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**Report of the Working Group on the status of the diplomatic courier and the diplomatic bag  
not accompanied by diplomatic courier**

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

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## Chapter VI

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

#### A. Introduction

149. The Commission started its consideration of the topic "Proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier" at its twenty-ninth session, pursuant to General Assembly resolution 31/76 of 13 December 1976.

150. At its thirtieth session, the Commission approved the result of the study undertaken by a Working Group on the subject and submitted it to the General Assembly at its thirty-third session, in 1978.<sup>788</sup> At that session the Assembly discussed the results of the Commission's work in the Sixth Committee under two separate agenda items, namely, "Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961: Report of the Secretary-General" (item 116) and "the Report of the International Law Commission" (item 114).

151. On 19 December 1978, the General Assembly adopted, without a vote, resolution 33/139 on the latter item. In section I, paragraph 5, of that resolution, the Assembly recommended:

... that the International Law Commission should continue the study, including those issues it has already identified, concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, in the light of comments made during the debate on this item in the Sixth Committee at the thirty-third session of the General Assembly and comments to be submitted by Member States, with a view to the possible elaboration of an appropriate legal instrument . . .

It also invited all States to submit written comments on the preliminary study carried out by the Commission on the subject, for their inclusion in the Commission's report on the work of its thirty-first session.

152. With regard to the former agenda item, the Assembly adopted without a vote, on the same day, resolution 33/140. In a preambular paragraph, the Assembly noted

"with appreciation the study by the International Law Commission of the proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, which could constitute a further development of international diplomatic law",

and in operative paragraph 5, decided

... that the General Assembly will give further consideration to this question and expresses the view that, unless Member States indicate the desirability of an earlier consideration, it would be appropriate to do so

<sup>788</sup> See *Yearbook . . . 1978*, vol. II (Part Two), pp. 138-147, document A/33/10, paras. 137-144. The report of the Working Group is hereinafter referred to as "1978 Report".

when the International Law Commission submits to the Assembly the results of its work on the possible elaboration of an appropriate legal instrument on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.

153. At the current session, at its 1546th meeting on 6 June 1979, the Commission again established a Working Group on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, composed of the following members: Mr. Alexander Yankov (Chairman), Mr. Emmanuel Kodjoe Dadzie, Mr. Leonardo Díaz González, Mr. Jens Evensen, Mr. Laurel B. Francis, Mr. Willem Riphagen, Mr. Sompong Sucharitkul, Mr. Abdul Hakim Tabibi, Mr. Doudou Thiam and Mr. Nikolai Ushakov. The Working Group held three meetings, on 17, 24 and 27 July 1979.

154. The Working Group had before it comments by States received by the Secretariat pursuant to section I, paragraph 5, of resolution 33/139 and paragraph 3 of resolution 33/140 of the General Assembly (A/CN.4/321 and Add.1-5) and a working paper prepared by the Secretariat<sup>789</sup> containing an analytical summary of the general views of Governments on the elaboration of a protocol on the subject and comments and observations of Governments, as well as the Commission's own observations, on specific issues relating to the subject.

155. On the basis of the documents mentioned in the preceding paragraph as well as other relevant material, the Working Group studied issues concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The result of this study is set out in sections B to D below. Section B gives an analysis of the general views on the elaboration of a protocol on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, expressed by Governments after the submission by the Commission of the result of its preliminary study on the topic in 1978. Section C contains summaries of comments and proposals made by Governments since 1976 on specific issues relating to the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. These summaries, together with the Commission's own observations, are grouped under each of the 19 headings which the Commission tentatively identified in 1978.<sup>790</sup> Section D reproduces certain issues which the Working Group examined during the current session and considered necessary to be studied.

<sup>789</sup> A/CN.4/WP.4. The main contents of the working paper provided a basis for the report of the Working Group (A/CN.4/L.310), which was subsequently incorporated, with changes, into this chapter.

<sup>790</sup> *Yearbook . . . 1978*, vol. II (Part Two), p. 139, document A/33/10, para. 143.

## B. General views on the elaboration of a protocol

156. Many Governments<sup>791</sup> expressed the view that the work of the Commission on the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier had shown that written legal rules on that question were either non-existent or quite inadequate. They stressed the need to elaborate a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. A number of these Governments considered that the Commission should undertake the task of its elaboration. They also thought that the Commission's work constituted a good basis for further efforts.

157. Many other Governments,<sup>792</sup> without referring to the work done by the Commission, also expressed the view that the existing conventions relating to the question were incomplete and that an additional protocol should therefore be elaborated.

<sup>791</sup> Algeria (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 18th meeting, para. 20; and ibid., Sessional fascicle, corrigendum*); Argentina (*ibid., Sixth Committee, 40th meeting, para. 44; and ibid., Sessional fascicle, corrigendum*); Bulgaria (*ibid., Sixth Committee, 19th meeting, para. 6, and 40th meeting, para. 31; and ibid., Sessional fascicle, corrigendum*); Byelorussian SSR (*ibid., Sixth Committee, 17th meeting, para. 7, and 39th meeting, para. 37; and ibid., Sessional fascicle, corrigendum*); Cyprus (*ibid., Sixth Committee, 16th meeting, para. 7; and ibid., Sessional fascicle, corrigendum*); Czechoslovakia (*ibid., Sixth Committee, 41st meeting, para. 58; and ibid., Sessional fascicle, corrigendum*); Germany, Federal Republic of (*ibid., Sixth Committee, 19th meeting, para. 33; ibid., Sessional fascicle, corrigendum; and A/CN.4/321 and Add.1-7 (reproduced in Yearbook . . . 1979, vol. II (Part One))*); Hungary (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 15th meeting, para. 12, and 36th meeting, para. 19; ibid., Sessional fascicle, corrigendum; and A/CN.4/321 and Add.1-7*); India (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 19th meeting, para. 55; and ibid., Sessional fascicle, corrigendum*); Kenya (*ibid., Sixth Committee, 38th meeting, para. 54; and ibid., Sessional fascicle, corrigendum*); Libyan Arab Jamahiriya (*ibid., Sixth Committee, 18th meeting, para. 31; and ibid., Sessional fascicle, corrigendum*); Mongolia (*ibid., Sixth Committee, 15th meeting, para. 4, and 41st meeting, para. 24; and ibid., Sessional fascicle, corrigendum*); Singapore (*ibid., Sixth Committee, 43rd meeting, para. 42; and ibid., Sessional fascicle, corrigendum*); Ukrainian SSR (*ibid., Sixth Committee, 18th meeting, para. 17; and ibid., Sessional fascicle, corrigendum*); USSR (*ibid., Sixth Committee, 14th meeting, para. 15, 37th meeting, para. 34, and 42nd meeting, para. 26; ibid., Sessional fascicle, corrigendum; and A/CN.4/321 and Add.1-7*).

<sup>792</sup> Afghanistan (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 19th meeting, para. 42; and ibid., Sessional fascicle, corrigendum*); Colombia (*ibid., Sixth Committee, 17th meeting, para. 9; and ibid., Sessional fascicle, corrigendum*); Cuba (*ibid., Sixth Committee, 19th meeting; ibid., Sessional fascicle, corrigendum; and A/CN.4/321 and Add.1-7*); Democratic Yemen (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 19th meeting, para. 58; and ibid., Sessional fascicle, corrigendum*); Egypt (*ibid., Sixth Committee, 17th meeting, para. 33; and ibid., Sessional fascicle, corrigendum*); Ethiopia (*ibid., Sixth Committee, 15th meeting, para. 16; and ibid., Sessional fascicle, corrigendum*); German Democratic Republic (*ibid., Sixth Committee, 16th meeting, para. 2; and ibid., Sessional fascicle, corrigendum*); Iran (*ibid., Sixth Committee, 19th meeting, para. 38; and ibid., Sessional fascicle, corrigendum*); Iraq (*ibid., Sixth Committee, 18th meeting, para. 3; and ibid., Sessional fascicle, corrigendum*); Poland (*ibid., Sixth Committee, 18th meeting, para. 8, and 38th meeting, para. 8; and ibid., Sessional fascicle, corrigendum*); Rwanda (*ibid., Sixth Committee, 41st meeting, para. 7; and ibid., Sessional fascicle, corrigendum*); Swaziland (*ibid., Sixth Committee, 45th meeting, para. 36; and ibid., Sessional fascicle, corrigendum*); Uganda (*ibid., Sixth Committee, 19th meeting, para. 60; and ibid., Sessional fascicle, corrigendum*).

158. Certain Governments,<sup>793</sup> in favour of elaborating such a protocol, attached special importance to the question of the status of the diplomatic bag not accompanied by diplomatic courier.

159. One Government<sup>794</sup> stated that it could consider the possibility of drafting such a protocol if its preamble acknowledged that the 1961 Vienna Convention on Diplomatic Relations<sup>795</sup> was imperfect and that it needed to be fully and substantially revised in order to correct its defects.

160. A few Governments<sup>796</sup> took the view that the study of the question of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier should be pursued by the Commission or by the Sixth Committee. Certain others<sup>797</sup> stated that they would not oppose further consideration of the subject by the Commission if other Governments insisted.

