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Summary record of the 2145th meeting

Topic:
Other topics

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first sentence: "During the consideration of this question, the point was raised as to whether the lack of provision for the inviolability of a courier's temporary accommodation in the codification conventions should be interpreted as denying the existence of such a customary rule." Moreover, the beginning of the second sentence of paragraph (1) as drafted should be expanded to state: "However, that view was not accepted by the Commission on the grounds that there exist . . .".

64. Mr. AL-QAYSI said that, in his view, Mr. Ogiso's point was implicit in the first sentence of paragraph (1).

65. Mr. McCAFFREY said he considered that some reference along the lines proposed by Mr. Ogiso should be included in the commentary.

66. Mr. BENNOUNA (Rapporteur) said that the point was already covered in the last sentence of paragraph (2), which expressly stated that the question arose whether special rules on the inviolability of the temporary accommodation of the diplomatic courier should apply.

Paragraph (1) was approved.

Paragraph (2)

67. Mr. CALERO RODRIGUES proposed that the opening words of paragraph (2), "Normally, couriers are housed", should be replaced by "Couriers are often housed".

It was so agreed.

68. After a discussion in which Mr. EIRIKSSON, Mr. McCAFFREY, Mr. Sreenivasa RAO and Mr. YANKOV (Special Rapporteur) took part, the CHAIRMAN suggested that the words "then the question arises whether" and the word "should", in the last sentence, should be deleted.

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraph (3)

Paragraph (3) was approved.

Paragraph (4)

69. Mr. EIRIKSSON said that the last part of paragraph (4) reflected a view on inviolability with which he could not agree. In his opinion, a State's obligation to protect a courier in temporary accommodation was no greater than its obligation with respect to ordinary citizens.

70. Mr. TOMUSCHAT, agreeing with Mr. Eiriksson, said that the statement in the seventh sentence that protective measures were "common in hotels" was simply not correct. He therefore proposed that the last three sentences of paragraph (4) should be deleted.

71. Mr. YANKOV (Special Rapporteur) said that, while he would not object to the deletion of the seventh and eighth sentences, the last sentence of the paragraph was highly relevant and should be retained.

72. The CHAIRMAN suggested that the seventh and eighth sentences of paragraph (4) should be deleted and that, in the last sentence, the word "However" should be replaced by "Moreover" and the word "justify" by "warrant".

It was so agreed.

Paragraph (4), as amended, was approved.

Paragraphs (5) to (8)

Paragraphs (5) to (8) were approved.

Paragraph (9)

73. Mr. BENNOUNA (Rapporteur) said that the words "Paragraph 4 reflects the Commission's view that", in the first sentence, should be deleted.

74. Mr. YANKOV (Special Rapporteur), agreeing with that change, said that, in the first sentence of the French text, the word *devait* should be replaced by *doit*.

75. Mr. EIRIKSSON proposed that the words "and owing to factual impossibilities", in the last sentence, should be deleted.

It was so agreed.

Paragraph (9), as amended, was approved.

Paragraph (10)

76. Mr. TOMUSCHAT said that, in his view, paragraph (10) was superfluous and should be deleted.

77. Mr. EIRIKSSON and Mr. McCAFFREY supported that proposal.

78. Mr. BENNOUNA (Rapporteur) said he considered that the last two sentences of paragraph (10) were useful.

The meeting rose at 6.20 p.m.

2145th MEETING

Thursday, 20 July 1989, at 10 a.m.

Chairman: Mr. Bernhard GRAEFRATH

Present: Mr. Al-Baharna, 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 17 (Inviolability of temporary accommodation) (*concluded*)

Paragraph (10) (*concluded*)

1. Mr. YANKOV (Special Rapporteur) said that paragraph (10) was the result of a compromise: in exchange for the deletion of a draft article relating specifically to the inviolability of the means of transport of a courier accompanying a bag, the Commission had decided to include paragraph (10) in the commentary.

2. Mr. MAHIU said that he endorsed the comment made by the Special Rapporteur, but nevertheless proposed that the first three sentences of paragraph (10) should be deleted.

It was so agreed.

Paragraph (10), as amended, was approved.

The commentary to article 17, as amended, was approved.

