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Summary record of the 1434th meeting

Topic:
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Extract from the Yearbook of the International Law Commission:-
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1634th MEETING

Wednesday, 16 July 1980, at 10.10 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (A/CN.4/335)

[Item 6 of the agenda]

PRELIMINARY REPORT BY THE SPECIAL RAPPORTEUR

1. Mr. YANKOV (Special Rapporteur), introducing his preliminary report (A/CN.4/335), said that its main object was to elicit advice and guidance from the Commission on certain topical issues of substance and method before he proceeded to draw up subsequent reports containing draft articles. He would be grateful for any comments, critical observations and suggestions that would contribute to further elucidation of such issues as the scope and content of the topic.

2. Although modest in terms of its doctrinal implications, the topic was nevertheless significant, by reason of the ever-increasing dynamics of international relations in which States and international organizations were engaged in very active contacts through various means of communication, including official couriers and official bags. The adoption of appropriate rules would therefore promote the development of friendly co-operation between States and contribute to the prevention or reduction of abuses on the part of either sending or receiving States. By supplementing existing international instruments, the Commission would enhance the precision and effectiveness of the legal framework governing that field of international relations. The adoption of up-to-date international rules would remedy some existing omissions and unsuitable practices and improve conditions for the application of existing conventions, which currently met with daily difficulties. The political significance of the Commission's work on the topic should be assessed also in the light of current international events, where failure to respect diplomatic privileges and immunities had become a matter of common concern.

3. The status of the diplomatic courier and the diplomatic bag, though a topic of a highly technical nature, nevertheless had some delicate features relating to important interests of States. One consideration of paramount importance for a viable regime governing communications between States was how to establish a reasonable balance between the secrecy requirements of the sending State and the security requirements of the receiving State. The immunity of the official bag from inspection had to be reconciled with the legitimate concern to prevent acts of terrorist sabotage and other abuses.

4. Despite those and other difficulties, the topic had the advantage of having been relatively well defined in a significant number of multilateral and bilateral treaties, including the Vienna Convention on Diplomatic Relations,[1] the Vienna Convention on Consular Relations,[2] the Convention on Special Missions,[3] and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character,[4] as well as in a number of rules of customary law. No serious conflicts existed in doctrine or jurisprudence, instances of disputes relating, rather, to abuses of the status of the diplomatic bag or failure to meet requirements regarding the facilities to be accorded to the diplomatic courier. Nevertheless, it was widely agreed that there was a need for more coherent uniform rules governing State practice and for further elaboration of legal doctrine on the subject, especially in regard to the diplomatic bag not accompanied by diplomatic courier, which had assumed greater importance for all countries, in particular the small and developing countries remote from the main centres of international political activity.

5. Referring to section II of his report, he said that he had thought that a consolidated account of the history of the Commission's consideration of the topic would provide a basis and constitute, to some extent, *travaux préparatoires* for the actual work of codification. In that connexion, he wished to pay a tribute to the work of the Working Group presided over by Mr. El-Erian,[5] which, together with the comments submitted by Governments and the topical summary of the Sixth Committee's discussion on the report of the Commission at the thirty-fourth session of the General Assembly (A/CN.4/L.311), provided a very sound basis for the Commission's current consideration of the topic.

6. The review of sources of international law on the topic contained in section III of his report was not exhaustive, and he would be grateful if members of the Commission would draw his attention to any impor-

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[1] United Nations, *Treaty Series*, vol. 500, p. 95 (hereinafter called "1961 Vienna Convention").

[2] *Ibid.*, vol. 596, p. 261 (hereinafter called "1963 Vienna Convention").

[3] General Assembly resolution 2530 (XXIV), annex.

[4] *Official Records of the United Nations Conference on the Representation of States in their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 207 (hereinafter called "1975 Vienna Convention").

[5] See *Yearbook ... 1978*, vol. II (Part Two), pp. 138 *et seq.*, document A/33/10, paras. 137–144.

tant omissions. The review showed that there was a great scarcity of judicial decisions on the subject. While a wide variety of sources existed, there were nevertheless insufficient specific legal rules on the subject. The relevant sources were mainly conventional in character, and in almost all of them the principle of freedom of communication for all official purposes had been explicitly recognized as fundamental. The scarcity of international judicial practice was explained by the fact that States, for understandable reasons, preferred to find administrative solutions to any problems that arose, rather than refer their cases to international tribunals.