161. On the other hand, several Governments<sup>798</sup> considered that the existing conventions dealt with the subject adequately and there was no need to elaborate an additional protocol on it. They generally emphasized that what was more important was stricter compliance with the provisions of the relevant conventions. One Government<sup>799</sup> stated that no urgency attached to the question.

162. Certain Governments<sup>800</sup> considered that the best course would be to wait until the Commission had completed its work on the subject before deciding what further action should be taken.

<sup>793</sup> Costa Rica (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 19th meeting, para. 57; and ibid., Sessional fascicle, corrigendum*); Ethiopia (*ibid., Sixth Committee, 15th meeting, para. 16; and ibid., Sessional fascicle, corrigendum*); Germany, Federal Republic of (*A/CN.4/321 and Add.1-7*).

<sup>794</sup> Tunisia (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 18th meeting, para. 14; and ibid., Sessional fascicle, corrigendum*).

<sup>795</sup> See foot-note 801 below.

<sup>796</sup> Austria (*A/CN.4/321 and Add.1-7*); Costa Rica (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 19th meeting, para. 57; and ibid., Sessional fascicle, corrigendum*).

<sup>797</sup> Canada (*ibid., Sixth Committee, 16th meeting, para. 15; and ibid., Sessional fascicle, corrigendum*); Italy (*ibid., Sixth Committee, 17th meeting, para. 16; and ibid., Sessional fascicle, corrigendum*).

<sup>798</sup> Austria (*ibid., Sixth Committee, 37th meeting, para. 6; and ibid., Sessional fascicle, corrigendum*); Canada (*ibid., Sixth Committee, 16th meeting, para. 15; ibid., Sessional fascicle, corrigendum; and A/CN.4/321 and Add.1-7*); Italy (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 17th meeting, para. 16; and ibid., Sessional fascicle, corrigendum*); Japan (*ibid., Sixth Committee, 19th meeting, paras. 51-52; and ibid., Sessional fascicle, corrigendum*); Kuwait (*A/CN.4/321 and Add.1-7*); Netherlands (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 19th meeting, paras. 14-15; and ibid., Sessional fascicle, corrigendum*); Spain (*ibid., Sixth Committee, 15th meeting, para. 7; and ibid., Sessional fascicle, corrigendum*); Switzerland (*A/CN.4/321 and Add.1-7*); United Kingdom (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 15th meeting, para. 20; ibid., Sessional fascicle; and A/CN.4/321 and Add.1-7*); United States (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 18th meeting, para. 27, and 40th meeting, para. 11; and ibid., Sessional fascicle, corrigendum*); Uruguay (*ibid., Sixth Committee, 19th meeting, para. 24; and ibid., Sessional fascicle, corrigendum*); Venezuela (*ibid., Sixth Committee, 19th meeting, para. 22, and 43rd meeting, para. 18; and ibid., Sessional fascicle, corrigendum*).

<sup>799</sup> Israel (*ibid., Sixth Committee, 41st meeting, para. 34; and ibid., Sessional fascicle, corrigendum*).

<sup>800</sup> France (*ibid., Sixth Committee, 20th meeting, para. 3; and ibid., Sessional fascicle, corrigendum*); Japan (*ibid., Sixth Committee, 19th meeting, para. 53; and ibid., Sessional fascicle, corrigendum*).

## C. Comments and proposals relating to possible elements of a protocol

### 1. DEFINITION OF "DIPLOMATIC COURIER"

#### (1) *Observations of the Commission*

No definition of "diplomatic courier" as such is found in the existing conventions.<sup>801</sup> However, the following provisions may be considered as containing elements for a possible definition.

(a) 1961 Vienna Convention (article 27, paragraphs 1 and 5):

1. . . . In communicating with the Government and the other missions and consulates of the sending States, wherever situated, the mission may employ all appropriate means, including diplomatic couriers . . .

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag . . .

(b) 1963 Vienna Convention (article 35, paragraphs 1 and 5):

1. . . . In communicating with the Government of the sending State, missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, . . .

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag . . .

(c) Convention on Special Missions (article 28, paragraphs 1, 3 and 6):

1. . . . In communicating with the Government of the sending State, its diplomatic missions, its consular posts and its other special missions or with sections of the same mission, wherever situated, the special mission may employ all appropriate means, including couriers . . .

3. Where practicable, the special mission shall use the means of communication, including . . . the courier, of the permanent diplomatic mission of the sending State.

6. The courier of the delegation, who shall be provided with an official document indicating his status and the number of packages constituting the bag . . .

(d) 1975 Vienna Convention (article 27, paragraphs 1 and 5, and article 57, paragraphs 1, 3 and 6):

#### *Article 27*

1. . . . In communicating with the Government of the sending State, its permanent diplomatic missions, consular posts, permanent missions, permanent observer missions, special missions, delegations and observer delegations, wherever situated, the mission may employ all appropriate means, including couriers . . .

5. The courier of the mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag . . .

#### *Article 57*

1. . . . In communicating with the Government of the sending State, its permanent diplomatic missions, consular posts, permanent missions,

permanent observer missions, special missions, other delegations and observer delegations, wherever situated, the delegation may employ all appropriate means, including couriers . . .

3. Where practicable, the delegation shall use the means of communication, including . . . the courier, of the permanent diplomatic mission, of a consular post, of the permanent mission or of the permanent observer mission of the sending State.

6. The courier of the delegation, who shall be provided with an official document indicating his status and the number of packages constituting the bag . . . (1978 Report.)<sup>802</sup>

#### (2) *Comments of Governments*

(a) The diplomatic courier is a person carrying the diplomatic bag of a diplomatic mission communicating with its Government or other missions of the sending State, wherever situated. (*Official Records of the General Assembly, Thirty-first Session, Sixth Committee, 65th meeting, para. 41; and ibid., Sessional fascicle, corrigendum.*)

(b) A diplomatic courier is a person authorized to deliver the diplomatic bag in relations between a diplomatic mission and the Government of its country, as well as between other missions and consulates of that Government, regardless of where they are situated. He shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag. (A/33/224, Annex, p. 65.)

(c) It would also be desirable to include in the protocol provisions to the effect that the meaning of the terms "diplomatic courier" and "diplomatic bag" will, where necessary, be assimilated to that of the terms "consular courier" and "consular bag", used in article 35 of the 1963 Vienna Convention; "courier of the special mission" and "bag of the special mission", used in article 28 of the Convention on Special Missions; and "courier of the mission", "bag of the mission", "courier of the delegation" and "bag of the delegation" used in articles 27 and 57 of the 1975 Vienna Convention. (*Ibid.*, p. 68.)

(d) The diplomatic courier is the person responsible for delivering the diplomatic bag. (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 17th meeting, para. 12; and ibid., Sessional fascicle, corrigendum.*)

(e) The expression may be said to have the following meaning: "diplomatic courier" means the person who, duly authorized by his Government, is responsible for the custody and physical transport of the diplomatic bag, or for transmitting an oral message from the sending State to the premises of the appropriate mission or office in the receiving State. However, this issue should be linked to item 13 [below], concerning the definition of "diplomatic bag". Furthermore, and for the sake of completeness, whatever definitions clause is drafted should also envisage the definition of "transit State" and "receiving State". (A/CN.4/321 and Add.1-7, Chile, para. 1.)

### 2. FUNCTION OF THE DIPLOMATIC COURIER

#### (1) *Observations of the Commission*

The provisions of the existing conventions mentioned under heading (1) above are also relevant under this heading. Some members stressed the need to make it clear that the function of the courier was that of the State and

<sup>801</sup> The words "existing conventions" as used here mean the Vienna Convention on Diplomatic Relations (referred to as "1961 Vienna Convention"), the Vienna Convention on Consular Relations (referred to as "1963 Vienna Convention"), the Convention on Special Missions, and the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character (referred to as "1975 Vienna Convention"). For the texts of these Conventions, see respectively United Nations, *Treaty Series*, vol. 500, p. 95; *ibid.*, vol. 596, p. 261; Annex to General Assembly resolution 2530 (XXIV); and *Official Records of the United Nations Conference on the Representation of States in Their Relations with International Organizations*, vol. II, *Documents of the Conference* (United Nations publication, Sales No. E.75.V.12), p. 207.

<sup>802</sup> See foot-note 788 above.

not of the individual. It was also pointed out that the function of the courier was not limited to the carrying of diplomatic bags; he might also carry messages orally. (1978 Report.)

(2) *Comments of Governments*

The existing multilateral conventions provide guidelines for defining the functions of the diplomatic courier. In performing his specific tasks, the diplomatic courier becomes the appropriate means used by a State to contact, in a safe and solemn manner, the particular diplomatic mission, consular office, permanent observer mission, special mission, or observer delegation which calls for its attention at the time. In practice, therefore, the courier has a number of functions, and hence the definition should be broad and flexible, rather than narrow and restricted to a list of various activities. (A/CN.4/321 and Add.1-7, Chile, para. 2.)

3. MULTIPLE APPOINTMENT OF THE DIPLOMATIC COURIER

(1) *Observations of the Commission*

No provision is found in the existing conventions. (1978 Report.)

(2) *Comments of Governments*

There would appear to be no objection to the multiple appointment of the diplomatic courier, if circumstances necessitate it. (A/CN.4/321 and Add. 1-7, Chile, para. 3.)