Commentary to article 18 (Immunity from jurisdiction)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraphs (3) to (5)

3. Mr. YANKOV (Special Rapporteur) proposed that the following new paragraph (3) *bis* should be added: "Views in the Commission were divided on the need for a special provision on immunity from criminal jurisdiction and the scope of such immunity." The second and third sentences of paragraph (4) would be deleted and the first sentence would be amended to read: "On the one hand, reservations were expressed concerning paragraph 1 on the ground that article 16, on the inviolability of the diplomatic courier, already provided the courier with all the protection he needed to perform his functions." The beginning of paragraph (5) would be amended to read: "On the other hand, reservations were expressed as to the addition of the words 'in respect of acts performed in the exercise of his functions', on the ground that the granting of immunity . . .".

4. Mr. CALERO RODRIGUES said that the beginning of the proposed paragraph (3) *bis* would only repeat what was stated in paragraph (2).

5. Mr. BENNOUNA (Rapporteur), recalling that the Commission had decided not to include any opinions other than its own in the commentaries, said that it should abide by that decision. Moreover, as Mr. Calero Rodrigues had pointed out, the proposed paragraph (3) *bis* would only repeat what was stated in paragraph (2). Paragraph (4) might not be unnecessary, but it could be included at the end of paragraph (2). Paragraph (5) was, however, of an entirely different nature, since it referred to the reservations expressed with regard to the Commission's decision and therefore did not belong in the commentary.

6. Mr. CALERO RODRIGUES said that the amendments proposed by the Special Rapporteur took account in a balanced way of the two trends of opinion in the Commission. In order to make the repetition less glaring, the proposed paragraph (3) *bis* could begin with the words "As indicated in paragraph (2) above".

7. Mr. McCAFFREY said that he supported the position of the Special Rapporteur and Mr. Calero Rodrigues.

8. Mr. BENNOUNA (Rapporteur) proposed that the commentary should be reorganized as follows: the texts of paragraphs (4) and (5), as amended by the Special Rapporteur, would come after the first sentence of paragraph (2), and the second sentence of paragraph (2) would become a new paragraph (2) *bis*.

9. Mr. YANKOV (Special Rapporteur) proposed that the text he had suggested for a new paragraph (3) *bis* (para. 3 above), as amended by Mr. Calero Rodrigues (para. 6 above), should become paragraph (3) of the commentary. The present paragraphs (4) and (5), as amended by him, would be combined to constitute paragraph (4). The present paragraph (3) would become paragraph (5).

10. Mr. MAHIU said that he agreed with the solution proposed by the Special Rapporteur, which was consistent with the logic of the argument.

11. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to approve paragraphs (3) to (5) as amended by the Special Rapporteur (para. 9 above).

It was so agreed.

Paragraphs (3) to (5), as amended, were approved.

Paragraph (6)

12. Mr. YANKOV (Special Rapporteur) said that the beginning of the first sentence should be amended to read: "The first sentence of paragraph 2 is modelled on the second sentence of . . .".

13. Mr. TOMUSCHAT proposed that a reference to article 43 of the 1963 Vienna Convention, a basic provision in the matter, should be added by inserting the words "article 43 of the 1963 Vienna Convention on Consular Relations and" after the word "like" in the third sentence.

It was so agreed.

Paragraph (6), as amended, was approved.

Paragraph (7)

14. Mr. McCAFFREY said that paragraph (7) was too long. He therefore proposed that it should be divided into two, the new paragraph beginning at the eleventh sentence with the words "As regards the interpretation . . .".

It was so agreed.

15. Mr. EIRIKSSON said he found it disturbing that a courier could justify "irregular driving" by invoking the requirements of his functions. He therefore proposed that, in the thirteenth sentence of the original paragraph (7), the words "or irregular driving" should be deleted.

It was so agreed.

Paragraph (7), as amended, was approved.

Paragraphs (8) and (9) (new paragraphs (9) and (10))

Paragraphs (8) and (9) (new paragraphs (9) and (10)) were approved.

Paragraph (10) (new paragraph (11))

16. Mr. McCAFFREY said that he did not see any need for the French word *renvoyait* in the last sentence of the English text. That word was used in private international law in Anglo-Saxon countries, but it had a very specific meaning, which was not quite the one it had in the text under consideration. He therefore proposed that it be deleted.

It was so agreed.