7. The main sources included the codification conventions concluded under the auspices of the United Nations, namely the Vienna Conventions of 1961, 1963 and 1975, and the Convention on Special Missions, adopted in 1969. As noted in paragraph 21 of the report, all those conventions contained provisions on the principle of freedom of communication for all official purposes and transit through the territory of a third State. In addition, the 1963 Vienna Convention contained general provisions relating to the facilities, privileges and immunities of honorary consular offices and consular posts headed by such offices, as stated in paragraph 22 of the report.

8. The report also referred to a number of other important multilateral treaties, including the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies, adopted by the General Assembly in 1946 and 1947 respectively,[6] and the Convention on Diplomatic Officers, adopted by the Sixth International Conference of American States in 1928, the relevant provisions of which were quoted in paragraph 24 of the report. Other relevant multilateral treaties were listed in paragraph 25.

9. Bilateral agreements relating to diplomatic relations proper existed mainly in the form of exchanges of notes constituting agreements. A number of examples were listed in paragraph 26 of the report. Most of the relevant bilateral treaties concluded between States concerned consular relations. A survey had been made of over 150 such treaties, which provided evidence of State practice concerning the status of consular couriers and their bags, particularly in regard to their inviolability and protection. As could be seen from paragraph 27 of the report, some of those treaties had been concluded before the adoption of the 1963 Vienna Convention, while quite a significant number had been concluded after the adoption of that convention and had been modelled on it.

10. In paragraph 28 of the report, reference was made to a number of relevant bilateral treaties concluded between States and international organizations. They consisted mainly of Headquarters Agreements and recognized the right of the organizations concerned to use couriers and bags with the same immunities and privileges as those enjoyed by diplomatic couriers and bags.

11. Other legal rules concerning the status of the diplomatic or consular courier could be found in national legislation and special regulations, as noted in paragraph 29 of the report.

12. Further evidence of relevant State practice could be found in diplomatic correspondence and official communications or statements, as noted in paragraph 30 of the report, where particular attention was drawn to the reservations made by certain States to article 27, paragraphs 3 and 4, of the 1961 Vienna Convention concerning the opening of the diplomatic bag and to the objections made to those reservations.

13. References to the status of the diplomatic courier and the diplomatic bag in doctrinal sources were of a general, rather than a specific nature. The bibliography contained in paragraph 31 of the report was not intended to be exhaustive, but attempted to cover the main schools of thought on the subject over a relatively wide geographical distribution. The sources included members of the Commission and the Secretariat.

14. The *travaux préparatoires* for the relevant provisions of the four United Nations codification conventions deserved special scrutiny. An examination of the records of those deliberations showed the significant contributions made by a number of present members of the Commission, including Mr. Bedjaoui, Mr. Dadzie, Mr. Riphagen, Mr. Tsuruoka, Mr. Ushakov and Sir Francis Vallat, to the formulation of provisions of relevance to the topic under consideration.

15. As to the form of the eventual instrument, most references in resolutions of the General Assembly spoke of the elaboration of an "appropriate legal instrument". At the current stage of the Commission's work, the main objective should be to prepare draft articles incorporating and combining elements of both *lex lata* and *lex ferenda* in such a way that they could serve as a basis for the elaboration of an appropriate legal instrument, following the well-established pattern of the Commission's work. The problem of the form of the instrument should be left to be decided by States Members of the United Nations at an appropriate stage in the codification process.

16. The empirical method was best suited to a topic of such a practical nature. As far as possible, the form of existing codification conventions should be followed, taking into consideration the specific functions of the official courier. The facilities, privileges and immunities accorded to the diplomatic courier were not intended to benefit the person concerned, but to establish conditions that would facilitate the performance of his functions, which were instrumental in the exercise of the right of communication. Consideration should be

[6] United Nations, *Treaty Series*, vol. 1, p. 15, and *ibid.*, vol. 33, p. 261, respectively.

given to the fact that the diplomatic courier was not a member of the mission of the sending State or international organization, and did not reside permanently in the territory of the receiving State. Consequently, the facilities accorded to him should be within the scope and limits of his functions. The main concern of the Commission should be to exercise flexibility and caution in drawing analogies with diplomatic and consular agents, while at the same time avoiding the creation of unnecessary limitations which might impair the effective protection of the courier and the bag.

