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SUMMARY RECORD OF THE 21st MEETING

Chairman: Mr. LUKABU KHABOUJI N'ZAJI (Zaire)
(Vice-Chairman)

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In the absence of the Chairman, Mr. Lukabu Khabouji N'Zaji (Zaire), Vice-Chairman, took the Chair.

The meeting was called to order at 3.20 p.m.

AGENDA ITEM 146: ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS (continued) (A/45/141)

1. Mr. ALZATE (Colombia), referring to the draft Additional Protocol to the Vienna Convention on Consular Relations submitted by Austria and Czechoslovakia (A/45/141, appendix), said that the scope of the Convention should be broadened in view of the changes that had taken place in the fields of technology, communications and international trade since its adoption in 1963. It was necessary now to focus not only on consular privileges and immunities, but also on the actual functions to be exercised by the consular representative. As a party to the Vienna Convention, Colombia believed that it was essential to draft an additional protocol governing such matters as the issuance and use of passports and other travel documents and visas, and notarial functions and other legal acts. Nationals of all countries must be subject to uniform rules safeguarding their rights and clearly laying down their obligations. His delegation was therefore willing to discuss the matter with other delegations in the near future, either in a working group or in a committee.
2. Mr. MARTINEZ GONDRA (Argentina) said that although the draft before the Committee was useful in itself, Argentina viewed it chiefly as further proof of the climate of détente and co-operation that had developed among Governments.
3. The Vienna Convention on Consular Relations was one of the most widely accepted international instruments. Since its adoption, State practice had helped to consolidate its provisions and had reaffirmed the interpretation of the norms laid down in it, either by means of their direct implementation or through their incorporation in relevant domestic rules.
4. The Convention did not set out consular functions in detail, which perhaps partly explained its success, but instead provided a general framework. Some States, including Argentina, had supplemented it through the conclusion of numerous bilateral agreements. Argentina noted with satisfaction that Austria and Czechoslovakia indicated in their explanatory memorandum that an additional protocol should contain specific rules on consular functions without, however, trying to regulate every detail (A/45/141, annex). That position was an excellent starting-point.
5. However, before Member States embarked on drafting an additional protocol, they must decide whether the consular conventions concluded by States already dealt adequately with the matters listed in the explanatory memorandum. They should also consider whether other questions should be added to those listed in the memorandum. Argentina believed that, at the current stage, Governments should be requested to comment on the draft, and the Secretary-General should be requested to

(Mr. Martinez Gondra, Argentina)

prepare a report containing their replies. The Sixth Committee could then reach a decision on the draft and, if appropriate, decide how it should be considered.

6. Mr. J. DROUSHIOTIS (Cyprus) said that consideration should be given to further regulating and facilitating consular functions. Currently, detailed consular functions were regulated by bilateral agreements between the receiving State and the sending State. Many developing and small States had limited practice and legal experience in the field, and work in that area would thus be of significant benefit to those States in particular. Cyprus noted that in the explanatory memorandum, the sponsors of the draft indicated that rules of customary international law should continue to govern questions not expressly dealt with by the Additional Protocol, and that the purpose of the Protocol would be to focus on the functions of consular officials relating to nationals of the sending State.

7. Cyprus believed that the item required careful consideration. As a first step, the Secretary-General should be requested to seek the views and comments of States on the subject and to circulate the replies in a report to the General Assembly at its forty-sixth session.

8. Mr. KNOX (United States of America) said that, although the Vienna Convention on Consular Relations concentrated on consular privileges and immunities, not consular functions, bilateral agreements and international practice had created a large body of international law on the subject of consular functions. To their credit, the drafters of the proposed Protocol had drawn on that body of law. His delegation noted, for example, that many of the proposed provisions paralleled provisions that the United States had incorporated in bilateral consular agreements since 1963.

9. Wisely, however, the drafters had not attempted to codify all international practice in the area in question. The draft Protocol provided that customary international law should continue to govern questions not regulated by the Protocol's provisions; the Protocol should not affect agreements already in force; and States should be free to conclude agreements supplementing or amplifying the Protocol's provisions.

