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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 3.30 p.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. BUBEN (Byelorussian Soviet Socialist Republic) said that at a time of deepening détente and active efforts to create a climate of mutual respect and trust international instruments strengthening the legal basis for peaceful co-operation among States were of increasing importance. The Vienna Convention on Diplomatic Relations of 1961 was a fundamental instrument in the field of diplomatic law, and its implementation had helped to foster friendly relations and co-operation among States. The fact that the General Assembly in resolution 31/76 had considered it desirable to give periodic consideration to its implementation by States, and the fact that the question was now being considered for the third time in the Assembly, indicated the degree of importance attached by Member States to the strict observance of the provisions of the Convention.

2. With regard to the measures to be taken in connexion with that question, his delegation felt that participation by all States in the Convention would help to achieve universal observance of the generally accepted rules of international diplomatic law. According to the report of the Secretary-General (A/33/224), the overwhelming majority of States Members of the United Nations shared that view. There was nothing to prevent all 150 States Members from becoming parties to the Convention, and the General Assembly should make a pressing appeal to all Member States to accede to it.

3. Many States parties had adopted internal legislation with a view to implementing the provisions of the Convention. However, it was a matter for grave concern when the draft legislation of States called into question the very essence of the provisions of that Convention. That was the case with the United States Diplomatic Relations Act, which had already been discussed and which required persons already enjoying diplomatic immunity to apply to United States courts for recognition of their immunity in the event of legal proceedings against them. The Vienna Convention contained no provision to the effect that persons enjoying diplomatic privileges and immunities should apply, after entering the receiving State, to any organs of that State for recognition of such privileges and immunities, in fact, a State which had granted entry to a person enjoying immunity had already, by so doing, acknowledged his immunity.

4. In the comments received from Member States, and in the previous discussions in the Sixth Committee concerning implementation of the Convention it had been noted that non-compliance by States with the basic provisions of the Vienna Convention could lead to serious disagreements between States and complicate international relations. In its resolution on the subject, the General Assembly should therefore reaffirm the need for the strict implementation by States of the provisions of the Convention, with a view, inter alia, to strengthening international peace and security and promoting international co-operation.

(Mr. Buben, Byelorussian SSR)

5. Particular concern was now being caused by terrorist attacks against diplomatic missions and their staff. According to article 22 of the Convention, 'The receiving State is 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.' The strengthening of measures to protect the security of diplomatic missions, and their staff would therefore promote the implementation of the provisions of the Vienna Convention.
6. Another effective means of ensuring such implementation should be the General Assembly's decision, at its thirty-first session, to consider the question periodically. To that end, the Secretary-General should be asked to send Member States periodic questionnaires concerning the domestic legislative measures they had enacted in order to fulfil their obligations under the Convention. The replies could form the basis for the preparation of analytical reports, and the consideration by the General Assembly of those reports would undoubtedly promote stricter observance of the Convention and wider participation in it.
7. In implementation of General Assembly resolution 31/76 of 13 December 1976, the International Law Commission had continued, at its thirtieth session, the study of proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The Working Group had defined 19 issues to be studied in that connexion, most of which were not adequately covered by existing international instruments on diplomatic law. The early elaboration of a protocol was therefore essential, and would be a constructive contribution to the further codification and progressive development of international diplomatic law.
8. Mr. GAVIRIA (Colombia) said that the Vienna Convention had the merit of embodying, in a single instrument, all the rules that had customarily been observed by States in their mutual relations. It reflected the general philosophy of diplomatic law, which held that the establishment of diplomatic relations and of diplomatic missions depended solely on the mutual consent of States. The Convention provided a better and more up-to-date legal basis than the 1815 Congress of Vienna and the Aquisgran regulations, since its phraseology was more general. The economically weak position of some new States was taken into consideration, as the Convention authorized one head of mission to be accredited to a number of States, and enabled a number of States to accredit the same Head of Mission as their representative, with the consent of the receiving State or States.
9. Some provisions of the Convention, however, needed to be supplemented and updated. His delegation supported the idea of elaborating a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.
10. With regard to means of improving the implementation of the Convention, he wished, first of all, to point out that there was no definition in any of the four existing conventions on the subject. A definition was therefore required, and he

(Mr. Gaviria, Colombia)

noted that the writer Philippe Cahier had defined it as "Postal packets or packages bearing external marks of their official character". With regard to the inviolability of the diplomatic bag, although article 27, paragraph 3, of the Vienna Convention prohibited the opening or detaining of the diplomatic bag, its wording could give the receiving State a pretext for opening it if the latter entertained serious doubts concerning its contents or safety.

