A/CONF.20/14

United Nations Conference
on Diplomatic Intercourse
and Immunities

Vienna — 2 March - 14 April 1961

Official Records

Volume I :

Summary Records
of Plenary Meetings
and of Meetings
of the Committee of the Whole

GENEVA - 1962

United Nations Conference
on Diplomatic Intercourse
and Immunities

Vienna — 2 March - 14 April 1961

Official Records

Volume I :

Summary Records
of Plenary Meetings
and of Meetings
of the Committee of the Whole

GENEVA - 1962

CONTENTS

RESOLUTION 1450 (XIV) OF THE GENERAL ASSEMBLY CONVENING THE CONFERENCE

International Conference of plenipotentiaries on diplomatic intercourse and immunities

The General Assembly,

Recalling that, by its resolution 1288 (XIII) of 5 December 1958, it decided to include in the provisional agenda of its fourteenth session the question entitled " Diplomatic intercourse and immunities " with a view to the early conclusion of a convention on diplomatic intercourse and immunities,

Believing that the codification of the rules of international law in this field would assist in promoting the purposes and principles of the Charter of the United Nations,

1. *Decides* that an international conference of plenipotentiaries shall be convoked to consider the question of diplomatic intercourse and immunities and to embody the results of its work in an international convention, together with such ancillary instruments as may be necessary;

2. *Requests* the Secretary-General to convoke the conference at Vienna not later than the spring of 1961;

3. *Invites* all States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice to participate in the conference and to include among their representatives experts competent in the field to be considered;

4. *Invites* the specialized agencies and the interested inter-governmental organizations to send observers to the conference;

5. *Requests* the Secretary-General to present to the conference all relevant documentation, and recommendations relating to its methods of work and procedures and to other questions of an administrative nature;

6. *Requests* the Secretary-General to arrange also for the necessary staff and facilities which would be required for the conference;

7. *Refers* to the conference chapter III of the report of the International Law Commission covering the work of its tenth session, as the basis for its consideration of the question of diplomatic intercourse and immunities;

8. *Expresses the hope* that the conference will be fully attended.

847th plenary meeting,
7 December 1959.

LIST OF DELEGATIONS

ALBANIA

Representatives

H.E. Mr. Siri Carçani (*Chairman of the Delegation*), Ambassador Extraordinary and Plenipotentiary at Prague

Mr. Nuco Misha, Ministry of Foreign Affairs

ARGENTINA

Representatives

H.E. Mr. Carlos Maria Bollini Shaw (*Chairman of the Delegation*), Ambassador Extraordinary and Plenipotentiary

H.E. Mr. José Medoro Delfino, Envoy Extraordinary and Minister Plenipotentiary, Legal Adviser of Ministry of Foreign Affairs

Mr. Carlos Oscar Keller Sarmiento, Embassy Attaché

Secretary

Mr. Julio César Araujo, Counsellor of Embassy

AUSTRALIA

Representative

H.E. Mr. J. C. G. Kevin (*Head of the Delegation*), High Commissioner to Ceylon

Alternate

Mr. H. S. Barnett, Department of External Affairs

Advisers

Mr. P. J. Flood, Australian Embassy, Brussels

Mr. J. Somerville, Senior Australian Customs Representative, London

Mr. J. Tyler, Australian Treasury Representative, London

Secretary

Miss K. M. Page

AUSTRIA

Representatives

Mr. Alfred Verdross (*Head of the Delegation*), Professor of International Law and Jurisprudence at the University of Vienna

Mr. Rudolf Kirchschlaeger (*Deputy Head of the Delegation*), Envoy Extraordinary and Minister Plenipotentiary, Federal Ministry of Foreign Affairs

Mr. Walter Wodak, Envoy Extraordinary and Minister Plenipotentiary, Federal Ministry of Foreign Affairs

Mr. Hans Tursky, Envoy Extraordinary and Minister Plenipotentiary, Federal Ministry of Foreign Affairs

Mr. Klaus Winterstein, Envoy Extraordinary and Minister Plenipotentiary, Federal Ministry of Foreign Affairs

Mr. Kurt Waldheim, Envoy Extraordinary and Minister Plenipotentiary, Federal Ministry of Foreign Affairs

Mr. Otto Fischer, Head of Section, Federal Ministry of Justice

Mr. Rudolf Fischer, Head of Section, Federal Ministry of Communications and Electricity

Mr. Edwin Loebenstein, Head of Section, Federal Chancellery

Mr. Viktor Hoyer, Head of Section, Federal Ministry of Justice

Mr. Otto Watzke, Ministerial Counsellor, Federal Ministry of Finance

Mr. Josef Jurkowitsch, Ministerial Counsellor, Federal Ministry of the Interior

Alternates

Mr. Georg Roessler, Counsellor of Legation, Federal Ministry of Foreign Affairs

Mr. Josef Ullmann, Ministerial Counsellor, Federal Ministry of Communications and Electricity

Mr. Johann Drechsler, Ministerial Counsellor, Federal Ministry of Justice

Mr. Paul Hausner, Ministerial Counsellor, Federal Ministry of Justice

Mr. Christine Villgrattner, Deputy Head of Department, Federal Ministry of Foreign Affairs

Mr. Maximilian Kuhtreiber, Section Counsellor, Federal Ministry of Finance

Mr. Wilhelm Sedlacek, Section Counsellor, Federal Ministry of Justice

Mr. Robert Pollak, Ministerial Secretary, Federal Ministry of Finance

Mr. Robert Linke, Ministerial Secretary, Federal Ministry of Justice

Mr. Johann Pasch, Secretary of Legation, Federal Ministry of Foreign Affairs

Mr. Franz Matscher, Secretary of Legation, Federal Ministry of Foreign Affairs

Mr. Willibold P. Pahr, Ministerial Commissioner, Federal Chancellery

Mr. Wolfgang Wolte, Attaché, Federal Ministry of Foreign Affairs

Experts

Mr. Joseph Ranger, Counsellor, Federal Ministry of Foreign Affairs

Mr. Franz Bogen, Federal Ministry of Foreign Affairs

BELGIUM

Representatives

H.E. Mr. Georges Delcoigne (*Chairman of the Delegation*), Ambassador of Belgium at Vienna

H.E. Count de Romrée de Vichenet (*Alternate Chairman of the Delegation*), Minister of Belgium at Prague

Mr. Joseph Nisot, Honorary Ambassador of Belgium

Count Antoine du Parc, Minister Plenipotentiary

Mr. Jean Bouha, Counsellor of Embassy

Advisers

Mr. André Vranken, Director

Mr. Ives de Vadder, Legal Adviser

Secretary

Mr. Eric R. A. M. Suy

BRAZIL

Representative

H.E. Mr. Joaquim de Souza Leao Filho (*Head of the Delegation*), Ambassador at The Hague

Alternate

H.E. Mr. Roberto de Arruda Botelho, Brazilian Minister at Vienna

Advisers

Mr. Geraldo Eulalio do Nascimento e Silva, First Secretary of Embassy

Mr. Egberto da Silva Mafra, First Secretary of Embassy

BULGARIA

Representatives

H.E. Mr. Ivan Daskalov (*Head of the Delegation*), Minister Plenipotentiary of the People's Republic of Bulgaria at Vienna

Mr. Yordan Golemanov, First Secretary of Legation, Ministry of Foreign Affairs

Alternate

Mr. Borislav Konstantinov, Second Secretary, Bulgarian Legation, Vienna

BURMA

Representatives

U Soe Tin (*Leader of the Delegation*), Executive Secretary, Foreign Office, Rangoon

U Ba Sein, Legal Remembrancer, Attorney-General's Office

U Ba Thaung, Chief of Administrative Division, Foreign Office

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

Representatives

Mr. S. T. Shardyko (*Chairman of the Delegation*), Chairman, Supreme Court of the Byelorussian SSR

Mr. N. P. Sherdyukov, Ministry of Foreign Affairs

Adviser

Mr. I. P. Dedyulia, Secretary-General of the Delegation

CAMBODIA

Representative

H.E. Mr. Wick Koun (*Head of the Delegation*), Secretary-General of the Ministry of Foreign Affairs