4. PRIVILEGES AND IMMUNITIES OF THE DIPLOMATIC COURIER (GENERAL)

(1) *Observations of the Commission*

On the general question of the privileges and immunities to be granted to the diplomatic courier, certain members stressed the importance of according the fullest possible diplomatic status to the courier, whereas others took the view that such privileges and immunities should be strictly limited to the needs of his functions.

In connexion with the same general question, it was pointed out that the existing conventions did not cover cases where the courier had another status as well, such as that of a diplomatic agent or consular officer. (1978 Report.)

(2) *Comments of Governments*

(a) Special attention should be given to such questions as the exemption of couriers from customs duties and charges. (A/31/145, p. 14.)

(b) Where a diplomatic mission receives or dispatches mail via a diplomatic courier, the latter shall, in the territory of the receiving State, enjoy all the privileges and immunities of a diplomatic agent set forth in articles 29-36 of the 1961 Vienna Convention. (*Ibid.*, p. 16.)

(c) The diplomatic courier should be entitled to enjoy at least some of the privileges and immunities of a diplomatic agent. (*Official Records of the General Assembly, Thirty-first Session, Sixth Committee, 65th meeting, para. 37; and ibid., Sessional fascicle, corrigendum.*)

(d) The protocol should provide for all the privileges and immunities granted to diplomatic representatives.

(*Ibid., Sixth Committee, 65th meeting, para. 42, and ibid., Sessional fascicle, corrigendum; A/CN.4/321 and Add.1-7, Czechoslovakia; ibid., Hungary; ibid., USSR.; Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 41st meeting, para. 58, and ibid., Sessional fascicle, corrigendum.*)

(e) Privileges and immunities should be granted to the diplomatic courier only to the extent necessary for the performance of his functions. (A/CN.4/321 and Add.1-7, Chile, para. 4; *ibid.*, Federal Republic of Germany.)

(f) No sufficient justification can be found for the exceptions made in article 27, paragraphs 6 and 7, or for the general rule contained in paragraph 5, of the 1961 Vienna Convention. The protocol should make it clear that the person carrying the bag was independent of the bag itself, so as to ensure that any measure taken by any State against the former was not extended to the latter. (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 17th meeting, para. 13, and ibid., Sessional fascicle, corrigendum.*)

4 (a). PERSONAL INVIOLEABILITY

(1) *Observations of the Commission*

The existing conventions contain the following provisions:

(a) 1961 Vienna Convention (article 27, paragraph 5):

5. ... He [the diplomatic courier] shall enjoy personal inviolability ...

(b) 1963 Vienna Convention (article 35, paragraph 5):

5. ... He [the consular courier] shall enjoy personal inviolability ...

(c) Convention on Special Missions (article 28, paragraph 6):

6. ... He [the courier of the special mission] shall enjoy personal inviolability ...

(d) 1975 Vienna Convention (article 27, paragraph 5, and article 57, paragraph 6):

*Article 27*

5. ... He [the courier of the mission] shall enjoy personal inviolability ...

*Article 57*

6. ... He [the courier of the delegation] shall enjoy personal inviolability ... (1978 Report.)

(2) *Comments of Governments*

(a) The diplomatic courier shall enjoy personal inviolability and shall not be liable to any form of arrest or detention. Where a diplomatic mission receives or dispatches mail via a diplomatic courier, the receiving State shall take all appropriate steps to prevent any infringement of the courier's person, freedom or dignity. (A/31/145, pp. 16-17; A/31/145/Add.1, p. 2; A/33/224, p. 66; A/CN.4/321 and Add.1-7, Czechoslovakia.)

(b) Since violations of the 1961 Vienna Convention continued to occur, it was felt necessary to supplement article 27 thereof by more precise provisions concerning the inviolability of diplomatic couriers, bearing in mind the technology currently employed for customs and border inspections. (*Official Records of the General Assembly, Thirty-first Session, Sixth Committee, 65th meeting, para. 32, and ibid., Sessional fascicle, corrigendum.*)

(c) The Commission should concentrate its attention on steps which would increase the effectiveness of the principle of inviolability of the diplomatic courier. (A/33/224, p. 60.)

#### 4 (a) (i). IMMUNITY FROM ARREST OR DETENTION

##### (1) *Observations of the Commission*

The existing conventions provide as follows:

(a) 1961 Vienna Convention (article 27, paragraph 5):

5. . . . He [the diplomatic courier] . . . shall not be liable to any form of arrest or detention.

(b) 1963 Vienna Convention (article 35, paragraph 5):

5. . . . He [the consular courier] . . . shall not be liable to any form of arrest or detention.

(c) Convention on Special Missions (article 28, paragraph 6):

6. . . . He [the courier of the special mission] . . . shall not be liable to any form of arrest or detention.

(d) 1975 Vienna Convention (article 27, paragraph 5 and article 57, paragraph 6):

##### *Article 27*

5. . . . He [the courier of the mission] . . . shall not be liable to any form of arrest or detention.

##### *Article 57*

6. . . . He [the courier of the delegation] . . . shall not be liable to any form of arrest or detention. (1978 Report.)

##### (2) *Comments of Governments*

The diplomatic courier shall not be liable to any form of arrest or detention. (A/31/145, p. 16; A/31/145/Add.1, p. 2; A/33/224, Annex, p. 64; A/CN.4/321 and Add.1-7, USSR.)

#### 4 (a) (ii). EXEMPTION FROM PERSONAL EXAMINATION OR CONTROL

##### (1) *Observations of the Commission*

No provision is contained in the existing conventions. (1978 Report.)

##### (2) *Comments of Governments*

(a) The diplomatic courier shall not be subject to any personal inspection or control of any kind, including inspection or control with the use of technical means. (A/31/145, pp. 6 and 17).

(b) The diplomatic courier, in the performance of his official duties, shall be exempt from the personal examination carried out at airports with a view to ensuring the safety of civil aviation, as well as from examination carried out at a distance by means of technical devices. (A/33/224, p. 67).

(c) The protocol should provide for the exemption of the diplomatic courier from personal examination or control. (*Official Records of the General Assembly, Thirty-first Session, Sixth Committee, 65th meeting, para. 42, and ibid., Sessional fascicle, corrigendum; A/CN.4/321 and Add.1-7, USSR; ibid., Hungary.*)

(d) There is no need to make specific provision for the exemption of the diplomatic courier from personal examination . . . because the task of the courier is of a correspondence rather than of a diplomatic representa-

tive character, and thus one should avoid causing undue difficulties to the host country. (*Ibid.*, Kuwait.)

#### 4 (a) (iii). EXEMPTION FROM INSPECTION OF PERSONAL BAGGAGE

##### (1) *Observations of the Commission*

No provision is contained in the existing conventions. (1978 Report.)

##### (2) *Comments of Governments*

(a) The personal baggage of the diplomatic courier shall [in all circumstances] be exempt from inspection, including customs inspection (A/31/145, p. 17; *Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 41st meeting, para. 58, and ibid., Sessional fascicle, corrigendum; A/CN.4/321 and Add.1-7, Czechoslovakia; ibid., USSR; ibid., Hungary.*)

(b) The personal baggage of the diplomatic courier shall be exempt from customs inspection. (A/31/145, pp. 6 and 14).

(c) Since violations of the 1961 Vienna Convention continued to occur, it was felt necessary to supplement article 27 thereof by more precise provisions concerning the inviolability of luggage, bearing in mind the technology currently employed for customs and border inspections. (*Official Records of the General Assembly, Thirty-first Session, Sixth Committee, 65th meeting, para. 32, and ibid., Sessional fascicle, corrigendum.*)

(d) The personal baggage of the diplomatic courier shall be exempt from customs inspection if there are no serious grounds for believing that it contains articles the import of which is prohibited by law or which are subject to the quarantine regulations of the host State. Such inspection shall be carried out only in the presence of the diplomatic courier. (A/33/224, p. 67.)

#### 4 (b). INVIOABILITY OF RESIDENCE

##### (1) *Observations of the Commission*

No provision is contained in the existing conventions. Emphasis was placed on the need to provide for protection of the place where the courier was staying while performing his functions. (1978 Report.)

##### (2) *Comments of Governments*

(a) The premises used by the diplomatic courier for residential purposes in the performance of his official duties in the host State or the transit State shall be inviolable. The host State or the transit State is required to take all appropriate steps to protect such premises from any intrusion or damage. (A/33/224, p. 67; A/31/145, p. 17).

(b) The protocol should provide for the inviolability of the residence or temporary official premises occupied by the diplomatic courier in the receiving State and in the transit State. (A/31/145, p. 14; *Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 41st meeting, para. 58, and ibid., Sessional fascicle, corrigendum; A/CN.4/321 and Add.1-7, Czechoslovakia; ibid., Chile, para. 4; ibid., USSR; ibid., Hungary.*)

(c) There is no need to provide for the inviolability of his residence because the task of the courier is of a correspondence rather than of a diplomatic representa-

tive character and thus one should avoid causing undue difficulties to the host country. (*Ibid.*, Kuwait.)

#### 4 (c). INVIOIABILITY OF MEANS OF TRANSPORT

##### (1) *Observations of the Commission*

No provision is contained in the existing conventions. Emphasis was placed on the need to ensure adequate protection of the means of transport of the courier. (1978 Report.)

