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## Sixth Committee

### Summary record of the 16th meeting

Held at Headquarters, New York, on Tuesday, 10 November 2020, at 3 p.m.

*Chair:* Mr. Skoknic Tapia ..... (Chile)

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*The meeting was called to order at 3 p.m.*

**Agenda item 84: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (A/75/168)**

1. **Ms. Popan** (Observer for the European Union), speaking also on behalf of the candidate countries Albania, Montenegro, North Macedonia and Serbia; the stabilization and association process country Bosnia and Herzegovina; and, in addition, Georgia and the Republic of Moldova, said that common action was needed to address ongoing breaches of international diplomatic and consular law and violent incidents and attacks against diplomatic and consular staff and premises. The European Union therefore urged all States to strictly implement the rules of international law on diplomatic and consular relations, which would help to build trust and confidence among nations.

2. The European Union strongly condemned attacks against diplomatic and consular missions and reiterated that any kind of violent act against such missions or their staff could never be justified, wherever they occurred. Under both the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, receiving States had the duty to take all appropriate steps to protect diplomatic missions and consular premises.

3. The European Union welcomed all efforts made by Governments around the world to prevent and curb the spread of the coronavirus disease (COVID-19) pandemic, and acknowledged the duty of diplomatic agents and consular officers to respect the laws and regulations of receiving States, including measures put in place to protect public health, while maintaining their privileges and immunities. Nonetheless, diplomatic agents should not be subjected to coercive measures in the enforcement of such measures, nor to any form of arrest or detention, and were exempted from measures amounting to direct coercion. The person of the diplomatic agent and the consular officer, as well as the premises of diplomatic and consular missions and the private residences of diplomatic agents, should be inviolable. Furthermore, health measures should not lead to restricted access of diplomatic agents and consular officers to the territories of receiving States.

4. Receiving States might not take measures that could affect or interfere with the principle of free communication between diplomatic and consular missions and their capitals, which was among the most important of all privileges and immunities under diplomatic law and was at the heart of both the Vienna

Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. Receiving States had the duty to accord full facilities for diplomatic and consular missions to perform their functions. The European Union and its member States upheld the principle of non-discrimination on which the two Vienna Conventions were premised and therefore expected their diplomatic staff to receive treatment no less favourable than that afforded to diplomatic staff accredited to the Union and its member States.

5. The European Union would continue to support efforts to ensure enhanced protection, security and safety of diplomatic and consular missions and representatives, and strongly encouraged States to uphold their obligations under the two Vienna Conventions.

6. **Ms. Laukkanen** (Finland), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the Nordic countries were concerned that diplomatic agents and premises kept falling victim to serious violations in receiving States, despite the general recognition of the special duty to protect them. In exceptional circumstances, such as those currently created by the COVID-19 pandemic, cooperation between States was pivotal, and diplomatic and consular missions and representatives formed the cornerstone of that cooperation. Despite the grave health concerns in many countries arising from the pandemic, the rules of diplomatic and consular law must still apply, however exceptional the circumstances. Any measures taken by receiving States to limit the spread of COVID-19 must be without prejudice to the privileges and immunities of diplomatic and consular missions and representatives.

7. The Nordic countries commended the Secretary-General for his efforts to assist Member States in responding to the reporting request contained in paragraph 11 of General Assembly resolution [73/205](#). They were pleased to note that for many of the incidents mentioned in his report ([A/75/168](#)), the Secretary-General included both a summary on the protection, security and safety failures encountered by sending States and a summary on the follow-up measures taken by receiving States. In the report, the Secretary-General also indicated that since his previous report on the topic ([A/73/189](#)), some additional States had become parties to the instruments relevant to the protection, security and safety of diplomatic and consular missions and representatives. The Nordic countries welcomed those new ratifications and continued to appeal to all States that had not yet done so to become parties to those instruments.

8. Universally recognized rules and principles of international law, as reflected in the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, placed upon receiving States a special duty to take all appropriate steps to protect diplomatic and consular premises, to prevent any attacks against diplomatic and consular representatives, and to accord full facilities for the performance of the functions of diplomatic missions and consular posts.

9. The Nordic countries urged States to honour their obligations under international law to provide protection to foreign missions, and to do their utmost to prevent such attacks from taking place on their territories and to fully investigate and prosecute the perpetrators of any such attacks when they occurred. The Nordic countries also encouraged States to engage in a dialogue with the diplomatic missions in their territories, with a view to finding the most effective ways of ensuring the full protection of diplomatic premises and representatives.

10. In his report, the Secretary-General had again documented serious violations that had taken place and reports about other attacks against diplomatic and consular missions and representatives. The Nordic countries regretted the injuries suffered in such attacks and condemned all acts of violence in the strongest terms. Such violations and attacks could never be justified and must not go unpunished.

11. **Mr. Guerra Sansonetti** (Bolivarian Republic of Venezuela) said that diplomacy was the root of international cooperation for peace, economic development and sustainable social progress based on dialogue, tolerance and mutual respect. The obligation to protect diplomatic and consular missions and their personnel was grounded in the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. The aim of protecting and respecting the immunity of diplomatic and consular missions and representatives was to ensure not only that States could fulfil their diplomatic responsibilities effectively, but also to maintain and strengthen friendly relations and cooperation among States. The Bolivarian Republic of Venezuela recognized the importance of discharging the commitments and obligations emanating from those instruments.

12. Since 2019, the Government of the United States had been pursuing a policy to effect unconstitutional regime change in Venezuela, including by armed means, which had resulted in systematic transgressions against the diplomatic missions of Venezuela and the undermining of the security and physical integrity of his country's diplomatic and consular representatives. The Government of Venezuela had informed the Secretary-

General and Member States about some of those transgressions, in light of the procedure set out in General Assembly resolutions 42/485 and [73/205](#).

13. On 10 January 2019, the Embassy of Venezuela in Peru had been attacked by violent groups, and on 20 February 2019, the Embassy in Costa Rica had been attacked and forcefully taken over by a group of unknown persons who were still illegally occupying it to date, and armed groups had attacked the Consulate of Venezuela in Guayaquil, Ecuador, subjecting its diplomatic and local personnel to physical and verbal attacks and stripping them of their belongings. The Government of Venezuela had still not received a response based on the law and not on the political preferences of the Governments of those countries.