Alternate

Mr. Youran Chan, First Secretary, Cambodian Embassy, Paris

CANADA

Representative

H.E. Mr. J. S. Macdonald (*Head of the Delegation*), Canadian Ambassador in Austria

Alternate

Mr. Gilles Sicotte, Head of Legal Division, Department of External Affairs

Advisers

Mr. E. H. Smith, Taxation Division, Department of Finance

Mr. J. M. Côté, Protocol Division, Department of External Affairs

Mr. E. A. Warnock, Assistant Secretary of Excise, Department of National Revenue

Secretary

Mr. P. D. Scott, Second Secretary and Vice-Consul, Canadian Embassy, Warsaw

CENTRAL AFRICAN REPUBLIC

Representative

H.E. Mr. Joseph Mamadou (*Head of the Delegation*), High Representative of the Central African Republic to the French Government

Adviser

Mr. Roger Guerillot, Commercial Attaché to the Mission of the Central African Republic, Paris

CEYLON

Representative

H.E. Mr. R. S. S. Gunewardene (*Head of the Delegation*), Ambassador Extraordinary and Plenipotentiary of Ceylon in Washington, Mexico City and Havana

Alternate

Mr. V. L. B. Mendis, Chief of Protocol

CHAD

Representative

H.E. Mr. Brahim Seid (*Head of the Delegation*), Ambassador of Chad in Paris

Adviser

Mr. Jean Victor Mauric Leproux, Diplomatic Adviser to the Mission of Chad, Paris

CHILE

Representatives

H.E. Mr. Luis Melo Lecaros (*Chairman of the Delegation*), Ambassador Extraordinary and Plenipotentiary

H.E. Mr. Martin Figueroa, Ambassador Extraordinary and Plenipotentiary

Adviser

Mr. Hugo Lea-Plaza, Chargé d'Affaires of Chile at Vienna

CHINA

Representatives

H.E. Mr. Hu Ching-yu (*Head of the Delegation*), Ambassador; Adviser and Chairman, Legal Commission, Ministry of Foreign Affairs

Mr. Chen Tai-chu, Minister Plenipotentiary; Adviser and Member, Legal Commission, Ministry of Foreign Affairs

Secretary

Mr. Lung Chang, Embassy of the Republic of China in France

COLOMBIA

Representative

H.E. Mr. Manuel Agudelo G. (*Chairman of the Delegation*), Envoy Extraordinary and Minister Plenipotentiary of Colombia in Austria

Adviser

Mr. Antonio Bayona, First Secretary of the Colombian Embassy at Berne

CONGO (LEOPOLDVILLE)

Representatives

Mr. Joseph Kahamba (*Head of the Delegation*), Ambassador Extraordinary and Plenipotentiary

Mr. José-Marie Patacas, Attaché and Member of the Delegation

Adviser

Mr. Laszlo Marothy, Technical Adviser, Ministry of Foreign Affairs

CUBA

Representative

H.E. Mr. Benito A. Besada Ramos (*Head of the Delegation*), Ambassador, Principal Legal Adviser, Ministry of Foreign Affairs

Alternate

H.E. Mr. Fernando Gainsa Gonzales, Minister of Cuba in Austria

CZECHOSLOVAKIA

Representatives

Mr. Richard Ježek (*Head of the Delegation*), Envoy Extraordinary and Minister Plenipotentiary at Vienna

Mr. Vratislav Pechota, Head of Department of the Ministry of Foreign Affairs

Mr. Stanislav Myslil, Legal Adviser of the Permanent Mission of the Czechoslovak Socialist Republic to the International Atomic Energy Agency

Adviser

Dr. Jiri Broz, Head of Division, Ministry of Foreign Trade

Secretary

Mrs. Milena Gabrielovà, Ministry of Foreign Affairs

DENMARK

Representative

H.E. Mr. Hans Henning Schrøder (*Chairman of the Delegation*), Assistant Director-General at the Ministry of Foreign Affairs

Alternate

Mr. Uffe Himmelstrup (*Vice-Chairman of the Delegation*), Chief of Section, Ministry of Foreign Affairs

Advisers

Mr. Harry Lund, Department of Customs

Mr. Erik Møller, Department of Direct Taxation

Secretary

Mr. Jørgen Michael Behnke, Secretary at the Ministry of Foreign Affairs

DOMINICAN REPUBLIC

Representative

Mr. Alain Stuchly-Luchs (*Chairman of the Delegation*), Honorary Consul-General of the Dominican Republic at Vienna

Alternate

Professor Theodor Schmidt, Deputy Consul-General of the Dominican Republic at Vienna

Expert

Mr. Otto Back

ECUADOR

Representative

H.E. Dr. Neftali Ponce Miranda (*Head of the Delegation*), Ambassador of Ecuador at the European Office of the United Nations

EL SALVADOR

Representative

H.E. Dr. Juan Contreras Chavez (*Head of the Delegation*), Envoy Extraordinary and Minister Plenipotentiary of El Salvador in Austria

ETHIOPIA

Representative

H.E. Ato Mechecha Haile (*Head of the Delegation*), Ethiopian Minister to the Holy See

Alternate

Ato Mohammed Hamid Ibrahim

FEDERATION OF MALAYA

Representatives

Mr. Mohammed Ghazali (*Head of the Delegation*), Permanent Secretary for External Affairs

Mr. Mohammed Suffian (*Deputy Head of Delegation*), Solicitor-General

Mr. William Fernando, Principal Assistant Secretary, Ministry of Finance

Mr. Mon Jamaluddin, Assistant Secretary, Ministry of External Affairs

FINLAND

Representative

Mr. Erik Castrén (*Head of the Delegation*), Professor of International and Constitutional Law at the University of Helsinki

Alternate

Mr. Richard Tötterman, Secretary of Bureau at the Ministry of Foreign Affairs

Secretary

Mr. Paavo Rantanen, Attaché at the Embassy of Finland at Vienna

FRANCE

Representative

H.E. Mr. Pierre de Vaucelles (*Head of the Delegation*), Minister Plenipotentiary

Alternate

Mr. Jacques Patey, Assistant Legal Adviser, Ministry of Foreign Affairs

Advisers

Mr. Emmanuel de Casteja, Counsellor of Embassy

Mr. Georges de Boulloche, Counsellor of Embassy

Mr. Georges Klevanski, Secretary of the French Embassy at Vienna

Secretary

Miss Hypsmann

FEDERAL REPUBLIC OF GERMANY

Representatives

H.E. Mr. Werner Dankwort (*Chairman of the Delegation*), Ambassador Extraordinary and Plenipotentiary

H.E. Mr. Carl H. Mueller-Graaf (*Vice-Chairman of the Delegation*), Ambassador Extraordinary and Plenipotentiary at Vienna

Mr. Hermann Meyer-Lindenberg, Counsellor, Legal Section, Ministry of Foreign Affairs

Mr. Heinrich Grützner, Counsellor, Ministry of Justice

Mr. Heribert Mast, Counsellor, Ministry of Justice

Mr. Edgar Schwoerbel, Counsellor, Ministry of Foreign Affairs

Mr. Wolfram Hucke, Counsellor, Ministry of Foreign Affairs

Mr. Hans von Vacano, Counsellor, Ministry of Foreign Affairs

Mr. Dedo von Schenck, Counsellor, Ministry of Foreign Affairs

Mr. Friedrich J. Kroneck, Secretary, Ministry of Foreign Affairs

Secretaries

Mr. Herbert Heinrich Rothen, Secretary to the Delegation

Miss Gisela Schultz-Pernice

GHANA

Representatives

The Honourable Mr. A. K. Puplampu (*Chairman of the Delegation*), Ministerial Secretary, Ministry of Foreign Affairs

H.E. Sir Edward O Asafu-Adjaye (Vice-Chairman of the Delegation), High Commissioner of the Republic of Ghana in the United Kingdom of Great Britain and Northern Ireland

Mr. A. B. B. Kofi, Head of the United Nations Division, Ministry of Foreign Affairs

Mr. E. K. Dadzie, Head of the Legal Division, Ministry of Foreign Affairs

Mr. Reginald Simmonds, International Lawyer

Miss Theresa Striggner, Assistant State Attorney, Ministry of Justice

Secretary

Mr. W. A. Wilson, Assistant Secretary, Ministry of Foreign Affairs

GREECE

Representatives

Professor Constantin Eustadhiadés (*Chairman of the Delegation*)

