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IMPLEMENTATION BY STATES OF THE PROVISIONS OF THE VIENNA CONVENTION  
 ON DIPLOMATIC RELATIONS OF 1961

Report of the Secretary-General

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I. INTRODUCTION

1. On 13 December 1976, the General Assembly adopted resolution 31/76, paragraphs 3, 4 and 5 of which read as follows:

"The General Assembly,

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"3. Invites Member States to submit or to supplement their comments and observations on ways and means to ensure the implementation of the provisions of the Vienna Convention on Diplomatic Relations of 1961 1/ and on the desirability of elaborating provisions concerning the status of the diplomatic courier in accordance with paragraph 4 of General Assembly resolution 3501 (XXX), with due regard also to the question of the status of the diplomatic bag not accompanied by diplomatic courier;

"4. Requests the International Law Commission at the appropriate time to study, in the light of the information contained in the report of the Secretary-General on the implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and other information on this question to be received from Member States through the Secretary-General, 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 would constitute development and concretization of the Vienna Convention on Diplomatic Relations of 1961;

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

The present report has been prepared pursuant to paragraph 5 of the above resolution, on the basis of comments and observations received from Member States and taking into account the results of the study requested from the International Law Commission under paragraph 4 of the same resolution.

2. The comments and observations on which the report is based include those which were received pursuant to paragraph 4 of General Assembly resolution 3501 (XXX) and published in document A/31/145 and Add., as well as those submitted pursuant to paragraph 3 of Assembly resolution 31/76, which had been received by 31 August 1978

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1/ United Nations, Treaty Series, vol. 500, p. 75.

and which are reproduced in the annex below. <sup>2/</sup> Any additional comments and observations which might be received from Member States will be published in addenda to the present report. While the analytical report is based, in accordance with paragraph 5 of Assembly resolution 31/76, on written comments and observations received from Member States, references to oral statements made on the topic in the Sixth Committee at the twenty-ninth, thirtieth and thirty-first sessions of the Assembly have been provided in foot-notes.

3. As to the results of 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, they are reflected in the subsection of the analytical report devoted to the proposed elaboration of the protocol in question (subsect. <sup>4</sup> of sect. C).

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<sup>2/</sup> In this connexion, it should be noted that, pursuant to para. 3 of resolution 31/76, Member States were invited by the Secretary-General, by a letter dated 19 January 1977, to communicate to him the comments and observations referred to in that paragraph. The International Law Commission, having subsequently expressed, in its report on the work of its twenty-ninth (1977) session, its intention to carry out, at its 1978 session, the study requested from it and having asked the secretariat to remind Member States "of the convenience of making available their proposals, comments and observations on the topic, as well as any information, relevant facts or developments subsequent to the adoption of the 1961 Vienna Convention on Diplomatic Relations which might be useful for the implementation of the request contained in para. <sup>4</sup> of General Assembly resolution 31/76 of 13 December 1976", the Secretary-General invited Member States, in a letter dated 12 October 1977, to take duly into account the above-mentioned considerations in the comments, observations and proposals they might transmit pursuant to resolution 31/76. The annex to the present report reproduces the replies to both letters from the Secretary-General, received as at 31 August 1978.

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II. ANALYTICAL REPORT ON WAYS AND MEANS TO ENSURE THE IMPLEMENTATION OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS OF 1961, PREPARED BY THE SECRETARY-GENERAL PURSUANT TO PARAGRAPH 5 OF GENERAL ASSEMBLY RESOLUTION 31/76

A. General observations

4. Most of the replies emphasized the role played by the 1961 Vienna Convention on Diplomatic Relations in inter-State relations. Thus the United States said that it attached

"considerable importance to the Convention ..." 3/

Greece felt the Convention to be

"extremely important by reason of its object which is to regulate diplomatic relations between States." 4/

Cyprus described it as an instrument which

"regulates an important area of international relations and helps to maintain normal relations between States." 5/

Hungary noted:

"The Hungarian People's Republic attaches great importance to all conventions of a universal character which, by regulating specific areas of relations among States, contribute to the maintenance and development of normal interstate relations and thereby, in a wider context, to peaceful coexistence. In view of the primary function assigned to diplomacy in the development of relations mentioned above, the Vienna Convention of 1961 on Diplomatic Relations is one of those conventions which cover an extremely important field of contacts among States." 6/

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3/ A/31/145, p. 16. See also the statement by the United States of America in A/C.6/31/SR.65 (para. 50).

4/ See annex below, reply of Greece, sect. A, para. 2.

5/ See annex below, para. 1 of relevant reply. See also the statements of France in A/C.6/SR.1580 (para. 16) and A/C.6/31/SR.68 (para. 49), India in A/C.6/31/SR.66 (para. 17), Iran in A/C.6/31/SR.66 (para. 21) and Japan in A/C.6/31/SR.66 (para. 23).

6/ A/31/145, P. 8. See also the statement of Hungary in A/C.6/31/SR.66 (para. 1).

Similar views were expressed by the Byelorussian Soviet Socialist Republic 7/, Mongolia 8/, the Ukrainian Soviet Socialist Republic 9/ and the Union of Soviet Socialist Republics 10/. In this connexion, the Union of Soviet Socialist Republics quoted the second paragraph of the preamble, as well as article 3, of the Convention. 11/ The German Democratic Republic added that it deemed it especially appropriate to highlight the significance of the Convention "in view of the conditions of and need for growing international détente which also is the objective of the United Nations." 12/

5. Several replies noted that the Convention, in the period since it entered into force, had gained wide acceptance among States, some 120 of which had become parties thereto: this observation was made in particular by Hungary 13/, Spain 14/, Sweden 15/ and the Union of Soviet Socialist Republics 16/. The Convention was, as a result, described by Spain as embodying "the general international law in the matter" 17/ by the United States as codifying "in most material respects ... existing rules of diplomatic law" 18/, by Greece as "codifying customary rules of

7/ See A/31/145, p. 4 and the annex below, para. 1 of relevant reply. See also the statement of the Byelorussian Soviet Socialist Republic in A/C.6/31/SR.66 (para. 10).

8/ See annex, para. 1 of relevant reply. See also the statements of Mongolia in A/C.6/SR.1578 (para. 45) and A/C.6/31/SR.65. (para. 31).

9/ See A/31/145, p. 13 and the annex below, para. 1 of relevant reply. See also the statement of the Ukrainian Soviet Socialist Republic in A/C.6/SR.1579 (para. 12).

10/ See annex below, para. 1 of relevant reply. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1519 (paras. 63 and 64) and A/C.6/SR.1578 (para. 34), Bulgaria in A/C.6/SR.1578 (para. 48), the German Democratic Republic in A/C.6/SR.1578 (para. 40) and Poland in A/C.6/SR.1578 (para. 51) and A/C.6/31/SR.65 (para. 55).

11/ A/31/145, p. 14. See also the statement of the Ukrainian Soviet Socialist Republic in A/C.6/SR.1579 (para. 12).

12/ A/31/145, p. 6. See also the statements of the German Democratic Republic in A/C.6/SR.1578 (para. 40), the Byelorussian Soviet Socialist Republic in A/C.6/SR.1579 (para. 7) and the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 34).

13/ A/31/145, p. 8.

14/ Ibid., p. 11.

15/ Ibid., p. 12.

16/ Ibid., pp. 14 and 15. See also the statement of the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 35).

17/ A/31/145, p. 11.

18/ Ibid., p. 18. See also the statements of the United States of America in A/C.6/SR.1579 (para. 16) and A/C.6/31/SR.65 (para. 50).

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diplomatic law" 19/, by Cyprus as representing "a valuable codification of international diplomatic law" 20/ and by the Union of Soviet Socialist Republics as containing "generally accepted norms of contemporary international law, many of which have taken shape over the centuries as customs and unwritten rules of embassy practice". 21/

6. Commenting further on the legal significance of the Convention, the Byelorussian Soviet Socialist Republic 22/ and the Union of Soviet Socialist Republics 23/ noted that this instrument had provided the basis for many pieces of domestic legislation adopted by States Parties for the purpose of implementing its provisions. It had also served, Hungary 24/, Mongolia 25/ and the Union of Soviet Socialist Republics 26/ recalled, as a model for the preparation of a whole series of international agreements designed to regulate legal relationships arising in other spheres of international life. Thus, the Union of Soviet Socialist Republics concluded

"The provisions of the Convention are used in solving the most varied problems relating to the conduct of foreign policy by States, including those arising in fields where special norms of international law do not yet exist." 27/

7. A number of replies also referred to the positive influence which the Convention had exerted on international relations. Thus, the Byelorussian Soviet Socialist Republic noted that the implementation of the Convention by States had

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19/ See annex below, para. 2 of relevant reply dated 4 April 1977.

20/ Ibid., para. 1 of relevant reply.

21/ A/31/145, p. 14. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 34), Mongolia in A/C.6/SR.1578 (para. 45) and the Ukrainian Soviet Socialist Republic in A/C.6/31/SR.65 (para. 46).

22/ A/31/145, p. 4.

23/ Ibid., p. 15.

24/ Ibid., p. 8.

25/ See annex below, para. 2 of relevant reply. See also the statement of Mongolia in A/C.6/SR.1578 (para. 45).

26/ A/31/145, p. 15. See also the statements of Bulgaria in A/C.6/31/SR.65 (para. 35), the Byelorussian Soviet Socialist Republic in A/C.6/31/SR.66 (para. 10) and the German Democratic Republic in A/C.6/SR.1578 (para. 40).

27/ A/31/145, p. 15.

"helped them to sustain and develop friendly relations and co-operation between them and to strengthen trust and mutual understanding between peoples". 28/

Similar views were expressed by the Ukrainian Soviet Socialist Republic 29/ and the Union of Soviet Socialist Republics. 30/

8. With regard to the relevance of the Convention to the present day requirements, a number of replies stressed that on the whole the Convention adequately met the needs of the international community. Thus Sweden observed:

"The rules laid down in the Convention have not, during the time that has passed since they were adopted, proved to be in need of any more thorough revision." 31/

The Ukrainian Soviet Socialist Republic stated:

"The Convention has stood the test of time and does not, on the whole, need to be reviewed or amended. In terms of its goals and its purpose, it is fully in keeping with the current status and the trend of development in this area of law." 32/

Similar views were expressed by Hungary 33/ and Mongolia. 34/

9. Divergent views were expressed, however, on the desirability of elaborating certain provisions of the Convention. Thus while Spain did not feel it necessary

"to develop any particular aspect, considering that States have traditionally resolved the question of the implementation of the Convention bilaterally and, where necessary, through action by the diplomatic corps accredited to each capital", 35/

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28/ Ibid., p. 4.

29/ See annex below, para. 1 of relevant reply.

30/ A/31/145, p. 15. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1519 (para. 64) and A/C.6/SR.1578 (para. 36), India in A/C.6/31/SR.66 (para. 17) and Poland in A/C.6/SR.1578 (para. 52).

31/ A/31/145, p. 12.

32/ Ibid., p. 13. See also the statements of the Ukrainian Soviet Socialist Republic in A/C.6/SR.1579 (para. 14) and A/C.6/31/SR. 65 (para. 46).

33/ A/31/145, p. 8.

34/ See annex below, para. 2 of relevant reply. See also the statements of the German Democratic Republic in A/C.6/SR.1578 (para. 37), Iran in A/C.6/31/SR.66 (para. 21), Poland in A/C.6/SR.1578 (para. 52) and A/C.6/31/SR.65 (para. 55) and the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 37).

35/ A/31/145, p. 11.



and while Sweden stated:

"Evidently it would be possible to elaborate more detailed regulations on certain aspects. Experience, however, has not borne out that there would, on any particular point, be a real need for this. In the Swedish opinion the present rules are, if properly applied, sufficient to guarantee the functioning of normal diplomatic relations between States". 36/

the Byelorussian Soviet Socialist Republic held the view, also shared by the German Democratic Republic, 37/ Hungary, 38/ Poland, 39/ the Ukrainian Soviet Socialist Republic 40/ and the Union of Soviet Socialist Republics 41/ that

"Experience in applying the Vienna Convention has shown that there are certain areas of intergovernmental relations which require additional and more precise regulations of specific questions of diplomatic law." 42/

Specifically the divergence of views bore on the question whether the provisions of the Vienna Convention concerning the diplomatic courier and the diplomatic bag should be further developed. In this connexion, reference is made to paragraphs 18 to 41 below.

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36/ Ibid., p. 12. See also the statement of France in A/C.6/SR.1580 (para. 16), Japan in A/C.6/31/SR.66 (para. 24), the Netherlands in A/C.6/31/SR.66 (para. 6), Paraguay in A/C.6/SR.1579 (para. 25), the United Kingdom of Great Britain and Northern Ireland in A/C.6/SR.1579 (para. 4) and the United States of America in A/C.6/SR.1579 (para. 17) and A/C.6/31/SR.65 (para. 52).

37/ Ibid., p. 6. See also the statements of the German Democratic Republic in A/C.6/SR.1578 (para. 41) and A/C.6/31/SR. 65 (para. 42).