##### (2) *Comments of Governments*

(a) The legitimate security interests of States should be recognized, particularly in regard to the technical operation of their transport facilities. *Official Records of the General Assembly, Thirty-first Session, Sixth Committee*, 65th meeting, para. 41, and *ibid.*, *Sessional fascicle*, corrigendum.)

(b) It is necessary to supplement article 27 of the 1961 Vienna Convention by more precise provisions concerning the inviolability of means of transport of the diplomatic courier. (*Ibid.*, *Sixth Committee*, 65th meeting, para. 32, and *ibid.*, *Sessional fascicle*, corrigendum; A/CN.4/321 and Add.1-7, Chile, para. 4; *ibid.*, USSR.)

#### 4 (d). IMMUNITY FROM JURISDICTION

##### (1) *Observations of the Commission*

No provision is contained in the existing conventions. It was stated that such immunity should be granted to the courier in connexion with the performance of his functions. (1978 Report.)

##### (2) *Comments of Governments*

(a) The diplomatic courier, in the performance of his official duties in the territory of the host State or the transit State, shall enjoy immunity from the criminal, civil and administrative jurisdiction of that State. The diplomatic courier is not obliged to give evidence as a witness in the host State or the transit State. The immunity of the diplomatic courier from the jurisdiction of the host State and the transit State shall not exempt him from the jurisdiction of the State to which the diplomatic bag belongs. (A/33/224, p. 66)

(b) The protocol should provide for the complete immunity of the courier from the jurisdiction of the State in whose territory he travels. (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee*, 41st meeting, para. 58, and *ibid.*, *Sessional fascicle*, corrigendum; A/CN.4/321 and Add.1-7, Czechoslovakia; *ibid.*, USSR.)

#### 4 (e). WAIVER OF IMMUNITIES

##### (1) *Observations of the Commission*

No provision is contained in existing conventions. (1978 Report.)

##### (2) *Comments of Governments*

(a) The State to which the diplomatic bag belongs may waive, wholly or in part, the immunities of its diplomatic courier who delivers the bag. Such waiver shall always be express. (A/33/224, Annex, p. 66.)

(b) As far as the waiver of such privileges is concerned, the principle set forth in article 31, paragraph 1, of the 1961 Vienna Convention, applying to the diplomatic agent, should remain applicable. (A/CN.4/321 and Add.1-7, Chile, para. 4.)

#### 5. FACILITIES ACCORDED TO THE DIPLOMATIC COURIER

##### (1) *Observations of the Commission*

No provision is contained in the existing conventions. (1978 Report.)

##### (2) *Comments of Governments*

(a) The facilities to be accorded to the diplomatic courier are related to the deference and courtesies to be extended by States, in their relations with one another, to the representatives or envoys of other States. Consequently, it will be a question of fact what the specific facilities should consist of, and for this reason a generic approach seems to be called for to the undertaking by States to facilitate, as far as possible, the performance of the functions of the courier (for example, the timely and prompt granting of visas). (A/CN.4/321 and Add.1-7, Chile, para. 5.)

(b) A provision should be elaborated concerning preferential treatment of the diplomatic courier with respect to passport and customs formalities. (*Ibid.*, Federal Republic of Germany.)

(c) For the purpose of the prompt and complete performance of the mission entrusted to him, the diplomatic courier should be able to rely on the undertaking given by States to give him passport visas, if such visas are necessary. A provision embodying this obligation on the part of transit States to permit movement through their territory would constitute an effective protection for the movement of the courier in the performance of his duty. For this purpose, it would be desirable to combine this principle with item 5, concerning the facilities to be accorded to the diplomatic courier. (*Ibid.*, Chile, para. 18.)

#### 6. DURATION OF PRIVILEGES AND IMMUNITIES OF THE DIPLOMATIC COURIER

##### (1) *Observations of the Commission*

No provision is contained in the existing conventions. However, the following provisions relating to the courier *ad hoc* may be taken into account:

(a) 1961 Vienna Convention (article 27, paragraph 6):

6. . . . the immunities [which a diplomatic courier *ad hoc* enjoys] shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

(b) 1963 Vienna Convention (article 35, paragraph 6):

6. . . . the immunities [which a consular courier *ad hoc* enjoys] shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

(c) Convention on Special Missions (article 28, paragraph 7):

7. . . . the immunities [which a courier *ad hoc* for the special mission enjoys] shall cease to apply when the courier *ad hoc* has delivered to the consignee the special mission's bag in his charge.

(d) 1975 Vienna Convention (article 27, paragraph 6, and article 57, paragraph 7):

## Article 27

6. . . . the immunities [which a courier *ad hoc* of the mission enjoys] shall cease to apply when the courier *ad hoc* has delivered to the consignee the mission's bag in his charge.

## Article 57

7. . . . the immunities [which a courier *ad hoc* of the delegation enjoys] shall cease to apply when the courier *ad hoc* has delivered to the consignee the delegation's bag in his charge.

The view was expressed that the jurisdictional immunities *ratione materiae* should continue even after a courier ceased to exercise his functions. (1978 Report.)

(2) *Comments of Governments*

(a) The diplomatic courier shall enjoy the privileges and immunities provided for in the protocol from the time he enters the territory of the host State or the transit State in the performance of his official duties until he leaves that territory. An *ad hoc* diplomatic courier shall enjoy the privileges and immunities provided for in the protocol from the time when he enters the territory of the host State or the transit State until he delivers the diplomatic bag entrusted to him to its destination. (A/33/224, p. 67).

(b) It seems advisable to restate the principle laid down in the four existing multilateral conventions, namely, that the privileges and immunities enjoyed by the diplomatic courier would cease to apply from the moment when he has delivered the diplomatic bag to the consignee. (A/CN.4/321 and Add.1-7, Chile, para. 6.)

(c) The privileges and immunities should apply for the entire duration of his stay in the receiving State, on the understanding that the diplomatic courier delivers a diplomatic bag to the diplomatic mission and also receives a diplomatic bag from the mission and that he performs these two acts without delay and subsequently departs immediately. (*Ibid.*, Federal Republic of Germany.)

## 7. NATIONALITY OF THE DIPLOMATIC COURIER

(1) *Observations of the Commission*

The following provision appears in the 1963 Vienna Convention (article 35, paragraph 5):

5. . . . Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he [the consular courier] is a national of the sending State, a permanent resident of the receiving State . . . . (1978 Report.)

(2) *Comments of Governments*

In view of the fact that, through the diplomatic courier, the sending State extends its official action to the transport and delivery of the diplomatic bag, and of the importance of entrusting such a mission to an official who is one of its own nationals and is duly authorized, the principle set forth in the 1963 Vienna Convention appears sound, namely, that the courier 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. (A/CN.4/321 and Add.1-7, Chile, para. 7.)

## 8. END OF FUNCTIONS OF DIPLOMATIC COURIER

(1) *Observations of the Commission*

No provision is contained in the existing conventions. It was stated that the termination of a courier's functions

should be the moment when he returned to his home base. (1978 Report.)

(2) *Comments of Governments*

(a) The protocol should contain provisions defining the procedure for terminating the functions of the diplomatic courier, if necessary. (A/31/145, p. 5.)

(b) With regard to the termination of the functions of the diplomatic courier, there are two distinct points, one concerning his function at the international level, and the other concerning his function under internal law. So far as the first point is concerned, the courier's functions would terminate when he delivers the diplomatic bag which he has been instructed to carry and deliver to the consignee; so far as the second point is concerned, his functions would terminate at the time when he reports the completion of his mission in the receiving State to the authority or service which assigned the official mission to him. (A/CN.4/321 and Add.1-7, Chile, para. 8.)

## 9. CONSEQUENCES OF THE SEVERANCE OR SUSPENSION OF DIPLOMATIC RELATIONS, OF THE RECALL OF DIPLOMATIC MISSIONS OR OF ARMED CONFLICT

(1) *Observations of the Commission*

No provision is contained in the existing conventions. (1978 Report.)

(2) *Comments of Governments*

(a) If diplomatic relations between the State to which the diplomatic bag belongs and the host State or the transit State are broken off or suspended, or in the event of armed conflict between them, the host State and the transit State are required to respect and observe the inviolability of the diplomatic bag within their territory, as well as the privileges and immunities of the accompanying diplomatic courier of the State to which the diplomatic bag belongs. (A/31/145, p. 17; A/33/224, p. 67).

(b) The legal status of the courier should be further defined by applying to the diplomatic bag article 45 (a) of the 1961 Vienna Convention, concerning the severing or suspension of diplomatic relations. According to the generally held legal view, the inviolability of the diplomatic bag was the corollary to the inviolability of the official correspondence, archives and documents of a diplomatic mission. The inviolability of the diplomatic bag and the privileges and immunities of the courier would continue to be observed by the receiving or transit State when the events mentioned in article 45 (a) occurred. (*Official Records of the General Assembly, Thirty-first Session, Sixth Committee, 65th meeting, para. 43, and ibid., Sessional fascicle, corrigendum.*)

(c) The function of the diplomatic courier, in so far as he is accorded privileges and immunities similar to those of the diplomatic agent, is of a procedural rather than a substantively political nature; consequently, the severance or suspension of diplomatic relations, or the recall of missions, should not influence decisively the functions of the courier during his passage through transit States. In strict law, the same would be true even in the event of an armed conflict with such States. In the event of the severance or suspension of diplomatic relations with the receiving State, or the recall of diplomatic missions, the diplomatic courier would act as a liaison between the



sending State and the diplomatic mission agreeing to look after the interests of that State; such situations of bilateral abnormality would not then interfere with the performance of the courier's functions. In the event of armed conflict, the *de facto* situation would prevent the courier from continuing to perform his functions. (A/CN.4/321 and Add.1-7, Chile, para. 9.)

