

Document:-
A/CN.4/SR.1829

Summary record of the 1829th meeting

Topic:
**Status of the diplomatic courier and the diplomatic bag not accompanied by the
diplomatic courier**

Extract from the Yearbook of the International Law Commission:-
1984, vol. I

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only from civil, but also from criminal jurisdiction. Indeed, it was for the sending State to decide on the actual type and scope of the waiver. Yet, by analogy with the codification conventions, particularly the 1975 Vienna Convention on the Representation of States, it was perhaps wise to limit the waiver of jurisdictional immunity to civil suits. The important thing was that, when the sending State decided that proceedings should not be taken against its diplomatic courier, it should none the less compensate any persons affected by the acts or conduct of the courier. It would be remembered that the idea of civil damages existed in criminal proceedings, since any criminal proceedings involved a civil suit when damages were being claimed. All in all, it might be best to maintain paragraph 5 in its present form.

The meeting rose at 1 p.m.

1829th MEETING

Monday, 28 May 1984, at 3 p.m.

Chairman: Mr. Sompong SUCHARITKUL

Present: Chief Akinjide, Mr. Balanda, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Laclea Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Ogiso, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Sir Ian Sinclair, Mr. Ushakov, Mr. Yankov.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (*continued*)
(A/CN.4/374 and Add.1-4,¹ A/CN.4/379 and Add.1,² A/CN.4/382,³ A/CN.4/L.369, sect. E, ILC(XXXVI)/Conf. Room Doc.3)

[Agenda item 4]

DRAFT ARTICLES SUBMITTED BY THE
SPECIAL RAPPORTEUR⁴ (*continued*)

ARTICLE 24 (Exemption from personal examination, customs duties and inspection)

ARTICLE 25 (Exemption from dues and taxes)

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

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

³ *Idem*.

⁴ The texts of the draft articles considered by the Commission at its previous sessions are reproduced as follows:

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

Arts. 9-14, referred to the Drafting Committee at the Commission's thirty-fourth session: *ibid.*, p. 46, footnotes 189 to 194.

Arts. 15-19, referred to the Drafting Committee at the Commission's thirty-fifth session: *ibid.*, pp. 48-49, footnotes 202 to 206.

ARTICLE 26 (Exemption from personal and public services)

ARTICLE 27 (Exemption from social security provisions)

ARTICLE 28 (Duration of privileges and immunities) *and*

ARTICLE 29 (Waiver of immunity)⁵ (*concluded*)

1. Mr. JAGOTA said that, in codifying and developing the law on the topic under study, the Commission should emphasize the functional rather than the doctrinal aspects. In particular, it should bear in mind that the prime object was safe and speedy communication between sending States and their missions, which was of the utmost importance for the conduct of international relations.

2. Referring to draft article 24, he noted that the main point at issue was the provision in paragraph 1 that the diplomatic courier should be "exempt from personal examination, including examination carried out at a distance by means of electronic or other mechanical devices". None of the four codification conventions contained a similar provision and views on the need for it differed. In view of that difference, he wished to propose a modified form of wording which he trusted would resolve the difficulty. He proposed that the phrase "including examination carried out at a distance by means of electronic or other mechanical devices" should be deleted, since that part of the provision could be taken care of by State practice and the principle of reciprocity. The first part of the provision could then be justified on the grounds of functional necessity and on the ground that the diplomatic courier would be carrying a diplomatic bag of a different kind from those entrusted to the captains of aircraft or masters of ships. On that basis, the paragraph could read: "The diplomatic courier, when accompanied by a diplomatic bag, shall be exempt from personal examination in the receiving State and the transit State."

