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Information received from Governments

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

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STATUS OF THE DIPLOMATIC COURIER AND THE DIPLOMATIC BAG NOT ACCOMPANIED BY DIPLOMATIC COURIER

[Agenda item 3]

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Information received from Governments

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NOTE

Multilateral conventions referred to in the present document:

	<i>Source</i>
Vienna Convention on Diplomatic Relations (Vienna, 18 April 1961) Hereinafter referred to as the 1961 Vienna Convention	United Nations, <i>Treaty Series</i> , vol. 500, p. 95.
Vienna Convention on Consular Relations (Vienna, 24 April 1963) Hereinafter referred to as the 1963 Vienna Convention	<i>Ibid.</i> , vol. 596, p. 261.
Convention on Special Missions (New York, 8 December 1969)	United Nations, <i>Juridical Yearbook 1969</i> (Sales No. E.71.V.4), p. 125.
Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character (Vienna, 14 March 1975) Hereinafter referred to as the 1975 Vienna Convention	<i>Ibid.</i> , 1975 (Sales No. E.77.V.3), p. 87.

Introduction

1. The International Law Commission, at its thirty-fourth session, in 1982, upon the suggestion of the Special Rapporteur, requested the Secretariat to renew the request addressed to States by the Secretary-General to provide further information on national laws and regulations and other administrative acts, as well as procedures and recommended practices, judicial decisions, arbitral awards and diplomatic correspondence in the fields of diplomatic law with respect to the treatment of couriers and bags.¹ Pursuant to the Commission's request, the Legal Counsel of the United Nations addressed a circular letter, dated 21 September 1982, to the Governments of States, inviting them to submit relevant information or to bring up to date the information submitted earlier, not later than 20 January 1983.

2. The replies received by the beginning of June 1983 from the Governments of 12 Member States are reproduced below.

¹ *Yearbook ... 1982*, vol. II (Part Two), p. 120, para. 248.

Austria

[Original: English]
[17 January 1983]

... concerning the request for information with respect to the treatment of diplomatic couriers and bags, [the Permanent Mission of Austria to the United Nations] has the honour to state that, since the last information transmitted by Austria, in 1982,¹ there has been no further relevant legislation and no change in the administrative regulations.

¹ See *Yearbook ... 1982*, vol. II (Part One), pp. 232 *et seq.*, document A/CN.4/356 and Add.1-3.

Colombia

[Original: Spanish]
[18 February 1983]

1. With regard to the treatment of diplomatic couriers and bags, the 1961 Vienna Convention, and specifically article 27 and article 40, paragraph 3, are applicable in Colombia. These matters are also governed by article 33 of Decree No. 2017 of 1968 (Organic Statute of the Ministry of Foreign Affairs),¹ and by articles 49 to 54 of Decree No. 3135 of 1956 "specifying the privileges and prerogatives of diplomatic agents in Colombia".²

2. In addition, a contract between the Ministry of Foreign Affairs and the airline *Avianca* provides for the transport of couriers and bags on the routes served by that airline.

¹ Republic of Colombia, *Diario Oficial* (Bogotá), 5 August 1964, No. 32568.

² Pan American Union, *Documents and Notes on Privileges and Immunities, with special reference to the Organization of American States* (Washington, D.C.), p. 264.

3. Colombian law contains no special regulations, administrative acts, procedures, judicial decisions or arbitral awards concerning the topic of the inquiry.

Cyprus

[Original: English]
[3 February 1983]

In Cyprus, all diplomatic pouches are sent by air and they are not accompanied by diplomatic courier. With regard to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the Government of Cyprus believes that the protection provided by articles 27-40 of the 1961 Vienna Convention is sufficient and that there is no real need to elaborate additional or more detailed new rules. In the view of the Government, the present rules are sufficiently comprehensive and precise to cover the needs and, if properly applied, to guarantee the functioning of diplomatic relations between States.