14. On 19 March 2019, two buildings of the office of the military attaché at the Venezuelan Embassy in Washington, D.C. and the Consulate in New York City had been simultaneously attacked and forcefully taken over by a group of unknown persons, with the protection and support of police officers and representatives of the United States Department of State. On 16 May 2019, the Embassy and official residences of Venezuela in Washington, D.C. had been invaded by Secret Service agents and Washington, D.C. police, upon instructions from the United States Government. To date, all those diplomatic premises remained occupied by force and illegally. On 13 November 2019, the Venezuelan Embassy in Brazil had been attacked and taken over by force by a group of violent individuals, without any reaction from the Brazilian police. On 27 July 2020, the General Consulate of Venezuela in Bogotá, Colombia had been completely vandalized and ransacked. To date, his Government had not received any response from the Colombian Government, not even as to the initiation of any investigation into the matter.

15. It was therefore clear that, acting in contravention of the Charter and international law, a number of Member States had allowed the diplomatic and consular premises of Venezuela in their countries to be occupied by unknown persons who did not meet the requirements of Venezuelan law to represent Venezuela, thus causing severe damage to the nation's heritage and its ability to provide consular assistance to its citizens abroad, especially during a pandemic.

16. His Government called on the Member States that had allowed those violations to assume their responsibilities, irrespective of any bilateral relations they might or might not have. It wished to remind those States that, in accordance with international law, there was no rule or principle that allowed supranational powers or coalitions of States to intervene in support of

the political opposition inside another State. Furthermore, those types of actions were in violation of the judgments of the International Court of Justice.

17. His Government strongly condemned the violent acts against its diplomatic and consular missions and representatives, wherever and by whomever committed. Those flagrant violations undermined the efforts to strengthen cooperation among States and ran counter to the obligations that States had under international law and various international conventions.

18. **Ms. Grosso** (United States of America) said that, for the normal conduct of relations among States, it was essential to respect the rules protecting the sanctity of ambassadors, other diplomats and the premises of consular and diplomatic missions, which were the foundations on which diplomacy functioned. The host country's special duty to protect diplomatic missions included protecting them against violence and attacks from non-State actors. In recent years, United States missions overseas had endured significant attacks, in some notable instances without the benefit of robust State protection.

19. The most recent serious incident had occurred in Iraq on 31 December 2019, when several Iranian-backed militias had attacked the Embassy of the United States in Baghdad, entering the international zone unhindered, passing through barricades manned by Iraqi security forces. At least one Cabinet member and one former Cabinet member of the Iraqi Government and several leaders of Iranian-backed armed groups who had been designated as terrorists by the United States had been involved in that attack. When the attackers had assembled at the Embassy, the Government of Iraq had done little to prevent them from breaking into and damaging and setting fire to the diplomatic facilities of the United States. Since that incident, attacks against diplomatic facilities had continued to escalate in Iraq, including with rocket fire and improvised explosive devices, with many people from a variety of nationalities and innocent Iraqi civilians injured or killed.

20. The assaults on the embassies of the United States abroad were attacks on the inviolability of the premises of the country's diplomatic missions. Under the Vienna Convention on Diplomatic Relations, Governments had a special duty to take all appropriate steps to protect the premises of foreign missions against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

21. The United States called on all Governments to fulfil that duty, although it also acknowledged that not everything was under the control of host countries. It

was more important that States respond promptly and robustly to any incidents that occurred, as her Government had done, for example, in April 2020, when municipal and federal authorities had responded promptly to a shooting that had occurred outside the Cuban Embassy in Washington, D.C. The suspect had been taken into custody and had been formally charged in federal court and was facing trial.

22. The United States stood with partner nations to underscore the urgency of taking steps to enhance security for diplomatic missions. The international community had a vital stake in the protection of diplomats and diplomatic missions because diplomacy was the foundation of international relations.

23. **Ms. Flores Soto** (El Salvador) said that her delegation recognized the importance of fulfilling the commitments set out in the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. Those instruments were built on the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among States. States therefore had a duty to take all appropriate steps to protect diplomatic and consular premises and personnel and to prevent any disturbance of the peace and impairment of their dignity. That duty included the adoption of appropriate laws to prevent, investigate and prosecute illicit acts against diplomatic and consular missions and representatives.

24. El Salvador had established effective protective mechanisms to allow missions and international organizations accredited to the country to perform their functions, and had adopted criminal laws that called for a stiffer penalty for crimes against the personal liberty of persons that were granted special protection under the rules of international law. El Salvador had also strengthened its security and care protocols regarding any situation that might impair the security of missions and their representatives, in order to fulfil its obligations under the two Vienna Conventions.

25. Well aware of the importance of its diplomatic and consular missions abroad being protected in receiving States, her delegation reiterated the need for States to take appropriate steps to address any impairment of their protection and to inform the United Nations accordingly. Although to date no serious offences had been committed in respect of the protection and security of diplomatic and consular missions and representatives accredited to El Salvador, her Government recognized the need to continue paying special attention to fulfilling its obligations in that regard.

26. **Ms. Abu-ali** (Saudi Arabia) said that her Government saw the safety of diplomatic and consular missions as a matter of the utmost priority and therefore took proactive and effective measures to ensure their protection. It had established a standing committee on diplomatic protection within the Ministry of the Interior, whose functions included protecting diplomatic representatives, locations and facilities. Saudi Arabia had long complied with customary norms that had subsequently been codified in international instruments. It was unfortunate that certain States had failed to provide the necessary protection; the diplomatic and consular missions of Saudi Arabia, for instance, had been subjected to attacks that flagrantly violated the relevant international conventions. Her Government urged States to take swift and effective measures to prevent or curb such violations, give a clear account of those measures, ensure that diplomatic staff could work independently, and respect the sovereignty of sending States.

