



SUMMARY RECORD OF THE 19th 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 3.25 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. KOSTOV (Bulgaria) said it was gratifying to note that 12 countries had ratified or acceded to the Vienna Convention since the thirty-first session of the General Assembly, bringing the total number to 127. Nevertheless, there was still room for a renewed appeal to those States which had not yet done so to become parties to the Convention.
2. At the current stage, it was particularly important to ensure strict observance, by all organs of individual States, of both the letter and the spirit of the Convention, in order to create an atmosphere of confidence and respect towards the official representatives of other States and to promote a better understanding of their highly responsible mission and of its significance for the development of bilateral and multilateral relations and for the cause of peace in general. The mass media, political parties and their prominent figures were to a great extent responsible for providing the most favourable conditions for the work of those representatives.
3. The Foreign Ministry of Bulgaria paid particular attention to that matter. As part of the programme for work with the diplomatic missions, it had already become an established tradition for the President of the State Council to hold yearly meetings with the diplomatic corps at various places throughout the country. These meetings had been given wide coverage by the media.
4. Regrettably, however, in some countries, organized campaigns were still waged against diplomatic missions, with a view to fostering hostility towards a given country. More often than not, activities of foreign diplomats were regarded as a source of economic and other difficulties experienced by the local population. In that connexion, he recalled the series of articles that had appeared in one of the New York daily newspapers during the previous year, in which the diplomatic missions to the United Nations and the privileges and immunities granted to them under the provisions of international law had been singled out as a scapegoat for all of New York's misfortunes.
5. Compliance with the Vienna Convention was inseparable from the question of national legislation and its enforcement. Such legislation, including all administrative and other regulations, should conform strictly to the provisions of the Convention. In that regard, his delegation fully shared the concern expressed by the representative of the Soviet Union to the effect that the new United States law contained some vague and ambiguous provisions subject to possible conflicting interpretations, including interpretations contrary to the Vienna Convention. His delegation, while grateful to the representative of the United States for providing some clarification on the matter, would very much appreciate it if that clarification could be made more detailed and substantiated. Although no one questioned the sovereign right of States to adopt legislation or regulations which they deemed necessary - a right which should be fully respected - attention should

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(Mr. Kostov, Bulgaria)

be drawn to cases where legislation or regulations affected international commitments or ignored obligations entered into through agreements affecting the rights of other States parties. It was imperative, therefore, to bring national legislation into line with the Convention, with a view to reaching a uniform interpretation and enforcement of national laws. A study by the Secretary-General on that question and, in particular, on existing practices in individual States in implementing the 1961 Convention would prove of great value to the work of the Committee.

6. The report of the Working Group on the Status of the Diplomatic Courier and of the Diplomatic Bag not accompanied by Diplomatic Courier (A/33/224, para. 42) represented a serious step forward in the fulfilment of the tasks assigned to that Working Group. It was evident from the report that a number of issues relating to the diplomatic courier were not regulated. Accordingly, the proposal that questions relating to the diplomatic courier and diplomatic bag should be regulated through an additional protocol to the Convention was a timely one.

7. Mr. SIRCAR (Bangladesh) said that, in common law countries, the immunity granted to foreign diplomats rested partly on common law and partly on statute law. However, practice had varied in detail as to the extent of immunities and also because it had sometimes been uncertain whether a particular immunity was allowed as a matter of law or of courtesy. A greater measure of certainty had been given to the law by the Vienna Convention.

8. While it was a universally accepted principle of international law that the person of a diplomatic agent was inviolable, and that he was immune from any form of arrest or detention and from all civil and criminal proceedings, it was, nevertheless, his duty to respect the criminal law and police regulations of the country and not to interfere in its internal affairs. However, if he broke those laws and regulations, the only action that could normally be taken against him was to make a diplomatic complaint to his Government, or, in extreme cases, a demand for his withdrawal. Although the Vienna Convention had incorporated customary international law to a great extent, it did not state whether the principle of inviolability precluded a receiving State from taking measures against a diplomat in self-defence or to prevent him from committing a crime.