10. In some respects, the draft Protocol might improve upon existing international practice. For example, his delegation noted from a comparison of article 36, paragraph 1(b), of the Vienna Convention and article 15 of the draft Protocol that the proposed language was an improvement, in at least two respects, over the corresponding language in the Vienna Convention. First, the draft Protocol would require the receiving State to notify the sending State of its action unless the detained or arrested person objected, rather than requiring the receiving State to notify the sending State only if the person in question so requested. Second, the draft Protocol specified a time within which the notification would have to be made, rather than stating, as the Vienna Convention did, that the notification must be made "without delay". The draft Protocol would be a still greater improvement if it specified a shorter period of time than five days.

(Mr. Knox, United States)

11. Of course, his delegation had questions about some of the draft provisions. For example, article 4 might give rise to problems of definition and of judicial sovereignty. Articles 10 to 13 appeared to rely largely on existing international practice. However, article 14 relied less on existing practice and would therefore have to be examined particularly closely. In addition, it would be necessary to consider more general questions, of the type raised at the previous meeting by Italy, about the purpose the Protocol would serve and the needs it would answer. The United States agreed that there was no reason to move hastily.

12. Uniformity in the area of international law under discussion was worth exploring, if it did not come at the price of undue restrictions on States' flexibility. The draft before the Committee provided a strong basis for further discussion of the topic.

13. Mr. ASTAPENKO (Byelorussian Soviet Socialist Republic) said that his delegation welcomed the proposal by Austria and Czechoslovakia contained in document A/45/141, while recognizing that the draft Additional Protocol could not claim to be definitive, as the sponsors themselves had acknowledged. It would, however, provide a basis for further codification in the field of consular relations, and was of practical interest to the Byelorussian SSR, which had recently acceded to the 1963 Vienna Convention.

14. In July 1990, the Supreme Soviet of the Byelorussian SSR had adopted a Declaration on State Sovereignty, which, inter alia, affirmed his country's determination to play its part as an independent, full and equal member of the world community, to act in accordance with the principles of the Universal Declaration of Human Rights and other generally-accepted instruments of international law, and to protect the interests of its citizens abroad. In that latter connection, the question of establishing consular relations directly with other countries, including Poland, Czechoslovakia, Germany and the United States, was being considered. While specific issues concerning consular relations were dealt with through bilateral agreements between States, the régime provided by the Vienna Convention on Consular Relations could furnish guidelines for States' conduct and the possibility of extending the régime by means of an additional protocol on consular functions merited careful study. Such a protocol might envisage broadening the scope of article 5 of the Convention by incorporating rules on specific consular functions and by establishing new provisions and principles determining the consular régime, taking into account developments in contemporary politics, the economy, technology and other fields.

15. In the summer of 1990, his country's consular services had been actively engaged in facilitating trips abroad for more than 10,000 Byelorussian children affected by the accident at the Chernobyl nuclear plant, and he wished to express his Government's gratitude to the consular services of many countries, including those of Austria, Belgium, Cuba, Czechoslovakia, France, Germany, Italy, the Netherlands, Spain, Switzerland and the United Kingdom, for their co-operation in expediting the issuance of visas. With that humanitarian exercise in mind, he wondered whether the Additional Protocol might not abolish visa requirements for

(Mr. Astapenko, Byelorussian SSR)

children, so that they could benefit from unrestricted travel. Such a procedure would be in conformity with the purposes and principles of the Charter and the Declaration adopted at the recent World Summit for Children.

16. With regard to the proposals of the Austrian and Czechoslovak delegations, he felt that the best approach would be for the Committee to request the Secretary-General to seek the views of Member States on the proposed text so that they could be taken into account in the preparation of a final version.

17. Mr. CALERO RODRIGUES (Brazil) said he agreed with the representative of Argentina that the Vienna Convention had perhaps been successful partly because it did not set out consular functions in detail. The proposals put forward by Austria and Czechoslovakia were quite detailed, in some cases maybe too detailed. Moreover, practically the entire content of the draft was already dealt with in article 5 of the Vienna Convention. However, the draft might well prove useful in some ways. Draft article 15, for example, was of particular interest to his delegation.

18. Brazil had reservations about requesting comments from Governments, and believed that it would be preferable for delegations to express their views on the subject in the Sixth Committee at the forty-sixth session of the General Assembly. Although there was no overriding need for an additional protocol, some of the points raised by Austria and Czechoslovakia certainly deserved further consideration.

19. Mr. HANAFI (Egypt) said that the draft before the Committee should be given serious consideration. Governments should therefore be given an opportunity to examine it in detail, so that they could express their views on the subject subsequently in the Sixth Committee.

The meeting rose at 4.05 p.m.