Mr. Nicolas Philopoulos, Chargé d'Affaires of Greece at Vienna

Mr. Nicolas Antonopoulos, Principal Press Officer at the Greek Embassy, Vienna

GUATEMALA

Representative

H.E. Dr. Francisco Linares Aranda (*Head of the Delegation*), Ambassador of Guatemala in Germany

Alternate

Mr. Karl Schwartz, Consul at Vienna

HAITI

Representative

H.E. Mr. Louis Mars (*Chairman of the Delegation*), Ambassador

HOLY SEE

Representative

Monsignor Agostino Casaroli (*Head of the Delegation*), Under-Secretary of the Holy Congregation of Special Ecclesiastical Affairs, Plenipotentiary Representative

Alternates

Monsignor Luigi Borettini, Professor at the Pontifical University of the Lateran

Monsignor Ottavio De Liva, Apostolic Mission at Vienna

Advisers

Professor Heinrich Kipp, University of Innsbruck

Professor Karl Zemanek, University of Vienna

HONDURAS

Representatives

H.E. Mr. Carlos Roberto Reina (*Head of the Delegation*), Ambassador of Honduras to France

Mr. Alois G. Englander, Consul of Honduras at Vienna

HUNGARY

Representatives

Mr. Endre Ustor (*Chairman of the Delegation*), Head of the Department of International Law and Consular Affairs, Ministry of Foreign Affairs

Mr. József Tallós, Counsellor, Ministry of Justice

Mr. Gyula Jelenik, Attaché, Ministry of Foreign Affairs

Secretary

Mr. Imre Uranovicz, Secretary, Ministry of Foreign Affairs

INDIA

Representative

H.E. Shri Arthur S. Lall (*Head of the Delegation*), Ambassador of India at Vienna

Alternates

Mr. K. Krishna Rao, Deputy Secretary to the Government of India, Ministry of External Affairs

Shri A. K. Mitra, First Secretary, Embassy of India, Vienna

INDONESIA

Representative

Mr. Ahmad Subardjo Djoyoadisuryo (*Head of the Delegation*), Ambassador of Indonesia to Switzerland

Alternates

Mr. Agus Yaman, Acting Chief of the Consular Bureau, Indonesian Foreign Office, Djakarta

Miss Endangsulbi Sastrodiredjo, Senior Official in the Directorate of United Nations Affairs and International Organizations, Indonesian Foreign Office, Djakarta

Adviser and Secretary

Mr. Abdullah Hadi, Second Secretary of the Indonesian Embassy at Berne, Switzerland

IRAN

Representative

H.E. Dr. Ahmad Matine-Daftary (*Chairman of the Delegation*), Professor of Law at the University of Teheran, Senator

Adviser

Mr. Hossein Chahidzadeh, First Secretary of the Imperial Iranian Embassy at Vienna

Secretary

Mr. Iradj Pezechgzad, Third Secretary of the Imperial Iranian Embassy at Vienna

Member

Mr. Mohammad Ali Madjd, Member of the Prime Minister's Office

IRAQ

Representative

H.E. Professor Mustafa Kamil Yaseen (*Head of the Delegation*), Ambassador Extraordinary and Plenipotentiary, Director-General of the Political Department, Ministry of Foreign Affairs

Adviser

H.E. Mr. Baqir H. Hasani, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Iraq in Austria

Secretary

Mr. Shakeeb Alighalib, Second Secretary at the Legation of Iraq at Vienna

IRELAND

Representatives

Mr. Timothy Joseph Horan (*Head of the Delegation*), Envoy Extraordinary and Minister Plenipotentiary of Ireland to Austria

Mr. Dermot Patrick Waldron, Assistant Legal Adviser, Department of External Affairs

ISRAEL

Representatives

Mr. Joseph I. Linton (*Head of the Delegation*), Ambassador Extraordinary and Plenipotentiary

Mr. Theodor Meron, Assistant Legal Adviser, Ministry for Foreign Affairs

ITALY

Representatives

H.E. Mr. Francesco Giorgio Mameli,[1] Ambassador; Vice-President of the Council of Diplomatic Disputes

H.E. Mr. Riccardo Monaco,[1] Honorary President of Section, Supreme Court; Chief of the Legal Service in the Ministry of Foreign Affairs; Professor at the University of Rome

H.E. Mr. Roberto Ago,[1] Professor at the University of Rome; Member of the International Law Commission

Mr. Adolfo Maresca (*Vice-Chairman of the Delegation*), Counsellor of Embassy; Assistant Chief of the Legal Service in the Ministry of Foreign Affairs; Professor of Diplomatic Law at the University of Rome

Expert

Mr. Francesco Coriasco, Judge; Legal Service of the Ministry of Foreign Affairs

Secretary

Mr. Mario Scialoja, Attaché of Legation

Secretariat

Miss Amelita Ballotta

Mr. Ruggero Roger Sciaretta

[1] Acting in rotation as Chairman of the Delegation.

JAPAN

Representatives

H.E. Mr. Fujio Uchida (*Head of the Delegation*), Japanese Ambassador to Austria

H.E. Mr. Michitoshi Takahashi, Japanese Ambassador to Yugoslavia

Alternate

Mr. Naraichi Fujiyama, Counsellor of the Japanese Embassy, Vienna

Legal Adviser

Professor Yuichi Takano, Tokyo University

Advisers

Mr. Ryohei Murata, Second Secretary of the Japanese Embassy, Vienna

Mr. Mitsuro Donowaki, Secretary in the Treaties Bureau, Ministry of Foreign Affairs

KOREA (REPUBLIC OF)

Representative

H.E. Mr. Kuy-Hong Chyun (*Head of the Delegation*), Ambassador Extraordinary and Plenipotentiary, Korean Ambassador to the Federal Republic of Germany

Alternates

Mr. Ho-Eul Whang, Korean Mission at Geneva

Mr. Hakoo Yeon, Korean Embassy at Bonn, Federal Republic of Germany

Mr. Nan-Kee Lee, Ministry of Foreign Affairs

Mr. Iel Hong, Ministry of Foreign Affairs

LEBANON

Representative

H.E. Mr. Mohamed Ali Hamadé (*Head of the Delegation*), Ambassador of Lebanon at Vienna

Alternate

Mr. Edmond Donato, First Secretary of the Embassy and Consul of Lebanon at Vienna

LIBERIA

Representatives

H.E. Mr. Nathan Barnes (*Head of the Delegation*), Ambassador of Liberia to the United Nations

Mr. Herbert Richard Wright Brewer, Counsellor, Department of State

Secretary

Miss Helga Clarke

LIBYA

Representatives

H.E. Mr. Omar Baruni (*Head of the Delegation*) Ambassador, Ministry of Foreign Affairs

H.E. Mr. Farag Ben Gileil, Director of Protocol, Ministry of Foreign Affairs

Mr. Hameda Zlitni, Head of the Research Department, Ministry of Foreign Affairs

LIECHTENSTEIN

Representative

H.S.H. Prince Heinrich of Liechtenstein (*Head of the Delegation*), Chargé d'Affaires of Liechtenstein in Switzerland

Alternate

Mr. Alfred Hilbe, Secretary of Legation

LUXEMBOURG

Representatives

H.E. Mr. Pierre Pescatore (*Head of the Delegation*), Minister Plenipotentiary

Mr. Jean Rettel, Assistant Legal Adviser, Ministry of Foreign Affairs

MALI

Representative

H.E. Mr. Kounton Diarra (*Head of the Delegation*), Assistant Secretary-General of the Government of Mali, Ministry of Foreign Affairs

MEXICO

Representatives

H.E. Mr. Carlos Dario Ojeda (*Head of the Delegation*), Ambassador Extraordinary and Plenipotentiary, Secretary-General in the Ministry of Foreign Affairs

H.E. Mr. Federico A. Mariscal, Ambassador Extraordinary and Plenipotentiary, Chief of Protocol, Ministry of Foreign Affairs

H.E. Mr. Manuel Cabrera Maciá, Ambassador Extraordinary and Plenipotentiary of Mexico in Austria