3. The problem raised by draft article 25 was clearly one of drafting. The Special Rapporteur had made it quite clear in his fourth report (A/CN.4/374 and Add.1-4, para. 167) that it was not intended that the diplomatic courier should be exempt from any taxes on private income arising from real estate in the receiving State or transit State. There was, however, a *lacuna* in the provision: it made no reference to the receiving or transit State or, indeed, to whether the exemption would apply in the sending State. He therefore proposed that the reference to "personal or real" taxes be deleted, so as to allow for a broader interpretation; that a reference to the receiving and transit States be added; and that the exemption be related to the services rendered by the diplomatic courier for the sending State. The first part of the article would then read: "The diplomatic courier shall, in the receiving State and the transit State, be exempt from taxes, dues and charges, national, regional and municipal, in respect of services rendered for the sending State, except for indirect taxes...". Alternatively, if it was thought necessary to specify the exception to the exemption from personal or real taxes, the following phrase could

⁵ For the texts, see 1826th meeting, para. 1.

perhaps be added: "except for dues and taxes on private income having its source in the receiving State or the transit State".

4. Draft articles 26 and 27 could perhaps be deleted, and the matters they dealt with would then be regulated by State practice.

5. While he endorsed the content of draft article 28, he thought that the extent to which paragraph 2 would apply to the diplomatic courier *ad hoc* would have to be clarified, since article 27, paragraph 6, of the 1961 Vienna Convention on Diplomatic Relations provided that the immunities of the courier *ad hoc* ceased on delivery of the bag to the consignee.

6. Lastly, with regard to draft article 29, he agreed that paragraph 1 should stop at the end of the first sentence, and that the question of who would waive immunity on behalf of the State should be left to State practice. As for paragraph 5 of the article, he considered that any civil claim should be settled between the sending State and the claimant; on no account should the paragraph make any reference to litigation under internal law, though that could perhaps be mentioned in the commentary.

7. Sir Ian SINCLAIR said it was clear that a provision on the duration of the privileges and immunities accorded to the diplomatic courier was needed, but draft article 28 was deficient in some respects. As had already been pointed out, it did not cover the case in which the diplomatic courier was in the receiving State when he started performing his functions. Also, the fact that article 27, paragraph 6, of the 1961 Vienna Convention on Diplomatic Relations provided specifically that the immunities of the *ad hoc* courier ceased to apply when he had delivered the diplomatic bag carried with it the implication that the inviolability and freedom from arrest and detention of the regular courier might not necessarily cease at the moment he delivered the bag.

8. An authoritative commentator⁶ had suggested that the inviolability of a professional courier as opposed to that of an *ad hoc* courier did not cease on his delivery of the bag, but that if he were to remain in the receiving State for a substantial period of leave his inviolability would probably be lost. It was thus an area in which the law and practice required clarification.

9. Referring to Mr. Jagota's comments, he pointed out that an *ad hoc* courier could be a diplomatic agent returning from leave in the sending State to his post in the receiving State. In that case, article 27, paragraph 6, of the 1961 Vienna Convention would apply, inasmuch as the agent would lose his privileges and immunities *qua* diplomatic courier on delivery of the bag, but would simultaneously resume the privileges and immunities he enjoyed in the receiving State by virtue of his status there as a diplomatic agent.

10. There was also a clear link between, on the one hand, draft article 28 and, on the other, draft articles 13 and 14, which dealt respectively with the end of the func-

tion of the diplomatic courier and with a diplomatic courier declared *persona non grata*. All those aspects would require careful consideration by the Drafting Committee in order to arrive at an appropriate form of words.

11. He considered that, if draft article 23 (Immunity from jurisdiction) were deleted, the second sentence of paragraph 2 of draft article 28 should also be deleted. The need for the diplomatic courier to enjoy jurisdictional immunities during his brief stay in the receiving State or transit State had not been demonstrated to his satisfaction. It required a flight of the imagination to envisage circumstances in which he might be exposed to civil claims in respect of acts performed in the course of his official functions. In any event, any such cases would surely be settled out of court if only because of the virtual impossibility of serving process on an itinerant courier.

12. His remarks on draft article 29, concerning waiver of immunity, were subject to the fundamental reservation that he believed it to be unnecessary; for if, as had been proposed, article 23 were not included in the draft there would be no need for article 29. Assuming, however, that the courier would continue to enjoy personal inviolability and freedom from arrest or detention under article 27, paragraph 5, of the 1961 Vienna Convention, it would always be open to a sending State, irrespective of whether or not draft article 29 was included, to waive such immunity from the criminal jurisdiction of the transit State or receiving State as was inherent in the notion that the courier was not liable to arrest or detention.

