shortly at The Hague to discuss the matter.

18. As to broader co-operation with the United Nations, AALCC had been accorded permanent observer status in 1980 and, in 1981, the General Assembly had adopted a resolution<sup>4</sup> calling for strengthened co-operation between the United Nations and AALCC, as a result of which the Committee had become involved in refugee and environmental protection matters. Of special interest was the fact that AALCC was in the process of preparing notes and comments on issues before the Sixth Committee of the General Assembly, with a view to assisting representatives in participating more effectively in the debates. It was likewise preparing a study on the strengthening of the United Nations through the rationalization of its methods of procedure.

19. With the establishment of the Commission in 1947, the work on the progressive development and codification of international law had been placed on a systematic footing. It was the combination of the Commission's legal endeavour, on the one hand, and the political component in the views expressed in the Sixth Committee, on the other, that had led to considerable success in the codification process, as illustrated by the adoption of instruments such as the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1969 Vienna Convention on the Law of Treaties. AALCC therefore placed special emphasis on the discussion in the Sixth Committee of the subjects before the Commission. To that end, it had written a paper urging the Sixth Committee to devote more time to the Commission's reports and it arranged for brief meetings on Commission matters to be held during General Assembly sessions, believing as it did that full participation in the debates on the Commission's work was facilitated by such a process of consultation.

20. All the topics under consideration by the Commission were of importance to AALCC, but its member Governments were growing a little restive about the progress on two of them: the law of the non-navigational uses of international watercourses and jurisdictional immunities of States and their property. In the latter case, the wide range of legislation that had been introduced in member States was causing practical problems. AALCC had deferred further consideration of the matter pending the finalization of the Commission's work on the topic, but he trusted that guidance would be forthcoming from the Commission in the not too distant future.

21. The Committee had suspended its work on international watercourses in 1976, when it had handed over all its papers on the matter to the Commission's Special Rapporteur for the topic at that

time. In response to urgent requests, the item had been included on its agenda again, but purely to monitor the progress made in the Commission. Member Governments were concerned because Mr. Evensen was no longer a member of the Commission and therefore could not continue his duties as Special Rapporteur for the topic, but they had been assured that the work would be taken up at the point at which he had left off.

22. The CHAIRMAN, thanking Mr. Sen for his statement, said that it was the Commission's policy to promote co-operation with regional bodies involved in the field of international law and that it was particularly interesting to receive reports of activities of special concern to the regions concerned. It was equally interesting to learn of areas of activity in which AALCC was working in harmony with the Commission, thereby facilitating its work and providing it with views and comments from Asia and Africa.

23. Mr. AL-QAYSI, speaking on behalf of the Asian members of the Commission, said it was abundantly clear from Mr. Sen's statement that AALCC had not only responded to regional interests in the matter of the progressive development and codification of international law, but also made a sustained effort to promote international law within the region. It had done so by forging a consensus among the States concerned on matters pertaining to international law, and in a particularly pragmatic way, which could be ascribed to the seriousness with which it performed its task. For example, the increase in its membership from 7 to 40 States was no mean achievement. It had engaged in work on public and private international law, on international trade law and on economic, environmental and refugee issues, but its most interesting initiative, perhaps, related to the strengthening of the United Nations through the rationalization of its methods of procedure. All those achievements would not, however, have been possible without the Secretary-General of the Committee, to whom he wished every success.

24. Mr. FRANCIS said that, when he had had the privilege of representing the Commission at the AALCC session in Qatar in 1978, he had been struck by the efficiency achieved with such a limited number of staff. The fact that the Committee had not confined itself to law but had extended its activities into other areas was a reflection of its awareness of the direct relationship between law and economic and financial realities. As to the two topics about which the Committee felt some concern, he could assure Mr. Sen that the Commission was only too anxious to meet that concern and to move ahead with them.

25. Mr. FLITAN thanked Mr. Sen for his statement and, on behalf of the Eastern European members of the Commission, conveyed best wishes to AALCC for success in the future. He had been struck by the wide range of topics dealt with by the Committee, the achievements in its work and its ambitious programme of future work. It had from the outset paid heed to the realities and demands of international life and was seeking to lend its strength in the service of the United Nations. It was also an

<sup>4</sup> Resolution 36/38 of 18 November 1981.

example to all those who worked in the same areas and provided proof of the fruitful co-operation possible between widely differing legal systems. The Commission plainly benefited, directly and indirectly, from the work of AALCC, and he therefore hoped that the links between the two bodies would grow even stronger.

