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New York

SUMMARY RECORD OF THE 18th MEETING

Chairman: Mr. BAVAND (Iran)

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AGENDA ITEM 116: IMPLEMENTATION BY STATES OF THE PROVISIONS OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS OF 1961: REPORT OF THE SECRETARY-GENERAL (continued)

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The meeting was called to order at 11 a.m.

AGENDA ITEM 116: IMPLEMENTATION BY STATES OF THE PROVISIONS OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS OF 1961: REPORT OF THE SECRETARY-GENERAL (continued) (A/31/145 and Add.1; A/33/224)

1. Mr. AL-WITRI (Iraq) said that his country, which had been a party to the Vienna Convention on Diplomatic Relations since 1965, and also to its Optional Protocol Concerning the Compulsory Settlement of Disputes, believed that the Convention was one of fundamental bases of international law, inasmuch as it codified the customary rules governing diplomatic relations and laid down a specific framework for the development of diplomatic practice. It established a balance between the interests of the sending State and the receiving State and defined the privileges and immunities of diplomatic agents and the relation thereof with the national laws of the receiving State. Implementation of the Convention was therefore of major importance, and the General Assembly should issue a fresh invitation to States which were not yet parties to the Convention to accede to it.

2. Like any multilateral treaty, the Vienna Convention would be strengthened if it was applied in good faith on a basis of reciprocity. Regrettably, some States had approved internal provisions which restricted the scope of application of the Convention. A new act of the United States, which would enter into force in December, would considerably reduce the number of persons enjoying diplomatic immunity. Section 5 of that Act laid down a new procedure for determining which diplomatic agents enjoyed immunity and it required diplomatic personnel to appear in court in order to invoke their immunity. In his delegation's view, such a procedure would be a violation of the Vienna Convention.

3. Articles 27 and 40 of the Convention laid down the fundamental principles regarding the status of the diplomatic courier and the diplomatic bag. His delegation had no objections, however, to the elaboration of a more detailed protocol on that subject. That would be a useful complement and would resolve questions that were not clarified in the Vienna Convention. The protocol should give a precise definition of the diplomatic courier and the diplomatic bag and should stipulate that the latter should in no instance be opened or detained by the receiving State, in accordance with article 27, paragraph 3, of the Convention. The use of the diplomatic bag not accompanied by diplomatic courier was current in present-day practice, particularly by developing countries. Norms should be elaborated concerning the responsibility of commanding officers of vessels or aircraft to whom a diplomatic bag had been entrusted. Other questions which should be resolved by a protocol on the subject were those concerning the death of the diplomatic courier, force majeure and severance of diplomatic relations. The draft protocol to be elaborated should be transmitted to a diplomatic conference for consideration and approval, and the text should be circulated beforehand to the Governments of States Members of the United Nations in order that they might formulate their comments.

4. Mr. BIALY (Poland) said that the interest displayed by the United Nations in the implementation of the provisions of the Vienna Convention, as reflected in

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(Mr. Bialy, Poland)

General Assembly resolution 31/76, was fully justified, for, according to the Charter, it was one of the purposes of the United Nations to develop friendly relations between nations and to take appropriate measures to strengthen universal peace. Diplomatic relations were the basic form of mutual relations between States, and the Vienna Convention on Diplomatic Relations codified the principles governing that subject. In his delegation's view, the General Assembly, which was entitled under the Charter to encourage studies and make recommendations for the promotion of the progressive development of international law, had full authority to review periodically the subject-matter of international law and to make appropriate recommendations.

5. His delegation attached importance to the fact that all the States which had made comments and observations in accordance with paragraph 3 of General Assembly resolution 31/76 (document A/33/224) shared the view that the Vienna Convention continued to have a positive influence upon relations among States, and he reiterated his delegation's strong belief that all States should fulfil the provisions of the Convention. Under all instruments of international law, every State had the duty to fulfil in good faith its obligations under international agreements and invoking national legislation could not exempt them from that duty. National legislation, therefore, should not restrict the powers of members of diplomatic missions. There was no justification for mass media reports in certain States implying alleged wide-scale abuses of diplomatic privileges and immunities, particularly in cases where the receiving State did not itself comply with article 22, paragraph 2, of the Vienna Convention, which stated that the receiving State was "under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity".