13. Mr. MALEK observed that the various exemptions accorded to the diplomatic courier under draft articles 24 to 27 must, in principle, be regarded as reasonable, since they did not go beyond the exemptions universally accorded, in various degrees, to diplomatic staff in general by the four codification conventions, in particular the 1961 Vienna Convention on Diplomatic Relations. The Special Rapporteur had extended the exemptions provided for in those conventions to the diplomatic courier only in so far as he judged them necessary for the performance of the courier's functions. In doing so, he had drawn up provisions on the basis of which possible abuses of the privileges and immunities granted to the diplomatic courier could be prevented, without thereby reducing the protection he enjoyed or impeding the proper performance of his official functions. At the same time, he had never lost sight of the difference, in nature and in functions, between the diplomatic courier and diplomatic staff. Thus the text he proposed appeared to be acceptable in the main to most members, as the discussion had shown.

14. The principle of exemption from customs duty and customs inspection, laid down in paragraphs 2 and 3 of draft article 24, which was based on State practice established well before the adoption of the 1961 Vienna Convention and was being continually confirmed, did not appear to meet with any opposition. Nevertheless, the text of those paragraphs had been the subject of various suggestions and proposals which the Special Rapporteur could usefully take into account when he came to

⁶ E. Denza, *Diplomatic Law. Commentary on the Vienna Convention on Diplomatic Relations* (Dobbs Ferry (N.Y.), Oceana Publications, 1976), p. 130.

re-examine the draft articles. On the other hand, he felt some anxiety about the exemption from personal examination provided for in paragraph 1. In his view, exemption from personal examination carried out by electronic or mechanical means should not be granted even to a diplomatic agent.

15. A few years earlier, representatives of States had met under the auspices of ICAO to consider means of dealing with the serious attacks being made against the security of international civil air traffic. They had then constantly blamed the absence in each other's territory, particularly at airports, of effective security measures to prevent the acts of sabotage being persistently carried out against civil aircraft, acts which had become extremely dangerous. Fortunately, the measures since applied included, thanks to the progress of science and technology, electronic devices for detection at a distance, which were considered sufficiently effective to protect civil aviation from terrorism. At the present time, when everything might be exploited for evil rather than for good, it was to be feared that exemption from personal examination by such means might often be used for purposes other than those intended. He hoped that the Special Rapporteur would not press for that exemption.

16. With regard to draft articles 25, 26 and 27, he emphasized that, in view of the special characteristics and functions of the diplomatic courier, it was doubtful whether it could be seriously maintained that the refusal, or even the granting to him, of the exemptions provided for in those draft articles could in any way affect any legal system or disrupt the balance between the legitimate interests of the receiving State and the transit State, on the one hand, and of the sending State, on the other. In any case, it seemed that the fate of the exemption provided for in draft article 27 was already settled, since that exemption was generally considered to be unnecessary or inapplicable in practice. As to the exemptions provided for in draft articles 25 and 26, the Commission should leave it to the Special Rapporteur to take decisions in the light of the discussion.

17. On draft articles 28 and 29, various comments, quite frequently concordant, had been made; he intended to comment on those draft articles at a later stage in the work, when the Commission discussed the texts as they might be amended by the Special Rapporteur in the light of the views expressed.

18. He felt sure that the various observations made on draft articles 24 to 29, though they showed some differences of opinion, would help the Special Rapporteur to revise the texts. Like other members of the Commission, he hoped that none of the texts proposed by the Special Rapporteur would be referred to the Drafting Committee—whose duties seem to have been expanded beyond measure—before the Commission had decided on the matters of principle involved. The texts, as amended by the Special Rapporteur, should be submitted to the Commission itself, if only for a brief exchange of views, before being referred to the Drafting Committee.