38/ Ibid., p. 8. See also the statements of Hungary in A/C.6/SR.1578 (para. 43) and A/C.6/31/SR.65 (para. 66).

39/ A/31/145/Add.1, p. 2. See also the statements of Poland in A/C.6/SR.1578 (para. 50) and A/C.6/31/SR.65 (para. 57).

40/ A/31/145, p. 14 and annex below, para. 9 of relevant reply. See also the statements of the Ukrainian Soviet Socialist Republic in A/C.6/SR.1579 (para. 14) and A/C.6/31/SR.65 (para. 48).

41/ Ibid., p. 16 and annex below, para. 8 of relevant reply dated 20 June 1977. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 38) and A/C.6/31/SR.65 (para. 23).

42/ Ibid., p. 5 and annex below, para. 4 of relevant reply. See also the statements of the Byelorussian Soviet Socialist Republic in A/C.6/SR.1579 (para. 8) and A/C.6/31/SR.66 (para. 13), Argentina in A/C.6/31/SR.65 (para. 28), Bulgaria in A/C.6/SR.1578 (para. 49) and A/C.6/31/SR.65 (para. 36), Cuba in A/C.6/31/SR.65 (para. 60), Czechoslovakia in A/C.6/SR.1579 (para. 2) and A/C.6/31/SR.65 (para. 62), India in A/C.6/31/SR.66 (para. 18), Iran in A/C.6/31/SR.66 (para. 22) and Mongolia in A/C.6/SR.1578 (para. 47) and A/C.6/31/SR.65 (para. 32).

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B. Implementation of the Convention in the practice of States

10. A number of replies including those of the Byelorussian Soviet Socialist Republic, 43/ Hungary, 44/ the Ukrainian Soviet Socialist Republic 45/ and the Union of Soviet Socialist Republics 46/ referred to instances where the rules of international diplomatic law and, in particular, the provisions of the Convention had been violated. The Byelorussian Soviet Socialist Republic remarked that some countries justified such violations

"by citing the existence of domestic administrative enactments, although under the Vienna Convention the special guarantees which it provides for embassies and missions and their diplomatic personnel take precedence over the guarantees in effect for citizens of any given country and for foreigners who are present in that country as private individuals." 47/

The violations in question were viewed by the Byelorussian Soviet Socialist Republic 48/ and the Union of Soviet Socialist Republics 49/ as all the more regrettable as they took place at a time of significant lessening of international tension.

11. Poland, while acknowledging the existence of disquieting instances of violations of the rules of diplomatic law, took the view that

"the overwhelming majority of the international community fully observes the rules of international diplomatic law as set out in the Vienna Convention on Diplomatic Relations of 1961." 50/

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43/ A/31/145, p. 4. See also the statements of the Byelorussian Soviet Socialist Republic in A/C.6/SR.1579 (para. 7) and A/C.6/31/SR.66 (para. 10).

44/ A/31/145, p. 8. See also the statements of Hungary in A/C.6/SR.1578 (para. 43) and A/C.6/31/SR.65 (para. 1).

45/ A/31/145, p. 13. See also the statements of the Ukrainian Soviet Socialist Republic in A/C.6/SR.1579 (para. 13) and A/C.6/31/SR.65 (para. 47).

46/ A/31/145, p. 15. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1579 (paras. 65 and 66), A/C.6/SR.1578 (para. 37) and A/C.6/31/SR.65 (para. 22), Bangladesh in A/C.6/SR.1579 (para. 20), Bulgaria in A/C.6/SR.1578 (para. 48) and A/C.6/31/SR.65 (para. 35), China in A/C.6/SR.1579 (para. 10), Czechoslovakia in A/C.6/SR.1579 (para. 1) and A/C.6/31/SR.65 (para. 61), France in A/C.6/SR.1580 (para. 16) and Mongolia in A/C.6/SR.1579 (paras. 28-32) and A/C.6/31/SR.65 (para. 32).

47/ A/31/145, p. 4. See also the statement of the Byelorussian Soviet Socialist Republic in A/C.6/31/SR.66 (para. 11).

48/ A/31/145, p. 4.

49/ Ibid., p. 15. See also the statement of the Ukrainian Soviet Socialist Republic in A/C.6/31/SR.65 (para. 47).

50/ A/31/145/Add.1, p. 2. See also the statement of Poland in A/C.6/31/SR.65 (para. 56).

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Greece pointed out that in its experience the Vienna Convention as a whole was being satisfactorily applied. 51/ The Federal Republic of Germany also reported that in its experience

"the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961 are correctly applied by most of the States having ratified, or acceded to, the Convention,"

but nonetheless observed

"... a few States fail to meet adequately the obligation to ensure to all members of the mission freedom of movement and travel in their territories (article 26 of the Convention), and some States qualify the obligation to permit the entry of articles free of customs duties and other charges (article 36 of the Convention)." 52/

12. Most of the replies emphasized the importance of general observance of the Convention and endorsed in this connexion General Assembly resolution 3501 (XXX). Thus Chile stated that it

"is concerned, and considers it of great importance, that the greatest possible number of countries Members of the United Nations should ... comply with its (the Convention) provisions. Chile accordingly supported the adoption of resolution 3501 (XXX), which contains a general invitation on this matter." 53/

Cyprus, 54/ Greece, 55/ Spain 56/ and the United States of America 57/ expressed similar views.

13. Mongolia considered it "of great importance that the stipulations of the Convention are scrupulously and universally observed," 58/ a point which was also made by the Byelorussian Soviet Socialist Republic. 59/ The Union of Soviet Socialist Republics noted that

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51/ See annex below, para. 3 of relevant reply dated 4 April 1977.

52/ A/31/145, p. 7. See also the statement of the United States of America in A/C.6/SR.1579 (para. 17).

53/ See annex below, para. 1 of relevant reply.

54/ Ibid., para. 2 of relevant reply.

55/ Ibid., para. 1 of relevant reply dated 4 April 1977.

56/ A/31/145, p. 11.

57/ Ibid., p. 18. See also the statements of France in A/C.6/SR.1580 (para. 16), India in A/C.6/31/SR.66 (para. 19), Iran in A/C.6/31/SR.66 (para. 22) and the United Kingdom in A/C.6/31/SR.68 (para. 30).

58/ See annex below, para. 3 of relevant reply.

59/ A/31/145, p. 4 and annex below, para. 3 of relevant reply.

"Strict observance of the provisions of the 1961 Vienna Convention is unquestionably an essential condition for the maintenance of normal intercourse between States," 60/

a view which was also expressed by the Ukrainian Soviet Socialist Republic. 61/

C. Ways and means to ensure the implementation of the provisions of the Convention

1. Desirability of an increased participation in the Convention

14. Most of the replies stressed the importance of greater participation in the Convention as provided in General Assembly resolution 3501 (XXX). Thus Sweden stated:

"Generally speaking, it would be of value if the Convention could gain an even wider acceptance among States than is now the case." 62/

Greece declared itself willing

"to encourage any effort ... to promote increased participation in the 1961 Vienna Convention on Diplomatic Relations and accordingly fully endorses the aims pursued by General Assembly resolution 3501 (XXX)." 63/

Similar views were expressed by Chile, 64/ Cyprus, 65/ Kuwait, 66/ Poland, 67/ and

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60/ A/31/145, p. 15 and annex below, para. 3 of relevant reply dated 20 June 1977. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1519 (para. 64), A/C.6/SR.1578 (para. 34) and A/C.6/31/SR.65 (para. 27).

61/ A/31/145, p. 13. See also the statements of the Ukrainian Soviet Socialist Republic in A/C.6/SR.1579 (para. 12), Bulgaria in A/C.6/31/SR.65 (para. 35), Cuba in A/C.6/31/SR.65 (para. 60), Czechoslovakia in A/C.6/SR.1579 (para. 3) and A/C.6/31/SR.65 (paras. 61 and 63), Hungary in A/C.6/SR.1578 (para. 43) and A/C.6/31/SR.66 (para. 2) and Poland in A/C.6/SR.1578 (para. 51).

62/ A/31/145, p. 12.

63/ See annex below, para. 1 of relevant reply dated 4 April 1977.

64/ Ibid., para. 1 of relevant reply.

65/ Ibid., para. 2 of relevant reply.

66/ A/31/145, p. 10.

67/ A/31/145/Add.1, p. 2.

Spain. 68/ The United Kingdom of Great Britain and Northern Ireland 69/ and the United States of America 70/ also considered the widest possible adherence to the Convention as desirable "notwithstanding that the Convention reflects to a great extent the rules of customary international law". The Byelorussian Soviet Socialist Republic observed:

"despite the fact that 12 years have elapsed since the Convention entered into force, participation in it cannot be said to be universal. Recognizing the great importance of the Convention for the maintenance of normal diplomatic relations between States, the Byelorussian SSR feels that participation in it by all States, especially States Members of the United Nations, would promote universal, strict observance of the generally recognized rules of international diplomatic law. In the opinion of the Byelorussian SSR, there is no obstacle at the present time preventing the 1961 Vienna Convention on Diplomatic Relations from becoming truly universal. In that connexion, the United Nations should take action to increase the number of States Parties to the Convention to the maximum extent." 71/

Remarks to the same effect were made by Mongolia, 72/ Poland, 73/ the Ukrainian Soviet Socialist Republic 74/ and the Union of Soviet Socialist Republics, 75/ as well as by the German Democratic Republic which reaffirmed in this connexion its view that

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68/ A/31/145, p. 11. See also the statements of Argentina in A/C.6/31/SR.65 (para. 28), Bangladesh in A/C.6/SR.1579 (para. 20), India in A/C.6/31/SR.66 (para. 17), Iran in A/C.6/31/SR.66 (para. 22) and Japan in A/C.6/31/SR.66 (para. 23).

69/ A/31/145, p. 18. See also the statement of the United Kingdom of Great Britain and Northern Ireland in A/C.6/31/SR.68 (para. 30).

70/ A/31/145, pp. 18 and 19. See also the statements of the United States of America in A/C.6/SR.1579 (para. 16) and A/C.6/31/SR.65 (para. 50) and Japan in A/C.6/31/SR.66 (para. 23).

71/ A/31/145, p. 4 and annex below, para. 2 of relevant reply. See also the statements of the Byelorussian Soviet Socialist Republic in A/C.6/SR.1579 (para. 7) and A/C.6/31/SR.66 (para. 10).

72/ See annex below, para. 3 of relevant reply. See also the statements of Mongolia in A/C.6/SR.1578 (paras. 46 and 47) and A/C.6/31/SR.65 (para. 31).

73/ A/31/145/Add.1, p. 2. See also the statements of Poland in A/C.6/SR.1578 (para. 53 and A/C.6/31/SR.65 (para. 55).

74/ A/31/145, p. 13 and annex below, paras. 3-5 of relevant reply. See also the statements of the Ukrainian Soviet Socialist Republic in A/C.6/SR.1579 (para. 12 and A/C.6/31/SR.65 (paras. 46 and 47).

75/ A/31/145, p. 15 and annex below, para. 2 of relevant reply dated 20 June 1977. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1519 (para. 64), A/C.6/SR.1578 (para. 35) and A/C.6/31/SR.65 (para. 21), Bulgaria in A/C.6/SR.1578 (para. 49), Czechoslovakia in A/C.6/SR.1579 (para. 1) and A/C.6/31/SR.65 (para. 63) and Hungary in A/C.6/SR.1578 (para. 43). See, on the other hand, the statement of China in A/C.6/SR.1579 (para. 10). /...

"all States wishing to do so have the right, upon acceding to the Convention, to make reservations insofar as these are compatible with the subject and purpose of the Convention." 76/

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76/ A/31/145, p. 6. See, on the other hand, the statement of the United States of America in A/C.6/31/SR.65 (para. 50).

2. Settlement of disputes arising from the interpretation or application of the Convention

15. In this connexion, the German Democratic Republic stressed that

"divergent views in interpreting or applying the Convention's provisions, which represent a balance between the interests of both the sending and the receiving State, should only be settled by negotiation and agreement, and not by unilateral action". 77/

The Netherlands stated:

"Where disputes concerning the application of the rules of international law concerning diplomatic relations cannot be settled in joint consultation between the sending and receiving States, they can be submitted for settlement to international arbitration or to the jurisdiction of an international court. Given the great importance to all States of having a uniform interpretation of these rules, it is advisable that in such cases the States involved apply, at the request of one of them, to the International Court of Justice, the principal judicial organ of the United Nations. To that end the General Assembly could urge all States to become parties to the Optional Protocol concerning the Compulsory Settlement of Disputes, belonging to the Vienna Convention of 1961." 78/

Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America also referred to the Optional Protocol. Spain observed:

"... it need hardly be mentioned that States that so desire can become parties to the Optional Protocol concerning the Compulsory Settlement of Disputes done in Vienna together with the Convention". 79/

The United Kingdom of Great Britain and Northern Ireland stated:

"... not only should care be taken that the provisions of the Vienna Convention are properly and fully implemented, but also that their spirit is not abused. An important step in dealing with this problem has been the establishment of the machinery provided for in the Optional Protocol Concerning the Compulsory Settlement of Disputes. A wider adherence to this Protocol would also serve the purposes of General Assembly resolution 3501 (XXX)." 80/

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77/ A/31/145, p. 6. See also the statement of Cuba in A/C.6/31/SR.65, para. 30.

