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New York

SUMMARY RECORD OF THE 14th 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

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The meeting was called to order at 3.30 p.m.

AGENDA ITEM 116: IMPLEMENTATION BY STATES OF THE PROVISIONS OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS OF 1961: REPORT OF THE SECRETARY-GENERAL (A/31/145 and Add.1; A/33/224)

1. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the examination of the item had definite positive significance. The report of the Secretary-General had been prepared on a high professional level, contained a good analysis of the material, particularly the replies of Governments regarding implementation of the provisions of the Vienna Convention, and gave a clear account of the work of the International Law Commission regarding the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. He was pleased to note that the report had been circulated in time for delegations to familiarize themselves with its contents.
2. The purpose of the Committee's discussion of the item was to determine what the precise state of affairs was with regard to the Vienna Convention, whether its provisions needed to be developed and made more specific, and along what lines that should be done. His delegation fully shared the opinion of other States that the Convention was an important document containing rules of international law governing diplomatic relations between States and felt that the Convention responded to present day needs. The fact that a number of later conventions had drawn upon the experience gained from the Vienna Convention attested to the fact that the latter was promoting the development of rules of international law. The Vienna Convention was also promoting the development of the legislation of States parties as well as other States on matters relating to the legal status of foreign diplomatic missions in their territory.
3. In discussing the need to enhance the role of the Vienna Convention in international relations and to ensure its implementation, three problems should be stressed: first, wider application of the Convention; second, more effective implementation of the Convention, and, in particular, more effective and stricter observance of the rules contained in it; third, further development and clarification of the principles and rules of diplomatic law contained in it.
4. With regard to the first of those points, efforts should continue to increase the number of States parties to the Convention; since 1976, the total had increased by 12, but more than 30 States, including 23 Members of the United Nations, had not yet become parties. At the present session of the General Assembly, a decision should be taken appealing to those States which had not yet done so to ratify or accede to the Convention.
5. With regard to the more effective implementation of the Convention, the Secretary-General's report showed that all States which had replied were in favour of its stricter observance. That view was, of course, in keeping with the legal principle of pacta sunt servanda; failure to comply with the provisions of the Convention would obviously create difficulties in the conduct of diplomatic relations between States and have undesirable consequences. His delegation shared the view that, generally speaking, the Convention was being observed and its objectives achieved.

(Mr. Khlestov, USSR)

6. He wished to deal with two points in connexion with the question of the implementation of the provisions of the Convention. First of all, failure by officials of the host country or by employees of diplomatic missions to comply with those provisions was inadmissible, and all States parties to the Convention should take steps to ensure that that did not occur. At the thirty-first session of the General Assembly, a resolution had already been adopted which drew the attention of States to that problem. The resolution adopted on the item at the present session should include a provision calling upon all States to adhere strictly to the provisions of the Convention.

7. The second point with regard to observance of the Convention was the question of how the legislation of States parties conformed to the latter's obligations under the Convention. The process of giving international obligations expression under domestic law was a complex one. It depended on the structure of the State, the jurisdiction of its internal organs, whether it was a unitary or federal State and other factors. Nevertheless, the States parties to the Vienna Convention must ensure that their legislation was not at variance with the obligations contained in the Convention.

8. In that connexion, it was impossible to overlook Public Law No. 95-393, a piece of legislation regarding diplomatic relations signed by the President of the United States on 30 September 1978. The law in question was worthy of note because it was the most recent example of how a State was interpreting and implementing the Vienna Convention. It affected not only the legal status of diplomatic missions in the territory of the United States but also that of missions to the United Nations. According to section 5 of the law: "Any action or proceedings brought against an individual who is entitled to immunity with respect to such action or proceedings under the Vienna Convention on Diplomatic Relations under section 3 (b) or 4 of this Act, or under any other laws extending diplomatic privileges and immunities, shall be dismissed. Such immunity may be established upon motion or suggestion by or on behalf of the individual or as otherwise permitted by law or applicable rules of procedure." Analysis of that provision showed that it was at variance with the Vienna Convention, according to which persons entitled to privileges and immunities enjoyed them from the moment they entered the territory of the host country and while they were present there in the performance of their functions. Privileges and immunities were granted to them automatically. The host country's consent to the admission of such persons also constituted recognition of the fact that they enjoyed privileges and immunities. The Convention did not stipulate that the persons in question were requested to apply to any authority of the host country to seek recognition of the fact that they enjoyed privileges and immunities. The host country itself must guarantee that privileges and immunities with respect to such persons were observed by all its authorities, executive as well as judicial. Under the United Nations Headquarters Agreement, those privileges and immunities were extended to the employees of missions to the United Nations.

9. The United States law in question defined the procedure for the application of the Vienna Convention by United States authorities. It dealt with the question of initiating proceedings against persons enjoying immunity. The first sentence

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stated that proceedings against persons enjoying immunity must be dismissed. The second sentence indicated that, in order for that to be done, it was necessary for a United States court to recognize the immunity. The words "Such immunity may be established" could be interpreted to mean that the court at its own discretion was entitled to decide that an employee of an embassy or a United Nations mission did not enjoy immunity. When a State admitted a person enjoying immunity to its territory, it thus recognized his immunity provided that he fell within one of the categories of persons to whom immunity was granted under the Vienna Convention. Giving a court the right to determine whether or not an employee of a foreign diplomatic mission had immunity was contrary to the Vienna Convention, which clearly provided that such an employee possessed immunity for the entire period during which he discharged his functions in the territory of the host country.