19. Mr. REUTER commended the Special Rapporteur for his learning and the clarity of his expositions. It was

clear from the debate that the matters under discussion raised many small but irritating practical difficulties. Some members of the Commission were convinced of the imperative need to deal with the subject, whereas others, including himself, felt some anxiety about it. Personally, he had nothing against any particular privilege or immunity which it was proposed to accord to diplomatic couriers and diplomatic bags. He noted, however, that the fears and reservations expressed emanated not from foreign ministries, but from other ministries. From the point of view of foreign relations alone, there seemed to be agreement that the widest possible privileges and immunities should be granted. But at the present time, considerations of finance, security and health were of decisive importance and those who had expressed reservations had reflected the overall will of States.

20. In that connection, it should be remembered that only one of the four codification conventions that were constantly being cited had really been accepted: the 1961 Vienna Convention on Diplomatic Relations. The 1963 Vienna Convention on Consular Relations had been the subject of numerous reservations, and the majority of States would have nothing to do with the other two conventions. That caused him some concern. In the texts under consideration the Commission was not really proposing anything extraordinary; it wanted diplomatic couriers to be treated in much the same way as tourists. But it should try to show rather more skill in the drafting and presentation of the articles; otherwise they might give rise to discussions which would certainly be interesting, but would lead to reservations. If a conference of plenipotentiaries was convened, the existence of numerous reservations might delay the entry into force of the new convention, which would not be without value since it might establish a custom.

21. The Commission must therefore be realistic; but what could it do to make the text of the draft articles a little less provoking? Generally speaking, it would probably be advisable to merge several articles into one, wherever that was possible. The enumeration in different articles of freedoms, exemptions, privileges and immunities might seem provoking to anyone giving them a cursory glance. It was a subject on which it might be dangerous to go into too much detail, for many of the matters involved depended on factors that were variable or were beyond the purview of the Commission.

22. With regard to draft article 24, paragraph 1, he was convinced that devices which made it possible to violate a certain secrecy with impunity should not be used, since that would be acting in contempt of the functions performed by the diplomatic bag. Nevertheless, he felt some reluctance about enumerating or defining such devices. Perhaps there really were electronic devices by which it was possible to read a whole book contained in a diplomatic bag; that would certainly be unacceptable, but it might be wondered whether the race for technological progress would not enable States to protect themselves against such procedures by using increasingly sophisticated methods. As to mechanical devices, he doubted whether the bag itself should undergo any examination. To combat the traffic in narcotic drugs, dogs were com-

monly used to smell baggage. But the diplomatic courier did not always know exactly what was in the bag he was carrying and it had sometimes happened that unscrupulous official services had taken advantage of the diplomatic bag to engage in drug trafficking. Hence it could not be considered that a State which used dogs to examine a diplomatic bag was interfering with the official functions of the diplomatic courier. He would therefore prefer the Commission to adopt wording which showed that everything depended on the object pursued.

23. Placing a receiving State and a transit State on the same footing, as had been done, left out of account the fact that, geographically, certain States were destined to be transit States while others were not. As the matter of transit might give rise to reservations by many States, it would be advisable to introduce distinctions between the situation of a receiving State and that of a transit State. The text of the articles could be revised to lighten the obligations attaching to transit which were imposed on certain States without reciprocity. It was true that in that sphere reciprocity was hardly desirable, since it could be destructive; for all reciprocity implied a threat of retaliation or even of reprisals. In fact, transit States gave more than they received. Perhaps it could be specified that the courier's route through the transit State must be as short as possible. Another solution would be to leave the problem aside until later.

24. Generally speaking, the Commission considered that the problem of reservations to a text it had drawn up concerned only the plenipotentiary conference convened to examine it. But when it had the impression that States mistrusted a series of articles, would it not be advisable to draw up a text calculated to allay their fears? In the present instance, if it was not possible to lighten the obligations of transit States, the Commission could at least define their content and specify the provisions to which reservations could be made. Such action would not, of course, be in conformity with the Commission's practice, but it was probably worth considering.