9. In his delegation's view, it would be possible to elaborate more detailed provisions for a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and on some other matters. However, if properly applied and observed in good faith, the provisions of the Convention were sufficient to guarantee the functioning of normal diplomatic relations between States. Much depended on the wider acceptance and scrupulous observance of the Convention by States Members of the United Nations. Moreover, disputes arising from the interpretation or application of the Convention should be settled by negotiation or conciliation, and not by unilateral action which might give rise to reprisals. If the negotiation or conciliation failed, the dispute could be submitted to arbitration or to the International Court of Justice. However, in view of the great importance of diplomatic couriers to the development

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(Mr. Sircar, Bangladesh)

of relations between States, there was no reason why the proposals concerning the elaboration of an additional protocol should not be examined.

10. Diplomatic privileges and immunities were awarded not to benefit the individuals concerned, but to ensure the efficient functioning of diplomatic missions as the representatives of States. With that end in view, it was essential to maintain in good faith the spirit and purpose of article 3 of the Vienna Convention.

11. Bangladesh, although it had yet to become a formal signatory to the Vienna Convention, had also adhered faithfully to its provisions and had accorded all representatives accredited to Bangladesh the privileges and immunities provided for in the Convention. His delegation would support any measure to ensure strict observance of the Vienna Convention and other universally recognized rules of international law on diplomatic relations.

12. Mr. HOFSTEE (Netherlands) said his delegation concurred with the view expressed by previous speakers that the Vienna Convention was an important instrument. His Government fully applied the rules of customary international law embodied in the Convention and intended to ratify it as soon as parliamentary approval had been obtained.

13. His delegation also considered it desirable that States should observe the rules of the Convention. He agreed with previous speakers that such was generally the case, and that the large majority of States abided by its provisions. Disputes concerning the application of the Convention could be settled by negotiation between the States concerned. Failing that, and in the obvious interest of having a uniform interpretation of the rules of the Convention, States could apply to the International Court of Justice. For that purpose, wide adherence to the Optional Protocol concerning the Compulsory Settlement of Disputes was desirable. In any event, there seemed to be hardly any reason for the Sixth Committee to pursue the matter of the implementation by States of the Vienna Convention any further. The matter should be taken up again only if there were tangible reasons for doing so.

14. With regard to the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, his Government had already stated in its written comment of 1976 that it deemed the provisions of article 27 of the Vienna Convention sufficient in that regard. Correct application of that article would ensure the proper functioning of courier services, and if anything more was to be done to promote their smooth operation, practical measures would be called for rather than a detailed specification of the existing regulations. He was gratified to note that that point of view had been supported by the representative of Spain. Neither the report of the Secretary-General (A/33/224) nor the observations made thus far in the Committee had caused his Government to change its position. The section of the report containing an analysis of the comments and observations received from Member

(Mr. Hofstee, Netherlands)

States failed to show why the elaboration of an additional protocol would be a matter of urgency. Furthermore, the elaboration of additional rules and immunities for the diplomatic courier seemed out of date, since most States currently sent their diplomatic bags unaccompanied. Further guarantees for the person of the diplomatic courier did not by themselves contribute to better protection of diplomatic bags and could well upset the balance between the interests of the sending and receiving States that was so carefully maintained in the Vienna Convention. If the question was to be pursued at all, it was to the matter of unaccompanied diplomatic bags that some useful attention might be given. For the time being, however, his delegation fully agreed with the written comment of the Government of Austria (A/33/224, pp. 18 and 19).

15. His delegation had found none of the 19 issues tentatively identified by the Working Group on the Status of the Diplomatic Courier and of the Diplomatic Bag not Accompanied by Diplomatic Courier to be of such importance that further study and elaboration of the rules would add an indispensable element to the Convention. Nor could it be demonstrated that the absence of such rules had thus far given rise to serious and undesirable incidents. Accordingly, his delegation doubted the advisability of providing the International Law Commission with a mandate for the elaboration of an additional protocol, quite apart from the fact that the Commission had more important and more urgent items on its agenda.

16. His delegation considered that a discussion of recent United States legislation relating to diplomatic relations fell outside the context of the current debate of the Committee. He had taken due note of the statement by the representative of the United States that the new legislation would not in any way alter the legal status of representatives of States Members of the United Nations and associated himself with the statements made on the matter by the representative of the United Kingdom and Canada.

