

Document:-  
**A/CN.4/SR.2143**

**Summary record of the 2143rd meeting**

Topic:  
**Other topics**

Extract from the Yearbook of the International Law Commission:-  
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Committee on Conferences and the Sixth Committee the serious difficulties in servicing meetings of the Commission during the last week of July, as described by the Secretariat of the United Nations Office at Geneva.

53. Mr. McCAFFREY said it seemed odd, indeed, that the bodies that were meant to service the Commission were in effect determining when the Commission would meet.

54. Mr. BENNOUNA (Rapporteur) noted that, in 1988, the Commission had chosen a starting-date of 8 May 1989 for its current session, but that decision had been overridden. An attempt was now being made to gain the victim's advance consent to its victimization. Whatever technical problems might be involved for the Secretariat services, the Commission must be guided only by its own preferences in choosing the starting-dates for its sessions. It would then be for the Committee on Conferences to determine, in terms of existing resources, whether the Commission's desiderata could be met.

55. Mr. DÍAZ GONZÁLEZ said that he endorsed the comments made by the Rapporteur. Although the Secretariat's technical difficulties should be taken into account, the Commission must be left free to make its own decision about the starting-dates.

56. Mr. SOLARI TUDELA said that he fully agreed with the Rapporteur.

57. Mr. ARANGIO-RUIZ said that he, too, agreed with the Rapporteur, but thought the Commission should make it clear that it preferred a specified date subject to administrative and technical feasibility.

58. The CHAIRMAN suggested that paragraph 25 should be amended to read:

“The Commission took note that its next session could be serviced at the United Nations Office at Geneva only from 1 May to 20 July 1990.”

59. Mr. DÍAZ GONZÁLEZ said that the Commission should not “take note” of anything: it should take a decision and then leave it to the Sixth Committee and the Committee on Conferences to make the appropriate arrangements.

60. Mr. YANKOV said that, in the Commission's 40-year history, it had always clearly indicated its preferences regarding the dates for its future sessions, and it should not change that practice now. To his knowledge, no United Nations body that met in regular session ever failed to set precise dates for its sessions.

61. Mr. BARBOZA said that he endorsed the comments made by Mr. Yankov.

62. Mr. BENNOUNA (Rapporteur) said that he, too, agreed with Mr. Yankov. He could not accept the manipulation of the Commission by the Secretariat, which was there to serve the Commission, not to dictate its decisions. The Commission was an independent body and should make its own decisions, not simply take note of decisions by the Secretariat.

63. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to leave the text of paragraph 25 unchanged, and to insert the dates “1 May” and “20 July”.

*It was so agreed.*

*Paragraph 25 was adopted.*

*Section C was adopted.*

*The meeting rose at 6.10 p.m.*

## 2143rd MEETING

*Wednesday, 19 July 1989, at 10 a.m.*

*Chairman: Mr. Bernhard GRAEFRATH*

*Present:* Mr. Al-Baharna, Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Jacovides, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Reuter, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

### Draft report of the Commission on the work of its forty-first session (continued)

**CHAPTER IX. Other decisions and conclusions of the Commission (concluded) (A/CN.4/L.442)**

**D. Representation at the forty-fourth session of the General Assembly**  
Paragraph 26

*Paragraph 26 was adopted.*

*Section D was adopted.*

**E. International Law Seminar**

1. Mr. EIRIKSSON recalled that it had been decided at the previous session to include in the Commission's report a list of all those who had participated in the International Law Seminar, from its first session until the present.
2. The CHAIRMAN suggested that the Planning Group should be reminded of that decision at the next session.

*It was so agreed.*

Paragraphs 27 to 30

*Paragraphs 27 to 30 were adopted.*

Paragraph 31

3. Mr. MAHIOU said that, in his view, it was not necessary to explain the details of the internal organization of the Seminar to the General Assembly. He therefore proposed that paragraph 31 be deleted.