25. The CHAIRMAN, speaking as a member of the Commission, said he wished to supplement the general comments he had made at the 1825th meeting on certain notions used in the draft articles. He had spoken then of the notions of "inviolability" and "immunity"; he now wished to refer to the notions of "privilege" and "privileges and immunities". The latter formula was used to refer to the aggregate of privileges, facilities and immunities accorded by a receiving State. The term "privilege" by itself had a positive connotation: the receiving State had a positive duty to grant the privilege. The term "immunity", on the other hand, had a negative connotation: the receiving State had an obligation not to exercise certain powers.

26. In the present set of draft articles, the notion of "exemption" was very important. It represented an exoneration from a liability, such as the liability to pay taxes or dues; that exemption was provided for in draft article 25. Similarly, draft article 24 provided for exemption from the liability to pay customs duties and imposed on the receiving State the duty not to exercise its powers in respect of personal examination of the diplomatic courier.

27. The position with regard to draft article 27 and to some extent with regard to draft article 26 was rather different. The diplomatic courier might not be liable to social security charges, or to personal and public services, and there was no need to exempt him from obligations he did not have. The solution would be to transfer the provisions of those articles to a commentary, which would explain that no liability existed for the diplomatic courier in those matters.

28. As for draft article 28, he agreed with Mr. Ushakov (1827th meeting) on the need to draw a distinction between a professional courier and an *ad hoc* courier. An important point was that the courier only enjoyed inviolability *ratione materiae*. He had no personal immunity, except for inviolability from arrest and detention; otherwise, his inviolability was purely functional and attached to the sending State.

29. Lastly, with regard to draft article 29, he pointed out that, under the 1961 Vienna Convention on Diplomatic Relations, even immunity *ratione personae* which covered the diplomatic agent outside his functions was not a personal prerogative but was granted in the name of his State. The sending State alone could waive the immunity of a diplomatic agent. As for inviolability, it could not be waived at all, and certainly not by the person concerned.

30. Mr. YANKOV (Special Rapporteur), summing up the discussion on draft articles 24 to 29, thanked members for the constructive criticisms and useful suggestions they had made, which had gone beyond the articles in question. Whereas those articles dealt with the status of the diplomatic courier, the Commission would soon be considering the draft articles dealing with the diplomatic bag; it was not possible, however, to dissociate the courier from the bag completely, since carrying the diplomatic bag was his main function.

31. In his work on draft articles 24 to 29, he had taken article 27 of the 1961 Vienna Convention on Diplomatic Relations as his starting-point. But he was well aware that the purposes of the present topic could not be properly served on that basis alone. He wished to stress once again that he had not taken the status of the diplomatic agent as his model; he had adopted a model closer to the status of the administrative and technical staff of diplomatic missions, and had accordingly drawn on the relevant provisions of the codification conventions relating to such staff. At the same time, he had endeavoured to introduce concrete elements which adequately reflected the specific functions of the courier and the practical needs for the discharge of those functions. He wished to dispel any misunderstanding about his basic position: at no time had he attempted to turn the diplomatic courier into a top-level diplomat.

32. As pointed out by Mr. Calero Rodrigues (1828th meeting), the Commission's objective should be threefold: first, to consolidate existing law; secondly, to unify the rules applicable to all diplomatic couriers; and thirdly, to develop rules on matters not covered by existing law. The Commission would have to make an effort to devise rules that were acceptable, viable and useful.

33. During the discussion, the courier had been described as a "vehicle", but he was more than that: he had a legal status as an officer of the State and he performed an official function. He was entrusted with a mission which was sometimes a critical one for the sending State.

34. The essential criterion with regard to the privileges and immunities of the courier was that of functional necessity. When applying that criterion, the short duration of the courier's functions in the receiving State was not the primary consideration; the brevity of his sojourn did not necessarily mean that he required less protection; in fact, he might well require more protection for that reason.

35. The question of the possible reaction of receiving States and transit States was very much in his mind. It must be remembered, however, that those States would also be sending States in other circumstances, so that the element of reciprocity was particularly important. The field of privileges and immunities was one in which reciprocity was particularly effective as a method of striking a balance between opposing interests.

36. A number of general observations had been made suggesting simplifications of the texts of certain draft articles. He was prepared to consider, and to discuss in the drafting Committee, all concrete proposals to that end, but the simplifications should not in any way deprive the courier of the protection necessary for the discharge of his duties.