17. Mr. YEPEZ (Venezuela) said his Government had ratified the Vienna Convention more than 14 years earlier and had been particularly vigilant in ensuring that all of its provisions were observed by the Venezuelan authorities. By the same token, his Government expected the provisions of the Convention to be duly observed by States with which it had diplomatic relations. The full implementation of the provisions of the Convention by both sending and receiving States made possible the existence of harmonious diplomatic relations between States, a factor which contributed to the maintenance of peace, one of the basic principles of his country's international policy. Venezuela had traditionally attached special importance to the observance of the principle of pacta sunt servanda, which was recognized and applied by the majority of States. For that reason, and because of the cardinal importance which it attached to international treaties, it did not consider that laws, decrees or other legal instruments could be enacted if they contained provisions contrary to those incorporated in an international treaty. Accordingly, Venezuela's internal legislation on diplomatic relations was in conformity with the provisions of the Vienna Convention, and, in the event of any conflict, the norms of the Convention would be applied.

(Mr. Yopez, Venezuela)

18. In considering the item, the Committee could take note of specific instances in which the provisions of the Vienna Convention had been violated by States, including cases in which States had promulgated a text of a legal or other nature contrary to the rules of the Convention. He recalled that paragraph 3 of General Assembly resolution 31/76 invited Member States to submit observations on ways and means of ensuring the implementation of the provisions of the Vienna Convention. One such means would be to permit the reporting of violations of the Convention which had actually taken place or which might occur as a result of legislation enacted by States.

19. Increased participation in the Convention would also help to guarantee the uniform implementation of its provisions. Although a considerable number of States had given it final approval, some 23 Member States had not yet incorporated it into their legislation. It would be desirable, therefore, for those States to take the necessary steps in that regard.

20. With regard to the implementation of the Convention in the practice of States, he said that, in the international community, it was desirable for States to abide by their international obligations. In the case of the Vienna Convention, the large majority of States seemed to be implementing its provisions in a satisfactory manner. Nevertheless, there had been specific cases of violations of the Convention which called for efforts on the part of the international community to ensure that they did not recur or become more widespread. The United Nations, and specifically the Sixth Committee, was an appropriate forum for the reporting and consideration of such violations, and for the formulation of pertinent recommendations or suggestions. In that connexion, he recalled that his delegation had supported the adoption of General Assembly resolution 3501 (XXX) which contained a general appeal to States to become parties to the Convention and to implement its provisions.

21. The question of the settlement of disputes arising from the interpretation or application of the Convention was of fundamental importance. Such disputes should be settled through direct negotiation between the States, unless they agreed to adopt some other peaceful settlement procedure. The large majority of States seemed to favour the procedure of direct negotiation, which was an effective means of settling disputes, particularly in questions of interpretation or application which called for speedy settlement or which, in most cases, were attributable to lack of information or easily remedied negligence on the part of the States themselves. That topic, because of its importance and the contribution which it could make to understanding among States, should be included in future agendas of the General Assembly, to be taken up annually or biennially, so that Member States would have an opportunity to report and take note of violations of a legal instrument which was of such importance for the harmonious development of diplomatic relations and the maintenance of peace.

22. With regard to the possible elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier he recalled that his delegation had stated on an earlier occasion that the

(Mr. Yopez, Venezuela)

