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at 10.30 a.m.

New York

SUMMARY RECORD OF THE 16th MEETING

Chairman: Mr. BAVAND (Iran)

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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. MEISSNER (German Democratic Republic) said that the Vienna Convention on Diplomatic Relations regulated all fundamental matters relating to the establishment, activities and privileges of permanent diplomatic missions and their members and represented at the present time a binding minimum standard for the regulation of diplomatic relations between States. Inasmuch as the Convention continued to gain in political and international legal importance, his delegation supported moves to enhance its universality and took a consistent stand on behalf of strict observance of the Convention; he recalled in that connexion the principles agreed upon in the Final Act of the Conference on Security and Co-operation in Europe for governing co-operation between States.
2. His delegation felt that some of the norms contained in the Vienna Convention called for amendment in the light of the experience gained in applying the Convention and in view of the development of diplomatic practice; that applied in particular to the legal status of diplomatic couriers as regulated in article 27 of the Convention, and his delegation therefore wished to express its undiminished interest in an optional protocol concerning the status of diplomatic couriers.
3. His delegation also wished to voice concern at the new United States law regarding the privileges and immunities of foreign missions, section 5 of which placed it within the discretion of the courts to decide to what extent a person entitled to privileges and immunities was to be granted them in each particular case; under that provision, a diplomat was required to prove in court that he had such entitlement. The provision in question was incompatible with the Vienna Convention, under which the receiving State had an obligation to extend the established privileges and immunities to protected persons without restriction and to take the internal measures required to ensure fulfilment of that obligation; the matter concerned the Committee inasmuch as the law in question affected the status of missions accredited to the United Nations.
4. Mr. JACOVIDES (Cyprus) said that the Vienna Convention on Diplomatic Relations of 1961 was part of the continuous and systematic effort directed towards the codification and development of contemporary international law and regulated an important area of international relations. The Committee was called upon to examine the degree of implementation of the Convention and to consider whether any additional steps were required in order to make that implementation more effective and close any gaps that might have appeared.
5. Disputes arising from the application of the 1961 Convention should be settled by the methods indicated in the Charter, of which negotiation was the most appropriate and the one most frequently resorted to, although, when there was a difference in legal interpretation, it became necessary to apply third-party dispute

(Mr. Jacovides, Cyprus)

settlement procedures of the kind referred to in Article 33 of the Charter and in the Optional Protocol to the Vienna Convention.

6. After listening carefully to the statements made concerning the recently adopted United States legislation, his delegation was refraining from any comment because of its position in the Committee on Relations with the Host Country and the fact that the opinion requested from the Legal Counsel of the United Nations had not yet been received.

7. With regard to the more specific issue of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, while that topic might not be as urgent as other areas of international law which awaited codification, there were several issues to be explored with a view to improving the 1961 text; should, therefore, the outcome of the Working Group's efforts be a draft protocol on that subject, his Government would give favourable consideration to the possibility of acceding to the protocol.

8. Mr. JEZIL (Czechoslovakia) said that his delegation regarded the Vienna Convention on Diplomatic Relations as an expression of the desire of States to create favourable conditions for the work of diplomatic missions and to contribute to the development of friendly relations, co-operation and peaceful coexistence between States. The principle of universality was being realized in the case of the Vienna Convention inasmuch as a large number of States had already become parties to it.

9. His delegation could not overlook the fact that in the United States, the host country of the United Nations and a party to the Vienna Convention, the Convention was to be applied in a manner that could in practice entail a failure to respect important rights of members of diplomatic missions. While it did not question the veracity of the United States representative's statements concerning the behaviour of United States executive bodies, his delegation noted that under the provisions of the Vienna Convention, which under the United Nations Headquarters Agreement also applied to the members of missions to the United Nations, the act of the receiving State in consenting to receive a person in its territory as a member of a foreign diplomatic mission automatically implied an undertaking by that State to respect and protect the privileges and immunities of the person in question and, consequently, to ensure respect for them by its authorities. Furthermore, articles 31 and 37 of the Vienna Convention clearly formulated the principle of the exemption of members of diplomatic mission from the jurisdiction of the receiving State. The provisions of section 5 of the United States law on diplomatic relations, which permitted United States courts to decide whether a member of a diplomatic mission was entitled to privileges and immunities, created apprehension with regard to a possible infringement of the rights of members of diplomatic missions provided for in the Vienna Convention. The legislation in question also provided for a procedure under which a member of a diplomatic mission was required to apply to a United States court for a determination of his entitlement to diplomatic privileges and immunities, whereas the Vienna Convention regarded the issue of privileges and immunities as one that pertained to relations between

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(Mr. Jezil, Czechoslovakia)

two States and not to relations between a given member of a diplomatic mission and an organ of the receiving State; the legislation in question was thus at variance with the Vienna Convention.