11. In the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the following four points should be taken into account: the serious circumstances or evidence that had to be present in order that the bag might be opened or examined by means of X-rays; the official who was competent to order the opening of the bag; the act of opening the bag (Cahier suggested that it should be opened in the presence of a Protocol Officer of the Ministry of Foreign Affairs of the receiving State and a member of the diplomatic mission to which the bag was addressed); detention of the bag for a short time, pending the arrival of those officials; procedure in the case of non-appearance of one or other of the officials; and a requirement that the bag should be inspected only for the purpose of checking the physical contents of the packets, and with the least possible delay, so as not to hinder diplomatic communications. Official correspondence, according to the wording of article 27, would be "all correspondence relating to the mission and its functions" and the packages constituting the diplomatic bag would be assured to contain "only diplomatic documents or articles intended for official use".

12. Moreover, no definition of the diplomatic courier was provided in any international convention. His delegation understood that the courier was the person responsible for delivering the diplomatic bag.

13. Although the Vienna Convention laid down rules concerning the diplomatic courier, those rules should be carefully studied and supplemented. His delegation could not find sufficient justification for the exceptions made in article 27, paragraphs 6 and 7, or for the general rule contained in paragraph 5. It suggested that the protocol should make it clear that the person carrying the bag was independent of the bag itself, so as to ensure that any measure taken by any State against the former was not extended to the latter.

14. His delegation also wished to suggest that diplomatic couriers and diplomatic bags which happened to be in a third State, in transit or as a result of force majeure, should enjoy the same protection and inviolability in that State as they were bound to be accorded by the receiving State, in accordance with article 40, paragraphs 3 and 4, of the Convention. That would ensure that the provisions applying to the receiving State were also applied to third States.

15. Mr. SERAFINI (Italy) said that his country had ratified both the Vienna Convention itself and the Optional Protocol concerning the Compulsory Settlement of Disputes. Italy had experienced no difficulties either in implementing the Convention in Italy itself or regarding its application to Italy by other States parties. He therefore considered that since the rules contained in the Convention were in keeping with current international law in that field, it would be premature

(Mr. Serafini, Italy)

to envisage any further regulations on the subject. The interest shown by many delegations in the national legislation of one of the States parties to the Convention was an indication of the importance attached by States to the scrupulous implementation of the Convention. His own delegation considered such concern warranted, as it served to alert States to the consequences of procedures which could involve violations of the Convention in practice. However, he did not consider it appropriate for the Sixth Committee to pass judgement on the national legislation of all States parties to the Convention, merely on the basis of certain misgivings, particularly as the situation regarding the implementation of the Convention by States had, in general, been recognized as satisfactory. The criterion should be the conduct of States in their international relations, rather than the internal regulations governing the operation of their organs. While the Secretary-General should be able to monitor the implementation of the Convention so as to call attention to any problems arising, the few difficulties which had so far been encountered did not seem sufficiently grave for the subject to be kept on the agenda of the General Assembly, or for negotiations to be started with a view to supplementing the existing rules. Some of the cases which had arisen did not seem to come even within the purview of an additional protocol of the kind proposed in the Committee a few years earlier, which was designed to ensure the protection of the diplomatic courier and the diplomatic bag. The cases in question related, in fact, to the problem of the immunities and privileges of the diplomatic or consular residence, and they could be settled by negotiations between the parties concerned, or by recourse to the Optional Protocol to the Convention. His delegation therefore merely hoped that an increasing number of Member States would participate in the Optional Protocol.