*It was so agreed.*

Paragraph 32

*Paragraph 32 was adopted.*

Paragraph 33

4. Mr. BENNOUNA (Rapporteur) proposed that paragraph 33 be deleted for the reason stated by Mr. Mahiou.

*It was so agreed.*

Paragraphs 34 to 37

*Paragraphs 34 to 37 were adopted.*

*Section E, as amended, was adopted.*

**F. Gilberto Amado Memorial Lecture**

Paragraphs 38 to 40

*Paragraphs 38 to 40 were adopted.*

*Section F was adopted.*

*Chapter IX of the draft report, as amended, was adopted.*

**CHAPTER VII. The law of the non-navigational uses of international watercourses (concluded)** (A/CN.4/L.440 and Corr.1 and Add.1 and 2)

**B. Consideration of the topic at the present session (concluded)** (A/CN.4/L.440/Add.1 and 2)

Paragraphs 30*i* to 33 (A/CN.4/L.440/Add.2)

*Paragraphs 30*i* to 33 were adopted.*

*Section B, as amended, was adopted.*

**C. Draft articles on the law of the non-navigational uses of international watercourses** (A/CN.4/L.440/Add.2)

Paragraph 34

*Paragraph 34 was adopted.*

*Section C was adopted.*

**D. Points on which comments are invited** (A/CN.4/L.440/Add.2)

Paragraph 35

*Paragraph 35 was adopted.*

*Section D was adopted.*

5. Mr. McCAFFREY (Special Rapporteur) said that, having considered chapter VII as a whole, the Commission might wish to shorten section A (Introduction) somewhat (A/CN.4/L.440 and Corr.1). He therefore proposed that, in paragraph 14, the list of titles of articles 2 to 7—which were reproduced in section C—should be deleted and that paragraph 19 should be simplified in the same way, only the first sentence being retained. If the Commission agreed to that proposal, the footnotes to the two paragraphs would also have to be amended so as to refer to section C.

*It was so agreed.*

*Chapter VII of the draft report, as amended, was adopted.*

**CHAPTER II. Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier** (A/CN.4/L.435 and Add.1-4 and Add.4/Corr.1)

**D. Draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier** (A/CN.4/L.435/Add.1-4 and Add.4/Corr.1)

6. Mr. YANKOV (Special Rapporteur) said that sections A to C of chapter II would shortly be issued in document A/CN.4/L.435. They would contain a historical review of the Commission's work on the topic, some observations of a methodological nature, including an analysis of the concept of functional necessity, and the recommendation addressed to the General Assembly by the Commission.

7. Section D, now before the Commission, consisted of the texts of the draft articles in their final form and of the draft Optional Protocols, as well as the commentaries thereto, incorporating the comments made in the Drafting Committee and in plenary.

Introductory paragraph (A/CN.4/L.435/Add.1)

*The introductory paragraph was adopted.*

*Commentary to article 1 (Scope of the present articles)*

Paragraph (1)

8. Mr. TOMUSCHAT proposed that the first sentence should be amended to read: "The general purpose of the present draft articles is to establish, within certain limits to be mentioned below, a comprehensive and uniform régime for all kinds of couriers and bags employed by States for official communications."

*It was so agreed.*

*Paragraph (1), as amended, was approved.*

Paragraph (2)

9. Mr. TOMUSCHAT proposed that, in the second sentence, the words "extremely high" should be replaced by "very high" and the words "a truly universal network" by "an almost universal network", and that the words "by and large, and", in the third sentence, should be deleted.

*It was so agreed.*

*Paragraph (2), as amended, was approved.*

Paragraph (3)

10. Mr. BENNOUNA (Rapporteur) noted that paragraph (3) referred to draft Optional Protocol One on the status of the courier and the bag of special missions, but not to draft Optional Protocol Two on the status of the courier and the bag of international organizations of a universal character.

11. Mr. YANKOV (Special Rapporteur) pointed out that the second optional protocol was referred to in paragraph (2) of the commentary to article 2.

12. Mr. DÍAZ GONZÁLEZ proposed that, throughout the Spanish text of chapter II, the words *los correos y las valijas* should be used instead of *los correos y valijas*.