27. **Mr. Amaral Alves De Carvalho** (Portugal) said that, in his report (A/75/126), the Secretary-General had referred to some of the measures taken to tackle the COVID-19 pandemic, which had raised complex questions concerning the application of diplomatic and consular law. However, measures taken to address the challenges posed by the pandemic must be drafted and enacted in accordance with applicable treaty-based or customary international law. Receiving and sending States must balance the duty to respect local law under the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations with the need to ensure, as much and as possible, the performance of diplomatic and consular functions and the enjoyment of the privileges and immunities of diplomatic and consular representatives.

28. Restrictions on those privileges and immunities must be in line with the obligations of receiving States, including with general principles of international law (such as the principle of proportionality and the principle of sovereign equality of States) and rules on State responsibility. Diplomatic and consular law should be interpreted with reference to context. Under normal circumstances, the protection, security and safety of diplomatic and consular missions and representatives already depended significantly on open and transparent communication between receiving and sending States. That was even more so during a global crisis such as a pandemic. Portugal therefore called on all Member States to double their communication efforts, to ensure that both international law and public health were safeguarded, and that diplomatic and consular missions and representatives were able to perform their functions.

29. **Mr. Skachkov** (Russian Federation) said that the host country of the United Nations, which had a duty to ensure the protection and safety of diplomatic and consular premises, had blatantly violated the inviolability of those belonging to his Government and a number of others. It had seized a facility on Long Island belonging to the Permanent Mission of the Russian Federation, along with other diplomatic and consular premises that had enjoyed long-standing privileges and immunities. The host country had also continued to deny representatives of the Russian Federation access to the property. Such acts were unacceptable and constituted a violation of the provisions pertaining to the inviolability of premises belonging to permanent missions contained in the Headquarters Agreement, the Vienna Convention on Diplomatic Relations, and the Vienna Convention on Consular Relations. They were also incompatible with the host country's duty to ensure that permanent missions were able to carry out their work. His delegation therefore called on all States to fulfil their obligations to protect diplomatic and consular premises and representatives.

30. **Ms. Jiménez Alegría** (Mexico) said that the principle of inviolability of diplomatic and consular premises was an important one underpinning the privileges and immunities developed by customary international law and codified expressly in articles 22 of the Vienna Convention on Diplomatic Relations and article 31 of the Vienna Convention on Consular Relations. That inviolability also extended to furnishings and other property located on the premises of missions, as well as their means of transport, which could not be subject to any registration, seizure, embargo or enforcement measure. The principle imposed on receiving States the obligation to take all appropriate steps to protect the premises of foreign missions against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity. Failure to take such steps represented a violation of the two Vienna Convention and hence entailed the international responsibility of receiving States.

31. Actions constituting undue interference included not only the physical occupation of premises, but also the surveillance and taking of photographs of diplomatic premises using unmanned aircraft systems, as well as excessive presence of police and military officers who impeded the functions of diplomatic personnel. Such actions could never be justified, much less applied as a response to disagreements in bilateral relations. Under the two Vienna Conventions, the principle of

inviolability also applied to the physical and digital archives, documents and communications of missions.

32. **Mr. Nasimfar** (Islamic Republic of Iran) said that the ability of diplomatic missions to effectively carry out their work depended on them operating in a peaceful, safe and quiet environment. Nonetheless, the number and range of acts of violence against diplomatic and consular representatives had been on the rise. It was therefore crucial to re-emphasize the duty of States to take all appropriate measures, as required by international law, to prevent harmful acts against diplomatic and consular missions. Under article 22 of the Vienna Convention on Diplomatic Relations, the premises of missions must be inviolable and receiving States had a special duty to take all appropriate steps to protect the premises of missions against any intrusion or damage and to prevent any disturbance of the peace of missions or impairment of their dignity. The obligations of States with respect to the safety and security of diplomatic and consular missions and agents had also been reiterated in several General Assembly resolutions on the current agenda item.

33. However, some of his country's diplomatic and consular missions and their personnel had been targeted by illegal acts and even terrorist attacks in 2018 and 2019 which had caused various degrees of damage and casualties. During those years, protesters had invaded the Iranian consular missions in Basrah, Najaf and Karbala, in the Republic of Iraq. During most of those invasions, attempts by the host country's security forces had been either insufficient or futile, and the attackers had been able to storm into the diplomatic and consular premises and, in some cases, destroy properties, supplies, equipment and documents.

34. Those missions had submitted several requests to the local authorities and police in order to improve their security arrangements before those attacks, and the security forces had been warned beforehand of the possible eruption of violence against diplomatic and consular premises and properties. However, the response of the local authorities had been far from adequate. Yet, his Government had assumed that the receiving State would identify, arrest and prosecute the assailants, remedy the situation, bear the costs of the damages inflicted, and take effective preventive measures to ensure that such disturbing events never occurred again.

35. With regard to the privileges and immunities of the United Nations and its specialized agencies and Member States accredited to those organizations, the criteria of reciprocity which applied to bilateral relations had been set aside to ensure the proper functioning of the United

Nations on the basis of the principle of sovereign equality of all its Member States. It was unfortunate that the country hosting the United Nations Headquarters, by imposing inhumane movement restrictions on the Iranian Mission and certain other missions in New York City, had jeopardized that important principle and violated its obligations. Its unilateral coercive measures and abuse of the international financial system had hampered the proper functioning of the diplomatic missions of some countries and violated article 25 of the Vienna Convention on Diplomatic Relations. It was a matter of grave concern that, in some cases, the diplomatic missions had been prevented from accessing their bank accounts due to such unlawful measures.

36. The Islamic Republic of Iran, as a State Party to the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, remained committed to ensuring due compliance with the provisions of those instruments and, in that regard, called upon all States to take appropriate measures to ensure the safety and security of diplomatic and consular missions and representatives.

37. **Mr. Nyanid** (Cameroon) said that his delegation was extremely concerned at the increasing number of serious failings in the protection and security of diplomatic and consular missions and representatives. The development of friendly relations – one of the fundamental principles of the United Nations and diplomacy in general – had led States to agree on the sacrosanct principles of diplomatic immunity, which existed in all cultures and in all legal regimes. Those principles were vital for inter-State relations and for the protection of the interests of States. As those principles were being increasingly violated, it was urgent to reaffirm the principles of international law concerning diplomatic and consular relations and to consider new options that might help to put an end to those violations. Respect for those principles was vitally important for the conduct of international relations; the protection of diplomatic and consular missions and personnel should therefore be effective.