Mr. Alfonso de Rosenzweig Diaz, Envoy Extraordinary and Minister Plenipotentiary, Director of Legal Services in the Ministry of Foreign Affairs

Secretary

Mr. Manuel de Araoz Herrasti, Counsellor, Mexican Embassy at Vienna

MOROCCO

Representative

Mr. Mohammed Sinaceur Benlarbi (*Head of the Delegation*), Director, International Agencies Division, Ministry of Foreign Affairs

Alternates

Mr. Ahmed Bennani, Secretary-General of the Ministry of Economic Affairs and Finance

Mr. Mohammed Bennani-Smires, Chief of Protocol, Ministry of Foreign Affairs

Mr. Abderrahman Smires, Ministry of Justice

NETHERLANDS

Representative

Professor Willem Riphagen (*Chairman of the Delegation*), Legal Adviser to the Ministry of Foreign Affairs

H.E. Mr. Henri F. Eschauzier (*Vice-Chairman of the Delegation*), Ambassador Extraordinary and Plenipotentiary, Netherlands Ambassador to Vienna

Advisers

Baron Diederik W. Van Lynden, Counsellor of Embassy, Vienna

Mr. H. G. Schermers, Assistant Legal Adviser to the Ministry of Foreign Affairs

Secretary

Miss H. van der Spek

NIGERIA

Representative

The Hon. Matthew Tawo Mbu (*Head of the Delegation*), Minister of State for Naval Affairs

Alternate

Mr. Olumide Olusanya Omololu, Deputy High Commissioner in the Nigerian High Commission, London

Member

Mr. Adedokun Haastrup, Senior Assistant Secretary, Ministry of Foreign Affairs and Commonwealth Relations

NORWAY

Representative

Mr. Bredo Stabell (*Head of the Delegation*), Director at the Ministry of Foreign Affairs

Alternate

Mr. Egil Amlie, Chief of Section at the Ministry of Foreign Affairs

Member

Mr. Bjarne Solheim, First Secretary at the Ministry of Foreign Affairs

PAKISTAN

Representative

H.E. Mr. M. S. A. Baig (*Head of the Delegation*), Ambassador of Pakistan to Austria

Secretary

Mrs. H. M. Dub

PANAMA

Representative

H.E. Mr. José E. Lefevre (*Head of the Delegation*), Ambassador Extraordinary and Plenipotentiary, Envoy Extraordinary and Minister Plenipotentiary of Panama in Austria and Belgium

PERU

Representative

H.E. Mr. Mario Sosa Pardo de Zela, Envoy Extraordinary and Minister Plenipotentiary, Minister of Peru at Vienna

PHILIPPINES

Representative

H.E. Mr. Roberto Regala (*Head of the Delegation*), Ambassador Extraordinary and Plenipotentiary of the Republic of the Philippines to Italy

POLAND

Representatives

H.E. Mr. Henryk Birecki (*Chairman of the Delegation*), Ambassador, Member of the Collegium of the Ministry of Foreign Affairs

Mr. Miroslaw Gasiorowski (*Vice-Chairman of the Delegation*), Chief, Legal and Treaties Department, Ministry of Foreign Affairs

Advisers

Mr. Jan-Jacek Dobierski, Chief of Division at the Ministry of Foreign Affairs

Mr. Franciszek Przetacznik, Adviser, Ministry of Foreign Affairs

PORTUGAL

Representative

H.E. Mr. Abilio Pinto de Lemos (*Head of the Delegation*), Ambassador of Portugal at Vienna

Alternate

Mr. Carlos Augusto Fernandes, Ministry of Foreign Affairs

Adviser

Mr. Fernao Vaz Pinto, Ministry of Foreign Affairs

ROMANIA

Representative

H.E. Dr. Victor Dimitriu (*Head of the Delegation*), Envoy Extraordinary and Minister Plenipotentiary of the Romanian People's Republic in Austria

Alternate

Mr. Edwin Glaser, University Professor, Principal Legal Adviser at the Ministry of Foreign Affairs

Adviser

Mr. Marin Alexie, First Secretary of the Legation of the Romanian People's Republic at Vienna

SAUDI ARABIA

Representative

Mr. Aouney W. Dejany, Counsellor, Saudi Arabian Embassy, Berne

SENEGAL

Representative

H.E. Mr. Léon Boissier-Palun (*Head of the Delegation*), Ambassador Extraordinary and Plenipotentiary, Ambassador of Senegal in London and Vienna

Adviser

Mr. André Coulbay, Counsellor of the Embassy of Senegal in London

SPAIN

Representatives

H.E. Mr. José Sebastián de Erice y O'Shea (*Chairman of the Delegation*), Ambassador of Spain at Vienna

Mr. Ramon Martin Herrero, Minister Counsellor of the Spanish Embassy at Vienna

Mr. Julian Ayesta, Secretary of the Spanish Embassy at Vienna

Mr. Ricardo Gimenez Arnau, Counsellor of Embassy

Alternate

Mr. Ismael Herraiz, Press Attaché, Spanish Embassy, Vienna

SWEDEN

Representatives

H.E. Mr. Zenon Stanislaw P. Westrup (*Head of the Delegation*), Former Envoy Extraordinary and Minister Plenipotentiary

H.E. Mr. Sture Petrén (*Deputy Head of the Delegation*), Ambassador

Alternate

Mr. Curt Leijon, Assistant Director of the Legal Department, Ministry of Foreign Affairs

Advisers

H.E. Count Gustaf Bonde, Minister Plenipotentiary, Head of Protocol, Ministry of Foreign Affairs

Mr. Olof Landenius, Chargé d'Affaires, Swedish Embassy, Bucharest

Expert

Mr. Anders Appeltoft, Chief of Section, Board of Customs

Secretary

Mr. Bengt Odevall, First Secretary, Swedish Embassy, Vienna

SWITZERLAND

Representatives

H.E. Mr. Paul Ruegger (*Head of the Delegation*), Ambassador

Mr. Rudolf L. Bindschedler (*Deputy Head of the Delegation*), Chief, Legal Service of the Federal Political Department

Mr. Richard Aman, Minister, Chief of Protocol, Federal Political Department

Secretary of the Delegation

Mr. Jean-Philippe Monnier, Legal Service of the Federal Political Department

THAILAND

Representative

H.E. Chitti Sucharitakul (*Head of the Delegation*), Ambassador of Thailand to the Swiss Confederation

Alternate

Mr. Obeboon Vanikkul, Chargé d'Affaires *ad interim* of the Embassy of Thailand at Vienna

TUNISIA

Representatives

H.E. Mr. Najib Bouziri (*Head of the Delegation*), Ambassador Extraordinary and Plenipotentiary

Mr. Moncef Jaafar, Secretary of Embassy

TURKEY

Representatives

H.E. Mr. C. S. Hayta (*Head of the Delegation*), Minister Plenipotentiary, Assistant Secretary-General for Political Affairs in the Ministry of Foreign Affairs

Mr. Vahap Asiroglu, Ministry of Foreign Affairs

Professor Seha Meray, Professor of Public International Law at the Faculty of Political Science, Ankara

Adviser

Mr. Pulat Tacar, Second Secretary, Turkish Embassy at Vienna

UKRAINIAN SOVIET SOCIALIST REPUBLIC

Representative

Mr. K. S. Zabigailo (*Head of the Delegation*), Ministry of Foreign Affairs, Kiev

Member

Mr. D. T. Yakovenko, Kiev University

Adviser

Mr. Y. I. Nikolski, Secretary-General of the Delegation

UNION OF SOUTH AFRICA

Representative

H.E. Mr. C. H. Taljaard (*Head of the Delegation*), Envoy Extraordinary and Minister Plenipotentiary

Alternate

Mr. A. S. du Toit, Third Secretary, South African Legation, Vienna

UNION OF SOVIET SOCIALIST REPUBLICS

Representatives

Mr. G. I. Tunkin (*Chairman of the Delegation*), Head of the Treaties and Legal Department, Ministry of Foreign Affairs

Mr. G. N. Mikheev, Minister Counsellor, USSR Embassy, Vienna

Mr. V. A. Romanov, First Secretary, Ministry of Foreign Affairs

Mr. A. P. Movchan, First Secretary, Ministry of Foreign Affairs

Advisers

Mr. V. I. Khamanev, Assistant, Treaties and Legal Department, Ministry of Foreign Affairs

