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**Fifth report on the status of the diplomatic courier and the diplomatic bag not accompanied
by diplomatic courier, by Mr. Alexander Yankov, Special Rapporteur**

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

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CONTENTS

		<i>Page</i>
<i>Note</i>		73
	<i>Paragraphs</i>	
INTRODUCTION	1-2	73
<i>Sections</i>		
I. PRESENT STATUS OF THE DRAFT ARTICLES	3-7	73
II. DISCUSSION OF THE TOPIC IN THE SIXTH COMMITTEE AT THE THIRTY-EIGHTH SESSION OF THE GENERAL ASSEMBLY	8-39	76
A. Consideration of the topic as a whole	8-16	76
B. Comments on the draft articles provisionally adopted by the Commission or submitted by the Special Rapporteur	17-39	77
1. Comments on draft articles 1 to 8 provisionally adopted by the Commission	17-27	77
2. Comments on draft articles 9 to 23 submitted by the Special Rapporteur	28-39	78
III. BRIEF ANALYTICAL SURVEY OF STATE PRACTICE RELEVANT TO THE DRAFT ARTICLES SUBMITTED TO THE COMMISSION	40-81	80
A. State practice relating to the general provisions of the draft (arts. 1-6)	42-45	80
1. Scope of the draft articles	42-44	80
2. The principle of reciprocity (art. 6)	45	80
B. State practice relating to the status of the diplomatic courier	46-53	80
1. Documentation and nationality of the diplomatic courier	46-47	80
2. Facilities, privileges and immunities accorded to the diplomatic courier	48-52	81
3. Diplomatic courier <i>ad hoc</i>	53	81
C. State practice relating to the status of the diplomatic bag	54-81	82
1. Indication of status of the diplomatic bag (art. 31)	54-63	82
2. Content of the diplomatic bag (art. 32)	64-69	83
3. Status of the diplomatic bag entrusted to the captain of a commercial aircraft, the master of a merchant ship or an authorized member of the crew (art. 33) and Status of the diplomatic bag dispatched by postal services or other means (art. 34)	70-72	84
4. Inviolability of the diplomatic bag (art. 36)	73-79	85
5. Exemption from customs duties and all dues and taxes (art. 38)	80-81	86
IV. CONSIDERATION OF THE DRAFT ARTICLES AT THE THIRTY-SIXTH SESSION OF THE COMMISSION ..	82-84	87

NOTE

Multilateral conventions cited 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 present report is the fifth submitted by the Special Rapporteur on the topic: "Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier". Its main objective is, first of all, to update the status of the draft articles and, secondly, to indicate the main trends in the attitude of Governments in respect of those draft articles emerging from the debates in the Sixth Committee of the General Assembly or as evidenced by recent State practice.

2. The essentially informative character of the present report is due to the fact that, in the fourth report,¹ a set of draft articles was already completed, together with the corresponding substantive commentaries. The present report is therefore designed to ascertain to what extent the views arising from the debates in the Sixth Committee, at the thirty-eighth session of the General Assembly, and from the latest information provided by Governments² or obtained from research by the Codification Division, coincide or are at variance with the solutions proposed by the Special Rapporteur in the draft articles submitted by him or provisionally adopted by the Commission, or are not covered thereby.³

¹ See footnote 3 (b) (iii) below.

² See p. 59 above, document A/CN.4/379 and Add.1.

³ For a detailed historical background of the consideration of the topic by the Commission up to 1983, see (a) the reports of the Commission: *Yearbook . . . 1979*, vol. II (Part Two), pp. 170 *et seq.*, chap. VI; *Yearbook . . . 1980*, vol. II (Part Two), pp. 162 *et seq.*, chap. VIII; *Yearbook . . . 1981*, vol. II (Part Two), pp. 159 *et seq.*, chap. VII; *Yearbook . . . 1982*, vol. II (Part Two), pp. 112 *et seq.* chap. VI; *Yearbook . . . 1983*, vol. II (Part Two), pp. 44 *et seq.*, chap. V; (b) the previous reports of the Special Rapporteur: (i) preliminary report, *Yearbook . . . 1980*, vol. II (Part One), pp. 231 *et seq.*, document A/CN.4/335; (ii) second report, *Yearbook . . . 1981*, vol. II (Part One), pp. 151 *et seq.*, document A/CN.4/347 and Add.1 and 2; (iii) third report, *Yearbook . . . 1982*, vol. II (Part One), pp. 247 *et seq.*, document A/CN.4/359 and Add.1; (iv) fourth report, *Yearbook . . . 1983*, vol. II (Part One), pp. 62 *et seq.*, document A/CN.4/374 and Add.1-4.

I. Present status of the draft articles

3. The draft articles contained in the set proposed by the Special Rapporteur in his various reports⁴ could be classified, according to their present status, in the following categories:

(a) Draft articles provisionally adopted by the Commission at its thirty-fifth session, in 1983;

(b) Draft articles considered by the Commission and referred to the Drafting Committee;

(c) Draft articles completing the set contained in the fourth report and which should be examined by the Com-

⁴ See footnote 3 (b) above.

mission before they are referred to the Drafting Committee.

4. In the first category are eight draft articles adopted on first reading by the Commission at its thirty-fifth session.⁵ Articles 1 to 6 constitute part I, entitled "General Provisions" namely: "Scope of the present articles" (art. 1);⁶ "Couriers and bags not within the scope of the present articles" (art. 2);⁷ "Use of terms" (art. 3);⁸ "Freedom of

⁵ The texts of articles 1 to 8, and the commentaries thereto, are contained in *Yearbook . . . 1983*, vol. II (Part Two), pp. 53 *et seq.* para. 190.

⁶ Article 1 provisionally adopted by the Commission reads:

"Article 1. Scope of the present articles"

"The present articles apply to the diplomatic courier and the diplomatic bag employed for the official communications of a State with its missions, consular posts or delegations, wherever situated, and for the official communications of those missions, consular posts or delegations with the sending State or with each other."

⁷ Article 2 provisionally adopted by the the Commission reads:

"Article 2. Couriers and bags not within the scope of the present articles"

"The fact that the present articles do not apply to couriers and bags employed for the official communications of international organizations shall not affect:

"(a) the legal status of such couriers and bags;

"(b) the application to such couriers and bags of any rules set forth in the present articles which would be applicable under international law independently of the present articles."

⁸ Article 3 provisionally adopted by the Commission reads:

"Article 3. Use of terms"

"1. For the purposes of the present articles:

"(1) 'diplomatic courier' means a person duly authorized by the sending State, either on a regular basis or for a special occasion as a courier *ad hoc*, as:

"(a) a diplomatic courier within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

"(b) a consular courier within the meaning of the Vienna Convention on Consular Relations of 24 April 1963;

"(c) a courier of a special mission within the meaning of the Convention on Special Missions of 8 December 1969; or

"(d) a courier of a permanent mission, of a permanent observer mission, of a delegation or of an observer delegation, within the meaning of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 14 March 1975,

who is entrusted with the custody, transportation and delivery of the diplomatic bag, and is employed for the official communications referred to in article 1;

"(2) 'diplomatic bag' means the packages containing official correspondence, documents or articles intended exclusively for official use, whether accompanied by diplomatic courier or not, which are used for the official communications referred to in article 1 and which bear visible external marks of their character as:

"(a) a diplomatic bag within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

"(b) a consular bag within the meaning of the Vienna Convention on Consular Relations of 24 April 1963;

"(c) a bag of a special mission within the meaning of the Convention on Special Missions of 8 December 1969; or

"(d) a bag of a permanent mission, of a permanent observer mission, of a delegation or of an observer delegation, within the meaning of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 14 March 1975;

"(3) 'sending State' means a State dispatching a diplomatic bag to or from its missions, consular posts or delegations;

"(4) 'receiving State' means a State having on its territory missions, consular posts or delegations of the sending State which receive or dispatch a diplomatic bag;

official communications" (art. 4);⁹ "Duty to respect the laws and regulations of the receiving State and the transit State" (art. 5);¹⁰ and "Non-discrimination and reciprocity" (art. 6).¹¹ The other two draft articles are in part II, entitled "Status of the diplomatic courier, the diplomatic courier *ad hoc* and the captain of a commercial aircraft or the master of a ship carrying a diplomatic bag", namely: "Documentation of the diplomatic courier" (art. 7)¹² and "Appointment of the diplomatic courier" (art. 8).¹³

"(5) 'transit State' means a State through whose territory a diplomatic courier or a diplomatic bag passes in transit;

"(6) 'mission' means:

"(a) a permanent diplomatic mission within the meaning of the Vienna Convention on Diplomatic Relations of 18 April 1961;

"(b) a special mission within the meaning of the Convention on Special Missions of 8 December 1969; and

"(c) a permanent mission or a permanent observer mission within the meaning of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 14 March 1975;

"(7) 'consular post' means a consulate-general, consulate, vice-consulate or consular agency within the meaning of the Vienna Convention on Consular Relations of 24 April 1963;

"(8) 'delegation' means a delegation or an observer delegation within the meaning of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character of 14 March 1975;

"(9) 'international organization' means an intergovernmental organization.

"2. The provisions of paragraph 1 of the present article regarding the use of terms in the present articles are without prejudice to the use of those terms or to the meanings which may be given to them in other international instruments or the internal law of any State."

⁹ Article 4 provisionally adopted by the Commission reads:

"Article 4. Freedom of official communications"

"1. The receiving State shall permit and protect the official communications of the sending State, effected through the diplomatic courier or the diplomatic bag, as referred to in article 1.

"2. The transit State shall accord to the official communications of the sending State, effected through the diplomatic courier or the diplomatic bag, the same freedom and protection as is accorded by the receiving State."