10. In addition, the United States law infringed the Vienna Convention by requiring a diplomatic agent to establish his immunity by applying to the courts, either on his own behalf or "as otherwise permitted by law or applicable rules of procedure". According to the Vienna Convention, an employee of a diplomatic mission enjoyed immunity in his capacity as representative of the sending State; the establishment of immunity in individual cases therefore lay with the State concerned. It was for the host country and the sending State to settle such matters through the diplomatic channel.

11. The law also infringed the Vienna Convention in stating that an application to the court could be made on behalf of the diplomatic agent. It was not clear whether the intention was to make use of lawyers, but even if application was made by the consular section of an embassy on the agent's behalf, there would be a failure to respect the Convention, since it was for the United States State Department, having issued a visa to the agent, to require the courts to recognize his immunity. Diplomatic agents would be compelled by the new law to apply to United States courts under the internal legislation of the United States, whereas the immunity of diplomatic agents was a matter regulated by international law, and particularly by the Vienna Convention itself. In enacting such a law, the United States was in breach of the obligations it had accepted under international law.

12. It was of the utmost importance that the internal legislation of all States parties to the Vienna Convention should fully respect its provisions. The Sixth Committee and the General Assembly should monitor the legislative practice of individual countries, as a key aspect of implementation of the Convention.

13. According to article 29 of the new Constitution of the USSR, which had entered into force on 7 October 1977, the relations of the Soviet Union with other States were based on conscientious observance of the obligations arising from the generally accepted principles of international law and from international agreements concluded by the USSR. On 6 July 1978, the Supreme Soviet had adopted a law providing for closer control of the observance of treaties by the USSR. Under Soviet legislation, priority was given to international obligations over the norms of internal law. Every existing Soviet law contained a provision to the effect that, where there was a discrepancy between provisions of an international agreement concluded by the USSR and a requirement of internal legislation,

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priority should be given to the former. It was important to ensure that the legislation of all States parties to the Vienna Convention was in accordance with the obligations arising from the Convention, and the Sixth Committee should concern itself with the degree of compliance observed.

14. According to the report of the Secretary-General, a number of States had emphasized the value of having recourse to the International Court of Justice, as provided by the Optional Protocol to the Convention, for the settlement of disputes arising from the interpretation or application of the Convention. There were now 49 States parties to the Protocol, but there were 127 States parties to the Convention. Since 1961, not a single dispute had been referred to the International Court for settlement; all disputes had been settled by negotiation between the States concerned. There was therefore little basis for the view that the International Court was the most effective method of settling disputes.

15. With regard to the future implementation of the Convention, General Assembly resolution 31/76 had requested the International Law Commission to study proposals on the elaboration of a protocol concerning the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier. That was a valuable field of work, since the practice of sending the diplomatic bag unaccompanied by a courier had become widespread. However, doubts had been expressed by the United Kingdom, the United States, Spain, the Netherlands, Austria and Venezuela as to the usefulness of such a protocol. The findings of the Commission, as reflected in section 4 (b) of document A/33/224, indicated that the elaboration of a protocol on the subject was essential. Paragraph 143 of the report of the Working Group on the Status of the Diplomatic Courier and the Diplomatic Bag not accompanied by Diplomatic Courier (A/CN.4/L.285), reproduced in the report of the Secretary-General, referred to a total of 30 issues relating to the diplomatic bag and courier which required clarification. The Commission had analysed all conventions containing provisions relating to the diplomatic courier and had found that 15 of the 30 issues were not covered by any rule of international law. It was therefore to be hoped that the Commission would undertake the preparation of a protocol on the subject as soon as possible. Useful suggestions were contained in the replies submitted by the German Democratic Republic, Greece, Colombia, the Federal Republic of Germany, the Mongolian People's Republic and Sierra Leone, contained in paragraphs 23 to 43 of the report.

16. It was advisable for the General Assembly to continue in future to consider methods of ensuring the implementation of the Vienna Convention because of the importance of diplomatic relations in the establishment of normal relations among States. He suggested that the Assembly should return to the subject at its thirty-fifth session.

17. Mr. ROSENSTOCK (United States of America) said that he would reply in detail at a later stage to the comments of the representative of the USSR. His delegation was reminded of the remark of Cicero about Catiline: "How long will you abuse our patience?". The Sixth Committee was not an appropriate forum in which to consider the internal legislation of States. However, it would be incorrect to infer that his country was not concerned with the views of others. The Optional Protocol to

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the Convention provided for disputes to be settled by reference to the International Court of Justice, and there were other traditional means by which States parties could and did settle their disputes. His delegation fully agreed that the host country must perform its obligations under the Convention, and he was therefore surprised that the representative of the Soviet Union had devoted more than half of his speech to the observance of its provisions in national law by one Member State. As his country had already stated in the Committee on Relations with the Host Country, the new United States legislation would not in any way alter the legal status of representatives of States Members of the United Nations. As to the phrase cited by the Soviet representative, "by or on behalf of", that was a standard United States legal phrase. In practice, there would be no change in proceedings relating to diplomatic immunity. It was the State Department which was responsible for filing a suggestion of immunity on behalf of the diplomat in question. The latter was not required to apply for his own immunity or to hire lawyers. There was no need for the practice in individual States to be examined by the Sixth Committee; there were established methods of negotiation, arbitration and conciliation available to parties in the event of disputes. The practice applying in the United States was also to be found in common-law countries throughout the world.

The meeting rose at 4.45 p.m.