78/ Ibid., pp. 10 and 11.

79/ Ibid., p. 12.

80/ Ibid., p. 18.

The United States of America expressed the view that

"acceptance of the Optional Protocol is the best way of ensuring application of the rules contained in the Convention and giving earnest of one's intention to comply with all the rights and duties in good faith". 81/

3. Periodic consideration by the General Assembly of the question of the implementation of the Convention

16. Several replies advocated a periodic review of the question by the General Assembly. Thus the Union of Soviet Socialist Republics stated:

"... the question of the observance of the Convention should be considered by the General Assembly and receive attention from the world community. The fact that the General Assembly considered the question twice, at its thirtieth and thirty-first sessions, and recognized the desirability of periodically returning to the question in the future, in particular at its thirty-third session, shows the great importance attached by the States Members of the United Nations to the Vienna Convention of 1961.

...

"The General Assembly's decision in favour of periodic consideration of the question of the implementation of the Vienna Convention is obviously an effective means for promoting the observance of the Convention. Even the prospect of such consideration and the preparations for it will undoubtedly direct the attention of the competent authorities of Member States and the world community to this question. The resulting opportunity for Member States to inform the United Nations of cases of violations of the Vienna Convention of 1961 will have the effect of helping to ensure observance of the Convention by all States. It will also be significant in this connexion that Member States will become familiar with the favourable experience accumulated in the implementation by States of the provisions of the Vienna Convention of 1961. Furthermore, periodic consideration of this question in the United Nations will stimulate those States not yet parties to the Convention to take a decision to accede to it." 82/

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81/ Ibid., p. 19. See also the statements of the United States of America in A/C.6/SR.1579 (para. 16) and A/C.6/31/SR.65 (para. 51).

82/ See annex below, paras. 1 and 7 of relevant reply dated 20 June 1977 and A/31/145, pp. 15 and 16. See also the statement of the Union of Soviet Socialist Republics in A/C.6/31/SR.65 (paras. 25 and 26).



Similar views were expressed by the Byelorussian SSR, 83/ Hungary 84/ and the Ukrainian Soviet Socialist Republic. 85/

17. On the other hand, Austria, while expressing support for "all efforts to ensure the implementation of international treaties as a contribution to the continued application of the universally recognized principle of good faith and pacta sunt servanda", 86/ held the view, with respect to the Vienna Convention on Diplomatic Relations, that

"for the time being one cannot proceed on a multilateral level beyond the general appeal already contained in General Assembly resolution 3501 (XXX) of 15 September 1975. If the concrete issues between two parties have to be dealt with, it is for those states to resolve them on an ad hoc basis in a spirit of co-operation and mutual understanding." 87/

4. Elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier

(a) Analysis of the relevant views and proposals from Member States

(i) General views on the elaboration of the envisaged protocol

18. All the replies recognized the validity and usefulness of the provisions of the Convention concerning the diplomatic courier and the diplomatic bag.

19. Some considered that those provisions were sufficient to ensure the proper functioning of courier communications. Thus Fiji stated:

"... the Fiji Government is of the opinion that the present provisions of the Vienna Convention relating to diplomatic couriers and diplomatic bags are clear and adequate. Non-observance of the Vienna Convention of 1961 does not in itself justify the creation of additional rules. The Fiji Government

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83/ A/31/145, pp. 4 and 5 and annex below, para. 1 of relevant reply. See also the statement of the Byelorussian Soviet Socialist Republic in A/C.6/31/SR.66 (para. 12).

84/ A/31/145, p. 8.

85/ See annex below, paras. 7 and 8 of relevant reply. See also the statements of Bulgaria in A/C.6/31/SR.65 (para. 35), the German Democratic Republic in A/C.6/31/SR.65 (para. 44), India in A/C.6/31/SR.66 (para. 19), Mongolia in A/C.6/31/SR.65 (para. 33) and Poland in A/C.6/31/SR.65 (para. 57).

86/ A/31/145, p. 3.

87/ Ibid. See also the statements of the United States of America in A/C.6/31/SR.65 (para. 53) and the United Kingdom of Great Britain and Northern Ireland in A/C.6/31/SR.68 (para. 29).

is of the opinion that if the present provisions were properly and conscientiously observed, there could be no abuse of the privileges accorded to the courier and the diplomatic bags." 88/

Similarly, the United Kingdom of Great Britain and Northern Ireland observed:

"It is recognized that there have been abuses of the provisions of the Convention, in particular having regard to General Assembly resolution 3501 (XXX), of article 27 concerning the status of the diplomatic courier. On the one hand the privileges accorded to couriers and their bags have been misused; on the other there have been instances of failure to accord to couriers and the diplomatic bag the protection to which they are entitled. In Her Majesty's Government's view, however, the fact that such misuse and failure of protection does occur is not a sign of the insufficiency of the provisions. Her Majesty's Government believe that if the present provisions were properly and conscientiously observed there would be no abuse of the privileges accorded to the courier and the diplomatic bag and that the status of the courier and the contents of the diplomatic bag would be adequately protected; if this principle is observed there is no occasion for the elaboration of further provisions." 89/

The same general position was taken by Cyprus, 90/ Kuwait, 91/ the Netherlands, 92/ Spain, 93/ Sweden, 94/ the United States of America 95/ and Venezuela, 96/ as well as by Austria 97/ which observed in this connexion:

"Since an almost identical wording /to that of article 27 of the Vienna Convention on Diplomatic Relations / has been adopted in March 1975 in respect of couriers of permanent missions to international organizations (Vienna

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88/ See annex below, relevant reply.

89/ A/31/145, p. 18. See also the statements of the United Kingdom of Great Britain and Northern Ireland in A/C.6/SR.1579 (para. 4) and A/C.6/31/SR.68 (paras. 30 to 32).

90/ See annex below, para. 3 of relevant reply.

91/ A/31/145, p. 10.

92/ Ibid., p. 11. See also the statement of the Netherlands in A/C.6/SR.1581 (para. 57).

93/ A/31/145, p. 12.

94/ Ibid.

95/ Ibid., p. 19. See also the statements of the United States of America in A/C.6/SR.1579 (para. 17), A/C.6/SR.1581 (para. 56) and A/C.6/31/SR.65 (paras. 51 and 52).

96/ See annex below, para. 4 of relevant reply.

97/ A/31/145, p. 3.

Convention on the Representation of States in their Relations with International Organizations of a Universal Character), it appears to be the view shared by the majority of Governments that no substantial change is warranted." 98/

20. Other replies, however, while agreeing that there was no need to amend or review the relevant provisions of the Convention, expressed the view that further elaboration of the provisions in question would facilitate their implementation. Thus Chile noted:

"... the Government of Chile considers that article 27 of the Vienna Convention on Diplomatic Relations deals quite adequately with these problems in general, but considers that it would be advisable to adopt detailed regulations under this provision with a view to adapting it to present needs and means of communication, in order to facilitate transport, to prevent correspondence from going astray and to ensure its inviolability." 99/

Views along the same lines were expressed by Colombia, 100/ the Federal Republic of Germany, 101/ Greece, 102/ Seychelles 103/ and Sierra Leone. 104/ The Ukrainian Soviet Socialist Republic, for its part, stated:

"In view of the great importance of diplomatic couriers to the development of relations between States, it seems advisable to examine the question of further regulating their functions and status in a more precise manner. That does not mean amending in some way the relevant provisions of the Vienna Convention on Diplomatic Relations but rather developing them in the light of the current practice of the diplomatic courier service." 105/

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98/ Ibid. See also the statements of Austria in A/C.6/31/SR.68 (para. 52), Australia in A/C.6/31/SR.68 (para. 53), France in A/C.6/SR.1580 (para. 16), Japan in A/C.6/31/SR.65 (para. 24) and Paraguay in A/C.6/SR.1579 (para. 25).

99/ See annex below, para. 4 of relevant reply.

100/ See annex below, section I of relevant reply.

101/ A/31/145, p. 7.

102/ See annex below, para. 3 of relevant reply dated 4 April 1977 and para. 2 of relevant reply dated 17 April 1978.

103/ See annex below, relevant reply.

104/ Ibid., para. 2 of relevant reply.

105/ A/31/145, p. 14 and annex below, paras. 9 and 10 of relevant reply. See also the statement of the Ukrainian Soviet Socialist Republic in A/C.6/31/SR.65 (para. 48).

This opinion was also shared by the Byelorussian Soviet Socialist Republic, 106/ the German Democratic Republic, 107/ Hungary, 108/ Mongolia, 109/ Poland 110/ and the Union of Soviet Socialist Republics. 111/

21. Most of the States mentioned in the previous paragraph supported the view that the relevant provisions of the Convention should be developed by means of the elaboration of a protocol concerning the status of both the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. Such was the position taken by Colombia, 112/ the German Democratic Republic, 113/ Hungary, 114/ Mongolia, 115/ Poland, 116/ the Ukrainian Soviet Socialist Republic 117/ and the Union of Soviet Socialist Republics, 118/ which was elaborated by the Byelorussian Soviet Socialist Republic in the following terms:

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106/ A/31/145, p. 5 and annex below, paras. 5 and 6 of relevant reply. See also the statements of the Byelorussian Soviet Socialist Republic in A/C.6/SR.1579 (para. 8) and A/C.6/31/SR.66 (para. 13).

107/ A/31/145, p. 6. See also the statements of the German Democratic Republic in A/C.6/SR.1578 (para. 41) and A/C.6/31/SR.65 (para. 40).

108/ A/31/145, pp. 8 and 9. See also the statements of Hungary in A/C.6/SR.1578 (para. 43) and A/C.6/31/SR.66 (para. 3).

109/ See annex below, para. 4 of relevant reply. See also the statements of Mongolia in A/C.6/SR.1578 (para. 47) and A/C.6/31/SR.65 (para. 32).

110/ A/31/145/Add.1, p. 2. See also the statement of Poland in A/C.6/SR.1578 (para. 52).

111/ A/31/145, p. 16 and annex below, paras. 8 and 9 of relevant reply dated 20 June 1977. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 38) and A/C.6/31/SR.65 (paras. 23 and 24).

112/ See annex below, para. 4 of sect. I of relevant reply.

113/ A/31/145, p. 6. See also the statement of the German Democratic Republic in A/C.6/SR.1578 (para. 42).

114/ A/31/145, pp. 8 and 9. See also the statements of Hungary in A/C.6/SR.1578 (para. 44) and A/C.6/31/SR.66 (para. 3).

115/ See annex below, para. 5 of relevant reply. See also the statements of Mongolia in A/C.6/SR.1578 (para. 47) and A/C.6/31/SR.65 (para. 32).

116/ A/31/145/Add.1, p. 2. See also the statement of Poland in A/C.6/SR.1578 (para. 52).

117/ A/31/145, p. 14 and annex below, paras. 9 and 10 of relevant reply. See also the statements of the Ukrainian Soviet Socialist Republic in A/C.6/SR.1579 (para. 14) and A/C.6/31/SR.65 (para. 48).

118/ A/31/145, p. 16 and annex, paras. 9 and 10 of relevant reply dated 20 June 1977. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 38) and A/C.6/31/SR.65 (para. 23).

"In the opinion of the Byelorussian SSR, the functions and status of the diplomatic courier could be regulated in an additional protocol to the 1961 Vienna Convention on Diplomatic Relations, which would be based on the provisions of that Convention and would take into consideration the relevant provisions of other conventions of a similar nature.

...

"The additional protocol should also solve the question concerning the standardization of the processing and dispatch of the diplomatic bag not accompanied by diplomatic courier. Such a link is, of course, widely used in practice by States. In that connexion it would also be worth while to study the question of the status of persons with whom the diplomatic bag is sent and who are not diplomatic couriers.

...

"The elaboration and adoption of an additional protocol to the 1961 Vienna Convention on Diplomatic Relations governing the functions and status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier would unquestionably represent a useful contribution to the further codification and progressive development of international diplomatic law and would promote the improvement of mutual understanding and the development of friendly relations among States in accordance with the purposes and principles of the United Nations Charter." 119/

22. Other replies focused on the question of the transport of the diplomatic bag not accompanied by diplomatic courier and advocated a detailed regulation of this type of transport with the aim of standardization. Thus, the Federal Republic of Germany noted

"In the Federal Republic of Germany over 90 per cent of the diplomatic pouches are sent by land, sea or air as unattended luggage (i.e. not attended by a diplomatic courier). It would seem desirable for this type of transport in particular to be regulated in detail by universally accepted international provisions so as to facilitate and expedite the transport of diplomatic luggage." 120/

Similar views were expressed by Greece 121/ and Sierra Leone. 122/

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119/ See annex below, paras. 11, 14 and 15 of relevant reply, and A/31/145, p. 5. See also the statements of the Byelorussian Soviet Socialist Republic in A/C.6/SR.1579 (para. 8) and A/C.6/31/SR.66 (paras. 13 and 14).