37. A number of proposals for additional provisions had also been made. In particular, there had been the proposal by Mr. Ushakov (1827th meeting) for a new draft article to deal with the privileges and immunities granted by the receiving State to a diplomatic courier who was a national of, or permanently resident in, that State, along the lines of article 38 of the 1961 Vienna Convention. The suggestion made by Mr. Ni (1828th meeting) regarding the order of the draft articles would no doubt be taken into consideration by the Drafting Committee, as well as the points raised by the Chairman when speaking as a member of the Commission.

38. Referring to the individual articles, he observed that most of the critical comments on draft article 24 had centred on paragraph 1, and mainly on the last phrase of that paragraph: "including examination carried out at a distance by means of electronic or other mechanical devices". He was quite prepared to accept the deletion of those words. The remaining proposals on article 24 mainly concerned drafting and would be duly considered by the Drafting Committee.

39. The discussion on draft article 25 had shown that the simplified text he had put forward was open to misunderstanding. He had, of course, had no intention of conferring any additional tax privileges on the courier. He had taken article 34 of the 1961 Vienna Convention as a basis, and out of the six categories of taxes which that article placed outside the exemption, he had mentioned only the two which appeared to him relevant to the case of the courier. Unfortunately he had given a false impression of the purpose of the article, which was to

make the courier's level of tax exemption equivalent to that of a member of the administrative or technical staff of a mission who was neither a national of nor permanently resident in the receiving State. Draft article 25 should therefore be thoroughly re-examined by the Drafting Committee in the light of the constructive criticisms put forward.

40. Several members had proposed the deletion of draft article 26. His own view was that, although that article dealt with a rather remote possibility, it was nevertheless desirable to keep it in the draft. If the majority of the Commission were in favour of dropping it, however, he would suggest that the subject-matter be transferred to a commentary. The question was not one which could be ignored altogether.

41. As to draft article 27, in view of the discussion which had taken place he was prepared to delete it. Nevertheless, he urged that the question of the exemption of the courier from social security provisions in respect of any income accruing to him in the receiving State should be dealt with in a commentary.

42. The discussion had shown that the explanations given in the fourth report in support of draft article 28 (A/CN.4/374 and Add.1-4, para. 183) had not proved very convincing. The wording of the draft article had attracted considerable criticism and he welcomed the many useful drafting proposals made, which would be taken into account by the Drafting Committee. He found most of those proposals acceptable and thought that the Drafting Committee could take as a basis for its work the redraft proposed by Mr. Ushakov (1827th meeting, para. 28).

43. He was opposed to the proposal to delete draft article 29, which would leave a gap in the draft. In paragraph 1 of that article, he could accept the deletion of the second sentence, the contents of which could be moved to the commentary. As to the rest, a number of drafting proposals had been made, many of them relating to paragraph 5, and they would be considered by the Drafting Committee.

44. In conclusion, he proposed that draft articles 24 to 29 be referred to the Drafting Committee for consideration in the light of the comments and suggestions made during the discussion.

45. Sir Ian SINCLAIR said it was his understanding that the Drafting Committee could eliminate draft article 25 altogether if it came to the conclusion that the diplomatic courier was not liable to tax in any circumstances and therefore did not stand in need of any exemption.

46. Mr. DÍAZ GONZÁLEZ said he did not see why the Commission itself could not take a decision on whether to delete or retain draft article 25. It appeared to be leaving that decision to the Drafting Committee.

47. The CHAIRMAN pointed out that the Commission had not perhaps had the benefit of the views of all members on every draft article. The position now was that draft articles 24 to 29 would be referred to the Drafting Committee with the comments made during the dis-

cussion; when those articles returned from the Drafting Committee, the Commission itself would be able to take a decision on them.

48. Mr. DÍAZ GONZÁLEZ said he would not object to draft articles 24 to 29 being referred to the Drafting Committee. He noted, however, that all the members who had spoken during the discussion had favoured the deletion of draft article 25. Since the Drafting Committee had fewer members than the Commission, he did not see how it could arrive at any different conclusion.