13. Mr. AL-QAYSI said that, in the English text, the word "couriers" should be used in the plural.

*It was so agreed.*

*Paragraph (3), as amended, was approved.*

Paragraph (4)

14. Mr. BENNOUNA (Rapporteur) proposed that the words "the state of" should be added before "customary international law".

*Paragraph (4) was approved.*

Paragraph (5)

15. Mr. TOMUSCHAT said that he doubted whether the Latin expression *inter se* would be understandable to the non-specialist reader.

16. Mr. YANKOV (Special Rapporteur) proposed that, after the expression *inter se*, the following phrase should be added by way of explanation: "i.e. communications between the missions, consular posts or delegations situated in one State with the missions, consular posts or delegations situated in another State".

17. Mr. REUTER said that, in his view, the expression "lateral communications" would be explicit enough.

18. The CHAIRMAN suggested that the Special Rapporteur, the Rapporteur and the secretariat should agree on the final form of wording.

\* Resumed from the 2141st meeting.

*Paragraph (5) was approved on that understanding.*

Paragraph (6)

*Paragraph (6) was approved.*

*The commentary to article 1, as amended, was approved.*

*Commentary to article 2 (Couriers and bags not within the scope of the present articles)*

Paragraphs (1) to (3)

*Paragraphs (1) to (3) were approved.*

*The commentary to article 2 was approved.*

*Commentary to article 3 (Use of terms)*

Paragraph (1)

19. Mr. EIRIKSSON said that he was not sure what the last sentence was supposed to mean. In his view, it should either be made clearer or be deleted.

20. Mr. YANKOV (Special Rapporteur) said that the sentence was meant to indicate to the reader that he should not expect to find in article 3 a definition of all the terms used in the draft without exception. The expression "host State", for example, which appeared only once, was defined in the relevant article.

21. Mr. AL-QAYSI proposed that the last two sentences of paragraph (1) should be combined and amended to read: "The definitions have been confined to the essential elements which typify the entities defined, leaving all other elements for inclusion in the relevant substantive articles."

22. Mr. CALERO RODRIGUES proposed that the last sentence should be amended to read: "Other definitional elements may be found in the relevant substantive articles."

23. Mr. YANKOV (Special Rapporteur) said that those two proposals could be combined in the following manner: "... defined, leaving all other definitional elements for inclusion in the relevant substantive articles".

24. Mr. EIRIKSSON proposed that the word "all" in the latter amendment should be deleted.

25. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to approve paragraph (1) with the amendments proposed by the Special Rapporteur and Mr. Eiriksson.

*It was so agreed.*

*Paragraph (1), as amended, was approved.*

Paragraph (2)

*Paragraph (2) was approved.*

Paragraph (3)

26. Mr. TOMUSCHAT said that, in his view, the list, in the last sentence, of delegates, deputy delegates, advisers, technical experts and secretaries of delegations was unnecessary. It was intended to explain what was meant by the term "representatives", which was defined in article IV, section 16, of the 1946 Convention on the Privileges and Immunities of the United Nations to include those same persons. A reference to that provision would be enough.

27. Mr. YANKOV (Special Rapporteur) said that it was for historical reasons that he had listed all the persons covered by the concept of "representative". That concept was only really explained in the 1946 Convention on the Privileges and Immunities of the United Nations and the 1947 Convention on the Privileges and Immunities of the

Specialized Agencies, since the 1975 Vienna Convention on the Representation of States gave a much more general definition. For the same historical reasons, he had used the term "Members" rather than "Member States", since, when the United Nations had been established, "Member" had been understood to mean what was now called "Member State".

28. Mr. EIRIKSSON said that neither paragraph (3) nor paragraph (9), in which the same expression was used, caused him any difficulty.

29. Mr. CALERO RODRIGUES suggested that the words "representatives of Members, delegates, deputy delegates, advisers, technical experts and secretaries of delegations", in the last sentence of paragraph (3), should be replaced by "representatives of Members" (which includes delegates, deputy delegates, advisers, technical experts and secretaries of delegations), in order simply to provide the reader with information.

30. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to approve paragraph (3) with the amendment proposed by Mr. Calero Rodrigues and to amend the other paragraphs in which the same wording appeared accordingly.

*It was so agreed.*

*Paragraph (3), as amended, was approved.*

Paragraphs (4) to (7)

*Paragraphs (4) to (7) were approved.*

Paragraph (8)

31. Mr. EIRIKSSON proposed that the word "master", in the third sentence, should be replaced by "captain" and that the last sentence should be replaced by a reference to the article relating to the practices in question.

32. Mr. YANKOV (Special Rapporteur) said that it was customary in practice and English maritime law to speak of the "master" of a merchant ship. While he had deferred in the Drafting Committee to the wishes of those who had wanted the term "captain" to be used in the body of the draft, he would like to retain the word "master" in paragraph (8) of the commentary. As to Mr. Eiriksson's second proposal, he suggested that reference be made to article 26, on transmission of the diplomatic bag by postal service or any mode of transport.

33. Mr. CALERO RODRIGUES pointed out that paragraph (3) of the commentary to article 23 contained an explanation concerning the use of the terms "captain" and "master". Personally, he would prefer to retain the last sentence of paragraph (8) under consideration and simply to add a reference to article 26 in square brackets so as to provide the reader with as much information as possible.

34. Mr. AL-QAYSI said that it was difficult to see how the last part of paragraph (8), reading "... could appropriately be dealt with in a new article to be placed at the part of the draft articles which bears on the status of the diplomatic bag", could be replaced simply by a reference to article 26, as Mr. Eiriksson had proposed. That would be tantamount to saying that the Commission had known in advance that it would deal with the practices in question in article 26, whereas that had not been the case.

35. Mr. YANKOV (Special Rapporteur) proposed that the last part of paragraph (8) should be replaced by the following

text: "... could appropriately be dealt with in another article. Reference is made in this connection to article 26."

*It was so agreed.*

*Paragraph (8), as amended, was approved.*

Paragraphs (9) and (10)

*Paragraphs (9) and (10) were approved.*

Paragraph (11)

36. Mr. McCAFFREY said that the third sentence was not clear. Both the courier who accompanied a bag and the courier sent by a State to take delivery of a bag should be mentioned.

37. Mr. CALERO RODRIGUES suggested that the words "whose function is precisely to accompany a bag", in that sentence, should be replaced by "whose function is always connected with a bag".

*It was so agreed.*

*Paragraph (11), as amended, was approved.*

Paragraph (12)

*Paragraph (12) was approved.*

Paragraph (13)

38. Mr. TOMUSCHAT proposed that the words "all the more", in the second sentence, should be replaced by "all the less".

39. Mr. McCAFFREY proposed that the word "especially" should be used instead.

40. Mr. EIRIKSSON proposed that the words "a generic term such as 'mission'", at the end of the second sentence, should be replaced by "a generic term, 'mission'".

41. Mr. RAZAFINDRALAMBO suggested that the dates of the conventions cited in the report should be indicated systematically.

42. Mr. YANKOV (Special Rapporteur) endorsed the proposals made by Mr. McCaffrey and Mr. Eiriksson. So far as Mr. Razafindralambo's proposal was concerned, since the titles of conventions were given in full when first cited in each chapter, he thought it would be better thereafter to use shorter titles without any date, where appropriate.

*The amendments by Mr. McCaffrey and Mr. Eiriksson were adopted.*

*Paragraph (13), as amended, was approved.*

Paragraph (14)

43. Mr. EIRIKSSON proposed the deletion of the words "on a very superficial level", which, being followed by the words "at first sight", were redundant.

*It was so agreed.*

*Paragraph (14), as amended, was approved.*

Paragraph (15)

44. Mr. TOMUSCHAT said that paragraph (15) did not really convey the basic idea which the Commission had agreed on and which he had in fact criticized, namely that the obligations incumbent on the transit State also applied to States which had not been informed that a courier was passing through their territory. It should therefore be made clear in the commentary that the expression "transit State" also covered a State through whose territory a courier passed, but which was not informed of that fact.