¹⁰ Article 5 provisionally adopted by the Commission reads:

"Article 5. Duty to respect the laws and regulations of the receiving State and the transit State"

"1. The sending State shall ensure that the privileges and immunities accorded to its diplomatic courier and diplomatic bag are not used in a manner incompatible with the object and purpose of the present articles.

"2. Without prejudice to the privileges and immunities accorded to him, it is the duty of the diplomatic courier to respect the laws and regulations of the receiving State or the transit State, as the case may be. He also has the duty not to interfere in the internal affairs of the receiving State or the transit State, as the case may be."

¹¹ Article 6 provisionally adopted by the Commission reads:

"Article 6. Non-discrimination and reciprocity"

"1. In the application of the provisions of the present articles, the receiving State or the transit State shall not discriminate as between States.

"2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State or the transit State applies any of the provisions of the present articles restrictively because of a restrictive application of that provision to its diplomatic courier or diplomatic bag by the sending State;

(b) where States modify among themselves, by custom or agreement, the extent of facilities, privileges and immunities for their diplomatic couriers and diplomatic bags, provided that such a modification is not incompatible with the object and purpose of the present articles

5. The second category comprises draft articles submitted by the Special Rapporteur in his third report (arts. 1-14) and referred to the Drafting Committee by a decision of the Commission at its thirty-fourth session, in 1982,¹⁴ as well as draft articles contained in his fourth report (arts. 15-19), which were also referred to the Drafting Committee by the Commission at its thirty-fifth session, in 1983.¹⁵ These draft articles, which are in part II, relating to the status of the diplomatic courier, are: "Appointment of the same person by two or more States as a diplomatic courier" (art. 9);¹⁶ "Nationality of the diplomatic courier" (art. 10);¹⁷ "Functions of the diplomatic courier" (art. 11);¹⁸ "Commencement of the functions of the diplomatic courier" (art. 12);¹⁹ "End of the function of the diplomatic courier" (art. 13);²⁰ "Persons declared *non grata* or not acceptable"

(art. 14);²¹ "General facilities" (art. 15);²² "Entry into the territory of the receiving State and the transit State" (art. 16);²³ "Freedom of movement" (art. 17);²⁴ "Freedom of communication" (art. 18)²⁵ and "Temporary accommodation" (art. 19).²⁶

6. At the thirty-fifth session of the Commission, the Special Rapporteur introduced four more draft articles (arts. 20-23), contained in his fourth report. These were partially examined by the Commission, it being understood that the debate on them should resume at the thirty-sixth session before they were referred to the Drafting Committee.²⁷ The draft articles are: "Personal inviolabil-

and does not affect the enjoyment of the rights or the performance of the obligations of third States."

¹² Article 7 provisionally adopted by the Commission reads:

"Article 7. Documentation of the diplomatic courier"

"The diplomatic courier shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag which is accompanied by him."

¹³ Article 8 provisionally adopted by the Commission reads:

"Article 8. Appointment of the diplomatic courier"

"Subject to the provisions of articles [9], 10 and 14, the diplomatic courier is freely appointed by the sending State or by its missions, consular posts or delegations."

¹⁴ *Yearbook . . . 1982*, vol. II (Part Two), p. 120, para. 249.

¹⁵ *Yearbook . . . 1983*, vol. II (Part Two), p. 50, para. 171.

¹⁶ Draft article 9 read as follows:

"Article 9. Appointment of the same person by two or more States as a diplomatic courier"

"Two or more States may appoint the same person as a diplomatic courier or diplomatic courier *ad hoc*".

¹⁷ Draft article 10 read as follows:

"Article 10. Nationality of the diplomatic courier"

"1. The diplomatic courier should, in principle, have the nationality of the sending State.

"2. Diplomatic couriers may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State, which may be withdrawn at any time.

"3. The receiving State may reserve the same right under paragraph 2 with regard to:

"(a) nationals of the sending State who are permanent residents of the receiving State;

"(b) nationals of a third State who are not also nationals of the sending State.

"4. The application of this article is without prejudice to the appointment of the same person by two or more States as a diplomatic courier, as provided in article 9."

¹⁸ Draft article 11 read as follows:

"Article 11. Functions of the diplomatic courier"

"The functions of the diplomatic courier shall consist in taking care of and delivering to its destination the diplomatic bag of the sending State or its diplomatic missions, consular posts, special missions, permanent missions or delegations, wherever situated."

¹⁹ Draft article 12 read as follows:

"Article 12. Commencement of the functions of the diplomatic courier"

"The functions of the diplomatic courier shall commence from the moment he is crossing the territory of the transit or receiving State, depending upon which of these events occurs first."

²⁰ Draft article 13 read as follows:

"Article 13. End of the function of the diplomatic courier"

"The function of a diplomatic courier comes to an end, *inter alia*, upon:

"(a) the completion of his task to deliver the diplomatic bag to its final destination;

"(b) the notification by the sending State to the receiving State that the function of the diplomatic courier has been terminated;

"(c) notification by the receiving State to the sending State that, in accordance with article 14, it refuses to recognize the official status of the diplomatic courier;

"(d) the event of the death of the diplomatic courier."

²¹ Draft article 14 read as follows:

"Article 14. Persons declared non grata or not acceptable"

"1. The receiving State may at any time, and without having to explain its decision, notify the sending State that the diplomatic courier of the latter State is declared *persona non grata* or not acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his function.

"2. In cases when a diplomatic courier is declared *persona non grata* or not acceptable in accordance with paragraph 1 prior to the commencement of his function, the sending State shall send another diplomatic courier to the receiving State."

²² Draft article 15 read as follows:

"Article 15. General facilities"

"The receiving State and the transit State shall accord to the diplomatic courier the facilities required for the performance of his official functions."

²³ Draft article 16 read as follows:

"Article 16. Entry into the territory of the receiving State and the transit State"

"1. The receiving State and the transit State shall allow the diplomatic courier to enter their territory in the performance of his official functions.

"2. Entry or transit visas, if required, shall be granted by the receiving or the transit State to the diplomatic courier as quickly as possible."

²⁴ Draft article 17 read as follows:

"Article 17. Freedom of movement"

"Subject to the laws and regulations concerning zones where access is prohibited or regulated for reasons of national security, the receiving State and the transit State shall ensure freedom of movement in their respective territories to the diplomatic courier in the performance of his official functions or when returning to the sending State."

²⁵ Draft article 18 read as follows:

"Article 18. Freedom of communication"

"The receiving and the transit State shall facilitate, when necessary, the communications of the diplomatic courier by all appropriate means with the sending State and its missions, as referred to in article 1, situated in the territory of the receiving State or in that of the transit State, as applicable."

²⁶ Draft article 19 read as follows:

"Article 19. Temporary accommodation"

"The receiving and the transit State shall, when requested, assist the diplomatic courier in obtaining temporary accommodation in connection with the performance of his official functions."

²⁷ *Yearbook . . . 1983*, vol. II (Part Two), p. 53, para. 189.

ity" (art. 20);²⁸ "Inviolability of temporary accommodation" (art. 21);²⁹ "Inviolability of the means of transport" (art. 22)³⁰ and "Immunity from jurisdiction" (art. 23).³¹

7. As indicated in the Commission's report on its thirty-fifth session, the remaining draft articles (arts. 24-42), which complete the set of draft articles submitted by the

²⁸ Draft article 20 read as follows:

"Article 20. Personal inviolability"

"1. The diplomatic courier shall enjoy personal inviolability when performing his official functions and shall not be liable to any form of arrest or detention.

"2. The receiving State or, as applicable, the transit State shall treat the diplomatic courier with due respect and shall take all appropriate measures to prevent any infringement of his person, freedom or dignity and shall prosecute and punish persons responsible for such infringements."

²⁹ Draft article 21 read as follows:

"Article 21. Inviolability of temporary accommodation"

"1. The temporary accommodation used by the diplomatic courier shall be inviolable. Officials of the receiving State or the transit State shall not enter the accommodation except with the consent of the diplomatic courier.

"2. The receiving State or the transit State has the duty to take appropriate measures to protect from intrusion the temporary accommodation used by the diplomatic courier.

"3. The temporary accommodation of the diplomatic courier shall be immune from inspection or search, unless there are serious grounds for believing that there are in it articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State or the transit State. Such inspection or search shall be conducted only in the presence of the diplomatic courier, provided that the inspection or search be taken without infringing the inviolability of the person of the diplomatic courier or the inviolability of the diplomatic bag carried by him and will not cause unreasonable delays and impediments to the delivery of the diplomatic bag."

³⁰ Draft article 22 read as follows:

"Article 22. Inviolability of the means of transport"

"1. The individual means of transport used by the diplomatic courier in the performance of his official functions shall be immune from

Special Rapporteur in his fourth report, were not formally introduced during that session; the Special Rapporteur briefly explained their content and suggested that the Commission, which now had before it the complete set of draft articles, should consider them at its thirty-sixth session.³²

inspection, search, requisition, seizure and measures of execution.

"2. When there are serious grounds for believing that the individual means of transport referred to in paragraph 1 carries articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State or the transit State, the competent authorities of those States may undertake inspection or search of that individual means of transport, provided that such inspection or search shall be conducted in the presence of the diplomatic courier and without infringing the inviolability of the diplomatic bag carried by him and will not cause unreasonable delays and impediments to the delivery of the diplomatic bag."

³¹ Draft article 23 read as follows:

"Article 23. Immunity from jurisdiction"

"1. The diplomatic courier shall enjoy immunity from the criminal jurisdiction of the receiving State or the transit State.

"2. He shall also enjoy immunity from the civil and administrative jurisdiction of the receiving State or the transit State in respect of all acts performed in the exercise of his official functions.