49. Mr. JAGOTA said that Mr. Díaz González was right in principle. In the case in question, however, referring draft articles 24 to 29 to the Drafting Committee at the present stage would not lead to any difficulty. He could not foresee any decision by the Drafting Committee which might prove unacceptable to the Commission as a whole.

50. Mr. YANKOV (Special Rapporteur) said he wished to explain his position on the interesting suggestions made by Mr. Reuter concerning the possibility of dealing separately with the transit State and with reservations. He would not at present take any position on the substance of those suggestions, but assured Mr. Reuter that they would receive very careful consideration at a later stage, either in connection with the miscellaneous provisions or when the whole draft had been completed.

51. The CHAIRMAN said that, if there were no further comments, he would take it that the Commission agreed to accept the Special Rapporteur's proposal to refer draft articles 24 to 29 to the Drafting Committee, together with all the comments and suggestions made during the discussion.

*It was so agreed.*⁷

The meeting rose at 6.15 p.m.

⁷ For consideration of draft articles 24 and 25 as proposed by the Drafting Committee, see 1864th meeting, paras. 23-47; for draft articles 26 and 27, see the decision by the Commission, *ibid.*, paras. 49 and 51.

1830th MEETING

Tuesday, 29 May 1984, at 10.05 a.m.

Chairman: Mr. Sompong SUCHARITKUL
later: Mr. Alexander YANKOV

Present: Chief Akinjide, Mr. Balanda, Mr. Calero Rodrigues, Mr. Díaz González, Mr. Evensen, Mr. Francis, Mr. Jagota, Mr. Lacleta Muñoz, Mr. Mahiou, Mr. Malek, Mr. McCaffrey, Mr. Ni, Mr. Njenga, Mr. Ogiso, Mr. Pirzada, Mr. Quentin-Baxter, Mr. Razafindralambo, Mr. Reuter, Sir Ian Sinclair, Mr. Ushakov.

Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (*continued*)
(A/CN.4/374 and Add.1-4,¹ A/CN.4/379 and Add.1,² A/CN.4/382,³ A/CN.4/L.369, sect. E, ILC (XXXVI)/Conf. Room Doc.3)

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DRAFT ARTICLES SUBMITTED BY THE
SPECIAL RAPPORTEUR⁴ (*continued*)

ARTICLES 30 TO 35

1. The CHAIRMAN invited the Special Rapporteur to introduce draft articles 30 to 35, which were contained in his fourth report (A/CN.4/374 and Add.1-4) and which read as follows;

Article 30. Status of the captain of a commercial aircraft, the master of a merchant ship or an authorized member of the crew

1. The captain of a commercial aircraft, the master of a merchant ship or an authorized member of the crew under his command may be employed for the custody, transportation and delivery of the diplomatic bag of the sending State to an authorized port of entry on his scheduled itinerary in the territory of the receiving State, or for the custody, transportation and delivery of the bag of the diplomatic mission, consular post, special mission, permanent mission or delegation of the sending State in the territory of the receiving State addressed to the sending State.

2. The captain, the master or the authorized member of the crew entrusted with the diplomatic bag shall be provided with an official document indicating the number of packages constituting the bag entrusted to him.

3. The captain, the master or the authorized member of the crew shall not be considered to be a diplomatic courier.

4. The receiving State shall accord to the captain, the master or the authorized member of the crew carrying the diplomatic bag the facilities for free and direct delivery of the diplomatic bag to members of the diplomatic mission of the sending State who are allowed by the receiving State to have access to the aircraft or ship in order to take possession of the diplomatic bag.

Article 31. Indication of status of the diplomatic bag

1. The packages constituting the diplomatic bag shall bear visible external marks of their official character.

2. The packages constituting the diplomatic bag, if unaccompanied by a diplomatic courier, shall also bear a visible indication of their destination and consignee, as well as of any intermediary points on the route or transfer points.

3. The maximum size or weight of the diplomatic bag allowed shall be determined by agreement between the sending State and the receiving State.

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

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

³ *Idem.*

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