45. Mr. EIRIKSSON said that he agreed with Mr. Tomuschat.

46. Mr. YANKOV (Special Rapporteur) said that, in his view, paragraph (14), which had just been approved, was sufficiently explicit in that regard. He would, however, propose that paragraph (15) be amended to read:

"The definition is broad enough to cover the foreseen situation of a State through whose territory a courier or bag passes in transit in accordance with an established itinerary and unforeseen situations in which the provisions of paragraph 2 of article 30 will apply, with its qualifications. Except in circumstances where a visa is required, the transit State may not be aware that a courier or bag is passing through its territory. This broad concept of a transit State is based on the different situations contemplated by article 40 of the 1961 Vienna Convention on Diplomatic Relations, article 54 of the 1963 Vienna Convention on Consular Relations, article 42 of the 1969 Convention on Special Missions and article 81 of the 1975 Vienna Convention on the Representation of States."

47. Mr. CALERO RODRIGUES said that he wondered whether the Convention on Special Missions should be mentioned.

48. Mr. YANKOV (Special Rapporteur) said that, although the case of special missions was, strictly speaking, covered not by the draft articles, but by an optional protocol, a reference to it was necessary in the interests of comparative law. Moreover, such a reference would not give rise to any problem of interpretation and would not create confusion.

49. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to approve paragraph (15) as amended by the Special Rapporteur.

*It was so agreed.*

*Paragraph (15), as amended, was approved.*

Paragraphs (16) and (17)

*Paragraphs (16) and (17) were approved.*

Paragraph (18)

50. Mr. TOMUSCHAT proposed that the words "It was also wondered", in the third sentence, should be replaced by "The question was also raised".

*It was so agreed.*

51. The CHAIRMAN proposed that the words "the fact", in the fifth sentence, should be deleted.

*It was so agreed.*

*Paragraph (18), as amended, was approved.*

Paragraph (19)

*Paragraph (19) was approved.*

*The commentary to article 3, as amended, was approved.*

*Commentary to article 4 (Freedom of official communications)*

Paragraphs (1) and (2)

*Paragraphs (1) and (2) were approved.*

Paragraph (3)

52. Mr. YANKOV (Special Rapporteur) said that the word "jurisdiction", in the second sentence, should be replaced by "territory".

*Paragraph (3), as amended, was approved.*

*The commentary to article 4, as amended, was approved.*

*Commentary to article 5 (Duty to respect the laws and regulations of the receiving State and the transit State)*

Paragraphs (1) and (2)

*Paragraphs (1) and (2) were approved.*

Paragraph (3)

53. Mr. TOMUSCHAT proposed that the word "law", in the last sentence, should be replaced by "laws".

*It was so agreed.*

*Paragraph (3), as amended, was approved.*

Paragraphs (4) and (5)

*Paragraphs (4) and (5) were approved.*

*The commentary to article 5, as amended, was approved.*

*Commentary to article 6 (Non-discrimination and reciprocity)*

Paragraph (1)

54. Mr. TOMUSCHAT proposed that the words "This article", at the beginning of the second sentence, should be replaced by the word "It", and that the last sentence, the meaning of which was more political than legal, should be deleted.

55. Mr. YANKOV (Special Rapporteur) said that he could accept those proposals, although it was not uncommon for commentaries to have political connotations.

*Mr. Tomuschat's amendments were adopted.*

*Paragraph (1), as amended, was approved.*

Paragraphs (2) and (3)

*Paragraphs (2) and (3) were approved.*

Paragraph (4)

56. Mr. TOMUSCHAT proposed that the last sentence, which reflected an individual opinion and not the opinion of the Commission as a whole, should be deleted. Furthermore, the second sentence narrowed the application of the rule of reciprocity unduly, for it seemed to suggest that the rule would come into play only when the transit State had been subjected to restrictive treatment on the part of the sending State acting as a transit State. In his view, however, the transit State could also bring the rule of reciprocity into play with respect to the receiving State if the latter applied a particular provision with respect to it in a restrictive manner.