"3. No measures of execution may be taken against the diplomatic courier, except in cases not covered by paragraph 2 of this article and provided that the measures concerned can be taken without infringing the inviolability of his person, temporary accommodation or the diplomatic bag entrusted to him.

"4. The diplomatic courier is not obliged to give evidence as witness.

"5. Nothing in this article shall exempt the diplomatic courier from the civil and administrative jurisdiction of the receiving State or the transit State in respect of an action for damages arising from an accident caused by a vehicle used or owned by the courier in question, if such damages cannot be covered by the insurer.

"6. Immunity from the jurisdiction of the receiving State or the transit State shall not exempt the diplomatic courier from the jurisdiction of the sending State."

³² *Yearbook . . . 1983*, vol. II (Part Two), p. 53, para. 186.

II. Discussion of the topic in the Sixth Committee at the thirty-eighth session of the General Assembly

A. Consideration of the topic as a whole

8. The progress achieved on the topic by the Commission at its thirty-fifth session, in 1983, received favourable consideration by many representatives. The presentation of the complete set of 42 draft articles was also appreciated as a basis for the work of the Commission. Some representatives expressed the hope that, given the satisfactory results produced so far, the Commission might be able to round off the first reading of the draft articles at its thirty-sixth session and finalize the second reading of the draft before the expiry of its current term of office, in 1986.³³

9. The importance of the topic and the need for its codi-

fication was again pointed out during the debate in the Sixth Committee. It was emphasized by some representatives that the codification of the status of the diplomatic courier and the diplomatic bag, particularly the enhancing of the system of protection of the means of official communication, would contribute to the effective functioning of diplomatic relations and to the strengthening of international co-operation.³⁴

10. Several representatives expressed support for the empirical, functional and pragmatic method applied in the elaboration of the draft articles, based on close examination of State practice in respect of diplomatic communications. It was also pointed out that the uniform approach and the comprehensive manner of dealing with all kinds of couriers and bags constituted a sound legal basis for a

³³ See "Topical summary, prepared by the Secretariat, of the discussion in the Sixth Committee on the report of the Commission during the thirty-eighth session of the General Assembly" (A/CN.4/L.369), paras. 302-304. See also *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee*, 38th meeting, paras. 46-48 (Brazil), 41st meeting, para. 12 (Israel), 47th meeting, para. 56 (Poland), 48th meeting, para. 60 (Mongolia).

³⁴ See "Topical summary . . ." (A/CN.4/L.369), paras. 303-304; and *Officials Records of the General Assembly, Thirty-eighth Session, Sixth Committee*, 42nd meeting, para. 13 (Ethiopia), 44th meeting, para. 71 (Czechoslovakia), 46th meeting, para. 14 (Hungary) and para. 22 (Afghanistan), 48th meeting, para. 77 (Zaire).

uniform régime governing the status of the courier and the bag.

11. The view was expressed that the central point of the codification of the topic was the granting of privileges, immunities and facilities to diplomatic couriers and bags. In that connection, special emphasis was placed on the need for achieving a proper balance in the draft articles between the sending State's requirements for confidentiality and the receiving or transit State's legitimate security and other interests, as well as between the principle of the inviolability of the diplomatic bag and the need to prevent abuses of the diplomatic bag.

12. While not denying the progress made by the Commission on the topic, some representatives expressed certain doubts and reservations as to the urgency of proceeding to a detailed codification of the rules regulating the legal status of the diplomatic courier and the diplomatic bag. In their view, what was required was the filling of small gaps and the implementation of existing rules.³⁵

13. The view was expressed that, in elaborating rules for the adequate protection of the courier in the exercise of his functions, it would not be proper to go too far in assimilating the status of the diplomatic courier to that of diplomatic staff. The temporary nature of the diplomatic courier's assignment made him comparable to the members of a special mission. It was said that the personal inviolability of the diplomatic courier should be based on the principle of functional necessity.³⁶

14. The form of the future instrument to be adopted on the topic under consideration was again the subject of discussion. A number of representatives supported the view that the draft should take the form of a binding instrument, preferably an international convention. Some representatives expressed the view that the final product of the Commission should take the form of a protocol that did not depart from the relevant conventions adopted under the auspices of the United Nations. One representative suggested that the draft articles could provide a useful basis for a General Assembly recommendation to States with a view to supplementing and clarifying the provisions of the 1961 Vienna Convention on Diplomatic Relations. According to another representative, the final form of the draft articles was not a question of particular urgency.³⁷

15. Several representatives made general observations on the draft articles submitted so far by the Special Rapporteur, particularly draft articles 15 to 23. While expressing the view that those draft articles were generally acceptable and presented no substantive difficulties, they suggested some changes relating mainly to their form and

drafting. One representative stated that the draft articles should be condensed and amalgamated.³⁸

16. The relationship between the draft articles and the relevant conventions on diplomatic and consular relations was also mentioned in the debate. It was suggested that at some stage the Commission should take a decision on the matter.³⁹ The Special Rapporteur has contemplated the consideration of this issue in conjunction with draft article 42 submitted in the fourth report.⁴⁰

B. Comments on the draft articles provisionally adopted by the Commission or submitted by the Special Rapporteur

1. COMMENTS ON DRAFT ARTICLES 1 TO 8 PROVISIONALLY ADOPTED BY THE COMMISSION

17. The general view emerging from the debate on draft articles 1 to 8 provisionally adopted by the Commission was that they were satisfactory. At the same time, comments were made relating to the substance and form of individual articles.

18. *Article 1 (Scope of the present articles)* was the subject of a thorough discussion. Two main trends transpired from that discussion: one supporting the comprehensive and uniform approach covering all kinds of couriers and bags as adopted in the draft; the other favouring a restrictive approach confined only to the diplomatic courier and the unaccompanied diplomatic bag *stricto sensu*.

19. It was argued by several representatives that the comprehensive approach applied in the elaboration of draft article 1 constituted a sound legal basis for a uniform régime governing the status of the courier and the bag. The rules applicable to all types of couriers and bags, according to that view, ensured the normal functioning of official communications, since any differentiation in the facilities, privileges and immunities established in existing conventions on diplomatic law was based primarily on the difference in nature or degree of the functions performed by the various categories of official representatives.

20. The comprehensive and uniform approach was questioned by one representative, who expressed serious reservations about the applicability of the same basic rules to diplomatic couriers and bags, consular couriers and bags, and the couriers and bags of special and permanent missions to international organizations. In his view, that approach seemed dangerous and could jeopardize the success of the draft. Such an approach would raise difficult problems for States which were not parties to the 1969 Convention on Special Missions or to the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character. The comprehensive and uniform approach

³⁵ See "Topical summary . . ." (A/CN.4/L.369), para. 305; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee*, 39th meeting, para. 20 (Federal Republic of Germany), 45th meeting, para. 37 (Spain), 50th meeting, para. 37 (Japan).

³⁶ See "Topical summary . . ." (A/CN.4/L.369), para. 308; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee*, 42nd meeting, para. 16 (Ethiopia).

³⁷ See "Topical summary . . ." (A/CN.4/L.369), para. 311; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee*, 36th meeting, para. 77 (German Democratic Republic), 39th meeting, para. 79 (Jamaica), 41st meeting, para. 35 (France), 43rd meeting, para. 8 (Italy), 44th meeting, para. 39 (United States of America), 47th meeting, para. 41 (Bulgaria).

³⁸ See "Topical summary . . ." (A/CN.4/L.369), para. 333; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee*, 37th meeting, para. 32 (Tunisia), 45th meeting, para. 22 (Morocco).

³⁹ See "Topical summary . . ." (A/CN.4/L.369), para. 310; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee*, 48th meeting, para. 38 (Indonesia).

⁴⁰ See document A/CN.4/374 and Add.1-4 (see footnote 3 (b) (iv) above), paras. 396-403.

disregarded the difference between the status of the diplomatic bag deriving from article 27 of the 1961 Vienna Convention on Diplomatic Relations and that deriving from article 35 of the 1963 Vienna Convention on Consular Relations, as a result of which the consular bag was currently subject to certain restrictions that did not apply to the diplomatic bag. Thus treating the two in exactly the same way, as envisaged in the draft articles, would constitute a radical change in the law and might not be acceptable to all States. A provision in the text permitting States to designate those types of couriers and bags to which they wished the new rules to apply might introduce useful flexibility in the draft but would not obviate the real complications, since the status of each type of bag would depend on the position taken by the sending State, the transit State and the receiving State. In that representative's view, such a system might impair the rules that were now universally accepted for the diplomatic bag and the consular bag, respectively.⁴¹ Another representative stated that the inclusion of a provision permitting States to designate those types of couriers and bags to which they wished the article to apply, as suggested in paragraph (2) of the commentary to article 1,⁴² would not promote uniformity in the treatment of diplomatic couriers. He therefore suggested that an attempt be made to draw up a compromise text that could eliminate the need for such an optional procedure.⁴³

21. The consideration of *article 2 (Couriers and bags not within the scope of the present articles)* raised the question, as on previous occasions, of the couriers and bags of international organizations and of national liberation movements.

22. Several representatives were in favour of extending the scope of the draft articles to international organizations and national liberation movements, taking into consideration the reality of international relations.⁴⁴

23. Some representatives, while basically in favour of extending the scope of the draft articles, advised great caution and realism, so as not to create difficulties that would obstruct progress and prevent the completion of the draft.⁴⁵

24. However, some representatives expressed opposition to or grave reservations about expanding the scope of the draft articles to include international organizations or other non-State entities. They stated that to do so would significantly complicate and delay the drafting work. It was suggested that the Commission should complete its first reading of the draft as a whole on the basis of the scope as indicated in draft article 1, and then review the position so that a final decision could be reached.⁴⁶

⁴¹ See *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 41st meeting, para. 32 (France)*.