120/ A/31/145, p. 7.

121/ See annex below, para. 3 of relevant reply dated 4 April 1977, and para. 2 of relevant reply dated 17 April 1978.

122/ Ibid., para. 2 of relevant reply. See also the statement of Argentina in A/C.6/31/SR.65 (paras. 28 and 29).

(ii) Proposals on the elaboration of the envisaged protocol

23. A first general proposal which was made by the German Democratic Republic 123/ and by Hungary 124/ was that the provisions on the status of the diplomatic courier contained in the 1961 and 1963 Vienna Convention on Diplomatic and Consular Relations, the 1965 Convention on Special Missions and the 1975 Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character should be integrated into a uniform system. 125/

(a) "Diplomatic courier": definition of the term and functions

24. Several States, including the Byelorussian Soviet Socialist Republic, 126/ Colombia, 127/ the German Democratic Republic 128/ and Hungary, 129/ considered it desirable to define the concept of diplomatic courier. Specifically, Colombia noted that the diplomatic courier "is the person responsible for accompanying the diplomatic bag". 130/ The Union of Soviet Socialist Republics noted:

"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.

...

"It would also be desirable to include in the protocol provisions to the effect that the meaning of the term /s/ 'diplomatic courier' will, where necessary, be assimilated to that of the terms 'consulate courier' ... used in article 35 of the 1963 Vienna Convention on Consular Relations; 'courier of the special mission' ... used in article 28 of the 1969 Convention on Special Missions; and 'courier of the mission' ... /and/ 'courier of the delegation' used in articles 27 and 57 of the 1975 Vienna Convention

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123/ A/31/145, p. 7.

124/ Ibid., p. 9. See also the statement of Hungary in A/C.6/SR.1578 (para. 44) and A/C.6/31/SR.66 (para. 3).

125/ See also in this connexion the views of the Byelorussian Soviet Socialist Republic as reproduced in the annex below, (para. 11 of the relevant reply) and of the Union of Soviet Socialist Republics as reproduced in paras. 24 and 36 below.

126/ See annex below, para. 12 of the relevant reply.

127/ Ibid., para. 2 of the relevant reply.

128/ A/31/145, p. 6. See also the statement of the German Democratic Republic in A/C.6/31/SR.65 (para. 41).

129/ A/31/145, p. 9.

130/ See annex below, para. 2 of the relevant reply.

on the Representation of States in their Relations with International Organizations of a Universal Character." 131/

The Ukrainian Soviet Socialist Republic further held that

"special attention should be given to ... a definition of the functions ... of couriers", 132/

a point which was also made by the Byelorussian Soviet Socialist Republic. 133/

(b) Privileges and immunities of diplomatic couriers

25. Commenting generally on the status of diplomatic couriers, the Byelorussian Soviet Socialist Republic said that the envisaged protocol

"should contain provisions defining the complete range of privileges and immunities of the diplomatic courier", 134/

a point which was also made by the Ukrainian Soviet Socialist Republic. 135/ In this connexion, the Union of Soviet Socialist Republics suggested that the envisaged protocol should provide that:

"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." 136/

Similar views were expressed by Poland. 137/

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131/ See annex below, para. 1 of relevant reply dated 13 July 1978. See also the statement of the German Democratic Republic in A/C.6/31/SR.65 (para. 41).

132/ A/31/145, p. 14 and annex below, para. 9 of relevant reply.

133/ A/31/145, p. 5 and annex below, paras. 11 and 12 of relevant reply. See also the statement of the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 38).

134/ A/31/145, p. 5 and annex below, para. 12 of relevant reply.

135/ See annex below, para. 9 of relevant reply.

136/ A/31/145, p. 16 and annex below, para. 9 of relevant reply dated 20 June 1977. See also the statement of the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 38).

137/ A/31/145/Add.1, p. 2. See also the statements of Bulgaria in A/C.6/31/SR.65 (para. 36), the Byelorussian Soviet Socialist Republic in A/C.6/31/SR.66 (para. 14) and the German Democratic Republic in A/C.6/31/SR.65 (para. 42).

26. A number of replies including those of the Byelorussian Soviet Socialist Republic, 138/ Colombia, 139/ Poland 140/ and the Union of Soviet Socialist Republics 141/ referred to the personal inviolability of the diplomatic courier. The following provision was proposed by the Union of Soviet Socialist Republics for inclusion in the envisaged protocol:

"The diplomatic courier, in the performance of his official duties, shall enjoy personal inviolability and shall not be liable to any form of arrest or detention. The host State and the transit State are required to take all appropriate steps to prevent any attack on his person, freedom or dignity." 142/

27. The question of the exemption from personal examination or control of the courier was mentioned in several replies including those of the Byelorussian Soviet Socialist Republic, 143/ the German Democratic Republic, 144/ Mongolia, 145/ the Netherlands, 146/ the Ukrainian Soviet Socialist Republic 147/ and the Union of Soviet Socialist Republics. 148/ The following wording was proposed by the Union of Soviet Socialist Republics:

"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. 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

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138/ See annex below, para. 12 of relevant reply.

139/ Ibid., para. 2 of sect. I of relevant reply.

140/ A/31/145/Add.1, p. 2.

141/ A/31/145, pp. 16 and 17. See also the statement of Mongolia in A/C.6/31/SR.65 (para. 32).

142/ See annex below, para. 5 of relevant reply dated 13 July 1978 and para. 9 of relevant reply dated 20 June 1977.

143/ See annex below, para. 12 of relevant reply.

144/ A/31/145, p. 6. See also the statements of the German Democratic Republic in A/C.6/SR.1578 (para. 41) and A/C.6/31/SR.65 (para. 42).

145/ See annex below, para. 5 of relevant reply. See also the statement of Mongolia in A/C.6/31/SR.65 (para. 32).

146/ A/31/145, p. 11.

147/ Ibid., p. 14 and annex below, para. 9 of relevant reply. See also the statement of the Ukrainian Soviet Socialist Republic in A/C.6/SR.1579 (para. 14).

148/ Ibid., pp. 16 and 17. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 38) and A/C.6/31/SR.65 (para. 22).



the host State. Such inspection shall be carried out only in the presence of the diplomatic courier." 149/

The Ukrainian Soviet Socialist Republic added that

"special attention should be given to the couriers' exemption from customs duties and charges", 150/

a view which was shared by the Byelorussian Soviet Socialist Republic. 151/

28. The Netherlands, on the other hand, expressed, in connexion with the possible misuse of a courier package, the view that in case of justifiable suspicions

"the receiving State should have the right to refuse to allow its importation unless the ... 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." 152/

29. With regard to the inviolability of the premises used by the diplomatic courier, which was mentioned by the Byelorussian Soviet Socialist Republic, 153/ the Ukrainian Soviet Socialist Republic 154/ and the Union of Soviet Socialist Republics, 155/ the following formulation was proposed by the Union of Soviet Socialist Republics:

"The premises used by the diplomatic courier for residential purposes in the performance of his official duties in the host State 156/ or the transit

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149/ See annex below, para. 8 of relevant reply dated 13 July 1978 and para. 9 of relevant reply dated 20 June 1977.

150/ A/31/145, p. 14 and annex below, para. 9 of relevant reply.

151/ See annex below, para. 12 of relevant reply.

152/ A/31/145, p. 11.

153/ A/31/145, p. 5 and annex below, para. 12 of relevant reply. See also the statement of the Byelorussian Soviet Socialist Republic in A/C.6/31/SR.66 (para. 14).

154/ A/31/145, p. 14, and annex below, para. 9 of relevant reply.

155/ "The host State of the diplomatic mission which receives or sends the diplomatic bag accompanied or not by a diplomatic courier."

156/ "The State through the territory of which the diplomatic courier, in the performance of his official functions, or the diplomatic bag not accompanied by a diplomatic courier, is in transit."

State 157/ 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." 158/

30. The Union of Soviet Socialist Republics also proposed formulations concerning the immunity from jurisdiction, waiver of immunity and the duration of privileges and immunities, which are reproduced in the annex below.

(c) End of functions

31. The Byelorussian Soviet Socialist Republic considered that the envisaged protocol should

"define the procedure for terminating, where the need arises, the functions of the diplomatic courier" ... 159/

(d) Consequences of the severance or suspension of diplomatic relations, the recall of diplomatic mission or armed conflict

32. Several replies, including those of the Byelorussian Soviet Socialist Republic, 160/ the German Democratic Republic, 161/ Mongolia, 162/ the Ukrainian Soviet Socialist Republic 163/ and the Union of Soviet Socialist Republics 164/ considered it advisable to make explicit provision for such contingencies in the envisaged protocol. In this connexion, the Union of Soviet Socialist Republics proposed the wording reproduced in the annex below.

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157/ A/31/145, p. 17. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 38), the German Democratic Republic in A/C.6/SR.1578 (para. 41) and Mongolia in A/C.6/31/SR.65 (para. 32). It should be noted that although the question of the inviolability of means of transport was not mentioned in the written comments and observations received from Member States, it was alluded to by Mongolia in A/C.6/31/SR.65 (para. 32).

158/ See annex below, para. 9 of relevant reply dated 13 July 1978 and para. 9 of relevant reply dated 20 June 1977.

159/ Annex, para. 12 of relevant reply. See also the statements of the Byelorussian Soviet Socialist Republic in A/C.6/31/SR.65 (para. 14) and Bulgaria in A/C.6/31/SR.65 (para. 37).

160/ See annex below, para. 12 of relevant reply.

161/ A/31/145, p. 6. See also the statement of the German Democratic Republic in A/C.6/31/SR.65 (para. 43).

162/ See annex below, para. 5 of relevant reply.

163/ A/31/145, p. 14 and annex below, para. 9 of relevant reply.

164/ A/31/145, p. 17 and annex, para. 9 of relevant reply dated 20 June 1977 and para. 11 of relevant reply dated 13 July 1978. See also the statements of the Union of Soviet Socialist Republics in A/C.6/SR.1578 (para. 38) and Bulgaria in A/C.6/31/SR.65 (para. 37).

(e) Persons declared non grata

33. Reference is made to the formulation proposed by the Union of Soviet Socialist Republics which is reproduced in the annex below. 165/

(f) Diplomatic couriers ad hoc and persons other than diplomatic couriers entrusted with diplomatic bags

34. Several replies referred to the institution of the diplomatic courier ad hoc (para. 6 of article 27 of the Vienna Convention) and to the case where the diplomatic bag is entrusted to the captain of a commercial aircraft (para. 7 of article 27). In this connexion, Colombia raised the question whether the two exceptions of paragraphs 6 and 7 or the general rule in paragraph 5 were duly justified in international law and went on to say:

"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 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." 166/

The Union of Soviet Socialist Republics proposed the following text concerning ad hoc diplomatic couriers:

"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." 167/

35. The status of persons with whom the diplomatic bag is sent and who are not diplomatic couriers was considered as worth studying by the Byelorussian Soviet Socialist Republic. 168/ In this connexion, Greece considered the present wording of paragraph 7 of article 27 as somewhat incomplete and observed

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165/ Other aspects of the status of the diplomatic courier which were not mentioned in the written comments and observations received from Member States but were touched upon in the oral statements made in the Sixth Committee at the thirty-first session of the General Assembly included the question of the granting of visas which was referred to by the German Democratic Republic in A/C.6/31/SR.65 (para. 43) and the question of the respect for the laws and regulations of the receiving State which was alluded to also by the German Democratic Republic in A/C.6/31/SR.65 (para. 42).

166/ See annex below, para. 2 of sect. I of relevant reply. See also the statement of Poland in A/C.6/31/SR.66, para. 57.

167/ See annex below, para. 14 of relevant reply dated 13 July 1978.

168/ Ibid., para. 13 of relevant reply dated 17 April 1978.

"Article 27, paragraph 1, provides for the taking of possession of the diplomatic bag from the captain of the aircraft while it makes no reference of its delivery to the captain of the aircraft, which may give rise to technical difficulties". 169/

g. "Diplomatic bag": definition of the term

36. Colombia referred to the definition by Philippe Cahier 170/ of the diplomatic bag as

"Postal packets or packages bearing external marks of their official character" 171/

and the Union of Soviet Socialist Republics stated:

"The diplomatic bag is the official correspondence 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," 172/

accompanying this definition with the remark it made in relation to its proposed definition of the diplomatic courier (see para. 24 above).

h. Inviolability of the diplomatic bag

37. Several replies, including those of Colombia, 173/ Mongolia, 174/ the Netherlands, 175/ Poland 176/ and the Union of Soviet Socialist Republics, 177/ made reference to the principle of the inviolability of the diplomatic bag as enunciated in article 27, paragraph 3 of the Convention. Thus the Union of Soviet Socialist Republics stressed that this principle applied to the diplomatic bag

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169/ Ibid., para. 2 of relevant reply dated 17 April 1978.

170/ Le Droit Diplomatique Contemporain, Publication de L'Institut Universitaire de Hautes Etudes Internationales, No. 40 (Librairie E. Draz, Genève, 1962), p. 213.

