

**DRAFT ARTICLES ON THE STATUS OF THE DIPLOMATIC COURIER
AND THE DIPLOMATIC BAG NOT ACCOMPANIED BY
DIPLOMATIC COURIER**

Upon the recommendation of the Sixth Committee at its thirtieth session, in 1975, the General Assembly, by resolution 3501 (XXX) of 15 December 1975, while reaffirming the need for strict implementation by States of the provisions of the 1961 Vienna Convention on Diplomatic Relations, deplored instances of violations of the rules of international diplomatic law and, in particular, of the provisions of that Convention. It further invited Member States to submit to the Secretary-General their comments and observations on ways and means to ensure the implementation of the provisions of the Convention as well as on the desirability of elaborating provisions concerning the status of the diplomatic courier.

Following a further recommendation by the Sixth Committee made at the thirty-first session, in 1976, by resolution 31/76 of 13 December 1976, the General Assembly, concerned at continuing instances of violations of the rules of diplomatic law relating, in particular, to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, again invited Member States, *inter alia*, to comment on the desirability of elaborating provisions concerning the status of the diplomatic courier with due regard also to the question of the status of the diplomatic bag not accompanied by diplomatic courier. At the same time, the Assembly requested the International Law Commission at the appropriate time to study the proposals made or to be made by Member States on the elaboration of a protocol concerning the status of such courier and bag, which would constitute development and concretization of the Vienna Convention on Diplomatic Relations.

The Commission accordingly included in the agenda of its twenty-ninth session, in 1977, an item entitled "Proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier", and established a Working Group to ascertain the most suitable ways and means of dealing with the topic. The Working Group agreed to recommend a number of conclusions to the Commission (A/CN.4/305), including the following: (1) the topic should be inscribed on the Commission's programme of work for study, as requested by the General Assembly; (2) the Commission should undertake the study of the topic at its next session without curtailing the time allocated for the consideration of the topics on the current programme of work to which priority had been given pursuant to the relevant recommendations of the General Assembly and the corresponding decisions of the Commission; and (3) in order to fulfill this aim, it would seem more appropriate for the Commission to adopt a procedure similar, *mutatis mutandis*, to the one it followed with respect to the protection and inviolability of diplomatic agents and other persons by having the Working Group undertake the first stage of the study of the topic and report thereon to the Commission without appointing a Special Rapporteur. The Commission approved the conclusions reached by the Working Group concerning the ways and means of dealing with the item (see *Yearbook of the International Law Commission, 1977*, vol. II (2), paras. 83 and 84).

At its thirtieth session, in 1978, the Commission reconvened the Working Group, which studied at that session the proposals for the elaboration of a protocol as well as the relevant provisions of the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1969 Convention on Special Missions, and the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character. The Working Group adopted as its basic position that the relevant provisions of those conventions, if any, should form the basis for any further study of the question. The Working Group tentatively identified the relevant issues relating to the diplomatic courier and the diplomatic bag and considered

the extent to which these issues were covered by the conventions. Although the issues were formulated to apply to the “diplomatic” courier and the “diplomatic” bag as requested by the General Assembly, some members of the Working Group were of the view that the issues were also relevant to other couriers and bags and should eventually be extended to them as well. The Commission included the report of the Working Group (A/CN.4/L.285) in its report to the General Assembly on the session (see *Yearbook of the International Law Commission, 1978*, vol. II (2), paras. 137–144).

At its thirty-third session, in 1978, the General Assembly discussed the results of the Commission’s work under two separate agenda items in the Sixth Committee, namely “Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961: report of the Secretary-General” (item 116) and “Report of the International Law Commission on the work of its thirtieth session” (item 114). In resolution 33/139 on the latter item, adopted on 19 December 1978, the General Assembly recommended that the Commission should continue the study, including those issues it had already identified, concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, in the light of comments made during the debate on the item in the Sixth Committee at the thirty-third session of the General Assembly and comments to be submitted by Member States, with a view to the possible elaboration of an appropriate legal instrument. With regard to the former item, the Assembly adopted, on the same day, resolution 33/140. The Assembly noted with appreciation the study by the Commission of the proposals on the elaboration of a protocol which could constitute a further development of international diplomatic law and decided that it would give further consideration to this question. The Assembly also expressed the view that, unless Member States indicated the desirability of an earlier consideration, it would be appropriate to do so when the International Law Commission submitted to the Assembly the results of its work on the possible elaboration of an appropriate legal instrument on the topic.