17. With regard to the scope and contents of the work, the terms "diplomatic courier" and "diplomatic bag" had not been used in an absolutely restrictive sense, as in the 1961 Vienna Convention. From the very outset, the Commission and the General Assembly had made it clear that those terms also covered such means of communication for all official purposes (as enumerated in paragraph 39 of the report). As stated in paragraph 40 of the report, the understanding had always been that the three multilateral conventions concluded subsequent to the 1961 Vienna Convention reflected the considerable developments that had taken place in subsequent years on various aspects of the topic under consideration, and that the relevant provisions of those conventions should therefore form the basis for any further study of the question. Of course, that more comprehensive approach did not automatically settle the question whether, or to what extent, the status of the diplomatic courier and the unaccompanied diplomatic bag should be assimilated to that of the other types of official couriers and official bags used by States or intergovernmental organizations. In that connexion, it had seemed appropriate to refer to the Commission's commentary to article 28 of its final draft on Special Missions, adopted in 1967, which was reproduced in paragraph 43 of the report. The Commission had also referred to that point in the commentaries to articles 27 and 58 of its final draft on the Representation of States in their Relations with International Organizations, adopted in 1971, reproduced in paragraph 44 of the report. In addition, the 1946 Convention on the Privileges and Immunities of the United Nations provided that the couriers and bags used by the United Nations should have the same immunities and privileges as diplomatic couriers and bags. The relevant provisions of that Convention were reproduced in paragraph 45 of the report.

18. In the list of items approved by the Commission as possible elements of a protocol on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (A/CN.4/335, para. 47), the terms "diplomatic courier" and "diplomatic bag" were taken to include the courier and the bag as conceived in the 1963 Vienna Convention, the 1969 Convention on Special Missions and the 1975 Vienna Convention.

19. In the light of those considerations, there were certain matters on which he would appreciate the Commission's guidance.

20. In the first place, the existing conventions did not define either the courier or the bag; it would therefore be helpful if an attempt could be made to provide definitions on the basis of the functions performed.

21. Secondly, it would be desirable for the Commission to decide whether the concept of the official courier and the official bag should embrace all types of official communication. Such a comprehensive approach would reflect the developments that had taken place since the adoption of the 1961 Vienna Convention, would promote the codification and progressive development of international law, and would make for uniformity in the legal protection afforded to all kinds of couriers and bags. Moreover, in adopting that approach, the Commission would not, in his view, be exceeding its terms of reference.

22. Thirdly, rules should be drawn up determining the functions of the official courier and related matters, since there were no specific provisions on those matters in the existing conventions.

23. Fourthly, certain other points (referred to in paragraphs 50–53 of the report) required consideration. They included the facilities and immunities accorded to the official courier, the status of the *ad hoc* courier and the status of the official bag, with special reference to the need to achieve a balance between the secrecy requirements of the sending State and the security requirements of the receiving State, between the safe and rapid delivery of the bag and respect for the sovereignty and security of the receiving State, and between immunity from checking and security considerations, particularly where the safety of civil aviation was concerned. Other questions to be considered related to possible abuses by either the sending or the receiving State, and the obligations of transit States and other third States, including their obligations in cases of *force majeure*.

24. Fifthly, as noted in paragraph 54 of the report, the Commission should decide whether some more general expression was required of such basic principles as those of freedom of communication, respect for the legal order and sovereignty of the receiving State, sovereign equality and non-discrimination, and possibly also the emergent role of international organizations in the field of diplomatic law.

25. Section VI of the report made several tentative suggestions regarding the structure and format of the draft articles. Broadly, those suggestions were to the effect that the draft should consist of five sections, dealing respectively with general provisions, the status of the official courier, the status of the official courier *ad hoc*, the status of the official bag, and certain miscellaneous provisions.

26. The idea underlying paragraph 61 of the report was that the Commission should seek to adopt a pragmatic and flexible approach to what was essentially a modest topic. That did not mean, however, that the topic was of little significance, for the international situation provided daily evidence of the ever-increasing importance of all facets of diplomatic law and of the need to take account of the dynamics of international relations.