38. His delegation was concerned at the attempts to weaken the protection regime set up by the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. It would therefore welcome the adoption of a United Nations resolution reaffirming that States must strictly observe and apply the provisions of international law concerning diplomatic and consular relations. Receiving States should therefore protect diplomatic and consular missions and personnel from groups or organizations that intended to undermine their security and dignity. His delegation stressed the need for close cooperation

between accrediting States and accredited States and called on States that were not yet done so to become party to the relevant legal instruments.

39. To improve the protection of diplomatic and consular missions and agents, Cameroon had established a special police unit whose mission was to protect the persons, property and nationals of friendly countries. The administrative units dealing with the issue also consulted regularly to coordinate their actions and adapt them to the nature and scope of the threats faced by certain missions. Cameroon also cooperated closely with the diplomatic and consular missions present in the country to adapt its measures to protect and secure diplomatic and consular missions and representatives.

40. **Mr. Li Kai** (China) said that enhancing the protection of diplomatic and consular missions and representatives was vital for their normal functioning and for the promotion of friendly relations among States. His Government attached paramount importance to the protection of diplomatic and consular missions and representatives and adhered strictly to its obligations under the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. It had adopted legislation and regulations on diplomatic and consular privileges and immunities and ensured that all diplomatic and consular missions were protected year-round by armed police, as needed.

41. Based on the country reports submitted to the Secretary-General under the current agenda item, it appeared, however, that the security and safety of diplomatic and consular missions and representatives were increasingly being threatened and impaired. There had also been an uptick in the risks concerning the safety of his country's diplomatic and consular missions and personnel in several countries. Some had been burglarized and mugged, and graffiti had been maliciously sprayed on the outer walls of some of its diplomatic premises. Some of its representatives had received telephone calls and emails about bomb threats, while others had even been victims of car-bomb attacks. His delegation strongly condemned those acts and called on all countries to enhance the protection of diplomatic and consular missions and representatives.

42. Under the two Vienna Conventions, receiving States were required to take proactive preventive measures to shield diplomatic and consular missions and representatives from any threat to their security and safety. In light of the specific circumstances and needs of diplomatic and consular missions and representatives, receiving States could take such initiatives as providing them with dedicated security

guards year-round, maintaining regular communications with the missions, providing them with timely briefings on security risks, heeding relevant requests from missions, and enhancing their protection during sensitive and critical times. Receiving States should also improve on the ex post facto punitive measures taken against those held responsible for crimes committed against diplomatic and consular missions and representatives. Those stipulations stemmed not only from the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, but also from the Convention on the Prevention and Punishment of Offences against Internationally Protected Persons, including Diplomatic Agents.

43. **Ms. de Souza Schmitz** (Brazil) said that diplomatic and consular immunities lay at the core of international law, since they protected the channels through which States could dialogue, cooperate and peacefully settle disputes. As recognized in the preambles to both the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, respect for the rules and principles governing diplomatic and consular relations was essential for the development and strengthening of friendly relations among States. Under the Conventions, archives and documents and official correspondence must be inviolable at all times, and receiving States had a duty to permit diplomatic and consular missions to communicate freely for all official purposes. Under the Conventions, it was also acknowledged that diplomatic and consular missions might employ all appropriate means to communicate with their capitals or other posts.

44. Given the advances in information technology and the expanded use of digital platforms, diplomatic and consular communications, archives and documents must be protected both offline and online. In addition, the challenges faced in promoting all dimensions of the protection, security and safety of diplomatic and consular missions must be adequately addressed in any resolutions adopted under the current agenda item.

45. **Ms. Ozgud Bilman** (Turkey) said that diplomatic and consular relations formed the foundation of international relations. The realization of the fundamental principles enshrined in the Charter of the United Nations, such as those of friendly relations among States, peaceful settlement of disputes, and international cooperation in solving international problems of an economic, social, cultural or humanitarian character, required diplomatic and consular missions to be able to function with full protection, safety and security.



46. Respect for the rules of international law governing diplomatic and consular relations was of paramount importance in that regard. It was on that basis that the international community could effectively work towards achieving peace, security, human rights protection and development. The proper functioning of that system was also crucial for States to be able to protect their rights and interests, as well as those of their citizens, in line with the principle of sovereign equality and non-interference in the internal affairs of States.

47. Unfortunately, acts that impeded the work of diplomatic and consular missions and that put their representatives at risk continued around the world. As evidenced in the Secretary-General's various reports on the topic, the missions and representatives of Turkey were often the target of such threats, acts and attacks, particularly by terrorist organizations and affiliated groups. Under international law, States had a duty to take all appropriate and timely steps to protect diplomatic and consular missions and their representatives.

48. In that regard, it was of particular importance that local and national authorities of receiving States duly consider threat assessments conveyed by diplomatic and consular missions, closely cooperate with missions, and swiftly put in place corresponding preventive measures. On the other hand, in order to preserve the integrity of the universally accepted body of rules governing diplomatic and consular relations, it was also imperative that diplomatic and consular premises not be used in any manner incompatible with their functions, and that those who enjoyed privileges and immunities respect the laws and regulations of receiving States.

49. When considering the topic of the protection of diplomats, it was vital to also consider the related issue of the glorification of crimes, including assassinations, committed by terrorist and other groups against representatives of diplomatic and consular missions. Turkey had lost many diplomats, including one international civil servant, to such attacks and assassinations. It therefore strongly condemned such attacks and any attempts to glorify the perpetrators thereof.

50. **Ms. Rodríguez Abascal** (Cuba) said that her delegation noted with concern and unequivocally condemned violent acts against diplomatic and consular missions and their representatives. Those acts had a negative impact on cooperative relations among States and constituted flagrant violations of the Vienna Convention on Diplomatic Relations, the Convention on Consular Relations and the Convention on the Prevention and Punishment of Crimes against

Internationally Protected Persons, including Diplomatic Agents. States must take all appropriate steps to prevent such acts in the future and to prosecute the perpetrators thereof.