10. His delegation supported the initiative calling for the preparation of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by courier; in its view, the protocol should set forth and elaborate the principle of the inviolability of the diplomatic courier and of the diplomatic bag whether or not accompanied by diplomatic courier.

11. Mr. KIRSCH (Canada) said that the question raised by the Soviet representative had three main aspects: the extent of acceptance of the Convention, implementation of its provisions, and the development and strengthening of the principles of international law contained in it. His delegation felt that the Convention was important not only because of the purpose it sought to achieve but also as a model of what could be accomplished in a process of codification under the auspices of the United Nations. It would therefore support a draft resolution calling upon those States which had not yet done so to accede to the Convention and to the Vienna Convention on Consular Relations of 1963, which had been ratified by 89 States.

12. He felt that, on the whole, the provisions of the Convention on Diplomatic Relations were being applied by States in a satisfactory manner. Problems unquestionably arose from time to time, but they were relatively few in number and did not reflect an attitude of ill-will towards the Convention. The question of the effects of a new United States law, which had been raised by the Soviet representative and commented upon by other speakers, gave rise to certain reservations as to its propriety inasmuch as it would cause the Committee to give separate consideration to the legislation of one Member State. Furthermore, the matter had already been brought up in the Committee on Relations with the Host Country. If certain provisions of the law in question were creating genuine problems, there were other settlement procedures, already referred to by previous speakers, which did not call for any action by the Sixth Committee.

13. As to the substance of the problem, he felt that the Committee had no basis for discussing recently enacted national legislation which had not yet been applied. His Government would vigorously oppose any violation of the provisions of the Vienna Convention that might occur and attached great importance to the latter's strict application, but the nature of the obligations imposed by the Convention must be made clear. The Convention required States to give practical effect to its provisions and not to incorporate any particular language into their legislation. What was important was not the precise wording used but the manner in which each country complied with its obligations under the Convention. He knew of no cases in which the provisions of the Convention had been violated by the United States, and one should not cast doubt upon the future behaviour of a State with regard to obligations which it had traditionally respected. Members should take note of the statements made by the United States representative in the Committee on Relations with the Host Country and the Sixth Committee offering repeated assurances that there would be no change in existing practice, which had not caused any problems in the past.

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14. The Soviet representative's proposal calling for a provision in a draft resolution stating that the legislation of States Parties to the Vienna Convention must not deviate from the Convention in any way represented, in principle, an initiative to which there could be no objection; however, that formulation did not fully reflect the obligations contained in the Convention, nor did it faithfully render the legal rule contained in article 27 of the 1969 Convention on the Law of Treaties, which provided that no State could "invoke the provisions of its internal law as justification for its failure to perform a treaty". That rule applied to specific problems that might arise and not to the text of laws. Moreover, the completely clear-cut, straightforward legal rule in question was universally accepted, and to reaffirm it in a vague manner and distort it would, far from strengthening it, merely weaken it and cast doubt on its application.

15. A proposal had been made for supplementing the provisions of the Vienna Convention governing the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. Although the relevant provisions of the Convention were not always applied as strictly as one might wish, violations usually resulted from misunderstandings concerning identification of the bag or from administrative errors and not from essentially legal factors. The solution lay in an effort by States to comply strictly with the provisions of the Convention. In the opinion of his delegation, the drafting of a protocol concerning the statute of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier would not serve any very useful purpose. Moreover, the observations by Governments on the subject which had formed the basis of the Secretariat report were few in number and divergent in content, and they showed that most countries did not give high priority to the matter. Nevertheless, if other delegations insisted, his own delegation would not oppose a new request to States to submit their observations or more intensive study of the subject by the International Law Commission. Since the question of the diplomatic courier and the diplomatic bag was the only one that warranted multilateral consideration, he hoped that the general subject of the Vienna Convention on Diplomatic Relations would not again be included in the Committee's agenda until the results of any studies undertaken on the matter were available.

The meeting rose at 11.40 a.m.