16. His Government agreed with the majority of States which had replied to the invitation contained in paragraph 4 of resolution 3501 (XXX) and paragraph 3 of resolution 31/76. Like them, it did not see any need for elaborating an additional protocol on the status of the diplomatic courier and the diplomatic bag. His delegation considered that the existing provisions on the subject were adequate, and that it would be best to concentrate on applying the existing law. The technical details not covered by the Vienna Convention, such as the means of transporting diplomatic bags not accompanied by courier, could be settled through practical arrangements with the carriers, and especially the airlines. However, his delegation would not oppose further consideration of the subject by the International Law Commission, if that were the wish of a majority of Committee members.

17. Mr. KOROMA (Sierra Leone) said that his Government attached great importance to the Vienna Convention on Diplomatic Relations as an instrument for the promotion of friendly relations among nations, irrespective of their different constitutional and social systems, and for the development of international law, provided that States parties scrupulously observed the letter and spirit of the Convention. In many African countries the Convention had been incorporated into domestic law.

18. His delegation agreed that a periodic review of the Convention would help to ensure faithful observance of its provisions and its wider acceptance. In spite of the many countries which had ratified or acceded to the Convention, among which

(Mr. Koroma, Sierra Leone)

African States numbered approximately 40, there had nevertheless been some violations of its provisions by individuals, State organs and non-governmental organizations. For example, a press luncheon was not an appropriate forum for behaviour conflicting with provisions of the Convention. There were, moreover, lacunae in the text. Again, certain provisions gave cause for misgivings on the part of some States.

19. While his Government agreed that no one sovereign State could stand in judgement over another without the latter's consent, the principle pacta sunt servanda must be observed, and States parties to the Convention were bound to make such modifications in their legislation as were necessary for fulfilment of their obligations under the Convention.

20. With regard to the misgivings caused by certain provisions, the representative of Ethiopia had said on the previous day that misapprehensions could lead to a chain reaction with entirely unpredictable results. Every effort must be made to dispel any doubts regarding the Convention.

21. His country's Government was not in a position to use diplomatic couriers, nor did it have its own world-wide airline to transport its diplomatic bag. Accordingly, on many occasions its diplomatic bag had been violated. It would therefore be in his country's interests for a protocol to be elaborated concerning the status of the diplomatic bag not accompanied by diplomatic courier. Such a protocol should stipulate that the security of the bag was the responsibility of the State of transit or the receiving State. He commended the International Law Commission's work on that topic and reiterated, in conclusion, that the purpose of diplomatic privileges and immunities was to ensure the proper performance of their task by diplomatic missions.

22. Mr. PUÑO (Philippines) said that his delegation noted with satisfaction the general consensus, stated in document A/33/224, that the Vienna Convention on Diplomatic Relations had gained "wide acceptance among States", 127 of which had become parties thereto; that it had "provided the basis for many pieces of democratic legislation"; that it had served as a model for international agreements designed to regulate legal relationships in many spheres of international life; and had exerted a positive influence in international relations.

23. A divergence of opinion had, however, emerged on the question whether or not the provisions of the Convention concerning the diplomatic courier and the diplomatic bag should be further developed. From the Secretary-General's report (A/33/224), it appeared that problems were becoming more complex in the settlement of disputes arising from the interpretation or application of the Convention. His delegation agreed with the observation made by many States that, when disputes concerning the interpretation of rules governing diplomatic relations could not be settled through joint consultations between the States involved, the matter should be submitted to the jurisdiction of the International Court of Justice.

24. In most legal systems prevailing in the world, however, the prerogative of domestic courts to make juridical interpretative pronouncements on international

(Mr. Puno, Philippines)

law as an incident to adjudication could not be precluded. The Philippine Civil Code provided that judicial decisions interpreting the law and the Constitution were part of the Philippine judicial system and, when made by the highest court, became a source of law. In the same Code, it was specifically stated that international law was a part of the law of the land.