51. In his report (A/75/168), the Secretary-General referred to a serious incident that had taken place at the Embassy of Cuba in Washington, D.C. in April 2020, to which the Cuban delegation had drawn attention during the consideration of the agenda item entitled "Measures to eliminate international terrorism". The response of the United States Government to that incident had been highly questionable. Under section 1116 of title 18 of the United States Code, any "attempt to kill a foreign official" was a crime punishable by imprisonment of up to 20 years. That section had been promulgated in 1976 by the United States Congress precisely to implement the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

52. On 22 July 2020, a federal grand jury had formally charged with four offences the individual who had fired 32 rounds of an AK-47 rifle at the Embassy of Cuba in Washington, D.C., who had also declared that his intention had been to kill. However, the four offences cited had not included the one of section 1116 of title 18 of the Code, which would have qualified the crime as terrorism. By refusing to qualify the attack perpetrated against the Cuban Embassy as a terrorist act, the United States Government had clearly acted on political grounds and had disregarded the application of international conventions that protected diplomatic agents against terrorist acts in that country.

53. For Cuba, that was a serious incident, which had taken place in the capital of a country in which a significant number of diplomatic missions were present. Cuba therefore denounced the silence of the Government of the United States, which could become a stimulus for those who identified diplomatic missions as targets of violent or terrorist attacks.

54. There was a serious history of violent and hostile acts, including terrorist attacks, against Cuban diplomatic officials based in the United States, both at the Embassy in Washington, D.C. and at the Permanent Mission to the United Nations in New York. It should be recalled, for example, that Cuban diplomat Félix García Rodríguez had been assassinated in New York on 11 September 1980 and the direct attacks with the use of explosive devices had been carried out against the Permanent Mission of Cuba in that city.

55. Cuba offered a quiet and secure environment for the performance of the diplomatic functions of all States and international organizations, and would continue to



pay special attention to the protection and security of diplomatic missions and representatives accredited to the country, as a sign of its commitment to the relevant international rules in force.

56. Her delegation called for thorough observance, implementation and enforcement of all the principles and norms of international law governing the inviolability of the premises of diplomatic and consular missions and missions of duly accredited international organizations. It continued to support the biennial consideration of the current agenda item in the Committee, since it helped to improve diplomatic and consular relations against a backdrop of security and strict compliance with the provisions of international law.

57. **Mr. Ahmed** (Iraq), speaking in exercise of the right of reply, said that Iraq stood by its independence, sovereignty and territorial integrity, and rejected the notion of its territory being used as a theatre for the settling of scores. Iraq condemned all hostile acts against foreign missions or embassies on its soil and emphasized the importance of protecting diplomatic missions and apprehending and prosecuting the perpetrators of such acts. It called on countries in which its embassies and agents had been attacked to investigate those attacks.

58. The Iraqi security forces had deployed and taken all necessary measures to protect the Iranian Embassy and its staff in Basrah. A large number of security personnel and agents had been assigned to protect the Embassy in the wake of the attacks it had endured. The authorities were also considering other measures to protect the Embassy and shore up security in order to prevent any future attacks of any kind. The Ministry of the Interior had been instructed to draft provisions and set up a commission on the protection of the premises and to investigate potential security failures there. Criminal proceedings had also been brought before a court in Basrah, which had rendered a ruling to ensure that the perpetrators were brought to justice.

59. The Republic of Iraq was committed to complying with all relevant international instruments, specifically the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, and to fulfilling its international commitments to ensure the safety and security of diplomatic and consular missions and representatives.

60. **Ms. Barba Bustos** (Ecuador), speaking in exercise of the right of reply, said that the security and safety and inviolability of diplomatic and consular missions and representatives, archives, documents and communications were crucial to the maintenance of

peaceful, constructive and friendly relations among States. It was therefore essential to ensure compliance with all the rules and principles of international law relating to the issue, in particular the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations and the relevant resolutions of the United Nations.

61. Her Government recognized that the privileges and immunities enjoyed by diplomatic and consular missions and representatives allowed them to function effectively. It therefore strongly condemned any violations against diplomatic and consular missions and representatives and international organizations and their personnel. It had also taken all legal and security measures to protect diplomatic and consular missions and representatives in its territory.

#### **Agenda item 82: Expulsion of aliens**

62. **The Chair** recalled that the current agenda item had arisen from the recommendation of the International Law Commission, adopted in 2014, that the General Assembly take note of the draft articles on expulsion of aliens in a resolution, annex the articles to the resolution, and encourage their widest possible dissemination; and to consider, at a later stage, the elaboration of a convention on the basis of the draft articles.

63. **Ms. Bierling** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that on 12 June 2014, in response to the Commission's recommendation that the General Assembly consider the elaboration of a convention on the basis of the draft articles, the Nordic countries had provided written joint comments after the first reading of the draft. They had also delivered a joint statement at the seventy-second session of the Sixth Committee on the topic.

64. The Nordic countries were still not convinced that the current topic lent itself to the elaboration of a convention, as it involved an area of law with significant and detailed regional rules and differences of opinion on many aspects. Nonetheless, the draft articles represented a useful description of the challenges faced concerning the expulsion of aliens. For the Nordic countries, the best approach at the current time was to reiterate their appreciation for the Commission's continuing contribution to the codification and progressive development of international law, and that the Committee should revert to the topic in few years' time.

65. On a more general note, and without prejudice to the future status of the draft articles, the Nordic countries considered that a possible future convention,

or any other type of instrument on the expulsion of aliens, should be based on, and clearly emphasize, the obligation of States under international law to readmit their own nationals who did not have a legal residence in another country. That obligation applied to both voluntary and forced returns.

66. **Ms. Tan** (Singapore) said that the topic of expulsion of aliens had been difficult because of the complex and sensitive interface between a State's sovereign right to expel aliens from its territory and that State's obligation to comply with applicable international human rights law, the rights and obligations of receiving States and those of individuals. The progressive development of laws and practices applicable to the expulsion of aliens must be approached with caution.