Egypt

[Original: English]
[1 December 1982]

With regard to the treatment of diplomatic couriers and diplomatic bags, the Government of Egypt applies paragraphs 1, 2, 4, 5, 6 and 7 of article 27 of the 1961 Vienna Convention, which has been an integral part of Egyptian law since Egypt's accession to the Convention on 9 July 1964. This is in conformity with article 151 of the Egyptian Constitution.

Federal Republic of Germany

[Original: English]
[29 November 1982]

The pertinent instructions contained in the circular addressed by the Federal Minister of the Interior to the federal and Länder agencies concerned, which was submitted together with the permanent representative's note No. 127 of 23 March 1982, continue to apply. No new regulations relating to the status of the courier have been issued.

Indonesia

[Original: English]
[28 February 1983]

1. The Government of the Republic of Indonesia ratified the 1961 Vienna Convention and the 1963 Vienna Convention by Indonesian Law/1982 of 25 June 1982. Indonesia treats the diplomatic courier and the diplomatic bag in accordance with the provisions of those Conventions and customary international law, taking into account the principle of reciprocity.

2. The Indonesian Government grants a "multiple entry visa", which is valid for six months, to the appointed diplomatic courier.

3. Circular notes No. D.0433/78/44 of 11 April 1978 and No. 1201/80/41 of 2 October 1980 of the Department of Foreign Affairs of the Republic of Indonesia stipulate that the diplomatic bag which has been sealed is exempted from inspection and can be picked up from the airport platform on arrival.

4. If the diplomatic bag is not picked up immediately and is kept in storage, the issuance procedures are as stated in Government Regulation No. 8 of 1957, relating to the issuance of diplomatic materials.

5. A decision of the Director of Perum Angkasa Pura,* No. SKEP. DU 106/K.U. 2013/81 of 12 November 1981, stipulates that the diplomatic bag of foreign representatives can be picked up by the appointed officer of the representative concerned upon showing a special pass that is issued by Perum Angkasa Pura.

6. In connection with the special pass described in paragraph 5 above, circular note No. D.0260/82/44 of 24 February 1982 of the Department of Foreign Affairs stipulates that any foreign representative can be issued a maximum of two special passes.

7. In the event that the officer responsible for picking up the diplomatic bag is not in the possession of the special pass, he should report to or contact the airport officials.

8. An official diplomatic courier of the Republic of Indonesia is an official bearing a diplomatic passport

who is also in possession of identification indicating that the said official is a diplomatic courier and of a document describing the content of the materials being carried.

9. A diplomatic bag which is sent by the Indonesian Government is marked with the signs stipulated in the 1961 Vienna Convention.

Kenya

[Original: English]
[16 March 1983]

1. Kenya is a party to the two conventions on diplomatic and consular relations and has given them force of law in Kenya in the manner provided for in the two instruments.

2. Kenya welcomes any measures that would enhance the inviolability of bags sent unaccompanied, which is the most commonly used method of communication by developing countries.

Malawi

[Original: English]
[18 January 1983]

1. The rules followed by the Government of Malawi on this matter are those contained in the 1961 Vienna Convention, in particular in its article 27, although these have not yet been expressly incorporated in the country's legislation. The legislation on diplomatic relations and consular relations which is still applied in Malawi was enacted in January 1964. At that time, the above-mentioned Convention was not yet applicable as law either to Nyasaland or to the United Kingdom. Upon independence, Malawi became a party to that Convention by way of accession on 19 May 1965. But, as stated above, the provisions of the Convention have not as yet been directly published in accordance with the national legislation, notwithstanding the fact that they are generally applied as law in Malawi's relations with other countries.

2. The present position is that Malawi's 1964 legislation on diplomatic and consular relations is in most respects out of date and efforts are under way (at Ministry level) to request the Government to repeal it and replace it by new legislation. The new legislation, which it is hoped will be in effect by 1984, will consolidate the provisions of the 1961 and 1963 Vienna Conventions, together with their respective protocols.

3. On the precise issue of the "Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier", the following is Government practice, based upon article 27 of the 1961 Vienna Convention:

* Mixed national airport company.