elaboration of an additional protocol did not seem warranted, since the provisions of the Vienna Convention were sufficiently comprehensive in that regard and because the immunities and privileges granted by the Convention to both the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier provided adequate protection. Moreover, with advances in world communications, the use of diplomatic couriers had declined and, when it was used, the individual acting as a diplomatic courier was usually an official of the mission, protected by the privileges and immunities granted by the Vienna Convention. Most of the concerns expressed by a number of delegations were dealt with in articles 27 and 40 of the Convention. For example, article 27, paragraphs 1 and 5, of the Convention contained ideas which would enable the diplomatic courier to be defined as one of the appropriate means to be used by the diplomatic mission in communicating with the Government, and the other diplomatic missions and consulates of the sending State. Those paragraphs also defined the functions of the diplomatic courier. Paragraph 5 also granted the diplomatic courier personal inviolability and immunity from detention or arrest, while paragraph 6 established the duration of the privileges and immunities of the diplomatic courier and provided for the possible designation of diplomatic couriers ad hoc who would enjoy the same immunities until the moment of delivery of the diplomatic bag. Paragraphs 2 and 4, although they did not specifically define what was meant by the diplomatic bag, took it to mean official correspondence relating to the mission and its functions. Paragraph 3 of that article provided that the diplomatic bag could not be opened or detained, and paragraph 7 stipulated that the diplomatic bag could be entrusted to the captain of a commercial aircraft who must carry an official document specifying the number of packages constituting the bag and who would not be considered as a diplomatic courier. Paragraph 5 also established the obligation of the receiving State to protect the diplomatic courier in the performance of his duties. Under article 40, paragraph 3, third States were obligated to accord official correspondence and other official communications in transit the same freedom and protection accorded by the receiving State and to accord diplomatic couriers and diplomatic bags in transit the same inviolability and protection as the receiving State was bound to provide. Paragraph 4 of that article also stipulated the obligations of third States with regard to the diplomatic courier and diplomatic bags whose presence in the territory of the third State was due to force majeure. The Vienna Convention therefore contained ample provisions regulating the treatment and protection to be accorded to both the diplomatic courier and the diplomatic bag, so that the proposed protocol was unnecessary. The task of the International Law Commission, according to paragraph 4 of General Assembly resolution 31/76, did not involve the elaboration of a definitive document on the question.

23. Mr. BRUM (Uruguay) said that his country, which was a party to the Vienna Convention, was prepared to support any initiative that would encourage those States which had not yet done so to accede to the Convention.

24. Regarding the advisability of elaborating supplementary provisions concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, his delegation considered that articles 27 and 40 of the Convention were already adequate. Those who favoured supplementary provisions based their position on the occurrence of repeated violations of the relevant rules,

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(Mr. Brum, Uruguay)

but new provisions would not in themselves change the situation, because it was impossible to devise effective repressive measures and pointless to add extra provisions to rules which were already being flouted. If it were necessary to supplement the Convention whenever one of its provisions was repeatedly violated, it would already have been amended many times. Examples of such violations were the restrictions on freedom of movement, employment of private servants and choice of diplomatic premises or residence to which diplomatic representatives were subjected in some countries.

25. Some States were in favour of devising rules for the transport of the diplomatic bag not accompanied by diplomatic courier. His delegation could have shared their view, had it not foreseen certain practical difficulties in that regard, since in most cases diplomatic bags were transported by private companies.

26. With regard to the new United States legislation on diplomatic relations, he wished to point out that reciprocity invariably led to discrimination and was therefore prohibited by the Convention. It was true that article 47 of the Convention provided for an exception to the principle of non-discrimination in cases where the receiving State applied any of the Convention's provisions restrictively because of a similar restrictive application to its own mission in the sending State. However, in such cases, the decision of the receiving State was not based on reciprocity of treatment, but was a means of retaliation. Nevertheless, his delegation shared the view that consideration of the law was within the competence of the Committee.

27. Mr. ARNOUSS (Syrian Arab Republic) said the Vienna Convention was an important instrument which helped to foster good relations among States and constituted a valuable codification of the customary rules followed by States in diplomatic practice. His country had acceded to the Convention in 1978 and was fully prepared to observe its provisions, having due regard to the reservations it had expressed in the instruments of accession. Other States which had not yet done so should be encouraged to accede to the Convention, and to abide by its provisions. As to the question of the study by the International Law Commission of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, the topic should be deferred until the Committee examined the report of the International Law Commission. His own delegation felt that the rules contained in the Vienna Convention were adequate to ensure normal diplomatic relations.

28. Mr. SOLA (Cuba) said his Government attached the greatest importance to the Vienna Convention, which promoted mutual understanding and peaceful coexistence among States. The international community also attached importance to the Convention, as was clear from the large number of States which had already become parties to it; that number should be further increased. While most States complied fully with the Convention, others adopted internal measures which violated its provisions or diminished its effectiveness. Periodic consideration by the General Assembly of the implementation of the Convention would help to ensure that States parties complied with it, and would encourage other States to accede to it.