#### 10. GRANTING OF VISAS TO THE DIPLOMATIC COURIER

##### (1) *Observations of the Commission*

No provision is contained in the existing conventions. It was considered desirable to establish a rule aimed at facilitating the granting of visas where visas were required. It was maintained that full diplomatic status should be given to couriers with respect to visas. (1978 Report.)

##### (2) *Comments of Governments*

(a) A solution should be found to the question of uniform and simplified procedures for granting of visas to diplomatic couriers. In view of existing practice, a formula obliging the receiving and transit States to grant a diplomatic or special visa to the courier, without any delay and regardless of the type of passport he carried, should be supported. (*Official Records of the General Assembly, Thirty-first Session, Sixth Committee, 65th meeting, para. 43, and ibid., Sessional fascicle, corrigendum.*)

(b) The granting of visas to the diplomatic courier would remain one of the facilities which transit States agree to grant him. (A/CN.4/321 and Add.1-7, Chile, para. 10.)

(c) It does not appear necessary to give the courier the status of a diplomatic agent in the matter of visas. (*Ibid.*, Federal Republic of Germany.)

#### 11. PERSONS DECLARED NOT ACCEPTABLE

##### (1) *Observations of the Commission*

No provision is contained in the existing conventions. (1978 Report.)

##### (2) *Comments of Governments*

(a) The host State or the transit State may, without having to justify its decision, inform the State to which the diplomatic bag belongs that the diplomatic courier delivering it is *persona non grata*. However, when the diplomatic courier is in the territory of the host State, it cannot request his recall or the termination of his official duties until the bag entrusted to him has been delivered to its destination. (A/31/145, p. 17; A/33/224, p. 67.)

(b) The protocol should provide for the appropriate right of the receiving State to declare the person of the diplomatic courier unacceptable. (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 41st meeting, para. 58, and ibid., Sessional fascicle, corrigendum; A/CN.4/321 and Add.1-7, Czechoslovakia.*)

(c) A provision should be elaborated analogous to article 9 of the 1961 Vienna Convention concerning the declaration of the diplomatic courier as *persona non grata*. (*Ibid.*, Federal Republic of Germany.)

(d) According to the principle laid down in article 9,

paragraph 1, of the 1961 Vienna Convention, the declaration of a person as not acceptable relates directly to the members of the staff of a mission who do not possess diplomatic status. Consequently, the diplomatic courier would not be liable, on these grounds, to recall from the receiving State, since he is neither a member of the staff of the mission, nor connected with it, or with the receiving State, in any permanent manner. On the other hand, owing to the essentially temporary nature of the functions of the courier it would be feasible to appoint as courier a person who has been declared not acceptable, even by the State in question. As has been mentioned earlier, the diplomatic courier does not perform his functions within the mission or office, but outside it, as an official link between the sending State and the mission concerned, and hence he is not involved in the internal operations of the mission. Furthermore, the diplomatic courier's connexion with the sending State's diplomatic or consular mission lasts only for as long as is necessary to deliver the communication or message brought by him; consequently, the declaration of a person as not acceptable, made on an occasion prior to that on which he is sent as a diplomatic courier, would not prevent him from accomplishing his particular mission. Nevertheless, in order to avoid in the future situations which might offend the sensibilities of the receiving State, sending States might undertake not to send as diplomatic couriers persons declared not acceptable by that country. (*Ibid.*, Chile, para. 11.)

#### 12. STATUS OF THE DIPLOMATIC COURIER *AD HOC*

##### (1) *Observations of the Commission*

The existing conventions provide the following:

(a) 1961 Vienna Convention (article 27, paragraph 6):

6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

(b) 1963 Vienna Convention (article 35, paragraph 6):

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers *ad hoc*. In such cases the provisions of paragraph 5 of this article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

(c) Convention on Special Missions (article 28, paragraph 7):

7. The sending State or the special mission may designate couriers *ad hoc* of the special mission. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the special mission's bag in his charge.

(d) 1975 Vienna Convention (article 27, paragraph 6, and article 57, paragraph 7):

##### *Article 27*

6. The sending State or the mission may designate couriers *ad hoc* of the mission. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when the courier *ad hoc* has delivered to the consignee the mission's bag in his charge.

##### *Article 57*

7. The sending State or the delegation may designate couriers *ad hoc* of the delegation. In such cases the provisions of paragraph 6 of this article shall also apply, except that the immunities therein mentioned

shall cease to apply when the courier *ad hoc* has delivered to the consignee the delegation's bag in his charge.

It was pointed out that the courier *ad hoc* might have another status, such as that of a diplomatic agent or consular officer, and that such a case was not covered by the existing conventions. It was also pointed out that there was need to define his status during the time when, after delivering a bag in his charge, he had to wait for some time until he was entrusted with another bag. (1978 Report.)

## (2) Comments of Governments

(a) (i) Article 27, paragraph 5, of the 1961 Vienna Convention provides that the diplomatic courier "shall enjoy personal inviolability and shall not be liable to any form of arrest or detention". Paragraph 6 makes provision for diplomatic couriers *ad hoc* and grants to such a courier the same immunity as that mentioned in paragraph 5 until he has delivered to the consignee the diplomatic bag in his charge. Paragraph 7 covers the case where the diplomatic bag is entrusted to the captain of a commercial aircraft, who is not regarded as a diplomatic courier; the paragraph provides that a member of the mission may take possession of the diplomatic bag directly and freely from the said captain. The question arises whether the two exceptions of paragraphs 6 and 7 or the general rule in paragraph 5 of article 27 of the Vienna Convention are duly justified in international practice. (ii) If the reply is affirmative in the former case, it is suggested that the protocol should clearly lay down the principle that the person carrying or accompanying the bag (diplomatic courier *ad hoc* and/or captain of a commercial aircraft) is independent of the bag itself, so as to ensure that any measure which the receiving State might possibly adopt with respect to the person is not extended to the diplomatic bag and vice versa. (A/33/224, pp. 54-55.)

(b) An *ad hoc* diplomatic courier shall enjoy the privileges and immunities provided for in the protocol from the time when he enters the territory of the host State or the transit State until he delivers the diplomatic bag entrusted to him to its destination. (*Ibid.*, p. 67.)

(c) The multilateral conventions referred to all permit the designation of diplomatic couriers *ad hoc*. They state that, in any event, such a courier's privileges and immunities would be more limited, in that they would cease to apply upon delivery of what was entrusted to him to the consignee. Consequently, the diplomatic courier *ad hoc* should be governed by specific rules, within the general rules applicable to the diplomatic courier, in respect of such questions as his legal status in the interim period elapsing between the delivery of the diplomatic bag and the time when he is entrusted with another. (A/CN.4/321 and Add. 1-7, Chile, para. 12.)

(d) The diplomatic courier *ad hoc* should have the same status as the ordinary diplomatic courier. (*Ibid.*, Federal Republic of Germany.)

## 13. DEFINITION OF "DIPLOMATIC BAG"

### (1) Observations of the Commission

No definition of "diplomatic bag" as such is contained in existing conventions. The following provisions, however, may be considered as relevant:

(a) 1961 Vienna Convention (article 27, paragraphs 2 and 4):

2. . . . Official correspondence means all correspondence relating to the mission and its functions.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

(b) 1963 Vienna Convention (article 35, paragraphs 1, 2 and 4):

1. . . . In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including . . . diplomatic or consular bags . . .

2. . . . Official correspondence means all correspondence relating to the consular post and its functions.

4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

(c) Convention on Special Missions (article 28, paragraphs 2, 3 and 5):

2. . . . Official correspondence means all correspondence relating to the special mission and its functions.

3. Where practicable, the special mission shall use the means of communication, including the bag . . . of the permanent diplomatic mission of the sending State.

5. The packages constituting the bag of the special mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the special mission.

(d) 1975 Vienna Convention (articles 27, paragraphs 2 and 4, and 57, paragraphs 2, 3 and 5):

### Article 27

2. . . . Official correspondence means all correspondence relating to the mission and its functions.

4. The packages constituting the bag of the mission must bear visible external marks of their character and may contain only documents or articles intended for the official use of the mission.

### Article 57

2. . . . Official correspondence means all correspondence relating to the delegation and its tasks.

3. Where practicable, the delegation shall use the means of communication, including the bag . . . of the permanent diplomatic mission, of a consular post, of the permanent mission or of the permanent observer mission of the sending State.

5. The packages constituting the bag of the delegation must bear visible external marks of their character and may contain only documents or articles intended for the official use of the delegation. (1978 Report.)

## (2) Comments of Governments

(a) The diplomatic bag is the official bag of the Government of a State or its diplomatic mission, intended for communication between the Government and the diplomatic mission as well as between the diplomatic mission and other missions and consulates of that State, regardless of where they are situated. The diplomatic bag may or may not be accompanied by a diplomatic courier. (A/33/224, pp. 65-66.)