Paragraph (10) (new paragraph (11)), as amended, was approved.

Paragraphs (11) to (13) (new paragraphs (12) to (14))

Paragraphs (11) to (13) (new paragraphs (12) to (14)) were approved.

Paragraph (14) (new paragraph (15))

17. Mr. TOMUSCHAT proposed that the words "were particularly stressed in the Commission", in the second sentence, should be replaced by "deserve particular attention"; that the words "as had been expressed in the case of paragraphs 1 and 2", in the third sentence, should be replaced by "as those applying under paragraphs 1 and 2";

and that the words "it was said that", in the fourth sentence, should be deleted.

It was so agreed.

Paragraph (14) (new paragraph (15)), as amended, was approved.

Paragraphs (15) to (18) (new paragraphs (16) to (19))

Paragraphs (15) to (18) (new paragraphs (16) to (19)) were approved.

The commentary to article 18, as amended, was approved.

Commentary to article 19 (Exemption from customs duties, dues and taxes)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

18. Mr. McCaffrey proposed that, in order not to give the impression that the chronological order of imports made any difference, the words "later imports", at the end of the first sentence, should be replaced by "other imports".

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraphs (4) and (5)

Paragraphs (4) and (5) were approved.

Paragraph (6)

19. Mr. McCaffrey proposed that, in the second sentence, the word "aspects" should be replaced by "respects" and the words "the courier's level" by "the courier's status".

It was so agreed.

20. Mr. Eiriksson proposed that the word "therefore", in the same sentence, should be deleted.

It was so agreed.

Paragraph (6), as amended, was approved.

Paragraph (7)

21. Mr. Mahiou pointed out there was a mistake in the paragraph numbering in the French text.

22. Mr. Tomuschat asked what airport taxes were meant in the last sentence. In some countries, such taxes were regarded as payment for services rendered.

23. After a brief discussion in which Mr. Pawlak, the Chairman, Mr. Eiriksson, Mr. Yankov (Special Rapporteur) and Mr. Mahiou took part, the Chairman proposed that the words "such as hotel and airport taxes", in the last sentence, should be deleted.

It was so agreed.

24. Mr. Calero Rodrigues proposed that the words "It was also stated in the Commission that", at the beginning of the last sentence, should be deleted.

It was so agreed.

Paragraph (7), as amended, was approved.

Paragraph (8)

Paragraph (8) was approved.

Paragraph (9)

25. Mr. McCaffrey proposed that the words "it discarded the possibility", in the second sentence, should be replaced by "the possibility was extremely remote".

It was so agreed.

Paragraph (9), as amended, was approved.

The commentary to article 19, as amended, was approved.

Commentary to article 20 (Exemption from examination and inspection)

Paragraph (1)

26. Mr. Eiriksson proposed that the Commission should follow the usual practice and refer in the first sentence to the "codification conventions", rather than to the "four codification conventions on diplomatic or consular law".

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraph (2)

27. Mr. Yankov (Special Rapporteur) said that the words "It was understood in the Commission that", at the beginning of the first sentence, should be deleted.

Paragraph (2), as amended, was approved.

Paragraph (3)

Paragraph (3) was approved.

Paragraph (4)

28. Mr. McCaffrey proposed that the word "guarantee", in the second sentence, should be replaced by "safe-guard".

It was so agreed.

29. Mr. Eiriksson said that the courier's baggage could contain articles imported unlawfully other than "for lucrative purposes", as stated in the first sentence.

30. Mr. Beesley proposed that that phrase should be amended to read: "for lucrative or other improper purposes".

It was so agreed.

Paragraph (4), as amended, was approved.

The commentary to article 20, as amended, was approved.

Commentary to article 21 (Beginning and end of privileges and immunities)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were approved.

Paragraph (4)

31. Mr. Yankov (Special Rapporteur) said that the words "for example" should be inserted before the words "in the case of a multiple-mission courier", in the fifth sentence.

Paragraph (4), as amended, was approved.

Paragraph (5)

32. Mr. Yankov (Special Rapporteur) said that the beginning of the second sentence should be amended to read: "This would be the case, for instance, of a receiving State which did not want to have recourse to a *persona non grata* declaration and yet wished to curtail possible abuses . . .".

Paragraph (5), as amended, was approved.

