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SUMMARY RECORD OF THE 15th 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 10.55 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. ENKHTSAIKHAN (Mongolia) said that the fact that about 130 States had become parties to the Vienna Convention on Diplomatic Relations since its adoption in 1961 revealed its importance in interstate relations. Nevertheless, in order to ensure fuller quantitative universality, the General Assembly should make use of its authority to encourage all Member States of the United Nations to become parties to the Vienna Convention. On the other hand, practical measures should be taken to ensure stricter observance by States of the obligations assumed under the Convention. Although the overwhelming majority of States observed in good faith the rules of international diplomatic law, there were States that continued to violate those rules under various pretexts, including that of the existence of domestic administrative enactments. In view of the grave consequences of such violations, his delegation appealed to all States to observe the provisions of the Vienna Convention more strictly and supported the view that the General Assembly should periodically review the question of implementation by States of the provisions of that Convention.

2. While recognizing the right of States to formulate reservations to the provisions of treaties to which they were parties, his delegation believed that such reservations, which modified certain provisions of the treaties, should be formulated in clear-cut terms, particularly in the case of the Vienna Convention. The reservations made by some States to article 27, paragraph 3, of the Vienna Convention, to the effect that, if there were serious grounds to presume that the diplomatic bag contained articles, the import and export of which was prohibited by its laws, then the receiving State would have the right to open it, was an attempt to infringe the international protection provided to the freedom of communication and official correspondence of diplomatic missions. Such reservations were incompatible with existing international law.

3. His delegation shared the concern of others over the consequences of the entry into force of the new United States' legislation on the immunities and privileges of diplomatic missions in the territory of the United States, including missions to the United Nations. Section 5 of the new legislation, dealing with the dismissal of actions, gave United States courts the discretionary right to decide whether a diplomatic agent was entitled to immunity or not. His delegation considered such a step to be incompatible with international law, which provided comprehensive exemption of diplomats from local jurisdiction, except in cases expressly provided for in article 31 of the Vienna Convention. His delegation fully supported the view expressed at the previous meeting by the representative of the Soviet Union, as well as those of the representatives who had spoken on the subject in the Committee on Relations with the Host Country, that diplomatic agents should enjoy their immunities and privileges from the very moment of entering the territory of the receiving State and throughout the period of their stay there. He had been surprised by the statement made by the representative of the United States that the question of whether the legislation of certain States parties to the Convention were inconsistent with the Convention should not be considered in the Sixth Committee, but should be settled on a bilateral basis. Nor could he accept the statement of the representative

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(Mr. Enhksaikhan, Mongolia)

of the United States that the new legislation would not affect diplomats stationed in New York, since the Sixth Committee should not currently be concerned with that specific case, but with the grave consequences that might arise from the fact that a State party to the Vienna Convention was passing legislation that ran counter to the principles of international law and to the rules expressly stipulated in that Convention.

4. One of the main functions of the General Assembly, as provided in article 13, paragraph 1 of the Charter of the United Nations, was to encourage the progressive development of international law and, in the past, some delegations had expressed doubt as to the necessity of drawing up a special convention for the protection of diplomatic agents, arguing that existing basic international instruments were adequate to deal with the problem. The same reasons were currently being invoked in opposing the drafting of an international instrument defining more precisely the status of the diplomatic courier, on the grounds that the question was adequately regulated by articles 27 and 40 of the Vienna Convention. His delegation did not share that view, since the Vienna Convention regrettably did not include diplomatic couriers in the category of diplomatic agents. The reports of the Secretary-General (A/33/224) and the International Law Commission (A/33/10) revealed that there were as many as 19 issues which could serve as a basis for drawing up a draft protocol on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. Since the question had been considered by the International Law Commission, he would return to the subject when the Commission's report was being discussed.

5. In conclusion, his delegation supported the view that the Secretary-General should periodically ask Member States to report on the legislative measures adopted by them in the fulfilment of their obligations under the Vienna Convention, so that an analytical report could be submitted to the General Assembly, and that, from time to time, the Assembly should consider the implementation by States of the provisions of that Convention, not only to direct the attention of world public opinion to the question, but also to encourage a larger number of States to become parties to the Convention.

6. Mr. MARTINEZ MORCILLO (Spain) said that the Vienna Convention on Diplomatic Relations of 1961 was a magnificent example of the success achieved in the process of codification of international law within the United Nations, and was also a good model of the procedure that should be followed in carrying out such codification. More States participated in the Vienna Convention than in almost any other instrument, with the exception of the United Nations Charter. The reason for that situation could be found in the virtues of the Convention itself, which brought together in a single written text the views accepted by the majority of the international community, and established an appropriate balance between the interests of the accrediting and receiving States. The instances of failure to implement the Vienna Convention had a political rather than a juridical foundation. The passage of time revealed a number of minor short-comings in the wording of the Convention, but those defects had as yet had no adverse effect on the Convention as a whole. The report of the Secretary-General (A/33/224) mentioned a number of ways of ensuring the implementation of the Convention, including the desirability of increased participation in the Convention and the settlement of disputes arising from its interpretation or application.