29. His delegation favoured the elaboration of an additional protocol concerning the status of the diplomatic courier and the diplomatic bag, which played an important role in communications between diplomatic missions and States.
30. The recent law on diplomatic relations adopted by the United States gave rise to deep concern. He believed that section 5 of that law was contrary to the provisions of the Convention. Although some delegations took the view that the Sixth Committee was not empowered to discuss the internal legislation of States, it was necessary to voice concern regarding the future impact of such legislation on relations between States in cases where it clearly restricted the application of principles of international law.
31. Mr. ZEHENTNER (Federal Republic of Germany) observed that few other international conventions had as many signatories as the Vienna Convention, and it was gratifying that the number of States parties had recently increased still further. The Convention embodied the widely accepted rules and principles of diplomatic practice, and the vast majority of States parties observed its provisions fully and conscientiously. However, there was full agreement that further progress towards its complete implementation must be made.
32. Unfortunately, a number of countries frequently failed to observe the basic provisions of the Convention. Current violations, which were on a greater scale than previously, included failure to recognize the right of freedom of movement, to grant exemption from customs duties, to respect the inviolability of the private residences of diplomats, of the diplomatic bag and of telephone and telex communications; interference with border crossing points; and the denial of immunity from jurisdiction to diplomatic agents. Remedies for such violations must be sought, and he welcomed the discussion in the Committee of measures to ensure correct implementation of the Convention.
33. In considering the elaboration of an additional protocol concerning the status of the diplomatic courier and the diplomatic bag, it should be remembered that considerable changes had occurred in diplomatic practice since 1961. The technical specifications currently applying to courier communications could be incorporated in an additional protocol, thereby improving the legal situation in that respect. The International Law Commission had pointed out that various aspects of courier communications required clarification. Any supplementary provisions to be elaborated must be binding in nature.
34. His country was a party to the Optional Protocol concerning the Compulsory Settlement of Disputes. Although many disputes were settled by bilateral negotiations, the machinery provided for in the Protocol was important in that it supplied a uniform interpretation of the Convention.
35. With regard to the new United States legislation concerning diplomatic relations, he wished to observe without prejudice to Article 2, paragraph 7, of the Charter that the State Department had committed itself to establishing before the courts the diplomatic immunity and privileges of persons affected by the legislation, and had stated that its previous practice in that respect would not be altered. As to the question whether the Committee should discuss the matter further, he had no firm view, but would prefer a pragmatic solution.

36. Mr. AKRAMI (Iran) said the importance of the Vienna Convention was recognized by the overwhelming majority of States. It regulated normal diplomatic relations and also helped to promote friendly relations and mutual understanding among States. His country attributed great importance to the Convention, and fully respected the obligations arising from it, as should all States Parties. The Convention constituted a codification of customary international diplomatic law, and consequently even States which were not parties to it should observe its provisions. He hoped that the Convention would gain universal acceptance as a result of the response of Member States to General Assembly resolution 3501 (XXX).

37. With regard to the settlement of disputes arising from the interpretation or application of the Convention, he believed that such disputes should primarily be settled on an ad hoc basis. His own Government had acceded to the Optional Protocol concerning the Compulsory Settlement of Disputes, and was convinced that the widest possible acceptance of the Optional Protocol would be effective in securing effective implementation of the Convention.

38. The question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier was covered in principle by articles 27 and 40 of the Convention. However, it would be advisable to elaborate those articles further, and to provide detailed regulations to facilitate the duties of the diplomatic courier and expedite the transport of diplomatic bags.

39. Mr. NOOR (Afghanistan) said the Vienna Convention had been of great help in maintaining peace and security among States by promoting friendly and normal relations. The implementation of any convention was crucial, for the law by itself was useless. The provisions of the Convention should therefore be conscientiously observed. With regard to the best means of ensuring implementation of the Convention, efforts should be directed towards making the Convention universal by encouraging more States to accede to it. He fully supported the General Assembly's decision to give periodic consideration to the question of the implementation of the Convention, which he believed would promote its observance and encourage States which had not already done so to accede to it. Such consideration would also bring any violation of the Convention to the notice of all States.

40. With regard to the settlement of disputes arising from the interpretation or application of the Convention, he felt that peaceful negotiation and agreement was a more appropriate method than unilateral action. Any other means to be adopted should be decided upon by both parties involved in the dispute.

41. The overwhelming majority of the international community scrupulously observed the rules of international diplomatic law as defined in the Convention. The violations of the Convention which occurred were not always committed by the receiving State; the sending State too could commit violations by abusing its diplomatic privileges. Both receiving and sending States should therefore carefully observe the provisions of the Convention, in order to avoid disputes. For the sake of peace, all States should apply international law and respect their obligations towards other States.