26. Mr. BARBOZA, speaking on behalf of the Latin American members of the Commission, said that Mr. Sen's outline of AALCC activities had afforded the Commission a welcome opportunity to grasp the full breadth of the Committee's task, to realize that the links with the Committee already dated back quite a number of years and to appreciate the affinity between the Committee's work and that of the Commission. Mr. Sen had also given a good insight into the variety of ways and means of action available to bodies engaged in the progressive development of international law, as advisers to Governments in a particular region and to delegations participating in United Nations conferences, as forums for consultation on matters at regional and inter-regional levels and as authors of studies on topics such as economic co-operation and the law of the sea, while at the same time co-operating with the Sixth Committee of the General Assembly in the examination of drafts submitted by the Commission. The latter aspect of the Committee's endeavours also enabled the Commission to move ahead with greater assurance in the elaboration of drafts ultimately intended for acceptance and ratification by States.

27. Mr. THIAM said that the statements by Mr. Sen were always very interesting and fostered a kind of dialogue between AALCC and the Commission. Every year, the Secretary-General of AALCC contributed new thoughts that encouraged the Commission to ponder further on the progressive development of international law and, in return, took away new considerations regarding universal codification. In that way, the relations between the Committee and the Commission were strengthened. It was to be hoped that the Chairman would be able to represent the Commission at the next session of AALCC.

28. Mr. RIPHAGEN, speaking on behalf of the Western European members of the Commission, thanked Mr. Sen for his report on the activities of AALCC. He had always listened to Mr. Sen's statements with great pleasure and appreciated the high intellectual quality and usefulness of the various AALCC publications. He expressed all good wishes for the Committee's continued success in its work.

*The meeting rose at 1.10 p.m.*

## 1904th MEETING

*Monday, 17 June 1985, at 3.05 p.m.*

*Chairman: Mr. Satya Pal JAGOTA*

*Present: Chief Akinjide, Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Calero Rodrigues, Mr. Díaz González, Mr. El Rasheed Mohamed Ahmed,*

*Mr. Flitan, Mr. Francis, Mr. Koroma, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ogiso, Mr. Razafindralambo, Mr. Reuter, Mr. Riphagen, Mr. Roukounas, Sir Ian Sinclair, Mr. Sucharitkul, Mr. Thiam, Mr. Tomuschat, Mr. Ushakov, Mr. Yankov.*

**Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (*continued*) (A/CN.4/382,<sup>1</sup> A/CN.4/390,<sup>2</sup> A/CN.4/L.382, sect. C, ILC(XXXVII)/Conf.Room Doc.2 and Add.1)**

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DRAFT ARTICLES SUBMITTED BY THE  
SPECIAL RAPPORTEUR<sup>3</sup> (*continued*)

- ARTICLE 23 (Immunity from jurisdiction)
- ARTICLE 36 (Inviolability of the diplomatic bag)
- ARTICLE 37 (Exemption from customs inspection, 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)
- ARTICLE 42 (Relation of the present articles to other conventions and international agreements) *and*
- ARTICLE 43 (Declaration of optional exceptions to applicability in regard to designated types of couriers and bags)<sup>4</sup> (*continued*)

1. The CHAIRMAN invited the Special Rapporteur to continue his introduction of the draft articles contained in his sixth report (A/CN.4/390), and specifically of draft articles 37 to 43.

2. Mr. YANKOV (Special Rapporteur) said that the revised text he was proposing for article 37 was an amalgamation of draft article 37 (Exemption from customs and other inspections) and draft article 38 (Exemption from customs duties and all dues and taxes) as originally submitted. The first part of the

<sup>1</sup> Reproduced in *Yearbook ... 1984*, vol. II (Part One).

<sup>2</sup> Reproduced in *Yearbook ... 1985*, vol. II (Part One).

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<sup>4</sup> For the texts, see 1903rd meeting, para. 1.