Paragraph (6)

33. Mr. Yankov (Special Rapporteur), replying to a comment by Mr. McCaffrey, proposed that the second sentence and the beginning of the third should be deleted. The new second sentence would thus begin: "The solution adopted follows article 27, paragraph 6 . . .".

It was so agreed.

Paragraph (6), as amended, was approved.

Paragraph (7)

Paragraph (7) was approved.

Paragraph (8)

34. Mr. McCAFFREY proposed that the words "sovereign decision", in the last sentence, should be replaced by "sovereign function".

It was so agreed.

Paragraph (8), as amended, was approved.

The commentary to article 21, as amended, was approved.

Commentary to article 22 (Waiver of immunities)

Paragraphs (1) and (2)

Paragraphs (1) and (2) were approved.

Paragraph (3)

35. Mr. TOMUSCHAT proposed that the words "and with the dignity befitting such duties", at the end of the paragraph, should be deleted.

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraphs (4) to (6)

Paragraphs (4) to (6) were approved.

Paragraphs (7) and (8)

36. Mr. McCAFFREY said he thought that the commentary relating to paragraph 3 of article 22 was important enough to have its own subheading. He therefore proposed that paragraph (7) should be preceded by the subheading "Paragraph 2" and paragraph (8) by the subheading "Paragraph 3". He also proposed that the words "on the understanding that", in the last sentence of paragraph (7), should be replaced by "on the ground that, as explained below".

It was so agreed.

Paragraphs (7) and (8), as amended, were approved.

Paragraph (9)

37. Mr. YANKOV (Special Rapporteur), replying to a comment by Mr. McCaffrey, proposed that the beginning of the fourth sentence should be amended to read: "Although some members of the Commission questioned the advisability of this rule, the Commission was of the view that ...".

It was so agreed.

Paragraph (9), as amended, was approved.

Paragraph (10)

38. Mr. McCAFFREY proposed that the words "is broad enough to cover", in the second sentence, should be replaced by "is intended to cover".

It was so agreed.

Paragraph (10), as amended, was approved.

Paragraph (11)

Paragraph (11) was approved.

Paragraph (12)

39. Mr. McCAFFREY proposed that the words "through negotiation and equity", at the end of the paragraph, should be replaced by "through negotiation of an equitable resolution".

It was so agreed.

Paragraph (12), as amended, was approved.

Paragraph (13)

40. Mr. YANKOV (Special Rapporteur) said that the words "It was made clear in the Commission that" should be deleted.

Paragraph (13), as amended, was approved.

Paragraph (14)

41. Mr. YANKOV (Special Rapporteur) said that the words "It was also pointed out in the Commission that", at the beginning of the paragraph, should be deleted.

Paragraph (14), as amended, was approved.

Paragraph (15)

Paragraph (15) was approved.

The commentary to article 22, as amended, was approved.

Commentary to article 23 (Status of the captain of a ship or aircraft entrusted with the diplomatic bag)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were approved.

Paragraph (4)

42. Mr. TOMUSCHAT said that he had some doubts about the relationship between the commentary and the rule stated. Did the words "which is scheduled to arrive at an authorized port of entry", in paragraph 1 of article 23, necessarily refer to a regular flight? If they did, the text would give the impression that greater importance was being attached to regular flights, whereas it should stress the fact that the port of entry had to be authorized.

43. Mr. BENNOUNA (Rapporteur) said he thought that the word "denote", in the first sentence of paragraph (4), should be replaced by another term and that that sentence should end with the words "the port of entry concerned". The remainder of the sentence would form a separate sentence, beginning: "It does not refer to voyages or flights ...".

44. Mr. McCAFFREY proposed that the words "has been included in the paragraph to denote ships or aircraft", in the first sentence of paragraph (4), should be replaced by "refers to ships or aircraft".

45. Mr. EIRIKSSON said that, in his view, the only possible interpretation of the word "scheduled" was that the ship or aircraft was intended to arrive at an authorized port of entry. He also pointed out that there was no mention of "commercial service" in the 1961 Vienna Convention on Diplomatic Relations or the 1963 Vienna Convention on Consular Relations, which referred only to "commercial aircraft".

Mr. McCaffrey's amendment was adopted.

Paragraph (4), as amended, was approved.