Mr. I. P. Blishchenko, Academy of Science of the USSR

Mr. N. P. Ushakov, Academy of Science of the USSR

Mr. S. A. Kondrashev, First Secretary, USSR Embassy, Vienna

Mr. Y. N. Granov, First Secretary, USSR Embassy, Vienna

Mr. P. A. Smidovich, Attaché, USSR Embassy, Vienna

Secretariat

Mrs. N. M. Frantsuzova, Interpreter, Ministry of Foreign Affairs

Mrs. T. M. Korolyuk, Verbatim reporter, Ministry of Foreign Affairs

UNITED ARAB REPUBLIC

Representatives

H.E. Mr. Abd-El-Hamid Nafeh Zade (*Chairman of the Delegation*), Ambassador, Chief of Protocol, Ministry of Foreign Affairs

H.E. Mr. Ahmed Moukhtar El Ghamraoui, Ambassador of the United Arab Republic in Bulgaria

H.E. Mr. Abdullah El-Erian, Minister Plenipotentiary, Director, Department of Legal and Treaty Questions, Ministry of Foreign Affairs

Alternate

Mr. Adel Fadel, Counsellor, Department of International Organizations and Conferences

Adviser

Mr. Fayez Nehlaoui, First Secretary of the Embassy of the United Arab Republic at Vienna

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Representatives

Mr. F. A. Vallat, C.M.G. (*Chairman of the Delegation*), Legal Adviser to the Foreign Office

Mr. T. H. Glasse, C.M.G., M.V.O., M.B.E., formerly Head of the Protocol Department of the Foreign Office

Mr. C. D. Lush, Assistant Legal Adviser to the Foreign Office

Advisers

Mr. G. Cunningham, Commonwealth Relations Office

Mr. G. Hart

Secretary

Mr. J. D. Lambert, M.B.E., Foreign Office

Secretarial staff

Miss F. M. Lindars

Miss E. J. Maddock

UNITED STATES OF AMERICA

Representative

Ambassador H. Freeman Matthews (*Chairman of the Delegation*)

Alternate

Mr. Warde M. Cameron (*Vice-Chairman of the Delegation*)

Advisers

Mr. Lewis Bowden

Mr. Ben Forman

Miss Betty Gough

Mr. Ernest Kerley

Miss Virginia Meekison

Mr. Milton Mitchell

Miss Sylvia Nilsen

URUGUAY

Representative

Mr. Nelson Iriniz Casas, Chargé d'Affaires *ad interim* of Uruguay in Austria

VENEZUELA

Representatives

Mr. Ramón Carmona (*Head of the Delegation*), Legal Adviser, Ministry of Foreign Affairs

Mr. Napoleón Giménez, Chargé d'Affaires of Venezuela at Vienna

VIET-NAM (REPUBLIC OF)

Representative

H.E. Mr. Ngo-Dinh-Luyen (*Head of the Delegation*), Ambassador of the Republic of Viet-Nam at the Court of St. James's

Members

Professor Nguyen-Quoc Dinh, Expert Adviser, Professor at the Faculty of Law, Caen

Mr. Tran Van Minh, Permanent Secretary of the Delegation of Viet-Nam to UNESCO, Paris

Mr. Dao-Huu-Tuong, Secretary of Embassy, London

YUGOSLAVIA

Representatives

H.E. Mr. Milan Bartoš (*Head of the Delegation*), Ambassador, Principal Legal Adviser, Department of Foreign Affairs

H.E. Mr. Lazar Lilic, Minister Plenipotentiary, Chief of Protocol, Department of Foreign Affairs

Mr. Dragutin Todoric, First Secretary, Department of Foreign Affairs

Secretariat

Mr. Dušan Ljubojevič (Secretary of the Delegation), First Secretary, Embassy of the Federal People's Republic of Yugoslavia at Vienna

Miss Slobodanka Stefanovič (Technical Secretary of the Delegation)

Mr. Vladimir Kemperle (Technical Assistant of the Delegation)

Specialized and related agencies

International Labour Organisation

Mr. C. W. Jenks, Assistant Director-General, International Labour Office,

Alternates

Mr. R. A. Métall, Chief, International Organizations Division

Mr. Josef Hammerl, Correspondent in Austria

Food and Agriculture Organization of the United Nations

Mr. G. Saint-Pol, Legal Counsel

United Nations Educational, Scientific and Cultural Organization

Mr. H. Saba, Division of External Liaison

International Atomic Energy Agency

Mr. Finn Seyersted (*Head of the Delegation*), Director, Legal Division

Mr. E. Nassinovsky, Legal Division

Mr. Y. Sokolov, Division of External Liaison

Mr. R. Gorgé, Legal Division

Mr. R. Rainer, Legal Division

Inter governmental organizations

League of Arab States

Mr. Farag Moussa, Second Secretary, Permanent Delegation of the League of Arab States to the European Office of the United Nations

Asian-African Legal Consultative Committee

Mr. Sachindra Chaudhuri

OFFICERS OF THE CONFERENCE AND ITS COMMITTEES

President of the Conference

Mr. Alfred Verdross (Austria)

Vice-Presidents of the Conference

The representatives of the following States: Argentina, Canada, Chile, China, Colombia, Czechoslovakia, France, Iran, Iraq, Italy, Liberia, Mexico, Nigeria, Philippines, Romania, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia

Committee of the Whole

Chairman: Mr. A. S. Lall (India)

Vice-Chairmen: Mr. H. Birecki (Poland), Mr. N. Iriniz Casas (Uruguay)

Rapporteur: Mr. W. Riphagen (Netherlands)

Credentials Committee

Members: Australia, El Salvador, Haiti, Mali, Philippines, Spain, Union of Soviet Socialist Republics, United Arab Republic, United States of America

Chairman: Mr. J. C. G. Kevin (Australia)

SECRETARIAT OF THE CONFERENCE

Mr. C. A. Stavropoulos (*Representative of the Secretary-General of the United Nations*), Legal Counsel of the United Nations

Dr. Yuen-li Liang (*Executive Secretary of the Conference*), Director, Codification Division, Office of Legal Affairs

Mr. G. Sandberg, Deputy Director, Codification Division, Office of Legal Affairs

Mr. N. Teslenko, Office of Legal Affairs

Mr. S. Torres-Bernardes, Office of Legal Affairs

Mr. J. S. Scott, Office of Legal Affairs

AGENDA [1]

1. Opening of the Conference by the Secretary-General
2. Election of the President
3. Adoption of the agenda
4. Adoption of the rules of procedure
5. Election of vice-presidents
6. Election of the Chairman of the Committee of the Whole
7. Appointment of the Credentials Committee
8. Organization of work
9. Appointment of the Drafting Committee
10. Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959
11. Consideration of draft articles on special missions in accordance with resolution 1504 (XV) adopted by the General Assembly on 12 December 1960
12. Adoption of convention(s) or other instruments and of the Final Act of the Conference
13. Signature of the Final Act and of the convention(s) or other instruments.

[1] Adopted by the Conference at its first plenary meeting.

RULES OF PROCEDURE [1]

CHAPTER I

Representation and credentials

Composition of delegations

Rule 1

The delegation of each State participating in the Conference shall consist of accredited representatives and such alternate representatives and advisers as may be required.

Alternates or advisers

Rule 2

An alternate representative or an adviser may act as a representative upon designation by the Chairman of the delegation.

Submission of credentials

Rule 3

The credentials of representatives and the names of alternate representatives and advisers shall be submitted to the Executive Secretary if possible not later than twenty-four hours after the opening of the Conference. The credentials shall be issued either by the Head of the State or government, or by the Minister for Foreign Affairs.

Credentials Committee

Rule 4

A Credentials Committee shall be appointed at the beginning of the Conference. It shall consist of nine members who shall be appointed by the Conference on the proposal of the President. It shall examine the credentials of representatives and report to the Conference without delay.

Provisional participation in the Conference

Rule 5

Pending a decision of the Conference upon their credentials, representatives shall be entitled provisionally to participate in the Conference.