171/ See annex below, para. 1 of sect. I of relevant reply.

172/ Ibid., para. 2 of relevant reply dated 13 July 1978.

173/ Ibid., para. 1 of sect. I of relevant reply.

174/ Ibid., para. 5 of relevant reply.

175/ A/31/145, p. 11.

176/ Annex, paras. 2-4 of relevant reply.

177/ Ibid., para. 9 of relevant reply dated 20 June 1977 and para. 3 of relevant reply dated 13 July 1978.

"whether accompanied or not accompanied by a diplomatic courier" 178/

Poland expressed the same view. 179/

38. With regard to the "different interpretations" to which the paragraph in question could give rise, Poland stated:

"It is ... the opinion of the Polish Government that all steps taken against terrorism should not lead to any form of violation of the special status of the diplomatic courier and the diplomatic bag. The argument put forward by some States that terrorists may pretend to be couriers and may place explosives in false diplomatic bags cannot lead to general suspicion towards all couriers and all diplomatic bags. Each State is fully responsible for its couriers and for the contents of the diplomatic bag which may contain only diplomatic documents or articles intended for official use, according to paragraph 4 of article 27 of the Convention.

"A hypothetical violation of this rule cannot lead to the introduction of measures of control of all couriers and all diplomatic bags." 180/

A similar position was taken by the Union of Soviet Socialist Republics. 181/

39. Colombia, on the other hand, while recognizing that "the Vienna Convention makes no provision for the possibility that the bag might be opened or detained", drew attention to the possibility 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. It therefore proposed that the envisaged protocol should set out rules to prevent arbitrary actions regarding the following points:

- (a) "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.
- (b) "The official who is competent to order the opening of the bag.
- (c) "The act of opening the bag. 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.

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178/ Ibid. See also the statement of the Union of Soviet Socialist Republics in A/C.6/31/SR.65 (para. 22).

179/ See annex below, para. 1 of relevant reply. See also the statement of Poland in A/C.6/31/SR.65 (para. 57).

180/ See annex below, paras. 3 and 4 of relevant reply.

181/ Ibid., para. 3 of relevant reply dated 13 July 1978.

(d) "Detention of the bag for a short time, pending the arrival of the officials mentioned.

(e) "Procedure in the case of non-appearance of one or the other of the officials mentioned.

(f) "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 ..." 182/

The Netherlands also advocated "a limitation of the inviolability of diplomatic bags whether or not they are accompanied by a courier" and reiterated its conviction that

"... where there are justifiable suspicions of misuse of a courier bag, 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." 183/

i. Responsibility of the States involved

40. Several States considered that the envisaged protocol should spell out the responsibility of the States involved regarding the inviolability of the bag and the courier. Thus Poland said:

"It should be highly desirable if the Commission examined the status of the couriers and the diplomatic bag in the light of States' responsibility, i.e. responsibility of the sending State, the receiving State and a third State - for inviolability of the courier and the bag ..." 184/

The Union of Soviet Socialist Republics proposed the following formulation:

"The host State 185/ or the transit State 186/ 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. Questions of the procedure to be followed in dispatching and receiving a diplomatic bag not accompanied by a diplomatic courier shall be settled by special agreements concluded between the States concerned." 187/

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182/ Ibid., para. 1 of sect. I of relevant reply.

183/ A/31/145, p. 11.

184/ See annex below, para. 5 of relevant reply.

185/ "The host State of the diplomatic mission which receives or sends the diplomatic bag accompanied or not accompanied by a diplomatic courier."

186/ "The State through the territory of which the diplomatic courier, in the performance of his official functions, or the diplomatic bag not accompanied by a diplomatic courier, is in transit."

187/ See annex below, para. 4 of relevant reply dated 13 July 1978.

Views along the same lines were expressed by the Byelorussian Soviet Socialist Republic. 188/ Sierra Leone, as a developing country whose "diplomatic bags, unaccompanied by courier, are at the mercy of anyone interested in their contents", placed special emphasis on the responsibility of the receiving and transit States with regard to unaccompanied diplomatic bags and observed in this connexion:

"It is therefore 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." 189/

Colombia also referred to the obligations of third States as follows:

"diplomatic couriers and diplomatic bags that happen to be in a third State in transit or owing to force majeure are to enjoy in the territory of that State the same protection, freedom and inviolability as the receiving State is bound to accord". 190/

41. Force majeure was also mentioned by the Union of Soviet Socialist Republics which proposed in this connexion the formulation reproduced in the annex below. The Union of Soviet Socialist Republics further proposed a provision (also reproduced in the annex below) on the obligations of the "host State" and the "transit State" in the event of the sudden death of a diplomatic courier or of an accident preventing him from performing his official duties.

(b) Results of the study by the International Law Commission of the proposals on the elaboration of the envisaged protocol

42. Pursuant to paragraph 4 of General Assembly resolution 31/76 (see para. 1 of the introduction to the present report), the International Law Commission included in the agenda of its twenty-ninth session, held in 1977, an item entitled "Proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier" and established a working group in order to ascertain the more suitable ways and means of dealing with the topic. 191/ At its thirtieth session, the Commission again established a Working Group on the Status of the Diplomatic Courier and of the Diplomatic Bag not Accompanied by Diplomatic Courier. At its 1527th meeting, held on 27 July 1978, the Commission considered the report of the Working Group (A/CN.4/L.285), which was introduced by its Chairman, Mr. Abdullah El-Erian. At the same meeting, the Commission approved the report and decided to include it in

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188/ Ibid., para. 12 of relevant reply.

189/ See annex below, paras. 1 and 2 of relevant reply.

190/ Ibid., para. 3 of sect. I of relevant reply.

191/ For the conclusions reached by the Working Group and subsequently approved by the Commission, see the report of the Commission on the work of its twenty-ninth session in Official Records of the General Assembly, Thirty-second Session, Supplement No. 10 (A/32/10), chap. V, paras. 83 and 84.

paragraphs 137 to 144 of its report to the General Assembly. 192/ At the same time, the Commission expressed the wish that those paragraphs be brought to the attention of the Secretary-General so that they might be taken into account in the present analytical report. The paragraphs in question are reproduced below: 193/

"Status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier"

"137. In 1976, after its consideration of an item entitled 'Implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961', the General Assembly adopted resolution 31/76, which recognized in its preamble 'the advisability of studying the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier' and provided in its operative paragraphs 3 to 5 the following:

'3. Invites Member States to submit or to supplement their comments and observations on ways and means to ensure the implementation of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and on the desirability of elaborating provisions concerning the status of the diplomatic courier in accordance with paragraph 4 of General Assembly resolution 3501 (XXX), with due regard also to the question of the status of the diplomatic bag not accompanied by diplomatic courier;

'4. Requests the International Law Commission at the appropriate time to study, in the light of the information contained in the report of the Secretary-General on the implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 and other information on this question to be received from Member States through the Secretary-General, 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 would constitute development and concretization of the Vienna Convention on Diplomatic Relations of 1961;

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

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192/ Official Records of the General Assembly, Thirty-third Session, Supplement No. 10 (A/33/10).

193/ For easy reference, the numbering of paragraphs in the above-quoted text follows that of the report of the International Law Commission.



"138. Pursuant to the request contained in paragraph 4 of the above resolution, the International Law Commission inscribed on the agenda of its twenty-ninth session an item entitled 'Proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier' and established a Working Group chaired by Mr. Abdullah El-Erian in order to ascertain the more suitable ways and means of dealing with the topic. The Working Group reached a series of conclusions, which the Commission subsequently approved. 194/

"139. In those conclusions, the Working Group recommended to the Commission, inter alia, that the Commission should undertake the study of the topic during its 1978 session in order to allow the Secretary-General to take into account the results of such a study in the report he had been requested to submit to the General Assembly at its thirty-third session and that such study should be done without curtailing the time allocated to the consideration of the topics to which priority had been given.

"140. At the present session, the Commission again established at its 1475th meeting, on 9 May 1978, a Working Group on status of the diplomatic courier and of the diplomatic bag not accompanied by diplomatic courier, composed of the same members as at the twenty-ninth session, namely, Mr. Abdullah El-Erian (Chairman), Mr. Juan José Calle y Calle, Mr. Emmanuel Kodjoe Dadzie, Mr. Laurel B. Francis, Mr. Willem Riphagen, Mr. Stephen M. Schwebel, Mr. Sompong Sucharitkul, Mr. N. A. Ushakov and Mr. Alexander Yankov. The Working Group held four meetings on 8 and 29 June and 20 and 25 July 1978.

"141. The Working Group had before it three working papers. The first paper (A/CN.4/WP.1 and Add.1-3), prepared by the Secretariat pursuant to the request made by the Commission at its twenty-ninth session, contained a classification of the general views of Member States on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the proposals submitted by Member States on the elaboration of such a protocol, and some practical measures proposed as found in the written comments submitted by Member States during 1976-1978 as well as in the observations made by their representatives in the Sixth Committee at the thirtieth and thirty-first sessions of the General Assembly. The working paper also reproduced in a comparative table the relevant provisions of the 1961 Vienna Convention on Diplomatic Relations, 195/ the 1963 Vienna Convention on Consular Relations, 196/ the 1969 Convention on Special Missions, 197/ and the 1975 Vienna Convention on the Representation of States in Their Relations with International

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194/ Official Records of the General Assembly, Thirty-second Session, Supplement No. 10 (A/32/10), chap. V, paras. 83 and 84.

195/ United Nations, Treaty Series, vol. 500, p. 95.

196/ Ibid., vol. 596, p. 261.

197/ Annex to General Assembly resolution 2530 (XXIV) of 8 December 1969.

Organizations of a Universal Character. 198/ It further annexed the comments on the elaboration of such a protocol received from Member States since 1977, those received up to the end of 1976 being reproduced in document A/31/145 and Add.1. The second working paper (A/CN.4/WP.2) contained the suggestions by the Chairman of the Working Group for an outline of issues on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier based on the comments and proposals of Member States as classified in the preceding Working Paper. The third working paper (A/CN.4/WP.3), prepared by the Secretariat at the request of the Working Group, set out the relevant provisions of the four multilateral conventions mentioned above under each of the headings contained in the second working paper, as orally revised by the Working Group.

"142. On the basis of the working papers as well as other relevant material, the Working Group studied the proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, together with the provisions of the four multilateral conventions referred to in paragraph 141. The Working Group adopted as its basic position that there had been considerable developments in various aspects of the question in recent years as reflected in the three multilateral conventions adopted subsequent to the 1961 Vienna Convention on Diplomatic Relations and that therefore the relevant provisions of those conventions, if any, should form the bases for any further study of the question. The Working Group tentatively identified nineteen issues and examined each of them in order to ascertain whether any of the four conventions adequately covered the issue concerned and what further elements could be considered as appropriately falling within each of those issues. Although, pursuant to the request of the General Assembly resolution quoted in paragraph 137 above the issues are so formulated as to be applicable to the 'diplomatic' courier or the 'diplomatic' bag, certain members of the Working Group were of the view that they were also relevant with respect to the other couriers or bags defined under the above-mentioned three conventions and therefore they should eventually be made applicable to such couriers or bags as well.

"143. The issues tentatively identified are as follows:

- "(1) Definition of 'diplomatic courier'
- "(2) Function of the diplomatic courier
- "(3) Multiple appointment of the diplomatic courier
- "(4) Privileges and immunities of the diplomatic courier
  - "(a) Personal inviolability
    - "(i) Immunity from arrest or detention

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198/ 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.

- "(ii) Exemption from personal examination or control
- "(iii) Exemption from inspection of personal baggage
- "(b) Inviolability of residence
- "(c) Inviolability of means of transport
- "(d) Immunity from jurisdiction
- "(e) Waiver of immunities
- "(5) Facilities accorded to the diplomatic courier
- "(6) Duration of privileges and immunities of the diplomatic courier
- "(7) Nationality of the diplomatic courier
- "(8) End of functions of the diplomatic courier
- "(9) Consequences of the severance or suspension of diplomatic relations, the recall of diplomatic missions or armed conflict
- "(10) Granting of visas to the diplomatic courier
- "(11) Persons declared not acceptable
- "(12) Status of the diplomatic courier ad hoc
- "(13) Definition of 'diplomatic bag'
- "(14) Status of the diplomatic bag accompanied by diplomatic courier
- "(15) Status of the diplomatic bag not accompanied by diplomatic courier
  - "(A) General
  - "(B) The diplomatic bag entrusted to the captain of a commercial aircraft or a ship
- "(16) Respect for the laws and regulations of the receiving State
- "(17) Obligations of the receiving State
  - "(A) General
  - "(B) Obligations of the receiving State in the event of death or accident of the diplomatic courier precluding him from the performance of his functions

"(18) Obligations of the transit State

"(A) General

"(B) Obligations of the transit State in the event of death or accident of the diplomatic courier precluding him from the performance of his functions

"(19) Obligations of the third State in cases of force majeure

"144. As a result of the study thus undertaken by the Working Group, the following provisions of the four Conventions mentioned in paragraph 5 above were deemed relevant, as appropriate, to each of the issues listed in the preceding paragraph. Additional points made in the course of the examination made by the Working Group are also reflected under each issue.