27. Lastly, he expressed his appreciation to the Secretariat for the assistance it had given him in his work.

28. Mr. CALLE Y CALLE said that the task of the Commission was not to codify legal rules in the strict sense, since that had already been done in existing conventions—in particular, the 1961 Vienna Convention—but rather to set forth in detail all matters relating to those tools of State known as the diplomatic courier and the diplomatic bag.

29. He noted from the report, however, that it was proposed to refer not to the diplomatic courier and diplomatic bag, but to the "official" courier and "official" bag. While he appreciated that the latter terms would serve the purposes of the Commission's work and would have the merit of covering all the various kinds of couriers in the different sectors of diplomacy, he believed that they would unduly institutionalize and over-emphasize what were essentially instruments in diplomatic exchanges between countries. In his own country, commercial bags between trade missions and the Ministry of Trade had been introduced, and were also made use of by military and other attachés. Those bags had, however, always been channelled through the Ministry of Foreign Affairs and had enjoyed all the facilities, privileges and immunities extended to the diplomatic bag. Thus, if he favoured the term "diplomatic", it was perhaps because it implied a status of immunity and inviolability behind which the personality of the State could be perceived. Possibly, too, that was why provision had been made for the pouches of international organizations to be accorded the same facilities and immunities as the diplomatic bag. Any unnecessary extension of that concept would, in his view, undermine it and divest it of its special attributes: immunity, inviolability and security.

30. He therefore considered that the main concern should be protection of the unaccompanied diplomatic bag. To ensure such protection, the bag must be provided with the necessary supporting documents from the Ministry of Foreign Affairs showing its origin, be closed with the seals of the State and be addressed to a diplomatic mission.

31. He believed it was important to strengthen the long-standing diplomatic guarantees and to revert to the principles which many regarded as sacrosanct, particularly at a time when there was a growing number of violations of diplomatic law, some of which, as noted in paragraph 62 of the report, had caused public concern.

32. Lastly, he expressed his confidence in the Special Rapporteur, with whose guidance the Commission would undoubtedly be able to draw up valid provisions.

33. Mr. REUTER, after emphasizing the merits of the report, said that the Commission should draft a set of articles without, for the time being, settling the question of its future. The drafting of articles was a salutary exercise, which made it necessary to use only terms having a very precise meaning.

34. If the Commission opted for a set of draft articles, it should decide on their purpose. In that connexion, he noted that in their observations several Governments had expressed concern. Some of them thought that a draft of articles was perhaps not essential, whereas others had expressed more open opposition. It was true that the diplomatic bag was subject to frequent abuses. To mention only his own country, at the Ministry of Foreign Affairs, French diplomatic bags arriving from abroad had for some years been opened in the presence of persons who were not attached to the Foreign Ministry, in particular a representative of the Ministry of Finance. The French Government had, indeed, judged it necessary to exercise some supervision over its own agents in regard to diplomatic bags. Moreover, the only criminal attempt against the Ministry of Foreign Affairs for many years dated back to the Algerian troubles and had been made possible by a device placed in a diplomatic bag. It was therefore not surprising that some Governments were anxious about what might be going on under cover of the diplomatic bag. That cautious attitude was further justified by the fact that some countries were in very delicate situations, whether as transit States or as States situated in particularly troubled regions of the world.

35. The Special Rapporteur had stated, both in his report and in his oral presentation, that some international organizations benefited from a regime similar to that governing the diplomatic bag. It was true that abundant correspondence was exchanged between Geneva, Vienna and New York by diplomatic bag. Although he was in favour of assimilating international organizations as closely as possible to States, he thought it preferable to abstain, initially, from dealing with questions relating to international organizations and their privileges.

36. On the question whether the existing conventions should be further developed, assuming the existence of an official courier and an official bag, he shared the opinion of the Special Rapporteur. Where there were normal relations between a State and one of its representatives abroad, the substance of the problem was the same: there was not much difference between the courier of a special mission or of a State delegation to an international organization and a diplomatic

courier. From a tactical point of view, however, he feared that the use of the expressions "official courier" and "official bag" might draw the attention of Governments to the reality of international life. For besides diplomatic and consular relations, there was a whole network of para-diplomatic and para-consular relations, so that Governments might have a reaction of anxiety at the continually increasing number of diplomatic couriers and diplomatic bags. Enormous amounts of correspondence left ministries of foreign affairs every day by diplomatic bag, and it was hardly surprising that that situation, even if it did not worry ambassadors, was a matter of concern to customs personnel and those responsible for territorial security or anti-terrorist brigades. He was therefore in favour of qualifying both the courier and the bag as "diplomatic" in the articles to be drafted by the Commission. At the same time, comparisons could be made with the existing conventions in order to prepare Governments for a possible extension in the draft articles.