6. He recalled that the competent authorities of the receiving State should ex officio take into account the diplomatic immunities applicable to individuals and that that right could not be established upon a request or proposal made by the individual or on his behalf. The same principle applied with regard to the waiver of immunity from jurisdiction, which, in accordance with article 32, paragraph 1, of the Vienna Convention, was the sole prerogative of the sending State.

7. His delegation shared the view that all States, particularly States Members of the United Nations, should be parties to the Vienna Convention on Diplomatic Relations and should submit only such reservations as were compatible with the purposes of the Convention. He believed also that disputes arising from the application of the Convention should be settled by peaceful means, on the basis of sovereign equality of States and in accordance with the principle of a free choice of means.

8. With regard to the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, he believed that such provisions should strive to avoid ambiguous interpretations and facilitate the application of the principle of the inviolability of the diplomatic bag and the diplomatic courier. The report of the Secretary-General (A/33/224, para. 42) listed 19 questions for which no provision was made in existing conventions.

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(Mr. Bialy, Poland)

It would be extremely valuable to adopt a decision on the need to elaborate a new protocol. The diplomatic bag not accompanied by diplomatic courier was a very widespread means of communication, and his delegation had, at the thirty-first session of the General Assembly, set forth its position on the desirability of the elaboration of universally applicable international norms on the subject.

9. Mr. GHARBI (Morocco) said that, although some delegations had expressed doubts regarding the usefulness of the debate on the implementation of the 1961 Convention on Diplomatic Relations, his delegation believed that a periodic review of the implementation of the principle instruments of international law came within the competence of the General Assembly and contributed to the promotion of the principles of the Charter, which governed relations among States. His delegation believed that, if an appeal was launched to States with a view to achieving more universal accession to that Convention, such an appeal should also include a reference to the 1963 Vienna Convention on Consular Relations, which was, so to speak, complementary to its predecessor.

10. One characteristic of disputes that might arise from the implementation of the Convention on Diplomatic Relations was that they were never strictly bilateral but concerned the international diplomatic community as a whole. Taking into account the hazards besetting diplomatic activities in the present-day world, recent international practice had been generally satisfactory, a fact which might be attributed to the regulating influence of the principle of reciprocity. Nevertheless, although deliberate infractions that could be imputed to States were rare, they should be the object of general concern and categorically discouraged. Bilateral negotiations were, unquestionably, the most appropriate way of resolving differences in such matters; recourse to the arbitration of the International Court of Justice was onerous, especially for the developing countries, and was only advisable in circumstances which seriously compromised the interest of the State. The proposal of the representative of the Philippines, concerning recognition of the right of States to seek an advisory opinion from the International Court of Justice on the implementation of the Vienna Convention on Diplomatic Relations, seemed to have many merits, but it would be difficult to adopt it without amending Article 96 of the Charter.

11. There was no doubt that on some occasions States were forced to enact laws or regulations concerning matters connected with the implementation of the Convention on Diplomatic Relations, such as the importation and marketing of vehicles intended for use by diplomatic agents, the importation of certain goods, and the movement of diplomatic and consular agents within the national territory. In all such cases, however, accredited missions should be informed of new regulations as soon as possible in order to dispel any anxiety and misunderstanding. Finally, regarding the draft protocol concerning the status of the diplomatic courier and the diplomatic bag, his delegation hoped that the international recognition of the inviolability of diplomatic correspondence both in countries of destination and in countries of transit would be expressed in the clearest possible terms.