Paragraphs (5) and (6)

Paragraphs (5) and (6) were approved.

Paragraph (7)

46. Mr. RAZAFINDRALAMBO proposed that the words "It was pointed out in the Commission that", at the beginning of the last sentence, should be deleted.

It was so agreed.

Paragraph (7), as amended, was approved.

Paragraph (8)

47. Mr. BENNOUNA (Rapporteur) said that the words "It was stressed in the Commission that", at the beginning of the second sentence, should be deleted.

Paragraph (8), as amended, was approved.

Paragraph (9)

48. Mr. RAZAFINDRALAMBO proposed that the first two sentences should be combined and be amended to read: "The Commission decided that the obligation for the receiving State laid down in paragraph 3 should not be qualified . . . of the present commentary, so as not to create the impression . . . for the receiving State."

49. Mr. YANKOV (Special Rapporteur), supported by Mr. CALERO RODRIGUES and Mr. TOMUSCHAT, suggested that the text should be retained as it stood.

It was so agreed.

Paragraph (9) was approved.

Paragraph (10)

50. Mr. NJENGA said that it was open to question whether, in State practice, the procedure to be followed by the member of the mission, consular post or delegation who was to take possession of the bag was as rigid as that described in the second sentence of paragraph (10). He was not sure that the person who had an authorization would always be the only one to be able to take possession of the bag. In many cases, for example when the authorized person was absent, another member of the mission, consular post or delegation who was duly authorized by the ambassador, or the ambassador himself, could take possession of the bag without having to present any special permit. He therefore proposed that the second sentence be deleted.

51. Mr. YANKOV (Special Rapporteur) said that the rule referred to by Mr. Njenga was not absolute and that, in most cases, the person who was to take possession of the bag had to present a special attestation certifying that he was authorized to do so. Some States issued authorizations which were valid for several months, for several persons. The excessive rigidity to which Mr. Njenga had referred could be dealt with by adding the words "in most instances" after the words "would not suffice" in the second sentence.

52. Mr. BENNOUNA (Rapporteur) said that the name of the person appointed to take possession of the bag was usually communicated to the authorities of the host country. The person concerned then did not have to present a special authorization every time. If he was succeeded by another person, the change was notified to the authorities. In his own view, the last two sentences of paragraph (10) could be deleted, since the first sentence contained the words "must be duly authorized".

53. Mr. CALERO RODRIGUES said that it would be better all the same to retain the last sentence.

54. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to delete the second sentence of paragraph (10).

It was so agreed.

Paragraph (10), as amended, was approved.

The commentary to article 23, as amended, was approved.

Commentary to article 24 (Identification of the diplomatic bag)

Paragraph (1)

55. Mr. TOMUSCHAT said that he preferred the formula "Paragraph . . . of article . . . is modelled on", as used in the paragraph under consideration, to the formula "The sources for article . . . are . . .", as used elsewhere in the commentaries. He proposed that the latter wording should be replaced by the former throughout the text.

56. The CHAIRMAN suggested that the Special Rapporteur should be allowed to decide on the advisability of such a change when he reviewed all the amendments the Commission had made to the draft report, including the deletion of expressions such as "It was stressed in the Commission that", "It was explained that" and "It was clearly indicated that".

It was so agreed.

Paragraph (1) was approved.

Paragraph (2)

57. Mr. OGISO said that the formula used in article 24, namely "the packages constituting the diplomatic bag", should be used instead of the words "a diplomatic bag", in the second sentence.

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraphs (3) to (6)

Paragraphs (3) to (6) were approved.

Paragraph (7)

58. Mr. McCAFFREY said that the words "some members of the Commission thought that", "others members thought that" and "The Commission as a whole", in the second and third sentences, should be retained. He proposed, however, that the words "did not deem it advisable to lay it down in mandatory language in the text of the paragraph", at the end of the paragraph, should be replaced by "did not deem it advisable to include such a requirement in the text of paragraph 2".

It was so agreed.

Paragraph (7), as amended, was approved.

Paragraph (8)

Paragraph (8) was approved.

The commentary to article 24, as amended, was approved.

Commentary to article 25 (Contents of the diplomatic bag)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were approved.

The commentary to article 25 was approved.