67. Singapore had made its views on the topic very clear at previous debates and continued to have concerns about the content of the draft articles and the extent to which the International Law Commission had sought to progressively develop the law through them. It also had concerns about the lack of distinction between codification and progressive development in the draft articles and the commentaries thereto. Her delegation had consistently disagreed with the expansion of the principle of non-refoulement articulated in paragraph 2 of draft article 23, which was not reflective of customary international law, since under that law, a State that had abolished the death penalty was under no obligation not to expel a person to another State where the death penalty might be imposed.

68. In view of those concerns, Singapore did not support the elaboration of a convention on the basis of the draft articles. The General Assembly should simply take note of the draft articles and any concerns and reservations expressed by delegations on them.

69. **Ms. Grosso** (United States of America) said that her Government continued to question the wisdom and utility of seeking to augment well-settled rules of law that existed in broadly ratified human rights and refugee conventions, which already provided the legal basis for achieving the key objectives of the draft articles. Furthermore, key aspects of the draft articles risked being confused with existing rules of law, because the Commission had combined in the same provision elements of existing rules with elements that represented proposals for the progressive development of the law. Accordingly, her delegation did not believe that it was appropriate to elaborate a convention on the basis of the draft articles.

70. **Ms. González López** (El Salvador) said that, at the seventy-second session, her delegation had

complained that the draft articles had been deemed finalized even though there had still been some substantive questions that had been of particular interest to Member States, including El Salvador. Her delegation considered that the topic of expulsion of aliens was intimately linked to the fundamental rules of international human rights law and the corresponding obligation of States to respect and protect the rights of persons under their jurisdiction without any discrimination. It noted with concern, however, that some provisions of the draft articles breached those rules and did not provide a more solid basis for the existing rules.

71. The Inter-American Court of Human Rights had noted in its rulings that all persons should be guaranteed due process, regardless of their immigration status, since the wide scope of the intangibility of due process applied not only *ratione materiae* but also *ratione personae*, without any discrimination. States should therefore adopt policies, laws, protocols and immigration practices anchored on a presumption of liberty and not on a presumption of detention. That meant that migrants had the right to remain in liberty while waiting for immigration procedures to unfold. The standard on the exceptionality of deprivation of liberty should be considered even higher in the case of immigration detention because immigration offences were administrative and not criminal in nature. Nonetheless, a presumption of detention against all migrants was retained in draft article 19.

72. Expulsion was an extreme measure with a profound impact on a person's autonomy and on the lives of the person's family members. Preventing a person from moving freely in the territory where they had spent part of their lives could be considered a form of deprivation of liberty. Expulsion should therefore be subject to the most stringent judicial review, and detailed procedural guarantees and criteria for non-expulsion should be established.

73. The draft articles did not, however, make any distinction between persons subjected to a detention process. In that connection, it was important to take into consideration advisory opinion OC-21/14 of the Inter-American Court of Human Rights, where the Court noted that States might not resort to the deprivation of liberty of children who were with their parents, or those who were unaccompanied or separated from their parents, as a precautionary measure in immigration proceedings. Some of the draft articles needed to be amended in light of the aspects that had already been consolidated in international human rights law and because some of them might run counter to certain provisions in instruments such as the New York

Declaration for Refugees and Migrants, the Global Compact for Safe, Orderly and Regular Migration, the Global Compact on Refugees and the 2030 Agenda for Sustainable Development.

74. Her delegation welcomed the modalities adopted in the current draft articles, but believed that a technical update was the best course of action to ensure continuous discussion of the draft articles, because although six years had passed since the conclusion of the work of the International Law Commission on the topic, the issues concerning the treatment of migrants and refugees remained and had been exacerbated by the COVID-19 pandemic.

75. More comments from her delegation on the topic, dealing with draft articles 26 and 36, could be found in its full statement published on the Committee's website.

76. **Ms. Guardia González** (Cuba) said that it was useful to codify the rights of persons expelled or facing expulsion, provided that such codification was based on the principle of full protection of the human rights of such persons and did not impair the sovereignty of States. The protection of the human rights of persons expelled or facing expulsion could not hamper the exercise of the right of expulsion. In that connection, it was necessary to take into consideration respect for national law and maintenance of public safety in each State. It was also crucial that States of destination be notified ahead of time about expulsions, in order to expressly protect the right of persons expelled or facing expulsion to communicate with their consular representatives.

77. Cuban criminal law provided for the expulsion of aliens as an accessory sanction that could be imposed by a court on natural persons if the court found that, given the nature of the offence, the circumstances of its commission or the personal characteristics of the suspect, there was evidence that the person's stay in the country would be prejudicial. The law also provided that the expulsion of aliens as an accessory measure applied after the principal sanction had been exhausted. It also gave the Ministry of Justice the discretionary power to order the expulsion of the sanctioned alien before the principal sanction had been implemented, in which case the criminal responsibility of the sanctioned individual would be extinguished.

78. The binding force of international instruments derived from the consent of States in the process of formation of international law. Her delegation recognized the contribution of the International Law Commission and each of its members to the progressive development of international law, and believed that the draft articles on expulsion of aliens could serve as a

starting point for the elaboration of an international convention on the topic. Nonetheless, the Commission could not, in and of itself, constitute a legislative organ responsible for establishing rules of international law. Its valuable contribution had been to document topics in respect of which States had developed transcendental rules for international law and to propose topics in respect of which States might be interested in developing such rules.

79. **Mr. Amaral Alves De Carvalho** (Portugal) said that the draft articles on expulsion of aliens represented a good framework for the protection and observance of the individual rights of persons facing expulsion, as they struck a good balance between said rights and the sovereignty of expelling States. His delegation believed that, for the time being, however, the draft articles were and should remain an overview of existing legal norms and that they should serve as a general guide on the law on the expulsion of aliens.

80. At the seventy-second session, Portugal had called on the Committee to better assess the influence of the draft articles on State practice. It had itself set an example of State practice with regard to the human rights of aliens during the coronavirus disease (COVID-19) pandemic by extending access to its national health service to all migrants and refugees, regardless of their status or legal situation.