37. If the draft articles became a convention, its links with the four existing conventions would have to be specified, which would be sure to raise delicate problems. It was regrettable that the 1969 Convention on Special Missions and the 1975 Vienna Convention had obtained few ratifications, and that the 1963 Convention had obtained fewer than the 1961 Vienna Convention. That was one more reason to take the precaution of stating, not that the Commission would confine its work to the diplomatic courier and the diplomatic bag, but that it would start with those two concepts, which were the most important and the most certain, though it might subsequently extend them.

38. In general, he approved of the plan proposed by the Special Rapporteur for the draft articles, but he hoped that the study of the general provisions, like that of the miscellaneous provisions, would only take place after all the specific questions had been examined. As some Governments still doubted the advisability of drafting articles on the subject, it was important to convince them of it before proceeding to the general and miscellaneous provisions.

39. With regard to the many specific questions listed in the plan proposed by the Special Rapporteur, he only wondered whether the Commission was prepared to consider the following question: should it be accepted that diplomatic bags, whether accompanied or not, could be examined by equipment which revealed their contents by means of X-rays, or even by means of rays capable of fogging any suspicious photographic film they might contain? It was well known that the diplomatic bag was sometimes used to carry espionage material.

40. While it was true that principles should be declared, as the Special Rapporteur had intimated, the content of the articles envisaged by the Commission should nevertheless be specified first. A principle as basic as that of non-discrimination was not always applied in practice. If that principle was declared, should it be deduced that a State could claim that it had been subjected to a discriminatory measure if its diplomatic bag was required to be opened, when no similar case had occurred for many years? Was there discrimination if four ambassadors from countries situated in a troubled region of the world were called upon by the State to which they were accredited to open their diplomatic bags, whereas about a hundred other ambassadors accredited to the same State were not so called upon? Only when the content of the draft articles had been specified would it be possible to formulate such a general principle as that of non-discrimination.

41. Finally, he pointed out that the Third United Nations Conference on the Law of the Sea had been seized of a proposal derogating from the principle of freedom of the high seas in the case of traffic in narcotic drugs.[7] That issue was not without importance for the topic under consideration, since events had shown that the diplomatic services of poor countries could even engage in drug trafficking to finance their secret services.

Jurisdictional immunities of States and their property (*continued*)* (A/CN.4/331 and Add.1, A/CN.4/L.317)

[Item 5 of the agenda]

Draft articles proposed by the Drafting Committee

42. The CHAIRMAN invited the Chairman of the Drafting Committee to introduce the texts adopted by the Committee of draft articles 1 and 6, which had been referred to it for consideration.

43. The proposed texts of those articles (A/CN.4/L.317) read:

Article 1. Scope of the present articles

The present articles apply to questions relating to the immunity of one State and its property from the jurisdiction of another State.

Article 6. State immunity

1. A State is immune from the jurisdiction of another State in accordance with the provisions of the present articles.

2. Effect shall be given to State immunity in accordance with the provisions of the present articles.

ARTICLE 1[8] (Scope of the present articles)

44. Mr. VEROSTA (Chairman of the Drafting

* Resumed from the 1626th meeting.

[7] "Informal Composite Negotiating Text/Revision 2", drawn up in April 1980 by the President of the Third United Nations Conference on the Law of the Sea and by the Chairmen of the main committees of the Conference (A/CONF.62/WP.10/Rev.2 and Corr.2–5).

[8] For consideration of the text initially submitted by the Special Rapporteur, see 1622nd and 1623rd meetings, 1624th meeting, paras. 1–27, 1625th and 1626th meetings.

Committee) said that article 1 was the first article in part I (Introduction) of the draft articles on the jurisdictional immunities of States and their property, and article 6 was the first article in part II (General Provisions). The original numbering of those two articles had been retained pending a final decision by the Commission on the numbering of all the draft articles.