12. Mr. BOUZIRI (Tunisia) said that the Vienna Convention on Diplomatic Relations of 1961 was one of the most important instruments for the codification of international law and had facilitated relations among States. States which had not yet acceded to the Convention should be urged to do so as soon as possible. His delegation did not, however, subscribe to the at times excessive praise lavished on the Convention and believed that it contained serious lacunae and imperfections. Those included the omission of a definition of the family from article 1 even though that term arose frequently in the Convention. Such an omission particularly affected the developing countries, in many of which the concept of the family was broader than in the developed countries. In addition, article 37, paragraph 2, placed a heavy burden on countries with limited resources; it was well known that missions of developed countries had far more technical and administrative staff than those of developing countries. Moreover, the Convention was implemented under conditions which were often unsatisfactory and gave rise to flagrant violations of international law, such as the checking of diplomatic agents' luggage for reasons of national security, the towing away of diplomatic vehicles, the infringement of provisions relating to tax exemption, the invasion of diplomatic premises, and attacks on such premises.
13. Examination of the implementation of the 1961 Vienna Convention gave rise to three conclusions: as many States as possible should accede to the Convention; the latter should be revised and improved to make it more acceptable, and all States that had already ratified the Convention should observe it scrupulously.
14. On the question of the status of the diplomatic courier and the diplomatic bag, his delegation believed that the provisions of the 1961 Vienna Convention were generally satisfactory and that there was no need to look for a definition of the diplomatic bag as a clear definition was given in article 27, paragraph 4. Moreover, protection of the diplomatic bag should not give rise to abuses. His delegation could, however, consider the possibility of drafting an additional protocol concerning the status of the diplomatic courier and the diplomatic bag if the preamble to such protocol acknowledged that the 1961 Vienna Convention was imperfect and that it needed to be fully and substantially revised in order to correct its defects.
15. Mr. UKRAINSKY (Ukrainian Soviet Socialist Republic) said that the periodic review of the implementation of the Vienna Convention on Diplomatic Relations made it possible not only to recall the importance of the Convention and the need for States to observe it scrupulously but also to draw attention to violations of its provisions in order to eliminate them. His delegation noted with satisfaction the increase in the number of States Parties to the Vienna Convention since the thirty-first session of the General Assembly. The Assembly should, however, urge States which had not yet done so to become Parties to the Convention, for the latter served the cause of coexistence and co-operation among States and of international peace and security.
16. He was concerned at the way in which some States, a number of which were Parties to the Vienna Convention, denied the universality of its provisions or

(Mr. Ukrainsky, Ukrainian SSR)

violated its rules. When a State became a party to a convention, it automatically assumed the obligation to take all necessary steps, including the enactment of domestic legislation, to ensure the implementation of that convention. States Members therefore had an interest in such domestic legislation, particularly when the State concerned was the host country of the United Nations. In 1972, the General Assembly had expressed in its resolutions its satisfaction at the adoption of a United States law on the protection of diplomatic personnel which guaranteed the safety of diplomatic missions in accordance with the Vienna Convention. His delegation now shared the view of other delegations that the recent United States law deviated from that Convention in a number of respects. The purpose of the discussion was to determine how the Convention was being implemented and to identify the legal aspects of its implementation in domestic legislation. The recent United States law was also unique and did not resemble that of any other State, so that the concern expressed was fully justified. The resolution to be adopted by the General Assembly must reflect its concern at violations of the Vienna Convention and the need for the Convention to be implemented through the adoption of all the necessary measures, including those relating to domestic legislation. The Secretary-General should send a questionnaire to all Governments concerning all the measures taken to ensure the implementation of the Convention and should prepare a report for the General Assembly to consider at a later session.