CHAPTER II

Officers

Elections

Rule 6

The Conference shall elect a President and twenty Vice-Presidents, as well as the Chairman of the Committee of the Whole provided for in rule 47. These officers shall be elected on the basis of ensuring the representative character of the General Committee. The Conference may also elect such other officers as it deems necessary for the performance of its functions.

President

Rule 7

The President shall preside at the plenary meetings of the Conference.

Rule 8

The President, in the exercise of his functions, remains under the authority of the Conference.

Acting President

Rule 9

If the President is absent from a meeting or any part thereof, he shall appoint a Vice-President to take his place.

Rule 10

A Vice-President acting as President shall have the same powers and duties as the President.

Replacement of the President

Rule 11

If the President is unable to perform his functions, a new President shall be elected.

The President shall not vote

Rule 12

The President, or Vice-President acting as President, shall not vote, but shall appoint another member of his delegation to vote in his place.

CHAPTER III

General Committee

Composition

Rule 13

There shall be a General Committee of twenty-two members, which shall comprise the President and Vice-Presidents of the Conference, and the Chairman of the Committee of the Whole. The President of the Conference or, in his absence, a Vice-President designated by him, shall serve as Chairman of the General Committee.

Substitute members

Rule 14

If the President or a Vice-President of the Conference finds it necessary to be absent during a meeting of the General Committee, he may designate a member of his

[1] As adopted by the Conference at its second plenary meeting and incorporating the amendment to rule 48 adopted at the third plenary meeting.

delegation to sit and vote in the Committee. The Chairman of the Committee of the Whole shall, in case of absence, designate the Vice-Chairman of the Committee as his substitute. The Vice-Chairman shall not have the right to vote if he is of the same delegation as another member of the General Committee.

Functions

Rule 15

The General Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the co-ordination of its work.

CHAPTER IV

Secretariat

Duties of the Secretary-General and the secretariat

Rule 16

1. The Secretary-General of the Conference shall be the Secretary-General of the United Nations. He, or his representative, shall act in that capacity in all meetings of the Conference and its committees.

2. The Secretary-General shall appoint an Executive Secretary of the Conference and shall provide and direct the staff required by the Conference and its committees.

3. The secretariat shall receive, translate, reproduce and distribute documents, reports and resolutions of the Conference; interpret speeches made at the meetings; prepare and circulate records of the public meetings; have the custody and preservation of the documents in the archives of the United Nations; publish the reports of the public meetings; distribute all documents of the Conference to the participating governments and, generally, perform all other work which the Conference may require.

Statements by the secretariat

Rule 17

The Secretary-General or any member of the staff designated for that purpose may make oral or written statements concerning any question under consideration.

CHAPTER V

Conduct of business

Quorum

Rule 18

A quorum shall be constituted by the representatives of a majority of the States participating in the Conference.

General powers of the President

Rule 19

In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall declare the opening and closing of each plenary meeting of the Conference; direct the discussions at such meetings; accord the right to speak; put questions to the vote and announce decisions. He shall rule on points of order and, subject to these rules of procedure, have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the limitation of time to be allowed to speakers, the limitation of the number of times each representative may speak on any questions, the closure of the list of speakers or the closure of the debate. He may also propose the suspension or the adjournment of the debate on the question under discussion.

Speeches

Rule 20

No person may address the Conference without having previously obtained the permission of the President. Subject to rules 21 and 22, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be in charge of drawing up a list of such speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

Precedence

Rule 21

The Chairman or Rapporteur of a committee, or the representative of a sub-committee or working group, may be accorded precedence for the purpose of explaining the conclusion arrived at by his committee, sub-committee or working group.

Points of order

Rule 22

During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the President in accordance with the rules of procedure. A representative may appeal against the ruling of the President. The appeal shall be immediately put to the vote and the President's ruling shall stand unless overruled by a majority of the representatives present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.

Time-limit on speeches

Rule 23

The Conference may limit the time to be allowed to each speaker and the number of times each representative may speak on any question. When the debate is limited and a representative has spoken his allotted time, the President shall call him to order without delay.

Closing of list of speakers

Rule 24

During the course of a debate the President may announce the list of speakers and, with the consent of the Conference, declare the list closed. He may, however, accord the right of reply to any representative if a speech delivered after he has declared the list closed makes this desirable.

Adjournment of debate

Rule 25

During the discussion of any matter, a representative may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The President may limit the time to be allowed to speakers under this rule.

Closure of debate

Rule 26

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote. If the Conference is in favour of the closure, the President shall declare the closure of the debate. The President may limit the time to be allowed to speakers under this rule.

Suspension or adjournment of the meeting

Rule 27

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall be immediately put to the vote. The President may limit the time to be allowed to the speaker moving the suspension or adjournment.

Order of procedural motions

Rule 28

Subject to rule 22, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

(*a*) To suspend the meeting;

(*b*) To adjourn the meeting;

(*c*) To adjourn the debate on the question under discussion;

(*d*) For the closure of the debate on the question under discussion.

Basic proposal

Rule 29

The draft articles adopted by the International Law Commission shall constitute the basic proposal for discussion by the Conference.

Other proposals and amendments

Rule 30

Other proposals and amendments thereto shall normally be introduced in writing and handed to the Executive Secretary of the Conference, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Conference unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments, or motions as to procedure, even though these amendments and motions have not been circulated or have only been circulated the same day.

Decisions on competence

Rule 31

Subject to rule 22, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or amendment in question.

Withdrawal of motions

Rule 32

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any representative.

Reconsideration of proposals

Rule 33

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on the motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

Invitations to technical advisers

Rule 34

The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

CHAPTER VI

Voting

Voting rights

Rule 35

Each State represented at the Conference shall have one vote.

Required majority

Rule 56

1. Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

2. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting.

3. If the question arises whether a matter is one of procedure or of substance, the President of the Conference shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the President's ruling shall stand unless overruled by a majority of the representatives present and voting.

Meaning of the expression "Representatives present and voting"

Rule 37

For the purpose of these rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

Method of voting

Rule 38

The Conference shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President.

Conduct during voting

Rule 39

1. After the President has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connexion with the actual conduct of the voting. The President may permit representatives to explain their votes, either before or after the voting, except when the vote is taken by secret ballot. The President may limit the time to be allowed for such explanations.

2. For the purpose of this rule "voting" refers to the voting on each individual proposal or amendment.

Division of proposals and amendments

Rule 40

A representative may move that parts of a proposal or of an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

Voting on amendments

Rule 41

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Voting on proposals

Rule 42

If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Elections

Rule 42

All elections shall be held by secret ballot unless otherwise decided by the Conference.

Rule 44

1. If, when one person or one delegation is to be elected, no candidate obtains in the first ballot a majority of the representatives present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.

2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the balloting, restricted to them, shall continue in accordance with the preceding paragraph.

Rule 45

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot a majority of the representatives present and voting shall be elected. If the number of candidates obtaining such majority is less than the number of persons or delegations to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible person or delegation. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled, and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

Equally divided votes

Rule 46

If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected.

CHAPTER VII

Committees

Committee of the Whole

Rule 47

The Conference shall establish a single Committee of the Whole. The Committee of the Whole may set up sub-committees or working groups.

Drafting Committee

Rule 48

The Conference shall appoint, on the proposal of the General Committee, a drafting committee which shall consist of not more than twelve members. This committee shall be responsible for the final drafting and co-ordination of the instruments approved by the committees of the Conference.

Officers

Rule 49

Except in the case of the Chairman of the Committee of the Whole, each committee and sub-committee shall elect its own officers.

Quorum

Rule 50

A majority of the representatives on a committee or sub-committee shall constitute a quorum.

Officers, conduct of business and voting in committees

Rule 51

The rules contained in chapters II, V and VI above shall be applicable, *mutatis mutandis*, to the proceedings of committees and sub-committees, except that decisions of committees and sub-committees shall be taken by a majority of the representatives present and voting, but not in the case of a reconsideration of proposals or amendments in which the majority required shall be that established by rule 33.

CHAPTER VIII

Languages and records

Official and working languages

Rule 52

Chinese, English, French, Russian and Spanish shall be the official languages of the Conference. English, French and Spanish shall be working languages.

Interpretation from a working language

Rule 53

Speeches made in any of the working languages shall be interpreted into the other two working languages.

Interpretation from official languages

Rule 54

Speeches made in either of the other two official languages shall be interpreted into the three working languages.