*Treatment accorded to the Government of Malawi
by other Governments*

All diplomatic bags of Malawi are dispatched to and from the Malawian missions abroad unaccompanied by diplomatic couriers. It is understood that they are accorded immunity from any kind of search. Thus they are neither opened nor otherwise dealt with by way of inspection. As the Government of Malawi has never dispatched diplomatic couriers for this purpose, it has no experience to communicate on this subject. Thus it cannot say how other countries would have treated its couriers were such couriers to carry its bags through their respective territories on their way to and from its missions abroad. The specific countries in point are Kenya, Ethiopia, Zambia, Zimbabwe, the United Kingdom, the United States of America, South Africa, Mozambique and the Federal Republic of Germany, where Malawi has missions and where its diplomatic couriers would have carried its diplomatic bags were these to be accompanied by courier.

*Treatment accorded to other Governments by
the Government of Malawi*

The Government of Malawi accords the full treatment provided for in article 27, paragraphs 3, 5 and 7, of the 1961 Vienna Convention to all missions accredited to Malawi. Thus diplomatic bags, whether accompanied or unaccompanied by diplomatic courier, are not opened or detained upon their entry into Malawi. Diplomatic couriers are protected by the Government upon their entry into Malawi; they are treated as important persons at the airport and enjoy personal inviolability, that is, they are not liable to any form of arrest or detention if they confine themselves to the performance of their duties. Where diplomatic bags are unaccompanied by a diplomatic courier, but are entrusted to the captain of a commercial aircraft scheduled to land at Malawian international airports (Kamuzu airport or Chileka airport), the missions are free to send their members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

4. The matter currently before the United Nations is an on-going one, since it has been on the agenda of the Sixth Committee of the General Assembly since 1978. It is the wish of most countries that the international rules contained in article 27 of the 1961 Vienna Convention should be amended to provide for detailed rules on the treatment to be accorded to diplomatic bags where such bags are not accompanied by diplomatic couriers, and also to give more specific immunities to such couriers.

5. The Malawian Government believes that it should meanwhile merely observe the developments. Once the new law has been adopted by Parliament, the Government will make any necessary amendments to it and, if so required, harmonize its provisions with any substantive changes in the existing rules on this topic eventually to emerge from current United Nations negotiations.

Romania

[Original: French]
[23 May 1983]

1. The Socialist Republic of Romania is a party to most of the international conventions and treaties governing the status of the diplomatic courier and the diplomatic bag: the 1946 Convention on the Privileges and Immunities of the United Nations,¹ the 1947 Convention on the Privileges and Immunities of the Specialized Agencies,² the 1961 Vienna Convention, the 1963 Vienna Convention, and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.³

Furthermore, it should be noted that the provisions of Romanian national legislation were drafted in the light of the treaty provisions to which the Socialist Republic of Romania had subscribed and to international practice recognized by States in that field. Thus articles 186 to 191 of chapter VI of the Customs Regulations (approved by Decree No. 337 of the Council of State, dated 26 November 1981),⁴ on the introduction of property into the country and its removal therefrom by diplomatic missions and consular offices accredited to the Socialist Republic of Romania, as well as by their members, regulate the status of the diplomatic bag and the consular bag, the conditions that have to be satisfied for the recognition and use of the diplomatic or consular bag, as well as exemption of those bags from customs control on entry into or departure from the country, the possibility of the diplomatic or consular bag being transported by the captain of a commercial aircraft, etc.

2. The Romanian Government is in favour of the continuation by the Commission of the study of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, with a view to formulating draft articles that may serve as a basis for the preparation and adoption of an appropriate international legal instrument. The Romanian Government considers that comprehensive and unified rules could thus be provided to govern the status of the diplomatic courier and the unaccompanied diplomatic bag in the light of the acquired practice of States in that field, which would have a favourable effect on the climate of the establishment and maintenance of good relations between States. A solution to the question of the status of the diplomatic courier and the diplomatic bag, by standardizing and generalizing existing practice could prevent confusion and misunderstandings, with the result of ensuring that States would behave in a manner likely to guarantee the legality and stability so necessary for the maintenance of confidence and co-operation

¹ United Nations, *Treaty Series*, vol. 1, p. 15.