(Mr. Noor, Afghanistan)

42. His delegation was among those which favoured the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. The vagueness of the existing provisions had caused difficulties and misinterpretations. The Convention contained no definition of the terms "diplomatic courier" or "diplomatic bag, unaccompanied". A clear definition should be provided of both terms, and of other concepts such as the privileges and immunities of diplomatic couriers, their personal inviolability and exemption from personal examination or control, and the inviolability of the premises used by them. States must be assured of the safe and speedy delivery of their correspondence. His own country had a particular interest in the question, especially with regard to the diplomatic bag not accompanied by diplomatic courier. As one of the least developed countries, it could not afford to send its bags accompanied by courier, and was very concerned that its bags should be safe, be protected against loss or theft and against being opened or inspected en route, and be promptly delivered. An additional protocol on the subject would be of great value in that regard, and would also be a useful contribution to the further codification of international law.

43. Mr. CORREA (Mexico) said his delegation attached great importance to the item under consideration, which touched on the very bases of coexistence among States. The Committee's consideration of it was timely, in view of the legislation on diplomatic relations recently approved by the United States Congress. In his delegation's view, some provisions of that legislation seemed incompatible with the Vienna Convention.

44. It had been clear from the discussions in the International Law Commission during the drafting of the Convention and from the discussions at the 1961 Vienna Conference that diplomatic privileges and immunities were an absolute prerogative of the sending State and that the diplomatic agent enjoyed them only in his capacity as a member of a diplomatic mission. The exceptions to that basic principle set forth in the Convention had been the result of its reconciliation with another equally important principle, namely that persons enjoying privileges and immunities had a duty to respect the laws of the receiving State. Those exceptions were clearly defined in the Convention. There were two general exceptions, to be invoked by the sending State, set forth in article 31, paragraph 1, and article 32, and three specific exceptions, set forth in subparagraph 1 (a), (b) and (c) of Article 31. Other exceptions had been proposed, but had been voted down or withdrawn by their sponsors. As the United States representative to the Vienna Conference had said, it seemed imprudent to add new exceptions to those already set forth in article 29 of the draft Convention.

45. The two general exceptions could be invoked at the discretion of the sending State. The other three exceptions could be invoked by the receiving State. But the bringing of judicial action by virtue of those exceptions did not depend on whether a diplomatic agent did or did not enjoy immunity but on the substance of the judicial action. The Convention established the immunity of the diplomatic agent except in the cases referred to in article 31, subparagraphs 1 (a), (b) and (c). There had been some criticism of that aspect of the Convention, but it must be borne in mind that anything which impeded the activities of diplomatic missions,

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(Mr. Correa, Mexico)

such as changes in the legislation of the host country, presented serious problems. That was why his delegation had read with concern the text of the legislation on diplomatic relations approved by the United States Congress.

46. Section 5 of the Law in question required that mission staff against whom judicial action was brought had to establish their right to diplomatic privileges and immunities in United States courts, which was contrary to the Vienna Convention. Furthermore, the Law could be interpreted to mean that the court was given discretion to find that a diplomatic agent did not enjoy immunity. That would also be contrary to the obligations undertaken by States parties to the Vienna Convention. If the intention of the United States Law was to recognize the immunity of diplomatic agents in accordance with the Vienna Convention, any procedure requiring the personal appearance in court of the diplomatic agent would be unnecessary. The obligations undertaken by a State under a convention extended to all the authorities of that State. It would be absurd for the sending State to have to prove its diplomatic agent's right to immunity before each and every one of the authorities of the receiving State.

47. Mr. BAROODY (Saudi Arabia) said he did not wish to be very specific concerning the provisions of the Vienna Convention, lest he forget that human behaviour could not be spelled out in mathematical formulae. So far as the Convention went, it was quite satisfactory, but in order for any convention to be effective, it must be observed in accordance with the principles of fair play and good faith, lest it be abused and violated.