17. The Working Group of the International Law Commission had considered a number of interesting proposals with regard to the drafting of a protocol concerning the diplomatic courier and the diplomatic bag and had formulated 19 questions which provided an excellent starting point for the drafting of such a protocol, whose adoption would remove the problems that had arisen from the use of the diplomatic courier and the diplomatic bag. The Secretary-General's report on the implementation of the Vienna Convention on Diplomatic Relations adhered to his mandate under General Assembly resolution 31/76 to prepare an analytical report on ways and means to ensure the implementation of the Vienna Convention on the basis of comments and observations received from Member States and taking into account the results of the study by the International Law Commission of the proposals on the elaboration of the protocol concerning the status of the diplomatic courier and the diplomatic bag. His delegation was therefore surprised at the critical reaction of one member of the Committee to the Secretary-General's report.

18. Mr. CHOUAKI (Algeria) said that the Vienna Convention on Diplomatic Relations, which defined and regulated diplomatic relations among States and to which his country was a Party, had successfully stood the test of time and had served as a reference for the drafting of other international legal instruments and of numerous pieces of domestic legislation relating to diplomatic law. His delegation believed that the community of States must commit itself to strict observance of the provisions of the Convention and it therefore appreciated any initiative designed to make that instrument universally applicable, whether in the form of an appeal to all States which had not yet done so to become Parties to the Convention or in the form of a periodic review by the General Assembly of the implementation of its provisions.

(Mr. Chouaki, Algeria)

19. Repeated violations of the Convention hindered the functioning of diplomatic missions and endangered the process of accession to the Convention. With regard to the law recently adopted by the host country, his delegation believed that the Sixth Committee was not the appropriate forum to consider the domestic legislation of a State and, still less, to prejudge its future practical implementation. None the less, there was justification for expressing concern when the domestic law of a State appeared to conflict with universally established rules, although such concern had been allayed by the verbal assurances given to the Committee. His delegation was convinced that the State in question would fulfil the obligations deriving from the Vienna Convention.

20. The task of drafting a protocol concerning the status of the diplomatic courier and the diplomatic bag, which the General Assembly had entrusted to the International Law Commission, had led to the formulation, as a preliminary, of 19 questions which should provide a sound working basis for the drafting of the articles of such a protocol. Although articles 27 and 40 of the Vienna Convention dealt with both issues in general terms, his delegation considered it quite legitimate that numerous representatives had urged consideration of the question of an additional instrument covering the definition, functions, privileges and immunities of the diplomatic courier and the definition, inviolability and protection of the diplomatic bag. His delegation would therefore support any resolution which called on the International Law Commission to continue its work on the drafting of an additional protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by courier.

21. Mr. ROSENSTOCK (United States of America) said that diplomatic privileges and immunities were undeniably of fundamental importance and that the relevant international law was codified in the Vienna Convention. It should be remembered, when urging that as many States as possible should accede to the Convention, that the latter codified principles that were binding both on States that were Parties to it and on those that were not. It was useful to consider periodically the implementation of major codifications of international law in order to verify their operation, but some time-limit should be applied to such consideration.

22. With regard to airport security measures, the present world situation, the obligation to protect diplomats and the fact that attacks on aircraft had been perpetrated by persons carrying diplomatic passports were factors tending to support the adoption of measures providing security for all, including diplomatic agents, against acts that might be directed against them.

23. The value-added tax, despite its decreasing application, was a widespread and important institution. He recalled that the problems created by the tax, because of its complexity and its various interrelationships, perhaps did not lend themselves to negotiation and hence were a classic example of problems which could best be solved by the participation of third parties. A number of countries in which there was a value-added tax were currently trying to adjust it to the general rules on the taxation of diplomatic agents.

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(Mr. Rosenstock, United States)

24. With regard to the towing away of diplomats' automobiles, he noted that in his country that measure was employed to keep the main thoroughfares clear. Much more emphasis was placed on towing away vehicles illegally parked in places reserved for diplomats, even though reserving such places was a matter of courtesy rather than obligation. Certain difficulties arose when diplomatic missions used rented vehicles which had no identifying marks and the authorities towed them away by mistake, but in such cases the vehicles were returned without delay and the authorities presented their apologies to the mission concerned.