81. His Government had granted temporary residence status to approximately 130,000 aliens with pending immigration or asylum proceedings by the date on which a state of emergency had been declared in Portugal. It was also considering extending that measure to 2021. In addition to ensuring the avoidance of certain cases of expulsion, the measure made it possible to recognize aliens as vulnerable persons and to ensure that they enjoyed equal rights to health, social support, employment and housing as Portuguese nationals during a particularly difficult time for public health. Such provisional, pragmatic and humane measures were in keeping with the spirit of the draft articles.

82. **Mr. Skachkov** (Russian Federation) said that States had an inalienable sovereign right to expel aliens. That right was not absolute, however, as States were also bound by international legal obligations, including the obligation to protect the rights and freedoms of persons subject to expulsion. Yet, there was no universal legal instrument for settling matters arising in connection with the process of expulsion of aliens. On the whole, the draft articles on expulsion of aliens, which addressed a number of increasingly vital aspects of that process, would be a useful resource in the drafting of such an instrument. However, in view of the

current constraints on the Committee's ability to meet in person, his delegation supported making a technical update to General Assembly resolution 72/117 and postponing the substantive discussion on the form that the draft articles could take, or of another suitable solution, to the seventy-eighth session of the General Assembly.

83. The Russian Federation was steadfast in its commitment to upholding the basic rights and freedoms of aliens subject to expulsion and to extending procedural guarantees to such persons. In light of the COVID-19 pandemic, it had suspended the limits applicable to the duration of temporary stays, visas, residence permits and migration cards for foreign citizens and stateless persons in its territory.

84. **Mr. Arrocha Olabuenaga** (Mexico) said that the draft articles on expulsion of aliens represented a good starting point for the discussion on the topic. That discussion should be guided by one main premise: respect of the human rights and dignity of persons who were or had been facing expulsion. While it was recognized by both theory and jurisprudence that States had an inherent right to expel any alien, they must exercise that right in accordance with existing international law, in particular in full compliance with human rights instruments.

85. Human rights were universal, which meant that neither the national origin of persons facing expulsion, nor their legal situation in the territory of a State could be used to refuse to protect their human rights. Adherence to human rights during an expulsion process, in particular the prohibition of arbitrariness, abuse of power and denial of justice, served to limit the powers of States with regard to aliens. For Mexico, observance of due process and due process guarantees, as well as the right to effective remedy, impartial justice and independence, were among the minimal conditions that States had to meet when exercising their sovereign right to expel any person.

86. Mexico therefore joined the international community in its general willingness to promote the observance of human rights during expulsion processes. It also reaffirmed its commitment to non-discrimination in expulsion processes and noted the importance of paying particular attention to vulnerable persons facing such processes, such as persons with disabilities, children, the elderly and pregnant women. It also called for family unity to be maintained in those processes.

87. Migration was a phenomenon inherent to a globalized world, as more and more people moved from one country to another for a variety of reasons. States and international organizations had the urgent task of

harmonizing the exercise of their sovereign powers with respect for the dignity of all persons.

88. **Mr. Nasimfar** (Islamic Republic of Iran) said that the expulsion of aliens was an area of international law that dealt simultaneously with the sovereign prerogative of States and the protection of individuals other than the nationals of those States. His delegation welcomed the draft articles on expulsion of aliens but believed that the idea of convening a diplomatic conference on the elaboration of a convention based on the draft articles was still premature. The sensitivity and significance of the topic required that the provisions of the draft convention be based on *lex lata* rather than *lex ferenda*. However, the International Law Commission had gone beyond customary and treaty law in seeking to codify the draft articles, which would be tantamount to codifying an area of international law where State practice was still limited.

89. States had not only the legal right to expel aliens who posed a threat to their national security or law and order, but also the right to determine the components of those two concepts on the basis of their national laws and prevailing circumstances. It was therefore unnecessary to draw up an exhaustive list of grounds that might be invoked to justify the expulsion of aliens. States were also under no obligation to specify the grounds for expulsion in all cases. That was, of course, without prejudice to the established legal fact that expulsion must be conducted with due respect for the fundamental human rights of the person being expelled, who must be protected against any inhuman and degrading treatment, including during pre-expulsion detention. The property rights of all persons subject to expulsion must also be respected and protected by the authorities of the expelling State.

90. Many national laws contained no provision for appeals against expulsion, and there were serious doubts about the existence of customary rules in that area. The right of return to the expelling State could not be recognized in the case of aliens who had been on its territory unlawfully prior to the expulsion. Granting such a right would imply recognition of an acquired right of residence in the territory of a foreign State, something unknown in State practice. By granting unlawful aliens the right to challenge an expulsion decision, the Commission had also gone beyond existing treaty and customary law. Affording equal treatment to aliens who were present in a State's territory, whether lawfully or unlawfully, could create an incentive for illegal immigration. Draft article 27 (Suspensive effect of an appeal against an expulsion decision) was also unacceptable, because it constituted progressive

development without a minimum basis in uniform or convergent State practice.

91. His delegation was of the view that the Commission's final output could serve as a guide for inter-State cooperation and national legislative measures on the expulsion of aliens, and did not seem to be ripe enough for the General Assembly to engage in a codification exercise over the expulsion of aliens, since national and regional jurisprudence on the matter was still evolving.

92. **Mr. Li Kai** (China) said that a sovereign State had the right to expel any alien, provided it did so in accordance with law. That right reflected a State's ability to exercise legal and effective control over its territory. In exercising that right, the State had to comply with the provisions of relevant international treaties and customary international law, as well as its domestic laws, while taking appropriate measures to protect the basic human rights and dignity of aliens facing expulsion. A reasonable balance should be achieved between protecting the basic human rights of the alien and upholding the State's sovereignty.

93. Despite the efforts of the International Law Commission, its draft articles remained unbalanced in some respects. For example, article 19, paragraph 2, stipulated that the extension of the duration of detention might be decided upon only by a court or, subject to judicial review, by another competent authority. In practice, the competent authority that decided to extend the duration of detention varied from State to State. Each State had the right to choose whether to protect the rights of persons facing expulsion through judicial review or through other reasonable procedures. It was not appropriate to make a one-size-fits-all rule.

94. The draft articles would be helpful in strengthening human rights protection. Yet, some of them were not supported by universal State practice and went beyond the treaty obligations undertaken by relevant States. They could therefore not yet serve as the basis for the negotiation of an international convention on the expulsion of aliens.