45. While article 1 embodied the basic rule laid down in the text originally proposed by the Special Rapporteur, certain drafting changes had been introduced for the sake of clarity. Specifically, the expression "jurisdictional immunities" had been replaced by a reference to "the immunity of one State and its property from the jurisdiction of another State", the reference to "territorial" and "foreign" States had been omitted and the expression "accorded or extended" had been deleted.

46. Mr. USHAKOV said he was neither for nor against article 1. In his opinion, it was not an article, since it did not state any legal rule. It was merely descriptive and referred to "questions relating to the immunity of one State and its property" without specifying what those questions were. As it stood, the article did not even define the scope of the draft articles. He therefore considered that the Commission should not submit such an article to the General Assembly.

47. Mr. VEROSTA said that the Drafting Committee had decided, after a long discussion, that it was not possible at that stage to cast the draft article in more specific terms. It had therefore decided to adopt the text proposed, with the word "questions", on the understanding that some more suitable form of words might be found when the content of all the other draft articles had been agreed.

48. Mr. REUTER, referring to the French texts of articles 1 and 6, asked why the word "*immunité*", in the singular, had been used in draft article 1 and in paragraph 2 of draft article 6, when "*immunités*", in the plural, appeared in the title to draft article 6.

49. Mr. VEROSTA said that the singular had been used in article 1 on the understanding that it could, if necessary, be replaced by the plural at a later stage.

50. The CHAIRMAN said that, if there were no objections, he would take it that the Commission decided to adopt draft article 1, subject to the comments made.

It was so decided.

ARTICLE 6[9] (State immunity)[10]

51. Mr. VEROSTA (Chairman of the Drafting Committee) said that draft article 6 incorporated certain drafting changes similar to those made to article 1. In paragraph 1, the words "a foreign State" and "a territorial State" had been replaced, respectively, by the words "a State" and "another State". Also, to underline the nature of the rule, the words "shall be" had been replaced by "is". In paragraph 2, the word "territorial" had again been deleted, and the reference to the judicial and administrative authorities, which had been considered to be unduly restrictive at that stage of the Commission's work, had been omitted. For the sake of consistency with paragraph 1, the words "recognized in the present articles" had been replaced by the words "in accordance with the provisions of the present articles".

52. Mr. USHAKOV said that he had taken part in the work of the Drafting Committee, where he had opposed draft article 6. Even the title was unsatisfactory, since the article did not deal with "State immunity". Paragraph 1 merely referred to what followed: it provided that "A State is immune from the jurisdiction of another State in accordance with the provisions of the present articles". It followed that the principle of jurisdictional immunity existed only in accordance with the draft articles, whereas in reality it was recognized by international law. That, moreover, had been demonstrated by the Special Rapporteur in his report.

53. He was therefore completely opposed to the wording of draft article 6, paragraph 1, as it stood, and had proposed the following wording to the Drafting Committee:

> "Each State is exempt from the power of any other State. A State and State property are not subject to the jurisdiction of another State, except as provided by the present articles."

That wording had the advantage of stating a principle and specifying that it could be subject to exceptions.

54. Mr. ŠAHOVIĆ said that he had not taken part in the work of the Drafting Committee and did not know why draft articles 1 and 6 had been adopted in their present form. Personally, he thought those articles called for very detailed commentaries reflecting the discussions in the Commission, and he would have preferred to know the content of the commentaries before pronouncing on the texts of the articles.

55. In his view, the two provisions were hardly comprehensible and were perhaps not worth submitting to the General Assembly. The Commission must not close its eyes to the fact that many questions had been left in abeyance when it had referred draft articles 1 and 6 to the Drafting Committee. It was important that the positions taken on each of those questions be duly mentioned in the commentary.

56. Moreover, he was inclined to agree with Mr. Ushakov, particularly in regard to draft article 6.

[9] For consideration of the text initially submitted by the Special Rapporteur, see 1623rd meeting, 1624th meeting, paras. 1–7, 1625th and 1626th meetings.

[10] For text, see para. 43 above.

57. Mr. VEROSTA said that the Drafting Committee had discussed the question at some length, and the majority had agreed that it would be advisable to submit at least two articles to the forthcoming session of the General Assembly.