Commentary to article 26 (Transmission of the diplomatic bag by postal service or any mode of transport)

Paragraphs (1) to (5)

Paragraphs (1) to (5) were approved.

The commentary to article 26 was approved.

Commentary to article 27 (Safe and rapid dispatch of the diplomatic bag)

Paragraphs (1) to (5)

Paragraphs (1) to (5) were approved.

The commentary to article 27 was approved.

Commentary to article 28 (Protection of the diplomatic bag)

Paragraph (1)

59. Mr. YANKOV (Special Rapporteur) said that the word "corner-stone" should be replaced by the words "key provision".

Paragraph (1), as amended, was approved.

Paragraphs (2) to (5)

Paragraphs (2) to (5) were approved.

Paragraph (6)

60. Mr. OGISO said that he found the last sentence, particularly the words "either electronic or technical", unclear.

61. Mr. YANKOV (Special Rapporteur) said that an external examination which was intended to identify the diplomatic bag would not be regarded as affecting its inviolability. Moreover, if it was suspected that the bag contained drugs, only the use of police dogs would be authorized, to the exclusion of any other means of examination. He suggested that the words "either electronic or technical" should be deleted, although they had been used in his eighth report (A/CN.4/417) and had not given rise to any reaction on the part of members of the Commission.

It was so agreed.

Paragraph (6), as amended, was approved.

Paragraphs (7) to (11)

Paragraphs (7) to (11) were approved.

The commentary to article 28, as amended, was approved.

Commentary to article 29 (Exemption from customs duties and taxes)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were approved.

The commentary to article 29 was approved.

Commentary to article 30 (Protective measures in case of force majeure or other exceptional circumstances)

Paragraphs (1) to (7)

Paragraphs (1) to (7) were approved.

Paragraph (8)

62. After an exchange of views in which Mr. EIRIKSSON and Mr. CALERO RODRIGUES took part, the CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to approve paragraph (8), on the understanding that the Special Rapporteur would add a passage explaining that the obligations of the transit State laid down in article 30 applied only if that State was aware of the presence of the courier or the bag in its territory.

It was so agreed.

Paragraph (8), as amended, was approved.

The commentary to article 30, as amended, was approved.

Commentary to article 31 (Non-recognition of States or Governments or absence of diplomatic or consular relations)

Paragraphs (1) to (3)

Paragraphs (1) to (3) were approved.

Paragraph (4)

63. Mr. YANKOV (Special Rapporteur) said that the words "The Commission was unanimously of the view that", in the first sentence, should be deleted.

Paragraph (4), as amended, was approved.

The commentary to article 31, as amended, was approved.

Commentary to article 32 (Relationship between the present articles and other conventions and agreements)

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

64. Mr. YANKOV (Special Rapporteur) said that the words "in the view of some members of the Commission", in the penultimate sentence, should be deleted.

Paragraph (2), as amended, was approved.

Paragraph (3)

65. Mr. McCAFFREY proposed that the words "purport to indicate" should be replaced by the word "indicate".

It was so agreed.

Paragraph (3), as amended, was approved.

Paragraphs (4) to (6)

Paragraphs (4) to (6) were approved.

Paragraph 7

66. Mr. YANKOV (Special Rapporteur) said that the end of the second sentence should read: "... intended to safeguard the basic rules contained in the present articles". The words "It was noted in the Commission that", at the beginning of the fourth sentence, should be deleted.

67. Mr. TOMUSCHAT proposed that the last sentence should be amended to read: "The same would be true of an agreement whereby two States stipulated that their bags were to be subject to means of electronic or mechanical examination."

68. Mr. BARSEGOV said that he doubted very much whether the last sentence was necessary, since it was for States to decide on the content of the agreements they concluded and it was not for the Commission to tell them what that content should be.

69. Mr. NJENGA said that he, too, was in favour of the deletion of the last sentence, which related to an issue that had been the subject of a long and inconclusive debate in the Commission.

70. Mr. OGISO pointed out that the last sentence reflected an opinion which had actually been expressed.

71. The CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to approve paragraph (7) as amended by the Special Rapporteur and Mr. Tomuschat.

It was so agreed.

Paragraph (7), as amended, was approved.

Paragraph (8)

Paragraph (8) was approved.