Interpretation from other languages

Rule 55

Any representative may make a speech in a language other than the official languages. In this case he shall himself provide for interpretation into one of the working languages. Interpretation into the other working languages by the interpreters of the secretariat may be based on the interpretation given in the first working language.

Summary records

Rule 56

Summary records of the plenary meetings of the Conference and of the meetings of the General Committee and of the Committee of the Whole shall be kept by the secretariat. They shall be sent as soon as possible to all representatives, who shall inform the secretariat within five working days after the circulation of the summary record of any changes they wish to have made.

Language of documents and summary records

Rule 57

Documents and summary records shall be made available in the working languages.

CHAPTER IX

Public and private meetings

Plenary meetings and meetings of committees

Rule 58

The plenary meetings of the Conference and the meetings of committees shall be held in public unless the body concerned decides otherwise.

Meetings of sub-committees or working groups

Rule 59

As a general rule meetings of a sub-committee or working group shall be held in private.

Communiqué to the press

Rule 60

At the close of any private meeting a communiqué may be issued to the press through the Executive Secretary.

CHAPTER X

Observers for specialized agencies and intergovernmental bodies

Rule 61

1. Observers for specialized agencies and intergovernmental bodies invited to the Conference may participate, without the right to vote, in the deliberations of the Conference and the Committee of the Whole, upon the invitation of the President or Chairman, as the case may be, on questions within the scope of their activities.

2. Written statements of such specialized agencies and intergovernmental bodies shall be distributed by the secretariat to the delegations at the Conference.

ERRATUM

Page 13, paragraph 11 : the third line should read France, Liberia, etc., *instead of* Italy, Liberia, etc.

SUMMARY RECORDS OF THE PLENARY MEETINGS

FIRST PLENARY MEETING

Thursday, 2 March 1961, at 3 p.m.

Acting President: Mr. STAVROPOULOS
(Legal Counsel, representing the Secretary-General)
later
President: Mr. VERDROSS (Austria)

Opening of the Conference
[Agenda item 1]

1. The ACTING PRESIDENT welcomed the Federal President of the Republic of Austria and expressed to him and to the Government and people of Austria the thanks and appreciation of all participants in the Conference for the welcome they had been given. He acknowledged the Austrian Government's invitation that had brought the Conference to Vienna, the generous contribution which had made the Conference possible and the excellent facilities which would ensure its success.

2. He then declared the United Nations Conference on Diplomatic Intercourse and Immunities open.

On the proposal of the Acting President, the Conference observed a minute of silent prayer or meditation.

3. The ACTING PRESIDENT, on behalf of the Secretary-General of the United Nations, welcomed the delegations; the Secretary-General attached great importance to its work and deeply regretted his inability to be present in person.

4. The choice of Vienna as the site of the Conference recalled the Congress of Vienna. The Regulation of Vienna, adopted by that Congress in 1815 and amended three years later at Aix-la-Chapelle, had been intended to obviate for all time the difficulties so often caused by questions of precedence. It dealt in general and in detail with the classification of diplomatic agents and still had much authority.

5. Perhaps no subject was more familiar to international lawyers and diplomats than that of diplomatic intercourse and immunities. It was governed by " extensive state practice, precedent and doctrine " [1] going back to the very beginning of formal relations between nations; it had a vast literature, and an impressive body of jurisprudence had been built upon it.

6. In view of the long history of the institution of diplomacy, it was surprising that so little progress had been made at the intergovernmental level towards the codification of the rules of diplomatic intercourse and immunities. Between the Congress of Vienna and the time when the matter had been referred to the International Law Commission, there had been few projects and only one successful undertaking: the adoption by the Sixth International American Conference, at Havana in 1928, of a Convention regarding Diplomatic Officers,[2] regulating the duties, privileges and immunities of diplomatic agents and the commencement and termination of diplomatic missions.

7. He then outlined the stages in which the subject had been developed, starting with the International Law Commission's debate at its first session in 1949 (A/925) and culminating, in response to General Assembly resolution 685 (VII) of 5 December 1952, in the forty-five draft articles on diplomatic intercourse and immunities which had been adopted by the Commission at its tenth session in 1958 (A/3859) and which were to be the basis of the Conference's deliberations.

8. As was stated in its report to the General Assembly in 1958, the International Law Commission had decided that the draft articles it had adopted should be recommended to States Members of the United Nations with a view to the conclusion of a convention. On 7 December 1959 the General Assembly had decided (resolution 1450 (XIV)) that an international conference of plenipotentiaries should be convened for that purpose. The draft articles related only to permanent diplomatic missions; but the Commission had since undertaken a preliminary survey of " *ad hoc* diplomacy " and adopted three draft articles on special missions (A/4425, chapter III), which had been referred to the Conference by General Assembly resolution 1504 (XV) of 12 December 1960.

9. Commenting on methods of work, he drew attention to the provisional agenda (A/CONF.20/1/Rev.1), the provisional rules of procedure (A/CONF.20/2 and Corr.1), and the Secretary-General's memorandum on the method of work and procedures of the Conference (A/CONF.20/3). He also observed that the Asian-African Legal Consultative Committee had adopted, at Colombo in 1960, a final report on functions, privileges and immunities of diplomatic envoys or agents (A/CONF.20/6).

10. He stressed the importance of the Conference's task, and recalled that, in the words of General Assembly resolution 685 (VII), early codification of the international law on diplomatic intercourse and immunities was " necessary and desirable as a contribution to the improvement of relations between States ". The topic by its very nature permeated relations between States, for it was vitally important that they should be conducted with the minimum of friction and the maximum of goodwill and facility. Experience had shown that success in the achievement of that aim depended largely on the existence of established rules adapted to modern circumstances.

11. It was fitting that the Conference should meet in a city so closely associated with diplomatic history. The Secretary-General had asked him to convey his

[1] Article 15 of the Statute of the International Law Commission (A/CN.4/4), United Nations publication, Sales No. 49.V.5.

[2] League of Nations, Treaty Series, vol. CLV, p. 261; also reprinted in United Nations Legislative Series, *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities*, United Nations publication, Sales No. 58.V.3, p. 419.

sincere wish that the work of the coming weeks might meet with enduring success and contribute directly to the vital task of promoting peaceful relations among all peoples.

Address by the Federal President of the Republic of Austria

12. H.E. Dr. Adolf SCHAERF, Federal President of the Republic of Austria, expressed his pleasure that the General Assembly of the United Nations had decided to accept the invitation of the Austrian Government and to hold the important Conference on Diplomatic Intercourse and Immunities at Vienna. He warmly welcomed the delegations to Austria.

13. Vienna had for many years been closely connected with the history of diplomacy. The purpose of the Conference, attended by so many eminent representatives of States, was to complete, or at least to continue, the work begun at Vienna 146 years earlier. The seventeenth annex to the Final Act of the Congress of Vienna, signed on 19 March 1815, contained the regulation on the classification of diplomatic agents. The Regulation of Vienna had not only, as stated in the preamble, avoided the difficulties which had often arisen " by reason of claims to precedence between various diplomatic agents " and which until that time had even led to armed conflict; it had also improved relations between the great and small Powers by establishing an order of precedence for their diplomatic representatives based on what might be called democratic principles. The order of precedence of diplomats was no longer decided by the military or political power of the States they represented, or by alliances or the family relationships of sovereigns, but by seniority as determined by the order of their arrival in the receiving country. The classification of heads of missions as ambassadors, envoys and *chargés d'affaires* has survived, and only of late had it diminished somewhat in importance; but within the various diplomatic categories the principle of equal status for the representatives of greater or lesser Powers had been respected since the Congress of Vienna.

14. That principle had been embodied in the draft articles drawn up by the International Law Commission, which provided the basis for the Conference's discussions. The durability of the Regulation of Vienna was all the more remarkable since the political decisions of the Congress of 1815, based on the supremacy of the five great Powers then dominant in Europe, had not secured peace for long.