² *Ibid.*, vol. 33, p. 261.

³ General Assembly resolution 3166 (XXVIII) of 14 December 1973, annex: see also United Nations, *Juridical Yearbook*, 1973 (Sales No. E.75.V.1), p. 74.

⁴ Romania, Chamber of Commerce and Industry (Bucharest, Publicom, 1982), pp. 140-142.

among them. In that way, the Commission would perform a useful task of codification in a highly sensitive area of inter-State relations.

3. In the practice of the Socialist Republic of Romania, the system whereby the same person is appointed as diplomatic courier by two or more States is unknown.

Sweden

[Original: English]
[24 January 1983]

Note of 17 January 1973 concerning the opening of diplomatic bags by a receiving State¹

The Royal Swedish Embassy presents its compliments to the Ministry of External Affairs of the Republic of ... and has the honour, with reference to the Ministry's Note No. 5/73 of 3 January 1973, concerning certain measures to be taken to combat trafficking in ... currency during the present currency exchange in ... , to state the following:

While understanding the problems facing the ... authorities in the present situation, the Embassy must express its deep concern at the measures stipulated in the Ministry's communication, which might be taken to impugn the integrity not only of this Embassy but also of the Government which it has the honour to represent.

In particular, the Embassy invites the attention of the Ministry to the gravity of the measures relating to official correspondence and diplomatic bags, which conflicts with customary international law as well as with article 27 of the Vienna Convention on Diplomatic Relations to which the Republic of ... is also a party. International law governing diplomatic relations prohibits any interference with official correspondence and diplomatic bags, whether sent to or from a Foreign Ministry or between its missions. Consequently the Embassy, on the instructions of its Government, has the honour to inform the Ministry that it is unable to acquiesce in the opening and inspecting of official correspondence and diplomatic bags.

Moreover, in keeping with the provisions of articles 29 and 36 of the same Vienna Convention, the Embassy is confident that the ... authorities will also refrain from searching and inspecting either the person or the personal baggage of diplomatic members of this Embassy who may enter ... during the six-week period of currency conversion.

¹ Communicated in a note verbale from the Permanent Mission of Sweden to the United Nations.

Union of Soviet Socialist Republics

[Original: Russian]
[28 February 1983]

The information below is submitted as a follow-up to that previously transmitted to the United Nations Secretariat.¹

1. On 24 November 1982, the Supreme Soviet of the USSR adopted the USSR State Frontier Act and a resolution on its implementation.²

2. Article 12 of the USSR State Frontier Act provides:

Permission to cross the USSR State frontier shall be granted by border guards to persons holding valid documents authorizing them to enter or leave the USSR.

Means of transport, goods and other property shall be permitted to cross the Soviet frontier in accordance with the legislation of the Soviet Union and international treaties to which it is a party.

In accordance with international treaties to which the Soviet Union is a party, simplified procedures may be established for authorizing persons, means of transport, goods and other property to cross the Soviet frontier.

3. With the adoption of the aforementioned legislation, the Statute of 5 August 1960 governing the protection of the Soviet frontiers, which was referred to in information submitted previously,³ ceased to have effect on 1 March 1983.

¹ *Yearbook...* 1982, vol. II (Part One), p. 240, document A/CN.4/356 and Add.1-3.

² *Pravda* (Moscow), 26 November 1982, No. 330 (23491).

³ Document A/CN.4/356 and Add.1-3 (see footnote 1 above), Union of Soviet Socialist Republics, sect. 1, para. 4.

Venezuela

[Original: Spanish]
[2 June 1983]

...

With regard to the proposal made by the Special Rapporteur concerning laws, regulations, procedures and practices, as well as judicial decisions, arbitral awards and diplomatic correspondence with respect to the treatment of couriers and bags, the Government of Venezuela points out that the only applicable legal instrument in the country is the 1961 Vienna Convention.

Furthermore, the Government of Venezuela has no information on any judicial decision or arbitral award relating to the treatment in the country of the diplomatic courier and the diplomatic bag.

...