57. Mr. FRANCIS said that, in his view, the last sentence of paragraph (4) had a rationale. Since the object was to ensure that the diplomatic bag was not used for purposes other than those for which it was intended, it was advisable to ensure, for instance, that two States of similar intent could not enter into an agreement, written or otherwise, to pursue a practice between them that was inconsistent with the object and purpose of the articles.

58. Mr. BENNOUNA (Rapporteur) said that the last sentence was not the only one in the commentary to express an individual opinion. Moreover, it had the merit of raising the question of the limits to the application of the rule of reciprocity and non-discrimination.

59. Mr. EIRIKSSON said it was his view that, as a general rule, the Commission should refrain from interpreting articles which were based on the provisions of earlier conventions or which reproduced them word for word.

60. The second and penultimate sentences of paragraph (4) both related to the restrictive application of a provision of the present articles and he did not share Mr. Tomuschat's interpretation of the second sentence; on the contrary, he subscribed to the view expressed in it. The last sentence, which was based on the provisions of the 1969 Vienna Convention on the Law of Treaties relating to reservations, did not have a place in the commentary.

61. Given the divergence of views among members, the second and last sentences could, in his view, be deleted without difficulty.

62. Mr. McCAFFREY said he considered that the last sentence should be retained, since it concerned a slightly divergent view which had been expressed and, what was more, by more than one member.

63. He had doubts about the effect of the phrase in the second sentence reading: "It was pointed out in the Commission". Did it mean that there had been agreement on the matter? He was not sure that that was the case.

64. Mr. YANKOV (Special Rapporteur) said that the second sentence of paragraph (4) gave an interpretation, with respect to the transit State, which corresponded to the text of paragraph (2) (a) of article 6. The last sentence defined certain limits relating to the object and purpose of the future instrument and similar provisions were to be found in the 1969 Vienna Convention on the Law of Treaties. Paragraph (4) should therefore be retained as drafted. Moreover, it was not at all unusual for the Commission to reflect in a commentary a point of view which, although it was not that of all its members, none the less served to interpret the provision in question.

65. Mr. McCAFFREY said that he would not oppose the approval of paragraph (4), but he still wondered about the meaning of the phrase "It was pointed out in the Commission", in the second sentence. Did it refer to the opinion of the Commission or not?

66. Mr. REUTER, noting that paragraph (4) was couched in rather vague terms, said that he wished to enter a formal reservation involving a fundamental question of principle—which was, incidentally, referred to in the final articles—concerning the relationship between the present articles and other treaties, namely the question of the extent to which a multilateral convention could restrict individual agreements for an object and a purpose that in the particular case were not clearly specified. He therefore accepted the paragraph as worded, but interpreted it as an opinion expressed by several members of the Commission and not as an opinion of the Commission itself. If it were an opinion of the Commission, he would oppose it.

67. Mr. BENNOUNA (Rapporteur) said he considered that, in principle, a commentary should reflect only the opinion of the Commission as a whole.

68. Mr. TOMUSCHAT said that he would prefer the second and last sentences of paragraph (4) to be deleted. If the second sentence were retained, however, it should begin with the words "Some members of the Commission pointed out".

69. Mr. EIRIKSSON said that he favoured the deletion of the second sentence, first, because it was controversial and, secondly, because the idea it expressed was reflected in the penultimate sentence.

70. Mr. FRANCIS said that he had supported the inclusion of the last sentence because he had thought that it was the practice in the Commission for an opinion which was not that of the Commission as a whole to be reflected in the commentary. If that was not so, he would not oppose the deletion of the sentence, but, if it subsequently proved that the practice was not unknown in the Commission, he would revert to the matter.

71. Mr. CALERO RODRIGUES said that, in his view, the second and last sentences should be deleted. In principle, the commentary should not reflect opinions other than those of the Commission as a whole.

72. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to delete the second and last sentences of paragraph (4).