⁴² See footnote 5 above.

⁴³ See *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 39th meeting, para. 85 (Jamaica)*.

⁴⁴ See "Topical summary . . ." (A/CN.4/L.369), para. 318; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 36th meeting, para. 76 (German Democratic Republic), 44th meeting, para. 12 (Algeria)*.

⁴⁵ *Ibid.*, 45th meeting, para. 21 (Morocco), 47th meeting, para. 55 (Poland).

⁴⁶ See "Topical summary . . ." (A/CN.4/L.369), para. 312; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee,*

25. The consideration of *article 3 (Use of terms)* concentrated more on the definition of the diplomatic bag and some drafting issues. One representative thought that it would be desirable to include articles on the right of a receiving State to prescribe and apply in a non-discriminatory manner the maximum allowable size of a diplomatic bag, and on the duty of a sending State to prevent misuse or abuse of the diplomatic bag. Another representative pointed out that the provisions concerning the diplomatic bag should cover only the diplomatic bag in the strict sense and should conform with article 27 of the 1961 Vienna Convention.⁴⁷ There were no specific comments on the other terms contained in article 3.

26. There were few comments on *article 5 (Duty to respect the laws and regulations of the receiving State and the transit State)*. The practical importance of the provision was stressed by one representative. Another representative noted some differences between the wording of article 5 and that of article 41, paragraph 1, of the 1961 Vienna Convention, differences for which he failed to see the justification.⁴⁸

27. *Article 6 (Non-discrimination and reciprocity)* did not raise any specific discussion, with the exception of one general comment to the effect that the article would be justified in principle only if a new convention were prepared. It was also pointed out that, as now drafted, it did not settle the question of the scope of the rule of reciprocity for the transit State.

2. COMMENTS ON DRAFT ARTICLES 9 TO 23 SUBMITTED BY THE SPECIAL RAPPORTEUR

28. Since more specific comments on draft articles 9 to 14 had been made in the Sixth Committee at the thirty-seventh session of the General Assembly, in 1982, this time they were confined to a few remarks on articles 9, 10, 12 and 13.

29. On draft *article 9 (Appointment of the same person by two or more States as a diplomatic courier)*, one representative stated that the principle underlying that article was acceptable to his delegation, but suggested that the provision could be included in an additional paragraph of article 8, instead of forming a separate article.⁴⁹

30. In connection with draft *article 10 (Nationality of the diplomatic courier)*, it was suggested by one representative that a specific reference to the diplomatic courier *ad hoc* be introduced.⁵⁰

41st meeting, para. 12 (Israel), 43rd meeting, para. 71 (United Kingdom), 44th meeting, para. 37 (United States of America).

⁴⁷ See "Topical summary . . ." (A/CN.4/L.369), paras. 323-325; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 39th meeting, para. 85 (Jamaica), 41st meeting, para. 34 (France), 42nd meeting, para. 17 (Ethiopia), 48th meeting, para. 28 (India)*.

⁴⁸ See "Topical summary . . ." (A/CN.4/L.369), paras. 327-328; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 41st meeting, para. 34 (France), 42nd meeting, para. 18 (Ethiopia)*.

⁴⁹ *Ibid.*, 39th meeting, para. 41 (Nigeria).

⁵⁰ *Ibid.*

31. On draft *article 13 (End of the function of the diplomatic courier)*, one representative expressed the view that the functions of the diplomatic courier were terminated only when the courier had delivered the bag to its final destination and returned to his country.⁵¹

32. Draft articles 15 to 19, which had been referred to the Drafting Committee, and draft articles 20 to 23, which had been partially considered by the Commission in 1983, were the subject of general as well as specific comments. As was pointed out, those draft articles were considered generally acceptable, subject to certain drafting changes and shortening of the texts (see paragraph 15 above).

33. The comments on draft articles 15 to 19, relating to the facilities accorded to the diplomatic courier, were confined to certain drafting amendments and suggestions for combining them into fewer provisions. One representative suggested adding the phrase "having regard to the nature and task of the diplomatic courier" at the end of draft *article 15 (General facilities)*.⁵²

34. On draft *article 16 (Entry into the territory of the receiving State and the transit State)* and draft *article 17 (Freedom of movement)*, only a few drafting amendments were proposed. One representative suggested replacing the work "quickly" by "expeditiously" in paragraph 2 of article 16. It was also suggested that the words "speedy and efficient performance" be inserted at the appropriate place in draft *article 17*.⁵³

35. Some representatives expressed general support for draft articles 20 to 23, on inviolability and immunity from jurisdiction, without prejudice to some drafting changes.⁵⁴

36. Several comments were made on draft *article 20 (Personal inviolability)*. The discussion was mainly concentrated on paragraph 2, with some critical observations concerning the obligation contained therein for the receiving State to prosecute and punish infringements of the personal inviolability of the diplomatic courier. It was pointed out that no such provision existed in the 1961 Vienna Convention or in the 1963 Vienna Convention. The issue thus exceeded the scope of diplomatic and consular law and touched on the problem of State responsibility.⁵⁵ One delegation proposed that paragraph 2 of draft *article 20* should be redrafted as follows:

"2. The receiving State or, as applicable, the transit State shall treat the diplomatic courier with courtesy and shall take all reasonable steps to prevent any infringement of his person, freedom or dignity."⁵⁶

37. Draft *article 21 (Inviolability of temporary accommodation)* was the subject of several comments and critical remarks, which varied from general acceptance to outright deletion. Several representatives criticized either a part of the draft *article*, mainly paragraph 3, or the draft *article* as a whole. In the view of one representative, the second sentence of paragraph 3, referring to the conditions and procedure of inspection or search of the temporary accommodation, should be deleted. Some representatives pointed out that there was a significant difference between the position of a member of the administrative and technical staff of a permanent mission, who resided on premises on a long-term basis, and that of a diplomatic courier, whose accommodation was temporary and short-term. It was further maintained that the provisions on the inviolability of temporary accommodation were hardly enforceable, in view of the established practice of freely choosing the hotel where the courier would stay.⁵⁷

38. Different views were also expressed on draft *article 22 (Inviolability of the means of transport)*. Several representatives expressed their general agreement with the text. One representative, while accepting paragraph 2 in principle, suggested the deletion of the reference to inspection and search, as in paragraph 3 of draft *article 21*. Some representatives suggested the deletion of draft *article 22*.⁵⁸

39. Draft *article 23 (Immunity from jurisdiction)* was also the subject of specific comments. Some representatives regarded it as an acceptable basis for the draft, while others questioned the need for it altogether. There were also comments relating to various paragraphs. One representative, while accepting the principle of absolute immunity from the criminal jurisdiction of the receiving or the transit State, could not see how the giving of evidence would ordinarily disturb the discharge of the courier's main function. If the exemption from the obligation to give evidence was to be retained in paragraph 4 of the draft *article*, it should be qualified by the addition of the phrase "concerning matters involving the exercise of his official function." Another representative questioned the usefulness of paragraph 5 of the draft *article* and suggested that measures of execution should not infringe the inviolability of the means of transport.⁵⁹

⁵¹ *Ibid.*, 45th meeting, para 7 (Kenya).

⁵² See "Topical summary . . ." (A/CN.4/L.369), paras. 333-334, 338 and 341-342; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 37th meeting*, para. 32 (Tunisia), 39th meeting, para. 81 (Jamaica), 45th meeting, para. 22 (Morocco), 47th meeting, para. 56 (Poland), 48th meeting, para. 27 (India).

⁵³ See "Topical summary . . ." (A/CN.4/L.369), paras. 336-337; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 48th meeting*, para. 27 (India).

⁵⁴ See "Topical summary . . ." (A/CN.4/L.369) para. 342; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 45th meeting*, para. 22 (Morocco).

⁵⁵ See "Topical summary . . ." (A/CN.4/L.369), para. 343; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 47th meeting*, para. 40 (Bulgaria).

⁵⁶ *Ibid.*, 39th meeting, para. 43 (Nigeria).

⁵⁷ See "Topical summary . . ." (A/CN.4/L.369), paras. 345-346; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 39th meeting*, para. 44 (Nigeria) and para. 82 (Jamaica), 41st meeting, para. 34 (France), 47th meeting, para. 40 (Bulgaria).

⁵⁸ See "Topical summary . . ." (A/CN.4/L.369), paras. 347-348; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 39th meeting*, para. 44 (Nigeria), and para. 83 (Jamaica), 43rd meeting, para. 70 (United Kingdom), 47th meeting, para. 40 (Bulgaria).

⁵⁹ See "Topical summary . . ." (A/CN.4/L.369), paras. 349-350; and *Official Records of the General Assembly, Thirty-eighth Session, Sixth Committee, 39th meeting*, para. 84 (Jamaica), 43rd meeting, para. 70 (United Kingdom), 47th meeting, para. 40 (Bulgaria) and para. 56 (Poland).

III. Brief analytical survey of State practice relevant to the draft articles submitted to the Commission

40. On the suggestion of the Special Rapporteur, the Commission requested the Secretariat *inter alia* to continue updating the collection of treaties relating to the topic and other relevant materials in the field of diplomatic and consular relations in general, and of official communications exercised through couriers and bags in particular. The Secretariat was also requested to update the study on State practice in the light of information and materials that might be provided by Governments or obtained through research.⁶⁰ The present survey is based on the study undertaken by the Codification Division. It is confined to the draft articles provisionally adopted by the Commission and those that have been submitted by the Special Rapporteur.