Paragraph (9)

72. Mr. YANKOV (Special Rapporteur) proposed that paragraph (9) should be amended to read: "The draft could also deal with the legal relationship between the present articles and customary rules on the same subject."

73. After an exchange of views in which Mr. PAWLAK, Mr. EIRIKSSON, Mr. CALERO RODRIGUES, Mr. McCAFFREY, the CHAIRMAN, speaking as a member of the Commission, Mr. TOMUSCHAT, Mr. BEESLEY, Mr. BENNOUNA

(Rapporteur), Mr. FRANCIS and Mr. YANKOV (Special Rapporteur) took part, the CHAIRMAN said that, if there were no objections, he would take it that the Commission agreed to delete paragraph (9), which it regarded as being unnecessary in the commentary, since it would be indicated in the introduction to chapter II of the report that the Commission had not discussed the question of the legal relationship between the present articles and customary rules on the same subject and that that question would be decided when the final version of the future instrument was prepared.

It was so agreed.

The commentary to article 32, as amended, was approved.

The meeting rose at 1.10 p.m.

2146th MEETING

Thursday, 20 July 1989, at 3 p.m.

Chairman: Mr. Bernhard GRAEFRATH

Present: 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 (concluded) (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 (concluded) (A/CN.4/L.435/Add.1-4 and Add.4/Corr.1)

*Commentary to article 12 (The diplomatic courier declared persona non grata or not acceptable) (concluded)**

Paragraph (6) (concluded)

1. Mr. EIRIKSSON recalled that the Commission had left open the possibility of reverting to paragraph (6), approved at the 2144th meeting, pending a decision on the commentary to article 21, which had now been approved.

2. Mr. YANKOV (Special Rapporteur) proposed that the last five sentences of paragraph (6) should be replaced by the following text:

“Paragraph 2 of article 12 refers to the refusal or failure of the sending State to carry out its obligations under paragraph 1. It is therefore concerned with the termination of the functions of the courier. It is only after the sending State has failed to comply with its obligation to recall the courier or terminate his functions that the receiving State may cease to recognize the person concerned as a dip-

lomatic courier and treat him as an ordinary foreign visitor or temporary resident. The second part of the first sentence of paragraph 2 of article 21 refers to the cessation of the courier’s privileges and immunities when he has not left the territory of the receiving State within a reasonable period.”

It was so agreed.

Commentary to draft Optional Protocol One on the Status of the Courier and the Bag of Special Missions (A/CN.4/L.435/Add.4)

Paragraph (1)

3. Mr. YANKOV (Special Rapporteur) said that the word “approach”, in the third sentence, should be replaced by “régime”.

4. Mr. McCAFFREY proposed that the words “The Commission felt that”, in the fifth sentence, should be deleted.

It was so agreed.

Paragraph (1), as amended, was approved.

Paragraphs (2) to (5)

Paragraphs (2) to (5) were approved.

The commentary to draft Optional Protocol One on the Status of the Courier and the Bag of Special Missions, as amended, was approved.

Commentary to draft Optional Protocol Two on the Status of the Courier and the Bag of International Organizations of a Universal Character (A/CN.4/L.435/Add.4).

Paragraph (1)

Paragraph (1) was approved.

Paragraph (2)

5. Mr. CALERO RODRIGUES proposed that the word “felt”, in the second sentence, should be replaced by “believed”.

It was so agreed.

Paragraph (2), as amended, was approved.

Paragraphs (3) to (5)

Paragraphs (3) to (5) were approved.

The commentary to draft Optional Protocol Two on the Status of the Courier and the Bag of International Organizations of a Universal Character, as amended, was approved.

Section D, as amended, was adopted.

A. Introduction (A/CN.4/L.435)

Paragraphs 1 to 32

Paragraphs 1 to 32 were adopted.

Paragraph 33

6. Mr. McCAFFREY said that the words “as much as possible coherent legal régime”, in the first sentence, should be replaced by “as coherent a legal régime as possible”.

It was so agreed.

Paragraph 33, as amended, was adopted.

Paragraphs 34 and 35

Paragraphs 34 and 35 were adopted.

Paragraph 36

7. Mr. McCAFFREY said that the word “their”, at the end of the second sentence, should be replaced by “his”.

It was so agreed.

Paragraph 36, as amended, was adopted.

* Resumed from the 2144th meeting.