(b) A more precise definition of what was understood by diplomatic bag and the articles that could be carried in it would save diplomatic missions from having to go through complex and varied procedures in order to accredit the diplomatic character of their dispatches and would make it easier for airlines to accord them the preferential treatment they deserved. However, item 13 of the study carried out by the Commission stated that one of the questions on which positive law was rather

unspecific was the definition of the contents of bags, and in item 16 of the study it was stated that no provision existed which clarified the role of the laws of the receiving State in that connexion. Since the contents of diplomatic bags were determined by the diplomatic function itself, restrictions on such contents could be established only in relation to that function, without the regulations of the receiving State impeding or limiting shipments sent in performance of the diplomatic function. (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 15th meeting, para. 7, and ibid., Sessional fascicle, corrigendum.*)

(c) It should be noted that Philippe Cahier defined the diplomatic bag as "postal packets or packages bearing external marks of their official character."<sup>803</sup> (*Ibid.*, 17th meeting, para. 10, and *ibid.*, *Sessional fascicle, corrigendum.*)

(d) This definition should be linked with the definition of the "diplomatic courier", as noted under item 1. It would, however, be desirable to draft a definition taking account of the provisions of the four multilateral conventions. As a result, the expression "diplomatic bag" would mean all packages which bear visible external marks of their character and permit the official movement of documents or articles intended exclusively for the use of the sending State and of its mission or office abroad. (A/CN.4/321 and Add.1-7, Chile, para. 13.)

(e) A clear definition of the diplomatic bag was given in article 27, paragraph 4 of the 1961 Vienna Convention. (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 18th meeting, para. 14, and ibid., Sessional fascicle, corrigendum.*)

#### 14. STATUS OF THE DIPLOMATIC BAG ACCOMPANIED BY DIPLOMATIC COURIER

##### (1) *Observations of the Commission*

The following provisions in the existing conventions may be considered as relevant:

(a) 1961 Vienna Convention (article 27, paragraph 3):

3. The diplomatic bag shall not be opened or detained.

(b) 1963 Vienna Convention (article 35, paragraph 3):

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reasons to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

(c) Convention on Special Missions (article 28, paragraph 4):

4. The bag of the special mission shall not be opened or detained.

(d) 1975 Vienna Convention (articles 27, paragraph 3, and 57, paragraph 4):

##### *Article 27*

3. The bag of the mission shall not be opened or detained.

##### *Article 57*

4. The bag of the delegation shall not be opened or detained.

In addition, the provisions quoted under (18) (1) (a) and (19) below may also be relevant.

It was pointed out that the existing conventions did not adequately provide for protection of the diplomatic bag accompanied by a courier in the place where he was staying or on means of transport. (1978 Report.)

##### (2) *Comments of Governments*

(a) There is no need for amendment or detailed specification of the existing regulation. Should this matter nevertheless be brought up again for discussion, a limitation of the inviolability of diplomatic bags should be sought, whether or not they are accompanied by a courier. Where there are justifiable suspicions of *misuse* of a courier bag or package, the receiving State should have the right to refuse to allow its importation unless the bag or package is opened in the presence of a representative of the sending State and it can be demonstrated to the satisfaction of the receiving State that there is no question of misuse. (A/31/145, p. 11.)

(b) The 1961 Vienna Convention makes no provision for the possibility that the bag might be opened or detained. Nevertheless, since reality is often ahead of the law, it is possible that the receiving State, if it should have serious evidence of some anomaly regarding the contents of the bag and in the extreme case where it fears for its own security, may have to decide to open it. Because such situations occur in fact, the protocol on the diplomatic courier and diplomatic bag should deal with them and set out rules in order to prevent arbitrary action, regarding *inter alia* the following points:

- (i) The serious circumstances or evidence that have to be present in order that the bag may be opened or examined by means of X-rays, as the case may be;
- (ii) The official who is competent to order the opening of the bag;
- (iii) The act of opening the bag. Philippe Cahier suggests that the bag should be opened in the presence of a protocol officer of the Ministry of Foreign Affairs of the receiving State and of a member of the diplomatic mission to which the bag is addressed. This measure seems to us quite appropriate, in the exceptional cases mentioned;
- (iv) Detention of the bag for a short time, pending the arrival of the officials mentioned;
- (v) Procedure in the case of non-appearance of one or other of the officials mentioned.

In any case, we consider that the bag should be inspected only for the purpose of checking the physical contents of the packets, and with the least possible delay in order not to hinder diplomatic communications, for as is expressly stated in article 27, paragraphs 2 and 4, official correspondence means "all correspondence relating to the mission and its functions" and "the packages constituting the diplomatic bag . . . may contain only diplomatic documents or articles intended for official use". (A/33/224, pp. 53-54.)

(c) The diplomatic bag, whether accompanied or not accompanied by a diplomatic courier, is inviolable and shall not be opened or detained, nor shall any person acquaint himself with its contents by means of technical devices without opening the bag. All packages constituting the diplomatic bag, whether accompanied or not accompanied by a diplomatic courier, shall bear visible external marks indicating their character and the Government to which they belong and shall contain only

<sup>803</sup> P. Cahier, *Le droit diplomatique contemporain* (Institut universitaire de Hautes Etudes internationales, publication No. 40) (Geneva, Droz, 1962), p. 213.

diplomatic documents and articles intended for official use. (*Ibid.*, p. 66.)

(d) The protocol should provide for the status of the diplomatic bag, whether accompanied or not accompanied by diplomatic courier, emphasizing the inviolability of the diplomatic bag and the obligation of both the receiving State and the transit State to take all necessary measures to ensure its inviolability. (*Ibid.*, p. 60; *Official Records of the General Assembly, Thirty-third session, Sixth Committee*, 18th meeting, para. 11, and 41st meeting, para. 58; and *ibid.*, *Sessional fascicle*, corrigendum; A/CN.4/321 and Add.1-7, Czechoslovakia.)

(e) With regard to the inviolability of the diplomatic bag, although article 27, paragraph 3, of the 1961 Vienna Convention prohibited the opening or detaining of the diplomatic bag, its wording could give the receiving State a pretext for opening it if the latter entertained serious doubts concerning its content or safety. (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee*, 17th meeting, para. 10, and *ibid.*, *Sessional fascicle*, corrigendum.)

(f) This item concerns the security measures to be taken by States in respect of packages constituting a diplomatic bag. One of the factors to be considered is the principle that the bag may not be opened or detained; in addition, provision should be made for whatever measures are to be taken by the transit and receiving States for the adequate protection of the diplomatic bag, as referred to under item 18 and 19. (A/CN.4/321 and Add.1-7, Chile, para. 14.)

#### 15. STATUS OF THE DIPLOMATIC BAG NOT ACCOMPANIED BY DIPLOMATIC COURIER

##### 15 (a). GENERAL<sup>804</sup>

###### (1) *Observations of the Commission*

The provisions quoted and referred to under item (14) above are also relevant to the status of the diplomatic bag not accompanied by diplomatic courier. (1978 Report.)

###### (2) *Comments of Governments*

(a) As far as the diplomatic bag being sent unattended was concerned, the 1961 Vienna Convention contained only two provisions, namely, paragraphs 3 and 4 of article 27. Paragraph 3, setting forth the principle of inviolability of the diplomatic bag, required some amendments, since modern techniques made it unnecessary to open the diplomatic bag in order to ascertain its contents. The relevant provision of the Polish-Austrian Consular Convention of 2 October 1974 stipulated that the consular bag was not subject to being opened, to control or detention. (*Official Records of the General Assembly, Thirty-first Session, Sixth Committee*, 65th meeting, para. 57, and *ibid.*, *Sessional fascicle*, corrigendum.)

(b) The host State or the transit State is required, while the diplomatic has is in its territory, to take all necessary measures to ensure the inviolability of the bag and to ensure that it reaches its destination as soon as possible. Questions of the procedure to be followed in dispatching and receiving a diplomatic bag not accom-

panied by a diplomatic courier shall be settled by special agreements concluded between the States concerned. (A/33/224, p. 66.)

(c) The protocol should stipulate that the security of the bag was the responsibility of the State of transit or the receiving State. (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee*, 17th meeting, para. 21, and *ibid.*, *Sessional fascicle*, corrigendum.)

(d) The use of the diplomatic bag not accompanied by diplomatic courier was particularly widespread in developing countries, for economic reasons, and its inviolability must be ensured except in cases where there was grave suspicion as to its contents. (*Ibid.*, *Sixth Committee*, 18th meeting, para. 33, and *ibid.*, *Sessional fascicle*, corrigendum.)

(e) In the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the following points should be taken into account: the serious circumstances or evidence that had to be present in order that the bag might be opened or examined by means of X-rays; the official who was competent to order the opening of the bag; the act of opening the bag (Philippe Cahier suggested that it should be opened in the presence of a protocol officer of the Ministry of Foreign Affairs of the receiving State and a member of the diplomatic mission to which the bag was addressed); detention of the bag for a short time, pending the arrival of those officials; procedure in the case of non-appearance of one or other of the officials; and a requirement that the bag should be inspected only for the purpose of checking the physical contents of the packets, and with the least possible delay so as not to hinder diplomatic communications. (*Ibid.*, *Sixth Committee*, 17th meeting, para. 11, and *ibid.*, *Sessional fascicle*, corrigendum.)