41. The main objective of this analytical survey is to ascertain to what extent the solutions suggested by the Special Rapporteur in his reports or draft articles and the commentaries thereto are supported by State practice or are at variance with or not covered by that practice. This method has been applied by the Special Rapporteur in his preceding reports. It has provided guidance in the study of the topic and the preparation of draft articles. This brief analytical survey, therefore, should be considered together with the one already used in the four previous reports submitted by the Special Rapporteur.

A. State practice relating to the general provisions of the draft (arts. 1-6)

1. SCOPE OF THE DRAFT ARTICLES

42. Some Governments, in their communications to the United Nations Secretariat, have alluded to the use of the diplomatic bag by entities other than States. Some among them have also referred to the possibility of extending the scope of the draft articles to those entities. The Mexican Ministry of Foreign Affairs has stated in a memorandum (para. 6)⁶¹ that:

Only States and international organizations may send and receive diplomatic bags. In Mexico, apart from the Ministry of Foreign Affairs, only missions accredited to the Government of Mexico may send and receive diplomatic bags.

Article III, section 10, of the *United Nations (Privileges and Immunities) Act 1948* of Pakistan⁶² provides:

The United Nations shall have the right to use codes and to dispatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

43. For its part, in its communication to the United Nations Secretariat,⁶³ the Government of Cyprus expresses

⁶⁰ *Yearbook* . . . 1983, vol. II (Part Two), p. 53, para. 187.

⁶¹ See the communication of the Government of Mexico, sect. 22 (p. 68 above, document A/CN.4/379 and Add.1).

⁶² See the communication of the Government of Pakistan (*ibid.*, p. 69).

⁶³ *Ibid.*, p. 69.

the view that the topic on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier is "broad enough to include communications of international organizations and of recognized liberation movements." Likewise, the Government of Bulgaria is of the view that:

. . . The scope of the draft articles should also include provisions regulating the status of couriers and bags of international organizations, as well as those of national liberation movements recognized by the United Nations and regional international organizations. Thus the future document will become a really universal set of rules concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. . . .⁶⁴

44. These comments regarding the broadening of the scope of the draft articles to cover international organizations and national liberation movements are in conformity with the possibilities contemplated in article 2 and the commentary thereto as provisionally adopted by the Commission.

2. THE PRINCIPLE OF RECIPROCITY (ART. 6)

45. Among the materials here surveyed, the only one relevant to the application of the principle of reciprocity in the treatment given to the diplomatic courier or the diplomatic bag is a comment from the Government of Indonesia transmitted to the United Nations Secretariat.⁶⁵ The Indonesian Government points out that Indonesia treats the diplomatic courier and the diplomatic bag in accordance with the provisions of the 1961 Vienna Convention and the 1963 Vienna Convention, and in conformity with customary international law, taking into account the principle of reciprocity. The comment is not explicit enough to determine whether the extent of the application of the principle of reciprocity makes it compatible with the solutions proposed in article 6 provisionally adopted by the Commission.

B. State practice relating to the status of the diplomatic courier

1. DOCUMENTATION AND NATIONALITY OF THE DIPLOMATIC COURIER

46. The materials here surveyed tend generally to reflect the relevant provisions of the 1961 and 1963 Vienna Conventions and they consequently coincide with the solutions proposed by the Special Rapporteur in his reports and draft articles, some of which have been provisionally adopted by the Commission, concerning questions such as the documentation and nationality of the diplomatic courier, his

⁶⁴ See the communication of the Government of Bulgaria, para. 2 (*ibid.*, p. 61).

⁶⁵ See the communication of the Government of Indonesia of 28 February 1983, para. 1 (*Yearbook* . . . 1983, vol. II (Part One), p. 59, document A/CN.4/372 and Add.1 and 2).

inviolability and immunity from jurisdiction as well as the facilities granted to him.

47. Some legislative sources and bilateral treaties provide information on the required documentation and on the nationality of the diplomatic courier. In this connection, the legislation of Belize⁶⁶ and the treaty practice of Sweden and Romania⁶⁷ contain provisions to the effect that the courier shall be provided with an official document indicating his status and the number of packages constituting the bag, and that, except with the consent of the receiving State, he shall be neither a national of the receiving State nor, unless he is a national of the sending State, a permanent resident of the receiving State.

2. FACILITIES, PRIVILEGES AND IMMUNITIES ACCORDED TO THE DIPLOMATIC COURIER

48. The most recent information received from the Government of Pakistan confirms that, in the performance of his functions, the diplomatic courier is protected by the receiving State, enjoys personal inviolability and cannot be liable to any form of detention.⁶⁸

49. The treaty practice of Bulgaria, Czechoslovakia, Mongolia and the German Democratic Republic equates the status of a diplomatic courier with that of persons carrying consular bags.⁶⁹

50. With regard to *entry into the territory* of the receiving State, contemplated in draft article 16, the Government of Indonesia points out that it "grants a 'multiple entry visa', which is valid for six months, to the appointed diplomatic courier."⁷⁰ For its part, the Government of the Soviet Union, in a communication of 28 February 1983 to the United Nations Secretariat,⁷¹ points out that, under article 12 of the USSR State Frontier Act of 24 November 1982:

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.

51. The practice of Indonesia and the USSR cited above appears to be compatible with draft article 16 proposed by the Special Rapporteur.

52. With reference to *the inviolability of the temporary accommodation* of the diplomatic courier as well as of his *means of transport*, a communication from the Government of Bulgaria expresses some reservations regarding paragraph 3 of article 21 and paragraph 2 of article 22 proposed by the Special Rapporteur. Those paragraphs authorize inspection or search of the temporary accommodation or individual means of transport in very special circumstances related to the import of prohibited articles or items under quarantine. The Government of Bulgaria is of the view that those provisions:

... represent a considerable deviation from the principle of inviolability of the temporary accommodation and individual means of transport of the diplomatic courier, which is a fundamental prerequisite for the unrestricted performance of the functions of the courier. The draft should provide for the strict application of this principle and allow no digressions from it. If it were nevertheless considered appropriate to introduce some limitations to the principle of inviolability with a view to avoiding possible abuses, such limitations should be minimal. They should be applied under strictly specified conditions not going beyond those contained in the draft articles, and above all in no case should an infringement of the personal inviolability of the diplomatic courier and the inviolability of the diplomatic bag be allowed.⁷²

3. DIPLOMATIC COURIER *AD HOC*

53. Some States have included in their communications references to couriers *ad hoc*. In all cases, the diplomatic courier *ad hoc* has been equated with an ordinary diplomatic courier, with the exception that the immunities and privileges of the courier *ad hoc* cease to apply when the bag has been delivered to the consignee. Thus paragraph 6 of section 35, entitled "Freedom of communications" of the second schedule of the 1972 Consular Relations Ordinance No. 9 of Belize⁷³ reproduces paragraph 6 of the article 35 of the 1963 Vienna Convention; and paragraph 6 of article 5 of the first schedule of the 1972 Act on diplomatic and consular privileges of Pakistan⁷⁴ reproduces paragraph 6 of article 27 of the 1961 Vienna Convention. Furthermore, a communication of the Government of Hungary transmitted to the United Nations Secretariat states that the provisions applicable to a diplomatic courier apply likewise to a diplomatic courier *ad hoc* "except that the courier's personal immunities shall cease upon delivery of the diplomatic bag to the consignee."⁷⁵ The equation between a diplomatic courier *ad hoc* and an ordinary diplomatic courier appears to be in line with article 3, paragraph 1 (1), and the commentary thereto, as provisionally adopted by the Commission, to the effect that a courier *ad hoc* is a courier "for a special occasion".

⁶⁶ Sect. 35 (Freedom of communications), para 5, of the second schedule of Ordinance No. 9 of 1972 (see p. 60 above, document A/CN.4/379 and Add.1).

⁶⁷ Art. 30, para. 5, of the Consular Convention between Sweden and Romania of 12 February 1974 (to appear in United Nations, *Treaty Series*, No. 20537).

⁶⁸ Art. 5, sect. 5, of the first schedule of the 1972 Act on diplomatic and consular privileges (see p. 69 above, document A/CN.4/379 and Add.1).

⁶⁹ Art. 14, para. 3, of the Consular Convention between Czechoslovakia and Bulgaria of 16 March 1972 (United Nations, *Treaty Series*, vol. 957, p. 3); art. 14, para. 3, of the Consular Convention between Mongolia and the German Democratic Republic of 12 October 1973 (*ibid.*, vol. 949, p. 3).

⁷⁰ Communication from the Government of Indonesia, para. 2 (see footnote 65 above).

⁷¹ See *Yearbook ... 1983*, vol. II (Part One), p. 61, document A/CN.4/372 and Add.1 and 2.

⁷² Communication of the Government of Bulgaria, para. 6 (see p. 61 above, document A/CN.4/379 and Add.1).

⁷³ Communication of the Government of Belize (*ibid.*, p. 60).

⁷⁴ Communication of the Government of Pakistan (*ibid.*, p. 69).

⁷⁵ Communication of the Government of Hungary, para. 8 (*ibid.*, p. 64).

C. State practice relating to the status of the diplomatic bag

1. INDICATION OF STATUS OF THE DIPLOMATIC BAG (ART. 31)

54. The State practice here surveyed upholds the proposals of the Special Rapporteur in draft article 31 regarding the various elements constituting an indication of the status of the diplomatic bag.

55. In a memorandum of 9 May 1932 on diplomatic and consular privileges and immunities,⁷⁶ the Ministry for Foreign Affairs of Finland pointed out:

...

(3) Packages, bags, bales, valises, trunks and other similar consignments, addressed to the chief of a legation or to a legation, which the foreign diplomatic couriers bring with them, shall be admitted free of duty and without inspection, provided they are provided with proper official seals and included in the courier's list.

(4) Parcels which diplomatic couriers bring with them to a consulate of a foreign power in Finland shall be free of inspection and duty, provided they are provided with proper official seals and the courier's list states that they contain documents and letters.

