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A/CN.4/305

Proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (para.4 of GA Res. 31/76) - Report of the Working Group, in A/32/10, para.83

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:-
1977, vol. II(2)

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5. Requests the Secretary-General to submit to the General Assembly at its thirty-third session an analytical report on ways and means to ensure the implementation of the Vienna Convention on Diplomatic Relations of 1961 on the basis of comments and observations on this question received from Member States and also taking into account the results, if available and ready, of the study by the International Law Commission of the proposals on the elaboration of the above-mentioned protocol;

6. Decides to include in the provisional agenda of its thirty-third session the item entitled "Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961: Report of the Secretary-General".

82. Pursuant to the request contained in paragraph 4 of the resolution quoted above, the Commission included in the agenda of its present session 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.

The Commission had before it a note by the Secretariat relating to the item (A/CN.4/300).⁵¹³

83. In order to ascertain the most suitable ways and means of dealing with the topic, the Commission established, at its 1425th meeting, held on 23 May 1977, a Working Group composed of Mr. El-Erian (Chairman), Mr. Calle y Calle, Mr. Dadzie, Mr. Francis, Mr. Riphagen, Mr. Schwebel, Mr. Sucharitkul, Mr. Ushakov and Mr. Yankov. The Working Group held three meetings on 2 and 9 June and 13 July 1977, agreeing to recommend to the Commission the following conclusions:

(a) The topic "Status of the diplomatic courier and of the diplomatic bag not accompanied by diplomatic courier" should be inscribed on the programme of work of the Commission, for study, as requested by paragraph 4 of General Assembly resolution 31/76;

(b) The Commission should undertake the study of the topic during its 1978 session in order to allow the Secretary-General to take into account the results of such a study in the report that he has been requested to submit to the General Assembly at its thirty-third session pursuant to paragraph 5 of General Assembly resolution 31/76;

(c) The study of the topic during the 1978 session of the Commission should be done without curtailing the time allocated to the consideration of the topics on the current programme of work of the Commission to which priority has been given pursuant to relevant recommendations of the General Assembly and corresponding decisions of the Commission;

(d) As a procedure similar *mutatis mutandis* to the one followed by the Commission in connexion with the question of the protection and inviolability of diplomatic agents and other persons entitled to special protection under international law seems more appropriate to fulfil the aims described under (b) and (c) above, the Working Group is prepared, if the

Commission so decides, to itself undertake the first stage of the study of the topic and to report thereon to the Commission without the need of appointing a special rapporteur;

(e) The Working Group would proceed to study the topic on the basis of the relevant proposals, comments and observations submitted by Member States pursuant to General Assembly resolutions 3501 (XXX) and 31/76;

(f) For the benefit of the work to be done by the Working Group, members of the Commission wishing to do so would be invited to submit written papers, preferably before the beginning of the 1978 session of the Commission, in the light of paragraph 4 of General Assembly resolution 31/76;

(g) To facilitate the task of the Working Group, and ultimately of the Commission itself, the Secretariat would be requested: (i) to remind Member States of the Commission's intention to study the topic during its 1978 session and of the convenience of making available to the Commission, by that time, their proposals, comments and observations thereon, as well as any information, relevant facts or developments subsequent to the adoption of the 1961 Vienna Convention on Diplomatic Relations which might be useful for the implementation of the request contained in paragraph 4 of General Assembly resolution 31/76; (ii) to prepare a paper presenting systematically the proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier contained in the comments and observations submitted by Member States pursuant to General Assembly resolutions 3501 (XXX) and 31/76.

84. At its 1462nd meeting, held on 18 July 1977, the Commission considered the report of the Working Group (A/CN.4/305), as introduced by its Chairman, Mr. El-Erian, and approved the conclusions reached by the Group concerning the ways and means of dealing with the item.⁵¹⁴

D. Second part of the topic "Relations between States and international organizations"

85. In its report on the work of its twenty-eighth session, the Commission included the following paragraph:

The Commission also approved the recommendation of the [Planning] Group, which was submitted to it by the Enlarged Bureau, that at least three meetings should be set aside for a discussion of the second part of the topic "relations between States and international organizations". In considering the question of diplomatic law in its application to relations between States and international organizations, the Commission concentrated first on the part relating to the status, privileges and immunities of representatives of States to international organizations. The draft articles which it adopted on this part at its twenty-third session in 1971 were referred by the General Assembly to a diplomatic con-

⁵¹³ Reproduced in *Yearbook... 1977*, vol. II (Part One).

⁵¹⁴ Recorded in paragraph 83 above.