(f) It appears necessary that all the rights and obligations connected with the dispatch of the diplomatic bag not accompanied by diplomatic courier should be regulated in detail. In this connexion, it is of paramount importance to ensure the inviolability of the diplomatic bag not accompanied by diplomatic courier. This could be accomplished, for example, by provisions guaranteeing the immediate delivery by the receiving State of the incoming diplomatic bag not accompanied by diplomatic courier and the instantaneous clearance of the outgoing diplomatic bag not accompanied by diplomatic courier immediately prior to the departure of the means of transport for the diplomatic bag. Regulations on the type and colour of the diplomatic bag not accompanied by diplomatic courier could also serve to ensure as direct and immediate a transfer as possible of the bag from the means of transport to the authorized member of the diplomatic mission, and vice versa. (A/CN.4/321 and Add.1-7, Federal Republic of Germany.)

(g) Particular attention should be given to the problems arising from the gap which exists between the justified need of the world community for security from terrorist activities, in particular in civil aviation, on the one hand, and the equally justified request for the inviolability of the diplomatic pouch, on the other hand. A concrete problem that could be studied in this context would be direct access to the apron of international airfields when delivering or receiving diplomatic pouches transported by pilots. (*Ibid.*, Austria.)

(h) It should be noted that States are using diplomatic couriers less and less frequently and that diplomatic bags

<sup>804</sup> See also comments and observations under item 14 above, which may be relevant but are not repeated here.

are now usually sent overland, by air or by sea without being entrusted to a courier. In many States, the packages and parcels constituting the diplomatic bag are sent by post. They are then treated in the same way as letters or parcels sent by ordinary or registered mail. It might be useful to envisage provisions ensuring that diplomatic bags sent by post arrive quickly and safely under all circumstances. (*Ibid.*, Switzerland.)

(i) The unaccompanied bag should be given the same measure of protection by transit States and the receiving State as is accorded to the bag accompanied by diplomatic courier. But the provisions of paragraphs 1-4 of article 27 of the 1961 Vienna Convention apply to both accompanied and unaccompanied bags. Further provision for bags unaccompanied by courier is made by paragraph 7 of that article. (*Ibid.*, United Kingdom.)

15 (b). THE DIPLOMATIC BAG ENTRUSTED TO THE CAPTAIN OF A COMMERCIAL AIRCRAFT OR OF A SHIP

(1) *Observations of the Commission*

The existing conventions provide the following:

(a) 1961 Vienna Convention (article 27, paragraph 7):

7. A diplomatic bag may be entrusted to 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 courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

(b) 1963 Vienna Convention (article 35, paragraph 7):

7. A consular bag may be entrusted to the captain of a ship or 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 consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

(c) Convention on Special Missions (article 28, paragraph 8):

8. The bag of the special mission may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. The captain shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a courier of the special mission. By arrangement with the appropriate authorities, the special mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

(d) 1975 Vienna Convention (article 27, paragraph 7, and article 57, paragraph 8):

*Article 27*

7. The bag of the mission may be entrusted to the captain of a ship or 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 courier of the mission. By arrangement with the appropriate authorities of the host State, the mission may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

*Article 57*

8. The bag of the delegation may be entrusted to the captain of a ship or 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 courier of the delegation. By arrangement with the appropriate authorities of the host State, the delegation may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft. (1978 Report.)

(2) *Comments of Governments*

(a) One of the problems ripe for consideration was a more detailed elaboration of provisions regarding the status of the diplomatic courier, or a person to whom the diplomatic bag had been entrusted, as well as the unaccompanied shipment of the diplomatic bag, which was becoming a more frequent practice, especially on the part of smaller States. With regard to the two latter practices, the provisions of the 1961 Vienna Convention were far too general. Article 27, paragraph 7, of that Convention, dealing with cases in which the diplomatic bag was entrusted to the captain of a commercial aircraft, who was not considered as a diplomatic courier, should be elaborated in greater detail. In that connexion, the speaker recalled that, as long ago as 1958, the view had been expressed that it might be advisable to consider extending the personal inviolability of the diplomatic courier to the captain or member of the crew of a commercial aircraft carrying the diplomatic bag; that immunity would exist only for the duration of the journey and until the bag was delivered. (*Official Records of the General Assembly, Thirty-first Session, Sixth Committee, 65th meeting, para. 57, and ibid., Sessional fascicle, corrigendum.*)

(b) Article 27, paragraph 7, of the 1961 Vienna Convention provides for the taking of possession of the diplomatic bag from the captain of the aircraft but makes no reference to its delivery to the captain of the aircraft, which may give rise to technical difficulties. (A/33/224, p. 58.)

(c) (i) Article 27, paragraph 5, of the 1961 Vienna Convention provides that the diplomatic courier "shall enjoy personal inviolability and shall not be liable to any form of arrest or detention". Paragraph 6 makes provision for diplomatic couriers *ad hoc* and grants to such a courier the same immunity as that mentioned in paragraph 5 until he has delivered to the consignee the diplomatic bag in his charge. Paragraph 7 covers the case where the diplomatic bag is entrusted to the captain of a commercial aircraft, who is not regarded as a diplomatic courier; the paragraph provides that a member of the mission may take possession of the diplomatic bag directly and freely from the said captain. The question arises whether the two exceptions of paragraphs 6 and 7 or the general rule in paragraph 5 of article 27 of the Vienna Convention are duly justified in international practice. (ii) If the reply is affirmative in the former case, it is suggested that the protocol should clearly lay down the principle that the person carrying or accompanying the bag (diplomatic courier *ad hoc* and/or captain of a commercial aircraft) is independent of the bag itself, so as to ensure that any measure which the receiving State might possibly adopt with respect to the person is not extended to the diplomatic bag, and *vice versa*. (*Ibid.*, pp. 54-55.)

(d) It is desirable to specify the rules applicable to the diplomatic bag in this case if it is felt that, in such circumstances, there is a greater need for the protection and free transit of the packages constituting the bag. The principle established in the existing multilateral conventions should therefore be upheld, in the sense that the diplomatic bag should be entrusted to the highest ranking person in charge of the means of transport being used to carry it, namely the captain of the ship or aircraft concerned. Upon its arrival at the port or airport of entry in the receiving State, the diplomatic bag would be

handed over to the mission official duly authorized for that purpose, who would take direct physical possession of the packages. (A/CN.4/321 and Add. 1-7, Chile, para. 15.)

(e) The possibility of entrusting a diplomatic bag to the captain of a commercial aircraft, in accordance with article 27, paragraph 7, of the 1961 Vienna Convention, usually arises only in the case of a diplomatic bag of the State to which the airline company belongs. The diplomatic bags of other States must therefore be sent as air freight, and are treated as such upon departure and arrival. In order to avoid the delays that generally result from such a situation, consideration should be given to provisions for swifter forwarding of diplomatic bags sent as air freight, more particularly by exempting them from customs formalities. (*Ibid.*, Switzerland.)

## 16. RESPECT FOR THE LAWS AND REGULATIONS OF THE RECEIVING STATE

### (1) *Observations of the Commission*

No provision is contained in the existing conventions. (1978 Report.)

### (2) *Comments of Governments*

(a) The protocol should stipulate the duty of the diplomatic courier to observe the laws and regulations of the receiving State. (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 41st meeting, para. 58, and ibid., Sessional fascicle, corrigendum, A/CN.4/321 and Add.1-7, Czechoslovakia.*)

(b) Unquestionably, the diplomatic courier must observe the laws and regulations of the receiving State. Without prejudice to the privileges and immunities to which he is entitled, the diplomatic courier should endeavour not to contravene the laws of the receiving State; while this obligation is expressly stipulated in article 41, paragraph 1, of the 1961 Vienna Convention, in respect of all persons enjoying privileges and immunities, including the duty not to interfere in the internal affairs of that State, there is no reason why the principle should not be reiterated in the future rules concerning the diplomatic courier. (*Ibid.*, Chile, para. 16; *ibid.*, Federal Republic of Germany.)

## 17. OBLIGATIONS OF THE RECEIVING STATE

### 17 (a). GENERAL

#### (1) *Observations of the Commission*

The existing conventions provide the following:

(a) 1961 Vienna Convention (article 27, paragraph 5):

5. The diplomatic courier, . . . shall be protected by the receiving State in the performance of his functions.

(b) 1963 Vienna Convention (article 35, paragraph 5):

5. . . . In the performance of his functions he [the consular courier] shall be protected by the receiving State.

(c) Convention on Special Missions (article 28, paragraph 6):

6. The courier of the special mission, . . . shall be protected by the receiving State in the performance of his functions.

(d) 1975 Vienna Convention (article 27, paragraph 5, and article 57, paragraph 6):

#### *Article 27*

5. The courier of the mission . . . shall be protected by the host State in the performance of his functions.

#### *Article 57*

6. The courier of the delegation . . . shall be protected by the host State in the performance of his functions. (1978 Report.)

### (2) *Comments of Governments*

(a) Receiving States of diplomatic missions are obliged to offer every possible assistance to diplomatic couriers in the performance of their duties. (A/31/145, p. 13.)