25. In the report of the Secretary-General (A/33/224), the studies of the International Law Commission were reproduced in excessive detail and documents that were already available to delegations were reproduced verbatim. The financial situation of the United Nations made it necessary to reduce costs not only in the interests of contributing States but also so that funds might be reserved for useful purposes. The responsibility for such superfluous reproduction of documents fell not on the Secretariat but on the body requesting it. The analytical part of the report represented a commendable effort to respond to a request that made little sense. The practice of avoiding problems by requesting the Secretariat to prepare studies on them might be useful in certain cases, but it should be remembered that the reason for that practice was a lack of clear ideas on how to approach the subject.

26. His delegation believed that the Vienna Convention on Diplomatic Relations, despite certain abuses committed by both sending and receiving States, continued to operate satisfactorily and was a sound codification of existing law. The 1975 Vienna Convention on the representation of States in their relations with international organizations of a universal character was based to a great extent on the 1961 Convention on Diplomatic Relations, a fact which demonstrated the latter's satisfactory nature. He felt that it was not necessary to examine the question repeatedly.

27. The report of the International Law Commission was useful and interesting. However, his delegation doubted the need to have a new agenda item on privileges and immunities when a large number of international instruments on the matter had already been drawn up. A disproportionate amount of time and effort was devoted to the question of the privileges of diplomatic agents when one considered how many other legal problems there were.

28. As to the means of ensuring the implementation of the Vienna Convention on Diplomatic Relations, his delegation remained convinced that the best method consisted in accepting the impartial jurisdiction of the International Court of Justice for the settlement of any disputes that arose. Representatives who dwelt on details of the Convention or on specific national regulations had not given a satisfactory explanation for the failure of their countries to ratify the Optional Protocol Concerning the Compulsory Settlement of Disputes. The fact that only 49 States had ratified the Protocol did not explain why a great Power should not do so. If indeed the principal procedure for the settlement of disputes was and would continue to be negotiation, nothing gave negotiations a greater impetus than the possibility of recourse to a court nor was there a better means of redressing the balance between a strong and a weak party.

(Mr. Rosenstock, United States)

29. With regard to the question raised concerning a recent United States law, he reiterated his delegation's serious doubts as to the relevance of such a discussion by the Committee, particularly under agenda item 116. Nevertheless, he wished to repeat that the new law would not make it necessary for diplomats or their lawyers to invoke immunity. The United States Department of State, through the Department of Justice, would continue to raise that question before the courts. No new procedure would result from the law, nor was there any intention to apply one.

30. Mr. EL BACCOUCH (Libyan Arab Jamahiriya) said that his country attached great importance to the Vienna Convention on Diplomatic Relations, to which it was a Party, and supported the proposal to urge States to accede to the Convention, since their accession was essential to the creation of a favourable climate in international relations. In his opinion, disputes should be settled by procedures chosen freely by the parties, and for that reason he did not support compulsory procedures for the settlement of disputes.

31. His delegation was not opposed to the elaboration of rules governing the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The questions raised by the Working Group of the International Law Commission, which were listed in the report of the Secretary-General (A/33/224, para. 42), dealt with matters that must be resolved.

32. Mr. ANOMA (Ivory Coast) said that his delegation attached great importance to the 1961 Vienna Convention on Diplomatic Relations and that an effort should be made to ensure that States which had not yet acceded to the Convention did so.

33. As to the draft protocol concerning the status of the diplomatic courier and the diplomatic bag, he noted that the use of the diplomatic bag not accompanied by diplomatic courier was particularly widespread in developing countries for economic reasons and that its inviolability must be ensured except in cases where there was grave suspicion as to its contents. In addition, the various provisions concerning the different types of diplomatic courier should be consolidated.

34. Finally, he emphasized the role of the International Court of Justice as the principal judicial organ of the United Nations system.

The meeting rose at 1.15 p.m.