7. With regard to the protocol concerning the status of the diplomatic courier, which was considered in detail in the report of the International Law Commission,

(Mr. Martinez Morcillo, Spain)

his delegation wished to make a number of observations on the basis for the immunities and privileges of the diplomatic courier and the identification of the diplomatic bag. The status of the diplomatic courier was intended to ensure the inviolability of the bag which he was carrying and, as a number of States had pointed out, articles 27 and 40 of the Vienna Convention of 1961 seemed to regulate adequately the status of the diplomatic courier by guaranteeing his personal inviolability and exempting him from any form of arrest or detention. His delegation agreed with the Governments of the Netherlands and Poland that one question requiring further consideration was the identification of the diplomatic bag. A more precise definition of what was understood by diplomatic bag and the articles that could be carried in it would save diplomatic missions from having to go through complex and varied procedures in order to accredit the diplomatic character of their dispatches and would make it easier for airlines to accord them the preferential treatment they deserved. However, in item 13 of the study carried out by the International Law Commission stated that one of the questions on which positive law was rather unspecific was the definition of the contents of bags, and, in item 16 of the study, it was stated that no provision existed which clarified the role of the laws of the receiving State in that connexion. Since the contents of diplomatic bags were determined by the diplomatic function itself, restrictions on such contents could be established only in relation to that function, without the regulations of the receiving State impeding or limiting shipments sent in performance of the diplomatic function.

8. His delegation believed that it was neither the time nor the place for a lengthy debate on the law enacted in the United States as a follow-up to the 1961 Vienna Convention. It nevertheless wished to draw attention to the dangers involved in interpreting section 5 of that law to mean that diplomatic agents must themselves plead immunity from jurisdiction before the courts. Such an interpretation, which could be based on the separation between the judicial and executive branches, could not be justified under international law, under which each State acted as a single entity, without distinction as to branches of government. Furthermore, a sentence passed by the courts on a diplomatic agent who was entitled to immunity could give rise to international liability on the part of the State in question; the latter was thus the one most concerned with clearly establishing the immunity rather than seeing its diplomatic agents or their lawyers compelled to invoke immunity.

9. Mr. SZELEI (Hungary) said that his delegation attached great significance to the strict observance of the Vienna Convention on Diplomatic Relations and noted that the number of States Parties to the Convention had increased considerably since the adoption of General Assembly resolution 31/76. His delegation nevertheless believed that the time had come to again urge those States which had not already done so to become Parties to the Convention. The United Nations should, moreover, review periodically the question of compliance with the Convention. His delegation was also concerned at the reservations expressed and the practice followed by some States with regard to the inviolability of the diplomatic bag. In the view of his delegation, such reservations were at variance with the spirit of the Convention.

10. His delegation was concerned at the new United States legislation which, in his opinion, deviated from the obligations which that country had clearly undertaken. It agreed with the interpretation given in that connexion by the

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(Mr. Szelei, Hungary)

representative of the Soviet Union. There was a contradiction between, on the one hand, United States Government practice and, on the other, the particular section of the new law which, in his view, ran counter to the Vienna Convention. The internal legislation of States Parties must consistently follow the provisions of the Convention, which were rules of contemporary international law.

11. His delegation continued to be deeply concerned about the safety of diplomatic missions and their staff, and it urged fulfilment of the relevant provisions of the Vienna Convention.

12. On the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the results of the study made by the International Law Commission pursuant to General Assembly resolution 31/76 were encouraging, and his delegation expected the Assembly to request the Commission to speed up its work on that issue.

13. His delegation suggested that the United Nations should periodically review the implementation of the Vienna Convention and that the General Assembly should take the matter up again at its thirty-fifth session; that the Secretary-General should request Member States to provide further observations on implementation, including internal legislation enacted for the purpose of fulfilling the provisions of the Convention, and should prepare an updated analytical report on the basis of those observations; and that the International Law Commission should help in the drafting of a protocol to the Convention concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.

14. Mr. YIMER (Ethiopia) said that the Vienna Convention on Diplomatic Relations was one of the most important international instruments adopted under the auspices of the United Nations. Even States which had not formally accepted the Convention applied its provisions, for it codified rules of customary international law. Nevertheless, and in spite of the fact that a large number of States were Parties to the Convention, an effort should be made to ensure that it gained wider acceptance. The General Assembly should therefore continue its periodic consideration of the Convention and urge States to accede to it.

15. When disagreements and disputes arose among States in their implementation of the provisions of the Convention, there was usually a tendency to think that it was the receiving State that had violated the Convention. That was not always the case, however, for there were instances in which the sending State abused its privileges. As with any other international instrument, disputes arising from the interpretation or application of the Convention should be settled by means of negotiation in accordance with Article 33 of the Charter. Any other mode of settlement of disputes, such as compulsory arbitration or judicial settlement, could not be initiated without the agreement of both parties to the dispute.