At its thirty-first session, in 1979, the Commission again re-established a Working Group, which studied issues on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The results of the study were set out in the Commission’s report to the General Assembly (see *Yearbook of the International Law Commission, 1979*, vol. II (Part Two), chapter VI, sections B to D), recommending that draft articles should be prepared. At the same session, the Commission decided to appoint Mr. Alexander Yankov as Special Rapporteur for the topic.

The Commission proceeded with its work on the topic from its thirty-second to thirty-eighth sessions and at its fortieth and forty-first sessions, from 1980 to 1986 and in 1988 and 1989, respectively. In connection with its consideration of the topic, the Commission had before it the reports of the Special Rapporteur, in which draft articles on the topic were proposed (A/CN.4/335, A/CN.4/347 and Add.1 and 2, A/CN.4/359 and Add.1, A/CN.4/374 and Add.1-4, A/CN.4/382, A/CN.4/390, A/CN.4/400 and A/CN.4/417), information provided by Governments (A/CN.4/321 and Add.1-7, A/CN.4/356 and Add.1-3, A/CN.4/372 and Add.1 and 2, A/CN.4/379 and Add.1, A/CN.4/409 and Add. 1-5 and A/CN.4/420) as well as documents prepared by the Secretariat (A/CN.4/300 and A/CN.4/WP.4 and 5).

The Commission began the first reading of the draft articles at its thirty-third session, in 1981, which was completed at its thirty-eighth session, in 1986. The draft adopted on first reading was transmitted, in accordance with articles 16 and 21 of the Commission’s Statute, through the Secretary-General, to Governments for comments and observations. The Sixth Committee discussed the draft articles at its thirty-sixth (1981), thirty-seventh (1982), thirty-eighth (1983), thirty-ninth (1984), fortieth (1985) and forty-first (1986) sessions.

The General Assembly, in resolutions 41/81 of 3 December 1986, and 42/156 of 7 December 1987, *inter alia*, urged Governments to give full attention to the request of the Commission for comments and observations on the draft articles adopted on first reading by the Commission.

At its fortieth session, in 1988, the Commission began the second reading of the draft articles. It re-examined the draft articles on the basis of the eighth report submitted by the Special Rapporteur (A/CN.4/417). In that report, the Special Rapporteur analysed the comments and observations of Governments in connection with each draft article and proposed the revision of certain draft articles. In his view, the elaboration of the draft articles should be based on a comprehensive approach leading to a coherent and, as much as possible, uniform regime concerning all kinds of couriers and bags. He also underscored the significance that should be attached to functional necessity as the basic factor in determining the status of all kinds of couriers and bags. These considerations of the Special Rapporteur were generally shared by the Commission.

At its forty-first session, in 1989, the Commission adopted the final text of thirty-two draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, as a whole, as well as a draft optional protocol on the status of the courier and the bag of special missions, and a draft optional protocol on the status of the courier and the bag of international organizations of a universal character, with commentaries thereto (see *Yearbook of International Law Commission, 1989*, vol. II (Part Two), paras. 30 and 72). In accordance with article 23 of its Statute, the Commission decided to recommend to the General Assembly that it convene an international conference of plenipotentiaries to study the draft articles and the optional protocols and to conclude a convention on the subject (see *Yearbook of International Law Commission, 1989*, vol. II (Part Two), para. 66).

Following a consideration of the draft articles by the Sixth Committee at its forty-fourth session, in 1989, the General Assembly, by its resolution 44/36 of 4 December 1989, decided to hold at its forty-fifth session, in 1990, informal consultations, in the framework of the Sixth Committee. Those informal consultations had the purpose of studying the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the draft optional protocols thereto, as well as the question of how to deal further with those draft instruments with a view to facilitating the reaching of a generally acceptable decision in the latter respect. Those consultations were continued at the forty-sixth and forty-seventh sessions, pursuant to General Assembly resolutions 45/43 of 28 November 1990 and 46/57 of 9 December 1991. Various proposals were made to reconcile the divergence of views which existed on some articles, in particular article 28 on the inviolability of the bag, but no agreement was reached. On the recommendation of the Sixth Committee, the General Assembly decided that, by its decision 47/415 of 25 November 1992, the informal consultations would be resumed at the fiftieth session, in 1995.

At its fiftieth session, in 1995, upon the recommendation of the Sixth Committee, the General Assembly adopted decision 50/416 of 11 December 1995, by which it decided to bring the draft articles, together with the observations made during the debates on them in the Sixth Committee, to the attention of Member States, and to remind Member States of the possibility that this field of international law and any further developments within it may be subject to codification at an appropriate time in the future.