56. More recent practice, whether conventional or otherwise, also makes constant mention of seals and locks as visible external marks of the diplomatic or consular bag. Thus article 2 of the agreement of 27 September 1946 between the United Kingdom and Mexico⁷⁷ provides:

... The bags shall bear the appropriate seals, and may be locked if desired, the keys resting in the custody of the respective Foreign Offices and Embassies.

The Convention between the United States of America and the United Kingdom relating to consular officers of 6 June 1951⁷⁸ provides in article 10, paragraph 3:

... Sealed consular pouches, bags and other containers shall be inviolable when they contain nothing but official communications and documents and are so certified by a responsible officer of the sending State.

57. The recent practice of Indonesia⁷⁹ and the treaty practice of Mexico⁸⁰ also insist on the need for visible

⁷⁶ Text reproduced in A. H. Feller and M. O. Hudson, ed., *A Collection of the Diplomatic and Consular Laws and Regulations of Various Countries* (Washington (D.C.), Carnegie Endowment for International Peace, 1933), vol. I, p. 510.

⁷⁷ Exchange of notes constituting an agreement for the transmission of diplomatic correspondence between London and Mexico City. See United Nations, *Treaty Series*, vol. 91, p. 161, and p. 66 above, document A/CN.4/379 and Add.1.

⁷⁸ United Nations, *Treaty Series*, vol. 165, p. 121.

⁷⁹ The circular notes of 11 April 1978 and 2 October 1980 of the Department of Foreign Affairs of the Republic of Indonesia provide that "the diplomatic bag which has been sealed is exempted from inspection". See the communication from the Indonesian Government, paragraph 3 (see footnote 65 above).

⁸⁰ See e.g. art. III of the agreement of 15 October 1921 between Mexico and Japan: "Each bag . . . must be fitted with a lock which closes properly."; art. 7 of the agreement of 15 August 1922 between Mexico and France: "The bags may be made of either leather or cloth. They shall be fitted with locks and may also be sealed with wax stamped with an official seal."; art. VI of the agreement between Mexico and Uruguay (exchange of

external marks on the bag: seals and, frequently, locks and keys. The legislation of Pakistan⁸¹ and Belize⁸² also refers specifically to the "visible external marks" of the diplomatic bag. The Islamic Republic of Iran, in a communication to the United Nations Secretariat indicating its practice with regard to the diplomatic bag, describes in detail the "visible external marks" it adopts for the easy identification of its diplomatic bags:

... Cotton and twine are used to knot the tops of the bags in the form of bundles, and the tips of the twine are passed through holes at the top of the bags, as well as a stamped and sealed identification ticket. The identification ticket, which has a specific shape and specific dimensions, bears the required information concerning the sender and the receiver.⁸³

58. A distinction should be drawn between the sealing of the bag itself and the sealing of its contents. The internal regulations of some countries provide in this connection that the correspondence within the bag be unsealed.⁸⁴ On the other hand, in connection with "classified" or "confidential" correspondence, a circular of the Mexican Foreign Service recommends that such communications:

should be marked accordingly and that they should always be sent in two envelopes, with the actual designation appearing only on the inner envelope, which must be closed securely and sealed with wax even when the correspondence in question is being sent by diplomatic bag.⁸⁵

59. The materials here surveyed confirm the need for an official document as an indication of the status of the diplomatic bag. This document may be the same as the one indicating the status of the courier, or a special one in the case of an unaccompanied bag. In both cases, however, it should contain an indication of the number of packages constituting the bag.

60. A memorandum of 7 April 1931 on exemptions from taxation and customs duties addressed by the Ministry of Foreign Affairs of the Grand Duchy of Luxembourg to the United States Embassy at Brussels⁸⁶ also refers to an official document mentioning the packages constituting the diplomatic bag. The relevant part of the memorandum reads:

Persons who make themselves known as diplomatic agents, carriers or bearers of dispatches, obtain the same exemption for the packages and other parcels bearing the seal of a legation abroad and the address of the Minister of Foreign Affairs, of a legation accredited in the Grand Duchy or of another Government, provided that these packages are mentioned in the passport of the person who presents them.

notes of 18 August and 20 September 1955): "the bags shall bear locks, padlocks or security mechanisms . . ." See the communication from the Government of Mexico, sections 4, 7 and 13 respectively (pp. 65 and 66 above, document A/CN.4/379 and Add.1).

⁸¹ See art. 5, para. 4, of the first schedule of the 1972 Act on diplomatic and consular privileges (*ibid.*, p. 69).

⁸² See section 35 (Freedom of communications), para. 4, of the second schedule of Ordinance No. 9 of 1972 (*ibid.*, p. 60).

⁸³ Communication of the Islamic Republic of Iran, paragraph 2 (*ibid.*, p. 64).

⁸⁴ See circulars Nos. A/A-85 (para. 5) and 149 (para 1(a) and (b) of the Colombian Ministry of Foreign Affairs (*ibid.*, p. 62).

⁸⁵ See the communication of the Government of Mexico, section 18 (*ibid.*, p. 67).

⁸⁶ Reproduced in Feller and Hudson, ed., *op. cit.*, vol. II, p. 791.

61. Paragraphs 5 and 7 of article 5 of the first schedule of the Pakistan Diplomatic Consular Privileges Act, 1972,⁸⁷ reproduce paragraphs 5 and 7 of article 27 of the 1961 Vienna Convention, both paragraphs referring to the official documents indicating the status of the diplomatic bag. Paragraphs 5 and 7 of Section 35 (Freedom of communications) of the second schedule of the Belize Consular Relations Ordinance No. 9 of the 1972⁸⁸ reproduce paragraphs 5 and 7 of article 35 of the 1963 Vienna Convention.

62. The Government of Indonesia, in a communication to the United Nations Secretariat,⁸⁹ points out that:

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.

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

63. It should be pointed out that many countries regulate in a precise manner the material, dimensions and maximum weight of the diplomatic bag, although this aspect appears to be left to the internal regulations of the sending State or to bilateral treaty regulations between sending and receiving States. For instance, the Mexican Ministry of Foreign Affairs states in a memorandum (para. 7):⁹⁰

The container, in other words the bag itself, may be made of a variety of materials, such as leather, canvas or cardboard.

In its treaty practice with different countries, Mexico has adopted different solutions regarding the material, dimensions and weight of the bag.⁹¹ The same may be said of Brazil.⁹² The Islamic Republic of Iran, in a communication to the United Nations Secretariat,⁹³ states:

⁸⁷ See p. 69 above, document A/CN.4/379 and Add.1.

⁸⁸ *Ibid.*, p. 60.

⁸⁹ Communication of the Government of Indonesia, paragraphs 8-9 (see footnote 65 above).

⁹⁰ Communication of the Government of Mexico, section 22 (see p. 68 above, document A/CN.4/379 and Add.1).

⁹¹ See e.g. art. 4 of the agreement of 18 February 1936 between Mexico and Poland (*idem*, sect. 9, p. 65 above):

"4. Pending agreement on other limitations for the diplomatic bags, the bag shall not exceed 20 kilograms in weight and shall measure 50 centimetres in length by 30 centimetres in height or shall have dimensions equivalent to the maximum."

Art. 4 of the agreement of 27 September 1946 between the United Kingdom and Mexico (*idem*, sect. 10, p. 66 above):

"4. In accordance with the requirements of the international postal regulations, the weight of each bag covered by this agreement shall not exceed 30 kilograms (66 lbs) and the dimensions of each bag shall not exceed 124 centimetres (49 inches) by 66 centimetres (26 inches)."

Art. IV of the agreement between Mexico and Brazil (exchange of notes of 24 February 1951 and 21 May 1952) (*idem*, sect. 12, p. 66 above):

"IV. The diplomatic bags of both countries used in air transport shall be made of canvas or such other material as experience has proved to be appropriate, and shall be a maximum of 60 centimetres long, 40 centimetres wide and, when full, 20 centimetres thick."

See also arts. III and V of the agreement of 15 October 1921 between Mexico and Japan (*idem*, sect. 4, p. 62 above); art. 6 of the agreement of 15 August 1922 between Mexico and France (*idem*, sect. 7, p. 65 above); art. IV of the agreement between Mexico and Uruguay (exchange of notes of 18 August and 20 September 1955) (*idem*, sect. 13, p. 66 above).

⁹² The agreement of 30 January 1946 between Brazil and Venezuela

In accordance with practice, the Ministry of Foreign Affairs of the Islamic Republic of Iran makes use of bags measuring 130 × 70 centimetres or 100 × 50 centimetres or 90 × 50 centimetres or 65 × 45 centimetres. The range of capacity of these bags is from 3 to 70 kilograms, but the conventional weight is about 30 kilograms.

2. CONTENT OF THE DIPLOMATIC BAG (ART. 32)

64. With reference to the contents of the diplomatic or consular bag, the practice of States surveyed tends generally to confirm, the principles laid down in article 27 of the 1961 Vienna Convention and article 35 of the 1963 Vienna Convention as well as in article 32, paragraph 1, proposed by the Special Rapporteur, to the effect that the diplomatic bag may contain only official correspondence and documents or articles intended exclusively for official use. Along these lines, for instance, are Hungary's communication to the Secretariat,⁹⁴ circular notes Nos. A/A-85 and 149 of the Ministry of Foreign Affairs of Colombia,⁹⁵ and circular No. 111-1-22 of 4 July 1961 of the Mexican Foreign Service.⁹⁶

65. Worth noting are one or two aspects regarding the contents of the diplomatic bag arising from the materials surveyed. For instance, according to Mexican administrative practice, there is no international definition of what should be considered as an object or article for official use.⁹⁷ In this connection, circular No. 111-1-22 of 4 July 1961 of the Mexican Foreign Service⁹⁸ states:

2. Not all articles intended for official use, in one way or another, by the diplomatic mission are to be regarded as articles for official use but, rather, only those whose nature warrants the granting of the special protection provided by the bag, as in the case of diplomatic papers.