16. The Convention had stood the test of time and required very little amendment or revision, except possibly on the question of the diplomatic bag and the diplomatic courier. While some States felt that the Convention's existing provisions were sufficient, others believed that an additional protocol should be drafted. His delegation subscribed to the latter view. The diplomatic bag and

(Mr. Yimer, Ethiopia)

the diplomatic courier should be afforded full protection not only by receiving States but also by the third States through which they passed. His delegation attached special importance to the question of the protection of the diplomatic bag not accompanied by diplomatic courier since, as a developing country, it could not afford to send its diplomatic bag accompanied by a courier. The study made by the International Law Commission on that subject constituted a good basis for further investigation.

17. On the question of domestic legislation relating to diplomatic privileges and immunities, while his delegation did not question the sovereign right of States to adopt such legislation, it did believe that extreme caution should be exercised in drafting the legislation in order to stay within the bounds of the Vienna Convention. Any domestic legislation which ran counter to the provisions of the Convention would constitute a violation by the State concerned of its international obligations.

18. Mr. FIFOOT (United Kingdom) said that his Government attached great importance to the implementation of the Vienna Convention. It attached equal importance to the working methods of the United Nations, however, and he wished to point out that the work of the Sixth Committee was characterized by the repetition, obfuscation and duplication which appeared to be inevitable in the Organization. Given the fact that the Vienna Convention contained no provisions regarding the way in which States were to fulfil their obligation concerning the granting of privileges and immunities and that there did not appear to be any case in which a decision had been taken to the detriment of the diplomatic community, it was not for the Sixth Committee or the United Nations to prejudge the legislation recently enacted by the United States or to act on the assumption that it would necessarily have detrimental effects. Neither was it appropriate for the Sixth Committee to duplicate the work already done by the Committee on Relations with the Host Country, to which actual cases arising in that context had to be referred.

19. Document A/33/22⁴ consisted basically of two parts. One of them, referring to the study made by the International Law Commission on the protocol concerning the status of the diplomatic courier and the diplomatic bag, for some reason almost entirely reproduced the contents of the report of the Commission, which the Committee was to consider at the present session and which members already had before them. The other part, which resembled the scholastic disputations of the Middle Ages, analysed the views of States despite the fact that the lack of complex or subtle points of difference between the replies of Governments made any analysis unnecessary. He was therefore unable to understand the suggestion that the process should be repeated. It was not the Secretariat that was at fault; the problem was, rather, the tendency of the Sixth Committee to avoid adopting decisions by prolonging analytical work when, in fact, as was pointed out by Poland (A/33/22⁴, para. 11) the overwhelming majority of the international community fully observed the rules set out in the Vienna Convention. Consideration of the question should end at the current session with that observation.

20. With regard to the question of the diplomatic bag and the diplomatic courier, his delegation felt that strict compliance with the provisions of the Vienna

(Mr. Fifoot, United Kingdom)

Convention would be sufficient to avoid abuses and that, in any case, the problem did not deserve treatment in a separate item or resolution. If its consideration was insisted upon, it should rather be included with the other proposals contained in the resolution which normally referred to the International Law Commission.

21. Mr. FRANCIS (Jamaica) said that his country, like many others, felt that increasing the number of Parties to the Convention was the most effective means of improving the implementation of its provisions and that the General Assembly should make another appeal to those States which had not yet acceded to it.

22. Non-implementation of the Vienna Convention could arise from two different, though closely linked, sources: States, organs and officials acting individually. In the case of violations committed by States, it should be borne in mind that article 47 of the Convention provided for the possibility of applying its rules in certain cases restrictively or with a more favourable treatment than was required by its text. Not every restrictive application constituted a violation of the Convention. In cases involving a real violation, a settlement should be sought through peaceful negotiations. That was an obligation clearly mandated by the Charter in order to prevent retaliation on the part of injured States and the harmful psychological effects which arose from unresolved disputes. Problems usually involved questions of fact and of law which called for a prompt solution, and only consultations and negotiations between the parties could bring that about. Judicial or arbitral clarification was too time-consuming. When contacts between the parties broke down, other means of achieving a settlement should, however, be applied, not excluding the participation of a third party. With regard to violations committed by officials acting individually, it was essential to give strict instructions to all officials for implementing the rules of the Convention, including the correct use of the diplomatic bag.

23. Sound reasons existed for the periodic review by the General Assembly of the implementation of the Convention. In view of the latter's importance and the universal scope of its provisions, when its implementation was being discussed the item should not be limited to questions arising out of the attitudes of the host country, with regard to which the Assembly regularly considered the reports of the Committee on Relations with the Host Country.

24. The report of the Secretary-General contained references to the study made by the International Law Commission on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier (A/33/224, para. 42). His delegation would make appropriate comments on that matter when the Committee took up the report of the International Law Commission, some of whose members would then be present.

The meeting rose at 12.10 p.m.