"(1) Definition of 'diplomatic courier'

"No definition of 'diplomatic courier' as such is found in the existing conventions. 199/ However, the following provisions can be considered as containing elements for a possible definition:

"(a) 1961 Vienna Convention (art. 27(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 (art. 35(1) and (5))

'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 couriers, ...'

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199/ The words "existing conventions" as used below 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"). See foot-notes 195 to 198 above.

'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 (art. 28(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 special mission, who shall be provided with an official document indicating his status and the number of packages constituting the bag ...'

"(d) 1975 Vienna Convention (arts. 27(1) and (5) and 57(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 ...'

"(2) Functions of the diplomatic courier

"The provisions of the existing conventions mentioned under (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 not of the individual. It was also pointed out that the function of the courier was not limited to carrying of diplomatic bags; he might also carry messages orally.

"(3) Multiple appointment of the diplomatic courier

"No provision is found in the existing conventions.

"(4) Privileges and immunities of the diplomatic courier

"Generally on the question of privileges and immunities to be granted to the diplomatic courier, certain members stressed the importance of providing for as full diplomatic status as possible to the courier, whereas others were of the view that such privileges and immunities should be limited strictly to the extent of his functions.

"Also generally regarding this question, it was pointed out that the existing conventions did not cover the cases where the courier had other status as well, such as diplomatic agent or consular officer.

"(a) Personal inviolability

"The existing conventions provide the following:

"(a) 1961 Vienna Convention (art. 27(5))

'5. ... He the diplomatic courier shall enjoy personal inviolability ...'

"(b) 1963 Vienna Convention (art. 35(5))

'5. ... He the consular courier shall enjoy personal inviolability ...'

"(c) Convention on Special Missions (art. 28 (6))

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

"(d) 1975 Vienna Convention (arts. 27 (5) and 57 (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 ...'

"(i) Immunity from arrest or detention

"The existing conventions provide as follows:

"(a) 1961 Vienna Convention (art. 27(5))

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

"(b) 1963 Vienna Convention (art. 35(5))

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

"(c) Convention on Special Missions (art. 28(6))

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

"(d) 1975 Vienna Convention (arts. 27(5) and 57(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'

"(ii) Exemption from personal examination or control

"No provision is found in the existing conventions.

"(iii) Exemption from inspection of personal baggage

"No provision is found in the existing conventions.

"(b) Inviolability of residence

"No provision is found in the existing conventions. The need was stressed to provide for protection of the place where the courier is staying while performing his functions.

"(c) Inviolability of means of transport

"No provision is found in the existing conventions. The need was stressed of ensuring adequate protection of the means of transport of the courier.

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"(d) Immunity from jurisdiction

"No provision is found in the existing conventions. It was stated that the immunity should be granted in connexion with the performance of the functions of the courier.

"(e) Waiver of immunities

"No provision is found in the existing conventions.

"(5) Facilities accorded to the diplomatic courier

"No provision is found in the existing conventions.

"(6) Duration of privileges and immunities of the diplomatic courier

"No provision is found as such in the existing conventions. However, the following provisions relating to the courier ad hoc can be taken into account:

"(a) 1961 Vienna Convention (art. 27(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 (art. 35(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 (art. 28(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 (arts. 27(6) and 57(7))

"Article 27:

'... 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:

'... 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 finished his functions.

"(7) Nationality of the diplomatic courier

"The following provision is found in one of the existing conventions: 1963 Vienna Convention (art. 35(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 ...'

"(8) End of functions of the diplomatic courier

"No provision is found in the existing conventions. It was stated that the termination of a courier's functions should be the moment when he returns to his home base.

"(9) Consequences of the severance or suspension of diplomatic relations, the recall of diplomatic missions or armed conflict

"No provision is found in the existing conventions.

"(10) Granting of visas to the diplomatic courier

"No provision is found in the existing conventions. It was considered desirable to establish a rule relating to the facilitation of the granting of visas where visas were required. It was pointed out that the full diplomatic status should be given to couriers with respect to visas.

"(11) Persons declared not acceptable

"No provision is found in the existing conventions.

"(12) Status of the diplomatic courier ad hoc

"The relevant conventions provide the following:

"(a) 1961 Vienna Convention (art. 27(6))

'6. The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph 5 200/ 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.'

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200/ For the para. 5 quoted in the above provisions, see (1) (4) (a) above and (17) (A) below.

"(b) 1963 Vienna Convention (art. 35(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 5 201/ 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 (art. 28(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 6 202/ 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 (arts. 27(6) and 57(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 5 203/ 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 6 204/ 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 stated that the courier ad hoc might have another status, like diplomatic agent or consular officer and that such case was not covered by the existing conventions. It was also pointed out that there was need to define his status while, after delivering a bag in his charge, he had to wait for some time until he was entrusted with another bag.

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201/ For the paragraphs 5 and 6 quoted in the above provisions, see sects. (1), (4)(a) above and (17)(A) below.

202/ Ibid.

203/ Ibid.

204/ Ibid.

"(13) Definition of 'diplomatic bag'

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

"(a) 1961 Vienna Convention (article 27(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(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(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(2) and (4) and 57(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 the 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.'

"(14) Status of the diplomatic bag accompanied by diplomatic courier

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

"(a) 1961 Vienna Convention (article 27(3))

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

"(b) 1963 Vienna Convention (article 35(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(4))

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

"(d) 1975 Vienna Convention (articles 27(3) and 57(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)(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.

"(15) Status of the diplomatic bag not accompanied by diplomatic courier

"(A) General

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

"(B) The diplomatic bag entrusted to the captain of a commercial aircraft or a ship

"The existing conventions provide the following:

"(a) 1961 Vienna Convention (article 27(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(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(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 (articles 27(7) and 57(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.'

"(16) Respect for the laws and regulations of the receiving State

"No provision is found in the existing conventions.

"(17) Obligations of the receiving State

"(A) General

"The existing conventions provide the following:

"(a) 1961 Vienna Convention (article 27(5))

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

"(b) 1963 Vienna Convention (article 35(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(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 (articles 27(5) and 57(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.'

"(B) Obligations of the receiving State in the event of death or accident of the diplomatic courier precluding him from the performance of his functions

"No provision is found in the existing conventions.

"(18) Obligations of the transit State

"(A) General

"The relevant conventions provide as follows:

"(a) 1961 Vienna Convention (article 40(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(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(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.'

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'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(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 if 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 under the existing conventions no obligation was found for a transit State to grant visas to diplomatic couriers but once they were admitted to the territory of the transit State they should enjoy the necessary protection.

"(B) Obligation of the transit State in the event of death or accident of the diplomatic courier precluding him from the performance of his functions

"No provision is found in the existing conventions.

"(19) Obligations of the third State in cases of force majeure

"The existing conventions provide as follows:

"(a) 1961 Vienna Convention (article 40(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(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(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 81(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.'

#### 5. Other proposals

(a) Practical measures for the smooth functioning of the courier services

43. The Netherlands stated that it saw

"a possibility of promoting the smooth functioning of the courier services by taking practical measures. For instance, couriers and the diplomatic bag they carry could be made more easily recognizable by adopting uniform directions as to the text of couriers' passes and the external marks of the character of the diplomatic packages. Furthermore, delays to couriers as a result of security measures at airports might be prevented by giving the security authorities concerned early notice of their arrival." 205/

44. Poland similarly considered it desirable to work out

"in detail all practical ways of implementation of the principle laid down in article 27, paragraph 4 of the Convention<sup>7</sup> which is formulated in the Convention in a very general way." 206/

(b) Protection of the premises of diplomatic missions

45. Chile considered that it would be necessary

"expressly to request the countries which have ratified this Convention to take all appropriate steps, in accordance with article 22, paragraph 2 thereof, to protect the premises of diplomatic missions and to prevent any disturbance of the peace of such missions." 207/

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205/ A/31/145, p. 11. See also the statement of the Netherlands in A/C.6/31/SR.66 (paras. 6 and 8).

206/ Annex, para. 6 of relevant reply.

207/ Annex, para. 2 of relevant reply.

ANNEX

Comments and observations received from Member States pursuant  
to paragraph 3 of General Assembly resolution 31/76 a/

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/

/20 July 1977/

1. The position of the Byelorussian Soviet Socialist Republic on the question of the implementation of the provisions of the Vienna Convention on Diplomatic Relations of 1961 was stated both in the reply of the Byelorussian Soviet Socialist Republic to the Secretary-General's inquiry (A/31/145 of 1 September 1976) and in statements made by the delegation of the Byelorussian Soviet Socialist Republic at the thirtieth and thirty-first sessions of the General Assembly. The Byelorussian Soviet Socialist Republic was also one of the sponsors of the resolutions adopted on that question by the Assembly at its thirtieth and thirty-first sessions (resolutions 3501 (XXX) and 31/76). The great importance which States Members of the United Nations attach to the Vienna Convention on Diplomatic Relations of 1961 can be seen from the fact that the Assembly has on two occasions, at the thirtieth and thirty-first sessions, discussed the question of the implementation of its provisions and recognized the usefulness of periodically considering that question. In fact, the question will be considered at the thirty-third session of the Assembly.
2. In the view of the Byelorussian Soviet Socialist Republic, all the necessary prerequisites for genuine universality of the 1961 Vienna Convention now exist, and such universality would promote world-wide strict observance of the generally recognized rules of international diplomatic law.
3. It is also essential to take effective action to ensure strict and scrupulous observance by all States of the provisions of this Convention, and to eliminate from the practice of international relations the cases of violations of its provisions, which still occur. The decision adopted by the General Assembly at its thirty-first session concerning the periodic consideration of the question of the implementation by States of the provisions of the 1961 Vienna Convention should constitute an effective means of promoting observance of the rules and principles established in the Convention.
4. Experience in applying the Vienna Convention on Diplomatic Relations of 1961 has also shown that there are certain areas of intergovernmental relations which require additional and more precise regulation of specific questions of diplomatic law.

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a/ See foot-note 2 above.

5. In that connexion, the Byelorussian Soviet Socialist Republic feels that consideration by the United Nations of the question of elaborating rules of international law governing the functions and status of the diplomatic courier is both necessary and timely. That conclusion is based on the considerations set forth in the following paragraphs.

6. The functions and status of the diplomatic courier are defined in articles 27 and 40 of the Vienna Convention on Diplomatic Relations of 1961 only in general terms, and many important aspects of that problem are not dealt with specifically. Many points therefore need to be considered in greater depth and detail and to be further clarified.

7. Neither in the Vienna Convention nor in other conventions of the same kind is there even a definition of the term "diplomatic courier", let alone definition of the courier's status and functions.

8. The Vienna Convention does not fully define the privileges and immunities of courier, the status of premises used by them, or questions relating to the standardization of the processing and dispatch of the diplomatic bag not accompanied by diplomatic courier; nor does it specify the procedure for terminating the activities of diplomatic couriers in various special circumstances or mention means of guaranteeing respect for their privileges and immunities in such circumstances.

9. Experience in applying the Vienna Convention indicates that the absence of clear regulations governing the function and status of the diplomatic courier sometimes makes it difficult for the sending State to maintain free contact with its diplomatic representatives, missions and delegations. Yet the diplomatic courier service must function normally and without hindrance if diplomatic representatives are to accomplish their tasks successfully.

10. The desirability of studying the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier is also noted in General Assembly resolution 31/76 of 13 December 1976.

11. In the opinion of the Byelorussian Soviet Socialist Republic, the functions and status of the diplomatic courier could be regulated in an additional protocol to the Vienna Convention on Diplomatic Relations of 1961, which would be based on the provisions of that Convention and would take into consideration the relevant provisions of other conventions of a similar nature.

12. In such an additional protocol, it would be necessary to define the meaning of the term "diplomatic courier" and to determine the entire range of his privileges and immunities, including the personal inviolability of the diplomatic courier, exemption of the courier from the payment of customs duties and charges and from customs inspection of his personal effects and baggage, and the inviolability of working residential premises occupied by the courier. It would also be necessary to define the procedure for terminating, where the need arises, the functions of the diplomatic courier and for guaranteeing respect for his

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privileges and immunities in extraordinary circumstances, as well as the obligation of the receiving State to give every assistance to the diplomatic courier and to take all appropriate steps to prevent any attack on his person, freedom or dignity.

13. The additional protocol should also solve the question concerning the standardization of the processing and dispatch of the diplomatic bag not accompanied by diplomatic courier, the status of which should be the same as that of the diplomatic bag accompanied by diplomatic courier. Such a link is, of course, widely used in practice by States. In that connexion, it would also be worth while to study the question of the status of persons with whom the diplomatic bag is sent and who are not diplomatic couriers.