95. **Ms. Townsend** (United Kingdom) said that her Government's position had always been that the expulsion of aliens was a difficult and complex topic which intruded directly into the domestic sphere of States. Her delegation believed that the topic was not currently suitable for a convention, and therefore did not agree that the draft articles reflected customary international law. It also did not agree with the content of those draft articles which claimed to represent the progressive development of international law.

96. The United Kingdom had submitted detailed comments on the draft articles in an annex to the written copy of its current statement. While it considered the topic to be insufficiently developed or coherent for codification, it remained committed to the protection of the rights of aliens faced with expulsion in its own domestic legal framework. Individual States should enjoy considerable discretion in that area. States must be able to manage immigration for their benefit and secure their borders against those who would seek to undermine effective immigration control. Migrants were expected to comply with the laws of host States. If they did not, the host State should be able to take appropriate, reasonable measures to promote compliance in accordance with existing international law obligations.

97. **Mr. Abd Aziz** (Malaysia) said that the expulsion of aliens was a topic which, by its very nature, had been addressed by States in their respective national legislative, judicial or administrative decisions. The draft articles and the commentaries thereto were the product of a lengthy deliberative process and a representation of the broadest possible consensus amongst States. Nonetheless, as a small country considered a destination country by many migrants, asylum-seekers and refugees, Malaysia remained unconvinced that the draft articles could ensure full respect for its sovereignty, territorial integrity and national security.

98. The draft articles replicated some existing principles which had already been set out in other international treaties, such as the rules relating to the expulsion of stateless persons, articulated in article 7 (Rules relating to the expulsion of stateless persons), which repeated the rules already codified in the 1954 Convention relating to the Status of Stateless Persons. Some elements in the draft articles had also expanded the scope of the principles codified in other international treaties, such as the principle of non-refoulement, articulated in article 23 (Obligation not to expel an alien to a State where his or her life would be threatened), which expanded the scope of the 1951 Convention relating to the Status of Refugees, as well as the prohibition of collective expulsion, articulated in article 9 (Prohibition of collective expulsion), which replicated a provision of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

99. It had taken the Commission a decade to adopt the draft articles, as there were differences of opinion on many aspects, as well as a significant number of existing, well-established State practices pertaining to many of the issues covered in the draft articles. States should continue to exercise their considerable discretion

and take reasonable measures with regard to the expulsion of aliens, in accordance with their relevant domestic laws, particularly in the current context of global migration and the COVID-19 pandemic. Malaysia therefore did not support the elaboration of a convention on the basis of the draft articles and would suggest that the General Assembly merely take note of the draft articles.

100. **Monsignor Hansen** (Observer for the Holy See) said that refugees, asylum-seekers, migrants, and victims of human smuggling and trafficking were some of the most vulnerable people in the world. It was important to therefore avoid a globalization of indifference, whereby migrants, refugees, displaced persons and victims of trafficking had become emblems of exclusion. In addition to the hardships that their condition entailed, they were often looked down upon and considered the source of all of society's ills. The expulsion of aliens was a complex and politically sensitive topic. While the difference of opinion on the draft articles on expulsion of aliens might require additional time for discussion and for State practice to develop, the desire for baseline norms regarding the expulsion of aliens called for continued perseverance.

101. The International Law Commission should be commended for preparing a draft built upon standards drawn from State and inter-State practices, national laws, and relevant provisions of international law, as well as elements of *lex ferenda*. The Commission neither called into question the right of States to independently address issues concerning the stay of aliens in their territories, nor did it seek to impose unjustified limitations on those cases where the expulsion of an alien would be legitimate. At the same time, fundamental human rights must always take precedence over State interests. Refugees, asylum-seekers, migrants and victims of human smuggling had the same human rights as lawful residents and their rights must therefore be fully ensured and protected. Article 5.4 of the draft rightly provided that "a State shall not expel an alien on a ground that is contrary to its obligations under international law".

102. The Holy See welcomed in particular draft articles 23 and 24, which extended the principle of non-refoulement well beyond the traditional confines of international refugee law. In fact, no one – not only refugees – should be expelled, returned or extradited to another State where there were substantial grounds for believing that their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion, or where they might be subjected to the death penalty. That provision codified a growing consensus in the

international community, as evidenced by article 3 of the United Nations Convention against Torture.

103. It was also important to improve conditions of detention and to protect the procedural rights of those in detention. The Holy See noted with concern that draft article 19 was based on the assumption that persons subject to expulsion would be detained. However, detention should be the exception rather than the rule. In addition, children should never be detained, and their best interests should be the primary consideration in all decisions made on their behalf. The rule of law, in fact, required that the State justify any limitation on a human right, taking into account any specific circumstances. Further, there should be provisions for detention facilities to be clean, provide access to doctors and take into account the needs of families, women and children, as the basic concept of human dignity required. The right of children who might be subject to expulsion to enjoy the care of their families must be ensured.

104. Due process guarantees were enshrined in international law and were non-derogable. States must ensure respect for procedural rights, which emanated from the principle of human dignity and not from an individual's immigration status, nor the period of time he or she had spent in a territory. It was critical to provide both substantive rights to aliens facing expulsion and the procedural means by which to exercise those rights. The right to a speedy judicial review of the lawfulness of detention, the right to receive a written decision, and the right to information about available legal remedies were all areas that should be given greater consideration.

105. While the Holy See acknowledged that, at the moment, there did not seem to be a consensus on convening an international conference to adopt a new convention on the expulsion of aliens, it believed that the topic must be kept on the Committee's agenda.

#### **Agenda item 86: The rule of law at the national and international levels (continued) (A/C.6/75/L.4)**

*Draft resolution A/C.6/75/L.4: The rule of law at the national and international levels*

106. **Mr. Arrocha Olabuenaga** (Mexico), introducing the draft resolution on behalf of the Bureau, said that the text of the draft resolution was based on that of General Assembly resolution 74/191, with technical updates as required.

107. **The Chair** said that the Committee would take action on the draft resolution at its meeting to be held on 19 November 2020.

*The meeting rose at 5.10 p.m.*