3. Accordingly, articles that are obtainable commercially (such as liquor and office equipment) are not suitable articles for transport by diplomatic bag, even though they are intended for official use by a diplomatic mission.

66. Another aspect regarding the contents of the bag concerns the question whether, in special circumstances, the bag may contain correspondence other than official. The French Minister of Foreign Affairs, in answer to an inquiry made by a Member of Parliament whether it was not

provides in para. 2 (b) that the exchange of official correspondence shall be effected "in pouches of canvas or other lighter material, with a maximum weight, including the postal receptacle and the safety lock, of 5 (five) kilograms, dimensions not exceeding 0.60 by 0.40 (sixty centimetres by 40 centimetres) with a maximum thickness of twenty centimetres." (United Nations, *Treaty Series*, vol. 65, p. 112.)

⁹³ Communication of the Islamic Republic of Iran, paragraph 2 (see p. 64 above, document A/CN.4/379 and Add.1).

⁹⁴ Paragraph 5 of the communication of the Government of Hungary provides that "the packages constituting the diplomatic bag . . . may contain only diplomatic documents or articles intended for official use." (*Ibid.*, p. 64.)

⁹⁵ Circular No. A/A-85 (para. 5) provides: "The bag service is intended solely for the carriage of official correspondence." Circular No. 149 (paras. 2-3) provides: "The inclusion of valuables, drugs or any other type of article is strictly prohibited. . . . It must be borne in mind that the diplomatic bag is strictly for official use." (*Ibid.*, p. 62.)

⁹⁶ Paragraph 1 of the circular provides: "The diplomatic bag may be used only to transport diplomatic papers and articles for official use." See communication of the Government of Mexico section 20 (*ibid.*, p. 68).

⁹⁷ *Idem*, sect. 22, para. 10 (*ibid.*, p. 69).

⁹⁸ *Idem.*, sect. 20 (p. 68 above).

possible for the diplomatic bag, in exceptional circumstances, to carry the correspondence of French nationals abroad, gave the following legal opinion:⁹⁹

Article 27 of the Vienna Convention of 18 April 1961, which governs diplomatic relations between States, determines the precise limits to the use of the diplomatic bag. Thus it provides that "the packages constituting the diplomatic bag . . . may contain only diplomatic documents or articles intended for official use". It is extremely important for our country, which expects from its partners strict compliance with this rule, not to depart from it under any circumstances. Furthermore, speaking now from a practical point of view, receiving, forwarding and delivering mail for our nationals in countries with postal difficulties would pose very difficult problems for this ministerial department.

In spite of the foregoing, this legal opinion seems to give an affirmative answer to the question, if very special and specific circumstances obtain. Thus it goes on to say:

*Nevertheless it is incumbent upon the heads of diplomatic or consular missions to determine on an ad hoc basis, and respecting the above-mentioned Vienna Convention, whether the transport of such and such non-administrative mail may be envisaged simultaneously with the transport of the bag itself: this is often the case with documents whose loss would cause the sender considerable harm (notarial certificates), or again with products whose dispatch is urgently needed (medicines).**

67. Circular C-15-140 of the Mexican Foreign Service dating from 1938, which has been communicated by the Government of Mexico as material still to be considered relevant, also refers to the inclusion of private correspondence in the bag.¹⁰⁰ It states:

Although diplomatic bags should, strictly speaking, be used only for transporting official correspondence whose nature warrants such measures, they are often used for sending correspondence and even articles to individuals. The Ministry of Foreign Affairs does not wish to take drastic measures prohibiting such use of the bag and reserving it for legitimate purposes. However, pending preparation of the relevant rules, which are currently under consideration, it is recommended that when consignments are sent they should be accompanied by a consignment sheet containing an accurate description of the contents of the consignment and that the sheet should be included in the shipment in such a way that it may be inspected easily by the Ministry's Dispatch Office.

68. In connection with the dispatch of private correspondence in a diplomatic bag, circular No. A/A-85 of the Colombian Ministry of Foreign Affairs¹⁰¹ provides:

As an exceptional measure and in very special circumstances, the head of mission may give prior express authorization for the dispatch of officials' personal correspondence, in which event the envelopes must be unsealed, must not weigh more than 25 grams and must clearly indicate the address and telephone number of the addressee, who shall collect them in person from the offices of the Ministry.

The Ministry shall return all correspondence not satisfying the above requirements.

69. The materials concerning State practice here surveyed also confirm the principle that the sending State

must take appropriate measures to prevent the dispatch through its diplomatic bag of unauthorized articles and prosecute and punish any person under its jurisdiction responsible for the misuse of the diplomatic bag, as contemplated in paragraph 2 of article 32 proposed by the Special Rapporteur. Thus, for instance, the organic law of the Mexican Foreign Service forbids the illicit use of diplomatic bags by diplomatic officials, considering such behaviour as grounds for suspension from service for up to 30 days.¹⁰² Similarly, administrative circular No. 149 of the Colombian Ministry of Foreign Affairs provides that the inclusion in the diplomatic bag of valuables, drugs or any other type of articles is strictly prohibited and that any official contravening that provision will be punished in accordance with the disciplinary provisions in force. Furthermore, any irregularity in the use of the bag—use for other than official purposes—must be reported to the competent authorities.¹⁰³

3. STATUS OF THE DIPLOMATIC BAG ENTRUSTED TO THE CAPTAIN OF A COMMERCIAL AIRCRAFT, THE MASTER OF A MERCHANT SHIP OR AN AUTHORIZED MEMBER OF THE CREW (ART. 33) AND STATUS OF THE DIPLOMATIC BAG DISPATCHED BY POSTAL SERVICES OR OTHER MEANS (ART. 34)

70. The considerations contained in the Special Rapporteur's reports as well as in draft articles 33 and 34 regarding the requirements to be met in respect of the diplomatic bag and the uniform protection it must enjoy, whether delivered by a professional or *ad hoc* courier, the captain of a commercial aircraft, the master of a merchant ship or a member of the crew, or dispatched by postal services or other means, are confirmed by some of the materials recently submitted by Governments to the United Nations Secretariat.

71. In this connection, paragraph 7 of section 35 (Freedom of communications) of the second schedule of Consular Relations Ordinance No. 9 of Belize of 1972¹⁰⁴ reproduces paragraph 7 of article 35 of the 1963 Vienna Convention, and paragraph 7 of article 5 of the first schedule of the 1972 Diplomatic and Consular Privileges Act of Pakistan¹⁰⁵ reproduces paragraph 6 of article 27 of the 1961 Vienna Convention. In accordance with those provisions, a diplomatic or consular bag may be entrusted to the master of a ship or the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a diplomatic or consular courier. As to the status of the bag, by arrangement with the appropriate local authorities, the diplomatic mission or consular post may send one of its members to take possession of the bag

⁹⁹ *Annuaire français de droit international*, 1980 (Paris), vol. XXVI, p. 961.

¹⁰⁰ See the communication of the Government of Mexico, section 19 (p. 68 above, document A/CN.4/379 and Add.1).

¹⁰¹ See the communication of the Government of Colombia (*ibid.*, p. 62).

¹⁰² Article 48 (c) and article 59 (b) of the organic law; see the communication of the Government of Mexico, section 14 (*ibid.*, p. 67).

¹⁰³ Paragraphs 2 and 4 of the circular; see the communication of the Government of Colombia (*ibid.*, p. 62).

¹⁰⁴ See the communication of the Government of Belize (*ibid.*, p. 60).

¹⁰⁵ See the communication of the Government of Pakistan (*ibid.*, p. 69).

directly and freely from the master of the ship or the captain of the aircraft.

72. With regard to the various ways in which a diplomatic or consular bag may be delivered and the uniformity of the status of the bag whatever the means of delivery, a provision contained in a memorandum of the Mexican Ministry of Foreign Affairs is worth noting. It is therein stated (para. 4)¹⁰⁶ that at present the diplomatic bag is normally transported as air freight and dealt with as such. It is also brought into the country by diplomatic couriers, bearing diplomatic passports, or by the captains of aircraft. However, there are no restrictions whatsoever on the way in which the bag is transported, which may be a delivery service, by the postal service or by a carrier (employing ships, buses or aircraft), etc. With reference to the transportation of the diplomatic bag by air, the Government of Colombia has pointed out¹⁰⁷ that "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".

4. INVIOABILITY OF THE DIPLOMATIC BAG (ART. 36)

73. The present survey of State practice tends generally to confirm the principle that the diplomatic bag may not be opened or detained and that it shall be exempt from customs and other inspection, as proposed in articles 36 (para. 1) and 37 submitted by the Special Rapporteur. In this connection, mention could be made of, for instance, Pakistani legislation,¹⁰⁸ Mexican administrative instructions,¹⁰⁹ Colombian circulars,¹¹⁰ Malawian practice,¹¹¹ Hungarian practice,¹¹² Indonesian practice,¹¹³ and Syrian practice.¹¹⁴

¹⁰⁶ See the communication of the Government of Mexico, section 22 (*ibid.*, p. 68).

¹⁰⁷ See the communication of the Government of Colombia of 18 February 1983, paragraph 2 (*Yearbook* . . . 1983, vol. II (Part One), p. 58, document A/CN.4/372 and Add.1 and 2).

¹⁰⁸ Article 5, paragraph 3, of the first schedule of the Diplomatic and Consular Privileges Act, 1972, provides: "The diplomatic bag shall not be opened or detained." (See the communication of the Government of Pakistan, p. 69 above, document A/CN.4/379 and Add.1.)