14. In the opinion of the Byelorussian Soviet Socialist Republic, the elaboration of such a protocol could be carried out by the International Law Commission, which prepared the draft texts of the Vienna Convention on Diplomatic Relations of 1961 and other documents relating to diplomatic and consular law. The elaboration of the additional protocol is entirely within the Commission's powers, especially in light of the fact that the range of rules requiring codification and a number of specific provisions for such a protocol have already been set forth, to a large extent, in the replies by States Members of the United Nations.

15. The elaboration and adoption of an additional protocol to the Vienna Convention on Diplomatic Relations of 1961 governing the functions and status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier would unquestionably represent a useful contribution to the further codification and progressive development of international diplomatic law and would promote the improvement of mutual understanding and the development of friendly relations among States in accordance with the purposes and principles of the United Nations Charter.

#### CHILE

[Original: Spanish]

"

[11 March 1977]

1. Chile is concerned, and considers it of great importance, that the greatest possible number of countries Members of the United Nations should ratify the Vienna Convention on Diplomatic Relations of 1961 and comply with its provisions. Chile accordingly supported the adoption of resolution 3501 (XXX) of 15 December 1975, which contains a general invitation on this matter.

2. The Government of Chile considers that it will be necessary expressly to request the countries which have ratified this Convention to take all appropriate steps, in accordance with article 22, paragraph 2 thereof, to protect the premises of diplomatic missions and to prevent any disturbance of the peace of such missions.

/...

3. Chile has fully complied with this Convention and ratified it on 9 January 1968.

4. As regards the advisability of preparing a protocol on the status of the diplomatic courier and the diplomatic bag, I have to inform you that the Government of Chile considers that article 27 of the Vienna Convention on Diplomatic Relations deals quite adequately with these problems in general, but considers that it would be advisable to adopt detailed regulations under this provision with a view to adapting it to present needs and means of communication, in order to facilitate transport, to prevent correspondence from going astray and to ensure its inviolability.

COLOMBIA

/Original: Spanish/

/11 May 1978/

I

1. Under article 27 of the Vienna Convention on Diplomatic Relations, signed at Vienna on 18 April 1961, which is in force in Colombia pursuant to Act No. 6 of 1972, "The receiving State shall permit and protect free communication on the part of the mission for all official purposes." In the case of diplomatic bags and the diplomatic courier and, in general, all means of communication, the provision places two duties on the receiving State:

(a) to facilitate free communication and give priority to diplomatic communications; and

(b) to respect the confidentiality of communication, which is the principle of inviolability laid down in article 27 with respect to all official correspondence.

A. The diplomatic bag

2. The diplomatic bag has been defined by Philippe Cahier b/ as "Postal packets or packages bearing external marks of their official character." The duty to facilitate its circulation and to respect its confidentiality implies that the diplomatic bag may not be opened or detained, a principle laid down in article 27, paragraph 3, of the Vienna Convention.

3. The 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

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b/ Le Droit Diplomatique Contemporain, publication of the Institut Universitaire de Hautes Etudes Internationales, No. 40 (Geneva, Librairie E. Draz, 1962), p. 213.

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:

(a) 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;

(b) The official who is competent to order the opening of the bag;

(c) The act of opening the bag. 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;

(d) Detention of the bag for a short time, pending the arrival of the officials mentioned;

(e) Procedure in the case of non-appearance of the one or the other of the officials mentioned;

(f) 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".

#### B. Diplomatic courier

This is the person responsible for accompanying the diplomatic bag. The Vienna Convention determines the status of the diplomatic courier, but the following points require study:

(1) Article 27, paragraph 5, of the 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.

(2) 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.

### C. Third States

5. Under article 40, paragraphs 3 and 4, of the Vienna Convention on Diplomatic Relations of 1961, official correspondence relating to the mission and its functions, diplomatic couriers and diplomatic bags that happen to be in a third State in transit or owing to force majeure are to enjoy in the territory of that State the same protection, freedom and inviolability as the receiving State is bound to accord; consequently, the earlier comments concerning the receiving State are equally applicable to third States.

6. In any case, we take the view that it is very desirable and necessary to approve and to give international effect to a protocol that spells out in unambiguous terms the status of the diplomatic courier and of the diplomatic bag not accompanied by a diplomatic courier.

## II

7. Comments of an international postal nature concerning paragraph 106 of the report by the International Law Commission of the United Nations on the elaboration of "a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier". c/ These comments were made by the Directorate General of the National Postal Administration of Colombia and are communicated for information.

"Although the documentary material communicated by the Secretariat seems to be concerned exclusively with the strictly diplomatic aspect of the subject-matter of the Vienna Convention of 1961, in that it refers to the diplomatic courier and the diplomatic bag - terms that do not appear in the Postal Conventions to which the countries members of the Universal Postal Union are parties - it may be appropriate to mention what happened in connexion with the decision taken by the Executive Council of UPU at its session in May 1976 concerning the topic 'official correspondence of diplomatic missions, ...'.

"Pursuant to decision C 42 of the Lausanne Congress, the Executive Council began the study in question and approved, in May 1976, a questionnaire which was sent out to all postal administrations on 3 June of that year.

"An analysis of the answers to the inquiry showed that the majority of the administrations which replied to the Questionnaire were:

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c/ Official Records of the General Assembly, Thirty-second Session, Supplement No. 10 (A/32/10).

"(a) In favour of maintaining the conclusions of the previous Executive Council, in other words, opposed to the inclusion in the Acts of UPU of any provision relating to diplomatic correspondence;

"(b) Opposed to the creation of a new category of consignments;

"(c) Opposed to acceptance of diplomatic correspondence free of postal charges;

"(d) In favour, however, of 'official correspondence' and 'diplomatic bags' being handled by the international postal services, provided that they are treated in the same way as all consignments of correspondence;

"(e) In favour of the international carriage of diplomatic mail being governed by bilateral or multilateral agreements, which have so far been applied without difficulty."

"APPENDIX

"UNIVERSAL POSTAL UNION, LAUSANNE CONGRESS - 1974

"DECISION C 42

"Official correspondence of diplomatic missions, consulates and intergovernmental international organizations

"CONGRESS,

"Having noted the conclusions of the study undertaken in implementation of decision C 53 of the 1969 Tokyo Congress,

"INSTRUCTS

"The Executive Council to continue the study of transmission by post of official correspondence of diplomatic missions, consulates and intergovernmental international organizations." d/

CYPRUS

[Original: English]

[20 January 1978]

1. The Vienna Convention on Diplomatic Relations of 1961 regulates an important area of international relations and helps to maintain normal relations between States. It represents at the same time a valuable codification of international diplomatic law.

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d/ See Universal Postal Union, Documents of the 1974 Lausanne Congress, vol. III, Berne, 1975.



2. The Government of Cyprus shares the view expressed in General Assembly resolution 3501 (XXX) concerning the importance of greater participation in and general observance of the Vienna Convention on Diplomatic Relations of 1961, to which Cyprus is a party.

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

FIJI

/Original: English/

/22 March 1977/

The Government of Fiji is of the opinion that the present provisions of the Vienna Convention on Diplomatic Relations of 1961 relating to diplomatic couriers and diplomatic bags are clear and adequate. Non-observance of the Vienna Convention does not in itself justify the creation of additional rules. The Government of Fiji is of the opinion that, if the present provisions were properly and conscientiously observed, there could be no abuse of the privileges accorded to the courier and the diplomatic bags.

GREECE

/Original: French/

/4 April 1977/

A

1. Greece, which is a contracting Party to the Vienna Convention on Diplomatic Relations of 1961, is willing to encourage any effort to promote increased participation in this Convention and to secure improved implementation of its provisions. It accordingly fully endorses the aims pursued by General Assembly resolution 3501 (XXX).

2. Moreover, Greece considers it a very great advantage that about 120 States are already parties to this Convention, so extremely important by reason of its object, which is to regulate diplomatic relations between States, and of its character, which is that of a document codifying international customary rules of diplomatic law.

3. With regard more particularly to the experience of Greece, it must be pointed out that the Vienna Convention as a whole is being satisfactorily applied and that,

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so far, practice has shown no need to supplement article 27 of this Convention with a view to strengthening the provisions relating to the functions and privileges of diplomatic couriers. This article is sufficiently broad with regard to the privileges and sufficiently precise in its wording to be satisfactory as a whole, from both the functional and the legal point of view. On the other hand, the question of the unaccompanied diplomatic bag might usefully be studied with a view to uniform regulation of the mode of transport, which is becoming increasingly important in our time.

/Original: English/

/7 April 1978/

B

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1. According to the view of the competent Greek authorities, the present status of the diplomatic courier and the diplomatic bag not accompanied by a diplomatic courier established by the Vienna Convention on Diplomatic Relations of 1961 is satisfactory and has not caused any difficulties to Greece in her relations with other countries.

2. The observation has been made by the Greek authorities, however, that the present wording of article 27, paragraph 7, of the said Convention is somewhat incomplete. More particularly, article 27, paragraph 1, provides for the taking of possession of the diplomatic bag from the captain of the aircraft, while it makes no reference of its delivery to the captain of the aircraft, which may give rise to technical difficulties. This point could eventually be looked into by the International Law Commission for the purpose of arriving at the proper wording of the article.

MONGOLIA

/Original: English/

/19 April 1977/

1. The Government of the Mongolian People's Republic considers that the Vienna Convention on Diplomatic Relations of 1961 has embodied the results of progressive development and codification of contemporary international law and customary rules of international conduct of States and, as such, it is called upon to serve the interests of strengthening international peace and security, promoting friendly relations and co-operation between States.

2. The Convention has stood the test of time and its provisions have found their further confirmation and development in a number of bilateral and multilateral instruments, which have been concluded recently in the field of diplomatic law, regulating international conduct of States.

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3. In view of the fact that there still occur instances of violation of the provisions of the Convention which cannot but aggravate relations among States, the Government of the Mongolian People's Republic considers it of great importance that those States which have not yet done so accede to the Convention immediately and that its stipulations be scrupulously and universally observed.

4. As to the question of the status of diplomatic couriers, the Government of Mongolia endorses the view that article 27 and other relevant provisions of the Vienna Convention need further development in the light of the events which have taken place since 1961.

5. Particular attention in this connexion should be paid to the question of communication by diplomatic couriers, exemption of diplomatic couriers and their personal baggage from customs inspection or control, including distant inspection or control with the use of technical means, to the question of inviolability of diplomatic mail in cases of severance or rupture of diplomatic relations. The Government of Mongolia favours the proposal of the Soviet Union for elaborating special provisions on the status of diplomatic couriers in an additional protocol to the Vienna Convention on Diplomatic Relations of 1961.

6. The Government of Mongolia shares the opinion that, in conformity with paragraph 4 of General Assembly resolution 31/76, the International Law Commission should study the observations and views contained in the report by the Secretary-General on the implementation by States of the provisions of the Vienna Convention on Diplomatic Relations of 1961 (A/31/145 and Add.1), other information on this question to be received from Member States and the proposals on the elaboration of a protocol concerning the status of diplomatic couriers and the diplomatic bag not accompanied by diplomatic courier, which would constitute development and concretization of the Vienna Convention.

POLAND

/Original: English/

/30 May 1978/

1. In the opinion of the Government of Poland, diplomatic missions cannot fulfil their functions without having proper means to maintain communication with their Governments. One of these means of communication is the diplomatic bag, whether accompanied by diplomatic courier or not.

2. Article 27 of the 1961 Vienna Convention on Diplomatic Relations contains general principles governing the status of the diplomatic courier and the diplomatic bag. It does not, however, regulate the status of an unaccompanied diplomatic bag, the use of which has become a regular practice of many States nowadays. The provisions of the Convention may, however, give rise to different interpretations and practices. Some States try to interpret, for example, the prohibition contained in paragraph 3 "The diplomatic bag shall not be opened or detained" as exhaustive and allowing them to proceed to other forms of interference with the diplomatic bag as, for example, X-ray control and other technical methods of control.

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3. It is also the opinion of the Government of Poland that all steps taken against terrorism should not lead to any form of violation of the special status of the diplomatic courier and the diplomatic bag. The argument put forward by some States that terrorists may pretend to be couriers and may place explosives in false diplomatic bags cannot lead to general suspicion towards all couriers and all diplomatic bags. Each State is fully responsible for its couriers and for the contents of the diplomatic bag, which may contain only diplomatic documents or articles intended for official use, according to paragraph 4 of article 27 of the Convention.

4. A hypothetical violation of this rule cannot lead to the introduction of measures of control of all couriers and all diplomatic bags.

5. The Government of Poland expresses its satisfaction over the fact that the International Law Commission has taken prompt and serious steps in order to examine the status of the diplomatic courier and the diplomatic bag from the legal point of view. When examining this subject, the International Law Commission should concentrate its attention on steps which would increase the effectiveness of the principle of inviolability of the diplomatic courier and the diplomatic bag, whether accompanied or not. It would be highly desirable if the Commission examined the status of the couriers and the diplomatic bag in the light of States' responsibility, that is, responsibility of the sending State, the receiving State and a third State - for inviolability of the courier and the bag and for the full respect of the principle laid down in article 27, paragraph 4, of the Vienna Convention.