58. Mr. SCHWEBEL said that he could understand Mr. Šahović's reaction, since the two draft articles, standing on their own, seemed somewhat bare. Read together with the commentaries, however, they would be quite comprehensible and would constitute a useful, albeit preliminary, step in the preparation of the draft. Moreover, the two draft articles had been prepared with a view to laying the groundwork, without prejudice to any views that might be held on the differences which remained. He therefore trusted that the Commission would adopt those draft articles.

59. The CHAIRMAN said that Mr. Ushakov's point could perhaps be met by recording his proposal in the Commission's report. An appropriate reference could also be made to Mr. Šahović's reservations.

60. Mr. USHAKOV observed that the commentary could not alter the meaning of the article, but only explain it. He could not imagine a commentary dealing with a principle that was not embodied in the article. Moreover, the Special Rapporteur had tried to prove the existence of that principle in international law, in the considerations concerning article 6 put forward in his report.

61. Mr. ŠAHOVIĆ said that he had not made a reservation, but had expressed an opinion. In his opinion, only articles that had been carefully drafted after mature consideration should be submitted to the General Assembly.

The meeting rose at 1.15 p.m.

1635th MEETING

Thursday, 17 July 1980, at 10.20 a.m.

Chairman: Mr. C. W. PINTO

Members present: Mr. Barboza, Mr. Bedjaoui, Mr. Calle y Calle, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Quentin-Baxter, Mr. Reuter, Mr. Riphagen, Mr. Šahović, Mr. Schwebel, Mr. Tabibi, Mr. Thiam, Mr. Tsuruoka, Mr. Ushakov, Sir Francis Vallat, Mr. Verosta, Mr. Yankov.

Also present: Mr. Ago.

Tribute to Mr. Santiago Torres-Bernárdez

1. The CHAIRMAN said it had been written in the *Bhagavad-gītā* (the Song of the Lord), some 2,000 years ago, that the God Krishna had spoken to the Prince Arjuna of knowledge as a sacrifice, a gift and an offering to the Gods. He, as Chairman of the Commission, wished in turn to refer to one whose patient search had brought the gift of knowledge to many—to an exemplary international civil servant, Mr. Santiago Torres-Bernárdez.

2. If the veil of anonymity with which Mr. Torres-Bernárdez had cloaked his work were lifted for a moment, he could be seen at the centre of every major codification conference convened by the United Nations. He had served the United Nations for more than twenty years, some fifteen of which he had spent as Deputy Secretary of the Commission. He had given not only of his knowledge but, more important, of his wisdom. With never-failing courtesy and good humour, he had made a vital contribution to the moulding of opinion within the Commission, and had guarded the essential traditions and strengths of the Commission with courage and firmness. He was, indeed, the very embodiment of its spirit.

3. But as the Commission stood to lose, so did the International Court of Justice stand to gain, for Mr. Torres-Bernárdez would serve the Court with the same high distinction with which he had served the Commission.

4. On behalf of the Commission, he congratulated Mr. Torres-Bernárdez on his appointment as Registrar of the International Court of Justice and wished him and his wife every success and happiness for the future.

5. Mr. TSURUOKA, speaking also on behalf of Mr. Pinto, Mr. Sucharitkul and Mr. Tabibi, the other Asian members of the Commission, expressed their pleasure at hearing that Mr. Torres-Bernárdez had been appointed Registrar of the International Court of Justice. That pleasure was tinged with a certain melancholy, however, for they were thus losing an associate with whom he himself had had bonds of friendship for over twenty years. In his new duties, Mr. Torres-Bernárdez would be able to continue making a valuable contribution to the cause of international law.

6. Rather than enumerate all his virtues, he would merely say that a splendid future certainly awaited him. He wished Mr. Torres-Bernárdez every success in his important post as Registrar.

7. Mr. BEDJAOUI, speaking also on behalf of Mr. Thiam, another African member of the Commission, said how moved they were at seeing Mr. Torres-Bernárdez leave for The Hague. A real pillar of the Commission, he had made a great contribution to the success of its work in recent years. The pleasure of seeing him take up the important post as Registrar of the Court was mixed with a feeling of melancholy at his departure from the Commission. Personally, he felt proud of having been the friend for more than a quarter of a century of the man who was leaving them after having given them so much.