(b) The host State is required to take all appropriate steps to prevent any attack on the person, freedom or dignity of the diplomatic courier. (A/33/224, Annex, p. 66; *Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 41st meeting, para. 58, and ibid., Sessional fascicle, corrigendum.*)

(c) The primary obligation of the receiving State may be described briefly as being to afford to the diplomatic courier the guarantees necessary for the enjoyment of his privileges and immunities, which are inherent in his function. As the relevant multilateral conventions indicate, the diplomatic courier shall be protected by the receiving State. Consequently, rather than drawing up a list of the specific secondary obligations which give effect to the principal obligation, it would be better to give a general definition of this duty. (A/CN.4/321 and Add.1-7, Chile, para.17.)

(d) The host State is required, while the diplomatic bag is in its territory, to take all necessary measures to ensure the inviolability of the bag and to ensure that it reaches its destination as soon as possible. (A/33/24, p. 66.)

(e) It is in our interest to have an international agreement by which the protection of the bag could be made the sole responsibility of the receiving State or any other State through which it passes. (*Ibid.*, p. 61.)

## 17 (b). OBLIGATIONS OF THE RECEIVING STATE IN THE EVENT OF DEATH OF OR ACCIDENT TO THE DIPLOMATIC COURIER PRECLUDING HIM FROM THE PERFORMANCE OF HIS FUNCTIONS

### (1) *Observations of the Commission*

No provision is contained in the existing conventions. (1978 Report.)

### (2) *Comments of Governments*

(a) In the event of the sudden death of a diplomatic courier or of an accident that prevents him from performing his official duties, the host State shall, as soon as possible, take steps to notify the State to which the diplomatic bag belongs and to transfer the diplomatic bag to the official representative of the State to which the diplomatic bag belongs. (A/33/224, p. 67.)

(b) In the event of the diplomatic courier's death or if some accident should prevent him from carrying out his functions, the future rule should be designed to ensure the protection of the packages constituting the diplomatic bag until they are handed over to another courier. (A/CN.4/321 and Add.1-7, Chile, para. 17.)

## 18. OBLIGATIONS OF THE TRANSIT STATE

## 18 (a). GENERAL

(1) *Observations of the Commission*

The relevant conventions provide as follows:

## (a) 1961 Vienna Convention (article 40, paragraph 3):

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit, the same inviolability and protection as the receiving State is bound to accord.

## (b) 1963 Vienna Convention (article 54, paragraph 3):

3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

## (c) Convention on Special Missions (article 42, paragraphs 3 and 4):

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. Subject to the provisions of paragraph 4 of this article, they shall accord to the couriers and bags of the special mission in transit the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The third State shall be bound to comply with its obligations in respect of the persons mentioned in paragraphs 1, 2 and 3 of this article only if it has been informed in advance, either in the visa application or by notification, of the transit of those persons as members of the special mission, members of their families or couriers, and has raised no objection to it.

## (d) 1975 Vienna Convention (article 81, paragraph 4):

4. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as the host State is bound to accord under the present Convention. They shall accord to the couriers of the mission, of the delegation or of the observer delegation, who have been granted a passport visa if such visa was necessary, and to the bags of the mission, of the delegation or of the observer delegation in transit the same inviolability and protection as the host State is bound to accord under the present Convention.

The question was raised whether the status of the diplomatic courier, in particular his privileges and immunities, should be dealt with in respect of transit States also. It was pointed out that the existing conventions provided no obligation for a transit State to grant visas to diplomatic couriers but that once the couriers were admitted to the territory of the transit State, they should enjoy the necessary protection. (1978 Report.)

(2) *Comments of Governments*

(a) The transit State is required to take all appropriate steps to prevent any attack on the person, freedom or dignity of the diplomatic courier. (A/33/224, p. 66; *Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 41st meeting, para. 58, and ibid., Sessional fascicle, corrigendum.*)

(b) For the purpose of the prompt and complete performance of the mission entrusted to him, the diplomatic courier should be able to rely on the undertaking given by States to give him passport visas, if such visas are necessary. A provision embodying this obligation on the

part of transit States to permit movement through their territory would constitute an effective protection for the movement of the courier in the performance of his duty. For this purpose, it would be desirable to combine this principle with item 5, concerning the facilities to be accorded to the diplomatic courier. (A/CN.4/321 and Add.1-7, Chile, para. 18.)

(c) Diplomatic couriers and diplomatic bags which happened to be in a third State in transit should enjoy the same protection and inviolability in that State as they were bound to be accorded by the receiving State, in accordance with article 40, paragraphs 3 and 4, of the 1961 Vienna Convention. That would ensure that the provisions applying to the receiving State were also applied to third States. (*Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 17th meeting, para. 14, and ibid., Sessional fascicle, corrigendum.*)

(d) The transit State is required, while the diplomatic bag is in its territory, to take all necessary measures to ensure the inviolability of the bag and to ensure that it reaches its destination as soon as possible. (A/33/224, p. 66; *Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 18th meeting, para. 11, and ibid., Sessional fascicle, corrigendum.*)

(e) It is in our interest to have an international agreement by which the protection of the bag could be made the sole responsibility of the receiving State or any other State through which it passes. (A/33/224, p. 61.)

## 18 (b). OBLIGATION OF THE TRANSIT STATE IN THE EVENT OF DEATH OF OR ACCIDENT TO THE DIPLOMATIC COURIER PRECLUDING HIM FROM THE PERFORMANCE OF HIS FUNCTIONS

(1) *Observations of the Commission*

No provision is contained in the existing conventions. (1978 Report.)

(2) *Comments of Governments*

(a) In the event of the sudden death of a diplomatic courier or of an accident that prevents him from performing his official duties, the transit State shall, as soon as possible, take steps to notify the State to which the diplomatic bag belongs and to transfer the diplomatic bag to the official representative of the State to which the diplomatic bag belongs. (A/33/224, p. 67.)

(b) In the event of the diplomatic courier's death or of some accident that prevents him from performing his functions, the future rule should be designed to ensure the protection of the packages constituting the diplomatic bag until they are handed over to another courier. (A/CN.4/321 and Add.1-7, Chile, para. 18.)

## 19. OBLIGATIONS OF THE THIRD STATE IN CASES OF "FORCE MAJEURE"

(1) *Observations of the Commission*

The existing conventions provide as follows:

## (a) 1961 Vienna Convention (article 40, paragraph 4):

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

## (b) 1963 Vienna Convention (article 54, paragraph 4):

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to *force majeure*.

(c) Convention on Special Missions (article 42, paragraph 5):

5. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to the official communications and the bags of the special mission, when the use of the territory of the third State is due to *force majeure*.

(d) 1975 Vienna Convention (article 18, paragraph 5):

5. The obligations of third States under paragraphs 1, 2, 3 and 4 of this article shall also apply to the persons mentioned respectively in those paragraphs and to the official communications and bags of the mission, of the delegation or of the observer delegation when they are present in the territory of the third State owing to *force majeure*. (1978 Report.)

## (2) Comments of Governments

(a) In cases of *force majeure* (forced landing of an aircraft or breakdown of other means of transport), the State in whose territory the diplomatic courier or diplomatic bag happens to be shall respect the provisions of the protocol concerning the privileges and immunities of the diplomatic courier and the status of the diplomatic bag. (A/33/224, p. 55; *ibid.*, p.67: *Official Records of the General Assembly, Thirty-third Session, Sixth Committee, 17th meeting, para. 14, and ibid., Sessional fascicle, corrigendum.*)

(b) If, in consequence of *force majeure* or of some fortuitous event, the diplomatic courier is compelled to make use of the territory of a third State, it is reasonable to infer that the protection of that State should be extended, for as long as necessary, to the person of the courier and to the diplomatic bag which he is accompanying. (A/CN.4/321 and Add.1-7, Chile, para. 19.)

## D. Additional items to be studied

1. Facilities accorded to the diplomatic courier with respect to his entry and departure from the territory of the receiving State.

2. Facilities accorded to the diplomatic courier for movement within the territory of the receiving State and the transit State in the performance of his functions.

3. Facilities accorded to the diplomatic courier for

communicating with the sending State and its diplomatic mission in the territory of the receiving State for all official purposes.

4. Exemption from national, regional or municipal dues and taxes.

5. Exemption from personal service and public service of any kind.

6. Obligation of the diplomatic courier not to undertake any professional or commercial activity on the territory of the receiving State or the State of transit.

7. Suspension of the functions of the diplomatic courier by the competent authorities of the sending State.

8. Application of the principle of non-discrimination with respect to the diplomatic courier, the accompanied and non-accompanied bag.

## E. Conclusions and recommendations

163. A brief review of sections C and D above has proved that there are many issues on which no provision is contained in the existing conventions and several issues on which, although there are some relevant provisions in the existing conventions, because of the general nature of such provisions, further elaboration is desirable.

164. In the light of the foregoing considerations, the Commission reached the following conclusions regarding the future work to be undertaken on the subject:

(1) The Secretariat should continue with the preparation of a comprehensive follow-up report, on the pattern of the latest working paper,<sup>805</sup> analysing the written comments which may be forthcoming as well as the views which may be expressed by Governments during the thirty-fourth session of the General Assembly.

(2) The Commission should appoint a Special Rapporteur on the topic of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, who will be entrusted with the preparation of a set of draft articles for an appropriate legal instrument.

165. At the 1580th meeting, held on 31 July 1979, the Commission appointed Mr. Alexander Yankov Special Rapporteur for the topic.

<sup>805</sup> See foot-note 789 above.