*It was so agreed.*

*Paragraph (4), as amended, was approved.*

Paragraph (5)

73. Mr. BENNOUNA (Rapporteur) said that the last sentence reflected a view originally expressed by Mr. Reuter, which he had himself supported and which the Commission had endorsed. The words "It was made clear in the Commission that" should therefore be deleted and the words "was intended" should be replaced by "is intended".

*It was so agreed.*

*Paragraph (5), as amended, was approved.*

*The commentary to article 6, as amended, was approved.*

Commentary to article 7 (Appointment of the diplomatic courier)

Paragraphs (1) and (2)

*Paragraphs (1) and (2) were approved.*

Paragraph (3)

74. Mr. EIRIKSSON said that paragraph (3) could be simplified, since its main purpose was to underline the importance of the reference in article 7 to articles 9 and 12. He suggested, however, that a decision in that regard should be deferred until the following meeting to allow him time to propose a form of wording after he had discussed the matter with the Special Rapporteur.

*It was so agreed.*

Paragraph (4)

*Paragraph (4) was approved.*

Paragraph (5)

75. Mr. EIRIKSSON, proposing the deletion of the second sentence, said that the first part of that sentence merely repeated what was stated in article 7 and the second part implied that, if the courier did not have the nationality of at least one of the sending States, the condition set forth in article 9, paragraph 1, was not satisfied. It was, however, apparent, on reading article 9, paragraph 1, that it laid down no such condition.

76. Mr. YANKOV (Special Rapporteur), supported by Mr. CALERO RODRIGUES, said that, in his view, the second sentence of paragraph (5), which dealt with a specific situation and the consequences of that situation, should be retained. It also reflected a position which had been taken by the Commission on first reading of the draft articles and which had not changed on second reading.

77. Mr. BENNOUNA (Rapporteur) said that he, too, considered it advisable to make it clear that, in cases where there were several sending States, it was not necessary for the courier to have the nationality of each of those States and that it sufficed for him to have the nationality of at least one of them.

78. Mr. EIRIKSSON said that the Rapporteur's comments merely confirmed him in his opposition to the second sentence of paragraph (5). None of the provisions of article 9 required the courier to have the nationality of one of the sending States. If, however, the Commission preferred to retain the second sentence, he proposed that the last part should be amended to read: "... although the Commission considers that the courier should have the nationality of one of the sending States".

79. The CHAIRMAN said it was his understanding that the majority of the members of the Commission wished to approve paragraph (5) without change.

*It was so agreed.*

*Paragraph (5) was approved.*

*The meeting rose at 1 p.m.*

## 2144th MEETING

*Wednesday, 19 July 1989, at 3 p.m.*

*Chairman: Mr. Bernhard GRAEFRATH*

*Present:* Mr. Al-Baharna, Mr. Al-Qaysi, Mr. Arangio-Ruiz, Mr. Barboza, Mr. Barsegov, Mr. Beesley, Mr. Bennouna, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Eiriksson, Mr. Francis, Mr. Jacovides, Mr. Mahiou, Mr. McCaffrey, Mr. Njenga, Mr. Ogiso, Mr. Pawlak, Mr. Sreenivasa Rao, Mr. Razafindralambo, Mr. Reuter, Mr. Roucounas, Mr. Sepúlveda Gutiérrez, Mr. Shi, Mr. Solari Tudela, Mr. Thiam, Mr. Tomuschat, Mr. Yankov.

## Draft report of the Commission on the work of its forty-first session (continued)

**CHAPTER II. Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (continued) (A/CN.4/L.435 and Add.1-4 and Add.4/Corr.1)**

**D. Draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (continued) (A/CN.4/L.435/Add.1-4 and Add.4/Corr.1)**

*Commentary to article 7 (Appointment of the diplomatic courier) (concluded)*

Paragraph (3) (concluded)

*Paragraph (3) was approved.*

*The commentary to article 7 was approved.*

*Commentary to article 8 (Documentation of the diplomatic courier)*

Paragraphs (1) and (2)

*Paragraphs (1) and (2) were approved.*