25. In any State a situation might arise where a suit was brought before a domestic court of justice, commenced initially as a purely private litigation, but, at some stage, a question relevant to international law might arise and one of the parties sued or impleaded as defendant might, for instance, invoke the right and privilege of diplomatic immunity accorded by the Vienna Convention. In such a case, the diplomatic organ of the host State might or should apprise the domestic court of its official stand with regard to the individual official evoking the immunity. In most jurisdictions, interdepartmental courtesy would constrain the judicial branch to give faith and credence to the official acts of the executive branch. But whether such certification from the diplomatic organ was forthcoming or not, the legal and judicial systems of most States ordained that the court could not, in general, be deprived of its power as a "tryer of facts". In the course of its process of "fact finding", that court must resolve many factual issues to delimit its jurisdiction over the case and over the person or to determine the existence or non-existence of the requisite conditions of the right or privilege invoked. When the legal issue hinged upon the interpretation of a rule of international law, the domestic court would be called upon to interpret the law in the exercise of its powers of adjudication. The proposal, then, of setting up a procedure or system of finality in the interpretation of the provisions of the Vienna Convention, by explicitly vesting that prerogative in the International Court of Justice, became significantly relevant.

26. Some difficulties presented themselves. Firstly, of 127 States parties to the Vienna Convention, only 49 were parties to the Optional Protocol concerning the Compulsory Settlement of Disputes. Secondly, under the Charter of the United Nations, only the General Assembly, the Security Council, organs of the United Nations and specialized agencies authorized by the General Assembly could request the International Court of Justice to give an advisory opinion on any legal question. Thirdly, under the Statute of the International Court of Justice, only States could be parties in case before that Court. Hence, interpretation of the Convention at the behest of States would be proper for the International Court of Justice only when a justifiable case between those States was actually pending before it.

27. His delegation therefore proposed, in general, that the jurisdiction of the International Court of Justice should be so enlarged as to enable it to exercise more effectively its powers of interpretation of the Vienna Convention; and, in particular, that individual States should be given the capacity and prerogative to request the Court to give advisory opinions in the interpretation of the Vienna Convention whenever divergences of views emerged from pronouncements of judicial, executive or diplomatic organs of Governments.

28. His delegation invited the attention of the International Law Commission to its statement for consideration and appropriate action.

29. Mr. EL-BASHANI (Egypt) said that the item under consideration was one of great importance, because the Vienna Convention codified one of the most important aspects of international relations. The principles enshrined in it derived from principles that had been applied by the international community for a long time. The large number of States which had ratified or acceded to the Convention showed the significance attached to the Convention and its warm reception at the international level, as a basic instrument in international relations.

30. His Government scrupulously observed the provisions of the Convention. It was also desirous of having all States show the same interest in it. That would help to strengthen diplomatic relations. The extension of its provisions to cover diplomatic couriers and agents would be a great improvement.

31. In diplomatic relations, co-operation with the receiving State on the basis of equitable principles and the principle of reciprocity, was essential. All States must, in so far as possible, facilitate the task of diplomatic missions and find practical solutions to problems arising in the varying circumstances in different countries.

32. His delegation appealed to all States which had not done so to accede to the Convention.

33. Another important area of diplomatic relations was the status of the diplomatic courier and the diplomatic bag, accompanied or not accompanied by diplomatic courier. Their protection must be ensured, and communication between diplomatic missions at the international level or with their home countries should be ensured. His delegation had no objection to the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag. His country, represented by Mr. El-Erian, had participated in the International Law Commission's work on that topic, which was reflected also in the Commission's report on the work of its thirtieth session (A/33/13).

34. The Vienna Convention was of major importance, because it related not only to diplomacy but to all areas of international relations and helped to strengthen international peace and security. Its universal application would help to promote peaceful coexistence among all States, without discrimination and on the basis of reciprocal rights and obligations. He stressed that work on the development of the Convention must be continued, with the co-operation of all States, in a spirit of goodwill and mutual understanding, with a view to developing international relations in a stable atmosphere.

The meeting rose at 4.25 p.m.