¹⁰⁹ The memorandum of 10 September 1981 of the Legal Counsel of the Mexican Ministry of Foreign Affairs states that "in no circumstances may or should a bag or package bearing an adequate diplomatic identification be opened." (See the communication of the Government of Mexico, section 21, p. 68 above.) A memorandum of 19 January 1982 of the Ministry of Foreign Affairs (para. 8) states: "The diplomatic bag must not be opened, detained or subjected to any type of inspection." (*Idem*, sect. 22, p. 68 above.)

¹¹⁰ The provisions of article 27 of the 1961 Vienna Convention and those of article 35 of the 1963 Vienna Convention were incorporated in Colombian legislation by Act No. 6 of 1972 and Act No. 17 of 1971 respectively. (See the communication of the Government of Colombia, p. 61 above.)

¹¹¹ In its communication of 18 January 1983, the Government of Malawi states that it "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." (*Yearbook* . . . 1983, vol. II (Part One), p. 60, document A/CN.4/372 and Add.1 and 2.)

¹¹² The Government of Hungary indicates in its communication (paras. 4 and 7) that "the Hungarian customs and revenue organs similarly act in accordance with article 27 of the 1961 Vienna Convention, which was promulgated in Hungary by Law-Decree No. 21 of 1965", and that, con-

74. It is to be noted, however, that the Government of the United Arab Emirates states in its communication¹¹⁵ that no legislation has as yet been enacted in the matter and that no judicial decisions have been rendered by the national courts. In practice, the Ministry of Foreign Affairs of the United Arab Emirates, in accordance with articles 27 and 41 of the 1961 Vienna Convention, in a case where there is suspicion as to the contents of the diplomatic bag, offers the diplomatic mission concerned one of two options: to have the diplomatic bag opened by the proper authorities and in the presence of a member of the mission and a member of the Ministry of Foreign Affairs of the United Arab Emirates, or to have the diplomatic bag returned to the place from which it was originally sent.

75. Faced with a case in which the receiving State, invoking reasons of strong suspicion of violation of currency control measures, ordered a diplomatic bag to be opened, the Government of Sweden strongly protested in the following terms:

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 the customary 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.¹¹⁶

76. The administrative regulations of some countries, while fully endorsing the concept that a diplomatic bag may not be opened or detained, provide for a special régime for the consular bag, in accordance with article 35 of the 1963 Vienna Convention. Thus the Mexican Ministry of Foreign Affairs expressly states in a note on the subject (paras. 11 and 13)¹¹⁷ that, in contrast to the diplomatic bag, the consular bag "has fewer privileges", and that:

sequently, "the diplomatic bag must not be opened or detained". (See p. 64 above, document A/CN.4/379 and Add.1.)

¹¹³ The circular notes of 11 April 1978 and 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". (See the communication of the Government of Indonesia, paragraph 3 (see footnote 65 above).)

¹¹⁴ The communication of the Government of the Syrian Arab Republic states:

"The Syrian laws and regulations relevant to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier are consistent with the 1961 Vienna Convention. That is to say, the Syrian airport authorities permit the diplomatic courier to hand over the diplomatic bags directly to the representative of the diplomatic mission, who has direct access to the tarmac. Moreover, the unaccompanied diplomatic bag is delivered to the representative of the diplomatic mission at the customs desk."

(See p. 69 above, document A/CN.4/379 and Add.1.)

¹¹⁵ *Ibid.*, p. 70.

¹¹⁶ See the communication of the Government of Sweden of 24 January 1983 (*Yearbook* . . . 1983, vol. II (Part One), p. 61, document A/CN.4/372 and Add.1 and 2).

The chief restriction to which the consular bag is subject is that, in cases where it is thought to contain articles other than correspondence, it may be opened in the presence of an authorized representative of the sending State, who may refuse to permit the bag to be opened, in which case it is returned to its place of origin. Should a situation arise in which it is considered necessary to request that a consular bag be opened, it is desirable to inform the Ministry of Foreign Affairs and the General Protocol Office, in addition to the foreign mission concerned, in order to settle any possible dispute.

Similarly, article 3 of the 1974 Consular Convention between Sweden and Romania,¹¹⁸ reproduces paragraph 3 of article 35 of the 1963 Vienna Convention regarding the possibility, in case of serious reasons, of requesting the opening of the bag or its return to its place of origin.

77. On the other hand, the treaty practice of some countries appears to equate the treatment given to the diplomatic bag *stricto sensu* and that given to the consular bag. Thus, for instance, article 14, paragraph 2, of the 1973 Consular Convention between Mongolia and the German Democratic Republic¹¹⁹ provides that:

2. Official correspondence of the consular post, and the consular bag, bearing visible marks of their official character shall be inviolable and shall be neither inspected nor detained by the authorities of the receiving State, irrespective of the means of communication employed.

Likewise, article 14, paragraph 2, of the 1972 Consular Convention between Czechoslovakia and Bulgaria¹²⁰ provides that:

2. The official correspondence of a consular post, regardless of the means of communication used, and sealed bags bearing visible external marks of their official character shall be inviolable, shall not be subject to inspection and shall not be detained by the authorities of the receiving State.

78. Special mention must be made of the question of the electronic screening of the diplomatic bag, without opening it. In the view of some writers and even according to the practice of some States, this procedure would not infringe the inviolability of the diplomatic bag laid down by the 1961 Vienna Convention. For example, the Austrian Ministry of Foreign Affairs, in a circular letter addressed to the diplomatic missions accredited to Austria, expressed the view that, since the inspection might not consist in manual search, electronic screening would be admissible under the 1961 Vienna Convention.¹²¹ In its communication of 6

¹¹⁷ See the communication of the Government of Mexico, section 22 (p. 68 above, document A/CN.4/379 and Add.1).

¹¹⁸ To appear in United Nations, *Treaty Series*, No. 20537.

¹¹⁹ United Nations, *Treaty Series*, vol. 949, p. 3.

¹²⁰ *Ibid.*, vol. 957, p. 3.

¹²¹ See the communication of the Government of Austria of 19 February 1982, section B (*Yearbook* . . . 1982, vol. II (Part One), p. 233, document A/CN.4/356 and Add.1-3).

January 1984,¹²² the Government of Austria states:

The inspection pertaining to the treatment of the diplomatic courier and the diplomatic bag transmitted with Notes 843-A/82 of 19 February 1982 is still valid. However, the procedure regarding the X-ray screening of the diplomatic bag has been abolished in the light of the changed security situation. Only if the diplomatic bag is not transported by the national airline may an X-ray screening take place upon the request of the airline undertaking the shipment.

79. The State practice surveyed above is somewhat at variance with the principle contained in paragraph 1 of article 36 proposed by the Special Rapporteur regarding electronic screening of the bag:

Article 36. Inviolability of the diplomatic bag

1. The diplomatic bag shall be inviolable at all times and wherever it may be in the territory of the receiving State or the transit State; unless otherwise agreed by the States concerned, it shall not be opened or detained and shall be exempt from any kind of examination directly or *through electronic** or other mechanical devices.

5. EXEMPTION FROM CUSTOMS DUTIES AND ALL DUES AND TAXES (ART. 38)

80. The State practice here surveyed confirms the general trend pointed out by the Special Rapporteur on exemption of the diplomatic bag from customs duties, dues and taxes, as reflected in draft article 38.

81. Article 8 of the agreement of 15 August 1922 between Mexico and France¹²³ provides:

The bags and accompanying packages shall not be liable to any form of inspection and shall be exempt from customs duties.

Likewise, article 6 of the agreement of 27 December 1946 between Mexico and Guatemala¹²⁴ provides:

The diplomatic bags of both countries shall be transported with total exemption from taxes, duties or charges of any kind. . . .

In a memorandum on 19 January 1982 of the Mexican Ministry of Foreign Affairs concerning the implementation of the new Customs Act in regard to diplomatic bags, it is stated (para. 9):¹²⁵

No special permit or licence is required in order to import the diplomatic bag. The latter is exempt from all customs duties, taxes and related charges other than charges for storage, cartage and similar services.

¹²² See p. 60 above, document A/CN.4/379 and Add.1.

¹²³ See the communication of the Government of Mexico, section 7 (p. 65 above).

¹²⁴ *Idem*, sect. 11 (p. 66 above).

¹²⁵ *Idem*, sect. 22 (p. 68 above).

IV. Consideration of the draft articles at the thirty-sixth session of the Commission

82. The work of the Commission at its thirty-sixth session will be greatly facilitated by the fact that it has at its disposal the complete set of draft articles on the topic. This set was already contained in the fourth report,¹²⁶ submitted by the Special Rapporteur at the thirty-fifth session of the Commission, in 1983.

83. Pursuant to a decision taken at its thirty-fifth session,¹²⁷ the Commission should first resume its debate on draft article 20 to 23 before referring them to the Drafting

Committee. The Commission should then proceed to the consideration of the other draft articles submitted in the fourth report: those relating to the status of the diplomatic courier (arts. 24 to 29), to the status of the captain of a commercial aircraft or the master of a merchant ship entrusted with the transport and delivery of a diplomatic bag (art. 30), to the status of the diplomatic bag (arts. 31 to 39), and to miscellaneous provisions (arts. 40 to 42).

84. It is to be hoped that, as suggested by several representatives during the discussion in the Sixth Committee of the General Assembly (see para. 8 above), the Commission may be able to finalize the first reading of the complete set of draft articles at its thirty-sixth session.

¹²⁶ See footnote 3 (b) (iv) above.

¹²⁷ *Yearbook . . . 1983*, vol. II (Part Two), p. 53, para. 189.