48. He regretted the recent legislation passed by the United States Congress on the subject, although he knew that Congressmen had to respond to the demands of their constituents. The diplomatic community had been the butt of a lot of criticism in New York City in such matters as, for example, diplomatic licence plates. However, such diplomatic privileges were customary world-wide, not just in the United States, and were extended to diplomats as a courtesy. He did not blame the United States for the position which it had adopted, and he had appreciated the lucid explanation given by its representative in the Sixth Committee. The fact was that people had changed, in the United States and elsewhere throughout the world, and there was a need to explore ways whereby the modern situation might perchance be remedied. He hoped that the United States Mission and Government would tell their people that it was a privilege to have the representatives of 150 nations converging on the United States. The defects of diplomats were only human, and given fair play and courtesy, conventions were secondary. The Vienna Convention should be implemented properly. He had no objection to adding protocols to it, if that would help, but they would be useless if they were not observed on the basis of good faith, reciprocity, courtesy and mutual consideration.

49. Mr. KAWAMURA (Japan) said Japan attached great importance to the Vienna Convention, which codified the rules of customary international law. It was a useful instrument for the development of friendly relations among nations, irrespective of their differing constitutional and social systems, and had provided the international community with a better and more solid basis for regulating

(Mr. Kawamura, Japan)

diplomatic relations among States. The steady increase in the number of States parties to the Convention had considerably strengthened the role it played in the smooth functioning of normal relations between States, and the Convention was attaining a truly universal character. That was a desirable step in the codification of international law - one which his delegation felt should be followed with respect to other international instruments of a codifying nature.

50. It was, however, most important that the implementation of the Convention should be ensured. While certain cases concerning its implementation might be a subject of contention between certain States, those cases could usually be settled bilaterally between the States concerned. It was his delegation's view that, given its nature, the problem did not warrant meticulous examination by the Sixth Committee. Consequently, his delegation was inclined to wonder whether item 116 required extensive consideration by Member States. It was not, however, opposed to the idea that practical and feasible measures should be examined in the Sixth Committee to ensure the implementation of the Convention, if all the members of the Committee deemed it necessary.

51. His delegation was not entirely convinced of the need to study the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and the need to elaborate an additional protocol on the question. However, the matter had been referred to the International Law Commission, and it would be more appropriate to speak on that problem during the debate on the Commission's report.

52. His delegation's study of the part of the report of the International Law Commission which dealt with the problem of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier had led it to the opinion that it would really be very difficult to conclude from the relevant provisions of the Vienna Convention on Diplomatic Relations, as well as from those of the Vienna Convention on Consular Relations, the Convention on Special Missions and the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character that those provisions were so devoid of clarity as to require complementary clauses on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. It would also be very difficult to conclude that those provisions were so far from being a faithful reflection of the practices recognized by States as to call for amendment.

53. His delegation therefore suggested that the best course would be to await future developments in the work of the International Law Commission's Working Group on the Status of the Diplomatic Courier and of the Diplomatic Bag not Accompanied by Diplomatic Courier.

(Mr. Kawamura, Japan)

54. With regard to the comments of delegations on the new United States legislation on diplomatic relations and its relation to the Vienna Convention, the most important element to be borne in mind was whether a country fulfilled its international obligation or not; each country was free to enact any internal legislation whatever, in order to fulfil its international obligation. The Committee had been assured by the representative of the United States that the new legislation would in no way change current practices in the United States, which did not contravene the Vienna Convention. If problems arose concerning the implementation of the legislation, it would be a subject for consultations and negotiations and, eventually, a settlement of disputes between the United States and the country which felt affected by the legislation. In any case, the international community should rather await the development of the practices which would follow upon the application of the legislation.

55. Mr. RAJU (India) said his delegation attached great importance to the Vienna Convention which not only codified the generally recognized rules of diplomatic law but further strengthened diplomatic relations. He urged those States which had not done so to become parties to the Convention as soon as possible and supported the idea that Member States should be invited periodically to give their views on the implementation of the Convention, since its observance was essential to the maintenance of normal relations between States. While there was no need to amend the Convention, there were certain questions relating to diplomatic law where further elaboration of the relevant rules would be desirable. Article 27 of the Convention dealt inter alia with the question of the diplomatic courier, and instances where diplomatic couriers had been hindered in the normal performance of their duties had given rise to misunderstandings and serious problems. His delegation had therefore supported General Assembly resolution 31/76, which requested 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. His delegation was pleased to note that the work carried out by the Commission was useful and supported continuing the study of the subject.