6. It would be also desirable if the Commission worked out in detail all practical ways of implementation of this principle, which is formulated in the Convention in a very general way.

7. It is also suggested that the Commission examine the status of the captain of a ship or of a commercial aircraft to whom the bag is entrusted, as stipulated by article 27, paragraph 7.

SEYCHELLES

[Original: English]

[2 November 1977]

The views of the Government of Seychelles are that, although the provisions of articles 27 and 40 of the Vienna Convention on Diplomatic Relations of 1961 have proved adequate in its experience, it sees no objection in principle to the drafting of a protocol on the subject in question.

SIERRA LEONE

/Original: English/

/13 April 1977/

1. Most developing countries, because of the cost involved, do not make use of diplomatic couriers. Sierra Leone in particular cannot afford diplomatic couriers nor do we have commercial aircrafts that cover far and distant places, the captains of which could be entrusted with the diplomatic bag. Our diplomatic bags, unaccompanied by couriers, are therefore at the mercy of anyone interested in their contents. Our bags have been violated on several occasions.

2. It is, therefore, 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.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/

/12 August 1977/

1. The discussion in the United Nations of the question of implementation of the Vienna Convention on Diplomatic Relations of 1961 makes it clearly apparent that there is an urgent need to ensure the strict observance and universal application of that most important international legal instrument, the purpose of which is, of course, to promote friendly relations among States regardless of their social and economic structure. The Conventions codifying rules for the conduct of diplomatic relations, which had emerged earlier in the form of custom and had been tested by centuries of practice, and consolidating new democratic principles and rules elaborated on the basis of progressive development have thus contributed and continue to contribute to the strengthening of the rule of law and legality in international relations, to the affirmation of trust and mutual understanding and to the broadening of all-round co-operation among peoples in conditions of equality.

2. This basic instrument in the field of diplomatic law provides a sound international legal foundation for the official activities of States which is fully in keeping with the requirements of peaceful coexistence, the purposes and principles of the Charter of the United Nations with respect to sovereign equality, the preservation and strengthening of international peace and security and the development of friendly relations and co-operation in different spheres of international life. It is, therefore, hardly surprising that the Vienna Convention should be regarded as authoritative and should enjoy well deserved recognition and that its provisions should underlie much domestic legislation in this field.

3. The Vienna Convention, regulating as it does one of the basic forms of international intercourse, namely, diplomatic relations, which constitute a means of establishing, maintaining and strengthening broad political, economic, cultural and other ties between States, is thus in its whole essence and content intended to be universally applied.

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4. Unfortunately, however, participation in it has not yet become universal. Many States have not yet acceded to it. As may be seen in practice, this fact is often used for the purpose of denying the generally recognized character of its rules and avoiding compliance with them. Clearly the task of enhancing the effectiveness of the Vienna Convention urgently requires that it should be made a universal international agreement without delay.

5. The Ukrainian Soviet Socialist Republic has accordingly welcomed the appeal of the General Assembly to States which have not yet done so to become parties to the Convention. That would unquestionably promote the fuller application of its provisions.

6. Another urgent task is to put an end once and for all to instances of violations of the Vienna Convention, which are still occurring in certain countries. The General Assembly, in resolutions 3501 (XXX) and 31/76, has expressed its concern at the existence of this situation. These violations are all the more disquieting in that they are taking place at a time when the trend towards détente is becoming more general.

7. The decision adopted by the General Assembly on periodic consideration of the question at its sessions should be an effective means of ensuring observance of the Vienna Convention of 1961. In discussing it, Member States could exchange experiences relating to the application of the rules of diplomatic law and inform the United Nations of instances in which they have been violated. This important problem would thus be drawn to the attention of world public opinion, which is another precondition for eliminating from international relations all instances of non-compliance with the Vienna Convention.

8. Such a discussion would serve as a fresh reminder of the significance of this international legal instrument for the maintenance of normal intercourse between States and provide an opportunity to emphasize the need for its strict, consistent and undeviating implementation. At the same time, that would encourage Governments which have not yet become parties to the Convention to accede to it.

9. The General Assembly's request to the International Law Commission to study the proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier also deserves full support. In that connexion, the Ukrainian Soviet Socialist Republic wishes to reiterate the view it expressed earlier to the effect that such a protocol should regulate in detail and strengthen the functions of diplomatic couriers, their rights and obligations, the inviolability of temporary official premises occupied by couriers when travelling, exemption of their personal baggage from customs inspection, their exemption from customs duties and charges and guarantees of the observance of their privileges and immunities during emergencies. The document in question could also include provisions concerning the sending of the diplomatic bag not accompanied by diplomatic courier.

10. In the view of the Ukrainian Soviet Socialist Republic, the elaboration and subsequent adoption of an international legal instrument concerning the status of diplomatic couriers would contribute to the elimination of the difficulties which arise in practice in connexion with the use of this important means of ensuring

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the normal operation of the system of diplomatic relations. Such a document would constitute development and concretization of the Vienna Convention on Diplomatic Relations of 1961 and that would unquestionably be in the interests of the further codification of diplomatic law.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/

/20 June 1977/

A

1. The Soviet Union, as is known, was the first to propose that the Vienna Convention on Diplomatic Relations of 1961 should be considered in the United Nations. The Government of the Union of Soviet Socialist Republics took that initiative on the basis of its belief that the purpose of the Vienna Convention of 1961 - to "contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems" - was so closely related to the purposes of the Charter of the United Nations that the question of the observance of the Convention should be considered by the General Assembly and receive attention from the world community. The fact that the Assembly considered the question twice, at its thirtieth and thirty-first sessions, and recognized the desirability of periodically returning to the question of the future, in particular at its thirty-third session, shows the great importance attached by the States Members of the United Nations to the Vienna Convention of 1961.
2. Accordingly, the General Assembly's appeal to States not yet parties to the Vienna Convention to accede to it deserves the most active support. It would serve the interests of the entire world community if the Vienna Convention of 1961 became in the near future an international agreement of a universal character.
3. There is an urgent need to ensure strict observance of the Vienna Convention of 1961 by all the parties to it.
4. The Government of the Union of Soviet Socialist Republics, for its part, is rigorously complying with all the provisions of the Vienna Convention of 1961, both those relating to the ensuring of normal conditions for foreign diplomatic missions to perform their functions in the territory of the Union of Soviet Socialist Republics and those containing norms which must be observed by diplomatic missions in performing their functions in the receiving countries.
5. Nevertheless, cases of violations of diplomatic law, including the provisions of the Vienna Convention of 1961 - as is stated in General Assembly resolutions 3501 (XXX) and 31/76 - continue to take place, a fact which inevitably gives rise to justifiable uneasiness on the part of many States. The Soviet Union believes that the elimination of such cases from the practice of international relations must be a matter of concern both for the United Nations and for all its Members.

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6. In response to the General Assembly's request to Member States to submit their observations on ways and means to ensure the implementation of the provisions of the Vienna Convention of 1961, the Soviet Union wishes, in addition to its earlier communication (A/31/145, pp. 14-17), to draw attention to the following.

7. The General Assembly's decision in favour of periodic consideration of the question of the implementation of the Vienna Convention is obviously an effective means for promoting observance of the Convention. Even the prospect of such consideration and the preparation for it will undoubtedly direct the attention of the competent authorities of Member States and the world community to this question. The resulting opportunity for Member States to inform the United Nations of cases of violations of the Vienna Convention of 1961 will have the effect of helping to ensure observance of the Convention by all States. It will also be significant in this connexion that Member States will become familiar with the favourable experience accumulated in the implementation by States of the provisions of the Vienna Convention of 1961. Furthermore, periodic consideration of this question in the United Nations will stimulate those States not yet parties to the Convention to take a decision to accede to it.

8. In connexion with the fact that the General Assembly has entrusted the International Law Commission with the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the Soviet Union wishes to reaffirm its previously stated position in the matter and refer to its previous comments concerning the essential content of a possible international law document on the status of the diplomatic courier.

9. In the view of the Soviet Union, such a document could include the following:

(a) In the territory of the receiving State of a diplomatic mission which receives or sends a bag delivered by a diplomatic courier, the said courier shall enjoy all the privileges and immunities of a diplomatic agent as defined in articles 29 to 36 of the Vienna Convention of 1961.

(b) The diplomatic courier shall enjoy inviolability of his person and shall not be subject to arrest or detention in any form. The receiving State of a diplomatic mission which receives or sends a bag delivered by a diplomatic courier shall take all appropriate steps to prevent any interference with his person, freedom or dignity.

(c) The diplomatic courier shall not be subject to any personal inspection or supervision. The personal bag of the diplomatic courier shall in all circumstances be exempt from inspection, including customs inspection.

(d) The premises used by the diplomatic courier as official premises or living quarters in the receiving State of the diplomatic mission receiving or sending a bag delivered by a diplomatic courier shall take all appropriate steps to protect such premises from any intrusion or damage.



(e) The receiving State of a diplomatic mission which receives or sends a bag delivered by a diplomatic courier may, without having to explain its decision, inform the State to which the diplomatic bag belongs that the diplomatic courier delivering it is persona non grata. However, the receiving State may not demand the recall or termination of functions of a diplomatic courier before he has delivered to the consignee the bag in his charge.

(f) In the event of the rupture or suspension of diplomatic relations between two States or of the permanent or temporary recall of diplomatic missions by one or both of them, and also in the case of armed conflict between two States, each of them shall respect and observe the inviolability of any diplomatic bag of the other State which is in its territory and also the privileges and immunities of the diplomatic courier accompanying such bag.

10. The Soviet Union believes that such a document might also contain provisions regulating questions relating to the sending of a diplomatic bag not accompanied by diplomatic courier.

11. In conclusion, it must be emphasized that in the present-day world, at a time when the relaxation of tension and the positions of States with respect to this process constitute a central question of world politics, the observance by all States of the Vienna Convention on Diplomatic Relations of 1961 becomes particularly important. In the view of the Soviet Union, the conditions for the full realization of all the provisions of the Convention are today more favourable than ever.

/Original: Russian/

/13 July 1978/

B

At the thirty-first session of the United Nations General Assembly, the delegation of the Union of Soviet Socialist Republics supported the proposal that the International Law Commission should prepare a draft protocol concerning the status of the diplomatic courier and of the diplomatic bag not accompanied by diplomatic courier, and presented its views on the possible content of such a protocol. In accordance with the request by the Secretary-General, to facilitate the Commission's task, the following observations have been drawn up, in the light of the discussions at the General Assembly, on the basic provisions which it appears should be included in the text of this protocol.

1. 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.

2. The diplomatic bag is the official correspondence of the Government of a State or its diplomatic mission, intended for communication between the

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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.

3. 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 diplomatic documents and articles intended for official use.

4. The host State e/ or the transit State f/ 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. Questions of the procedure to be followed in dispatching and receiving a diplomatic bag not accompanied by a diplomatic courier shall be settled by special agreements concluded between the States concerned.

5. The diplomatic courier, in the performance of his official duties, shall enjoy personal inviolability and shall not be liable to any form of arrest or detention. The host State and the transit State are required to take all appropriate steps to prevent any attack on his person, freedom or dignity.

6. 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.

7. 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. g/ 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.

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e/ The host State of the diplomatic mission which receives or sends the diplomatic bag accompanied or not accompanied by a diplomatic courier.

f/ The State through the territory of which the diplomatic courier, in the performance of his official functions, or the diplomatic bag not accompanied by a diplomatic courier, is in transit.

g/ The State whose Government sends its diplomatic mission a diplomatic bag accompanied or not accompanied by a diplomatic courier or receives such a bag from its diplomatic mission.

8. 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. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 or 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.

14. The diplomatic courier shall enjoy the privileges and immunities provided for 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 in its destination.

15. 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 Vienna Convention on Consular Relations of 1963; h/ "courier of the special mission" and "bag of the special mission", used in article 28 of the 1969 Convention on Special Missions; i/ 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 on the Representation of States in their Relations with International Organizations of a Universal Character of 1975. j/

VENEZUELA

/Original: Spanish/

/21 March 1978/

1. Diplomatic missions must, for the proper discharge of their duties, be in constant contact with the State which they represent and this communication must be confidential. The receiving State must therefore make available to diplomatic missions the facilities which they require, must provide them with protection and must not violate secrecy.
2. Missions may use all existing means, subject to the agreement of the receiving State.
3. In the case of Venezuela, the diplomatic courier has been used infrequently as a means of communication between States. Except for the Vienna Convention, our legislation does not contain provisions on the subject, nor has our Government spoken on the subject at international conferences.
4. With regard to the desirability of endorsing an additional protocol, we consider that the provisions in article 27 of the Vienna Convention are adequate in that they provide the diplomatic courier with sufficiently broad prerogatives and immunities for carrying out the function entrusted to him. Furthermore, the person who is entrusted with the diplomatic bag is normally a diplomatic official protected by the privileges granted by the Convention itself. If he is not, his status is covered by article 27, paragraph 6.

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h/ United Nations, Treaty Series, vol. 596, No. 8638.

i/ General Assembly resolution 2530 (XXIV).

j/ A/CONF.67/16.