56. Mr. FOURNIER (Costa Rica) urged all countries that had not done so to ratify the Vienna Convention and said that a study should be prepared on the protection of diplomatic couriers and the diplomatic bag. Article 27 of the Vienna Convention should be revised. Paragraphs 1, 2 and 3 of that article appeared to establish basic immutable principles regarding the official correspondence of the mission and the diplomatic bag. The following paragraphs, however, seemed to weaken the effect of the first three. From paragraph 4 onward certain concepts had been introduced which seemed to contradict those embodied in the preceding paragraphs, imposing a limitation on what had seemed definitive. Unless the resulting ambiguity was clarified by a United Nations organ or some competent international body, national parliaments would feel entitled to enact any measures they regarded as appropriate in order to defend their rights. That involved the fundamental principle of self-defence embodied in the United Nations Charter, which any country could invoke when it felt that its basic rights were in danger. If article 27 had not been so contradictory, the United States law

(Mr. Fournier, Costa Rica)

mentioned during the discussion might not have come into being. Diplomats should abide by the laws of the country to which they were accredited, but they should also observe the terms of the Vienna Convention, and if there was a discrepancy between national law and the Convention, diplomats would be hampered in the performance of their functions. Such situations must be avoided.

57. The Sixth Committee should study the question of the diplomatic bag and conduct an in-depth analysis of the current situation regarding diplomatic correspondence. Diplomatic correspondence was worthy of the highest respect on the part of all States, but the unrestricted transport of packages whose contents were unknown was another matter. His delegation hoped that the Sixth Committee at the current session would produce constructive, practical solutions to the question he had mentioned, thus exerting a beneficial effect on international relations.

58. Mr. FARIS (Democratic Yemen) praised the major contribution the Vienna Convention had made in codifying international contemporary law and promoting good relations among States, and urged all countries which had not yet done so to accede to the Convention as soon as possible. Democratic Yemen attached great importance to the Convention and used it as a basis for relations with other countries. However, there were still some lacunae which impeded the implementation of the Convention and weakened its effectiveness. It was therefore necessary further to develop and strengthen its provisions. The complete observance of the Convention by all States was essential to the maintenance of good international relations. Consequently, the Sixth Committee and the General Assembly should attach greater importance to ensuring that the Convention was properly implemented. A protocol to the Vienna Convention should be drafted dealing with the status of the diplomatic courier and the diplomatic bag; the status and responsibilities of third countries; and the need for States to ensure that their laws were not contrary to the spirit or letter of the Vienna Convention.

59. It was regrettable that some States parties had engaged in practices which did not respect the lofty spirit of the Convention. An example was section 5 of the new United States law, whose provisions ran counter to the spirit and objectives of the Convention, having a negative implication for diplomats accredited to the United Nations and infringing on diplomatic immunity, which was one of the most important aspects of diplomacy.

60. Mr. RUSITA (Uganda) said his country had always supported full implementation of the Vienna Convention, because it played a valuable role in promotion of the observance of the generally recognized rules of international diplomatic law. Uganda had therefore acceded to the Convention in that reservation and had supported General Assembly resolution 31/76. His delegation recognized the importance of studying the question of the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier, and supported the proposal for drafting a protocol to the Convention; the proposals and comments submitted by a number of countries together with the relevant provisions of existing Conventions could be used as guidelines in that connexion.

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(Mr. Rusita, Uganda)

61. Regarding domestic legislation by States parties to the Vienna Convention, his delegation felt that although every sovereign State had a right to pass laws, such laws should conform to that State's international obligations. Legal systems were different, but the Vienna Convention was clear, being of equal importance to the receiving State and to the sending State. If one State decided to interpret and implement it in its own way, disregarding the opinion of other States, the consequences were likely to be serious, leading to a proliferation of domestic legislation which would weaken the universality and diminish the status of the Convention. The Convention should be interpreted according to its letter and spirit with a view to enhancing its universal role and its effectiveness in promoting international diplomatic relations. Consultations among the members of the international community should precede legislative decisions rather than follow them. His delegation appealed to all States to interpret and implement the Convention with political goodwill and in good faith.

The meeting rose at 6 p.m.