15. The expression " Diplomatic Corps " to designate all the ambassadors, envoys and chargés d'affaires accredited to a particular country had first been used at Vienna in the eighteenth century, before the Congress of Vienna. The Diplomatic Corps had acquired its first written legal recognition and rules in 1815 under the Regulation of Vienna, which had, however, been limited to order of precedence. The Conference had the task of adapting the customary law which had grown up on diplomatic intercourse and immunities to the needs of modern times and of formulating it in a convention. In every capital city, the totality of diplomatic representatives would in that way become a body with a code of rules.

16. The primary responsibility of each member of the Diplomatic Corps was, and would continue to be, to represent the interests of his country. Questions affecting all members of the Diplomatic Corps, whatever differences there might be in the policies of the countries they represented, would, however, be settled by the provisions on diplomatic intercourse and immunities to be approved by the Conference.

17. In establishing the principles governing the work of their diplomats, the governments of all countries should surely make a greater effort to take account of the aspirations shared by all peoples. All men and women in every part of the globe, of every colour, longed for peace and security. They abhorred the use or the threat of force for the achievement of selfish political ends. All men of goodwill were agreed that the task of feeding the hungry was more important than the struggle for power.

18. The great Powers should help the nations which had recently obtained their independence, or which would do so in the near future, to make good use of their new freedom. That was the conviction of all who were themselves independent or who were still struggling towards independence. The United Nations had done enduring work for the maintenance of peace, respect for human rights, and the freeing of many peoples from foreign rule and oppression. It was continuing its efforts with wonderful courage and zeal.

19. Austria believed unreservedly in the principles on which the United Nations Charter was based. For that reason, and not only because the Conference was a sequel to the Congress of 1815, the Austrian people were happy that their capital city had been chosen for a meeting designed to promote peace in the world.

20. On their behalf and on his own, he expressed his wish for the complete success of the United Nations Conference on Diplomatic Intercourse and Immunities.

21. The ACTING PRESIDENT thanked the Federal President of the Republic of Austria for his kind and thoughtful words and for honouring the Conference with his presence; he thanked the Austrian Government for the generous contribution and the administrative arrangements which had enabled the Conference to meet at Vienna.

The Federal President of the Republic of Austria withdrew.

Question of participation in the Conference

22. Mr. TUNKIN (Union of Soviet Socialist Republics) said that there had been grave violations of international law in the convening of the Conference. The purpose was to codify the international law on diplomatic intercourse and immunities, a subject of universal importance and interest which should be discussed by a conference in which all States were represented, so that the articles agreed upon should be universally accepted and applied;

but the Governments of the German Democratic Republic, the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam, and the Mongolian People's Republic had not been invited to participate. The argument that only States Members of the United Nations and of the specialized agencies could be invited was merely an attempt to cover discrimination against certain countries on the ground of their social system. The Western Powers were using the structure of the United Nations and of the specialized agencies to debar some socialist countries from taking part in their work. International law allowed no such discrimination. The Federal President of the Republic of Austria had referred in his address to the development of the principle of equality of all States. That was one of the fundamental principles of international law. The social structure of a country was not governed by international law, but was an internal matter for each State.

23. The most serious matter, however, was the continued flouting of reason and of international law by treating the representatives of the Kuomintang as representatives of China, a policy which harmed international co-operation and the cause of peace, to which all should be devoted. Only the Government of the People's Republic of China could appoint legitimate representatives of that great country.

24. Mr. MATTHEWS (United States of America) said that the remarks of the representative of the Union of Soviet Socialist Republics were out of order. The question raised in those remarks had been decided by the General Assembly in its resolution 1450 (XIV) convening the Conference. Under that resolution, " all States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice " had been invited to the Conference, and only representatives of those States could participate in its work. None of the regimes referred to by the representative of the Union of Soviet Socialist Republics was a Member of the United Nations or of a specialized agency, or a party to the Statute of the International Court of Justice. The Republic of China, however, was a member of the United Nations and the specialized agencies, and its government represented China in all organs of those organizations. That government alone, therefore, was qualified to represent China at the Conference.

25. Mr. BIRECKI (Poland) said that the absence of the legitimate representatives of China, which could not be represented by the Kuomintang, was a flagrant violation of a basic principle of international law. That the situation was illogical was demonstrated by the fact that a number of governments represented at the Conference recognized the Government of the People's Republic of China as the only legal government of that country.

26. His country, together with others, regretted that the United Nations was being used by certain States for discriminatory purposes. The important subject to be considered was of universal interest, and the discrimination applied to the Government of the People's Republic of China, as well as to the Governments of the German Democratic Republic, the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam and the Mongolian People's Republic, reduced the scope of the Conference.

27. Mr. REGALA (Philippines) appealed to delegates to cut short the discussion. The Conference had been convened to consider a highly technical subject and was not an appropriate forum for controversy. The question of the representation of China had been fully discussed in the General Assembly of the United Nations.

28. Mr. HU (China) said that the offensive and irrelevant remarks questioning the status of his delegation were inconsistent with the purpose for which the Conference had been convened. They were an attempt to make it a forum for political controversy into which his delegation, although it was the main target of the attack, did not wish to be drawn. The Conference had been convened under resolution 1450 (XIV) of the General Assembly. Clearly, any alteration in its composition would call for the amendment of that resolution, which was outside the competence of the Conference.

29. Mr. JEZEK (Czechoslovakia) said it was inadmissible that the place of the lawful representatives of China should be occupied by representatives of the Kuomintang group who did not represent anybody. The Government of the People's Republic of China, which was the only legal government of China, maintained diplomatic relations with nearly forty States and commercial relations with over eighty States; its exclusion from the Conference would harm the interests of all States, apart from being contrary to international law, the Charter of the United Nations and the interests of the Conference. The Government of the People's Republic of China could not be expected to ratify any instrument adopted by a conference to which its representatives were not admitted. Nor was there any possible justification for excluding representatives of the German Democratic Republic, the Mongolian People's Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam. Every State should be permitted to take part in the Conference, which was of worldwide scope.

30. Mr. LALL (India) said that his delegation did not intend to question the adequacy of the invitations to the Conference, which were governed by resolution 1450 (XIV), but considered that the Republic of China, which had been invited to the Conference, could only be represented by the effective government of China.

31. Mr. DANKWORT (Federal Republic of Germany) expressed regret at the statement made by certain delegations that the Conference should be attended by representatives of an area which was not a State in the legal sense, but merely the Soviet zone of Germany. The Conference was bound by the terms of resolution 1450 (XIV), and the statement was out of order.

32. Mr. BESADA (Cuba) said that the exclusion of representatives of certain countries was part of the imperialist policy of certain Powers and was detrimental to the authority of the United Nations. The Conference

should be attended by the representatives of all legitimate governments which had the support of their peoples.

33. Mr. WHANG (Republic of Korea) said that the Republic of Korea had come into being as a result of elections held in 1948 under the supervision of the United Nations. The authorities which controlled North Korea had no international standing and had defied the authority of the United Nations.

34. Mr. DIMITRIU (Romania) said that the absence of the lawful representatives of China and of the representatives of the German Democratic Republic, the Mongolian People's Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam would impair the authority of the Conference and of any instruments it might adopt.

35. Mr. PONCE MIRANDA (Ecuador) said that the Conference had no authority to broaden its composition; the suggestion that it should do so was out of order. The Conference had been convened to deal with a highly technical subject, and the proper forum for discussing the question of participation was the General Assembly.

36. Mr. NAFEH ZADE (United Arab Republic) said that the Conference, as a law-making conference entrusted with the tasks of codifying and developing general rules of diplomatic intercourse and immunities, should be of a truly universal character. It could not disregard the Chinese people, which formed one-fourth of the population of the world. His delegation therefore urged that the People's Republic of China should participate in the Conference.

37. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that the Conference was expected to prepare instruments which would strengthen international peace and security; he urged that the lawful representatives of China, and the representatives of the German Democratic Republic, the Mongolian People's Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam, should participate in its work, and that the representatives of the Kuomintang régime should be excluded. Under Article 2, paragraph 6, of the Charter, the United Nations was to ensure that non-member States should act in accordance with the principles of the Charter " so far as may be necessary for the maintenance of international peace and security ". In the light of that provision, it was clear that States not Members of the United Nations should participate in the preparation of international instruments on diplomatic intercourse.

38. Mr. SIRI (Albania) expressed his delegation's satisfaction that the Conference had a greater number of participants than previous conferences, but regretted the absence of the representatives of the German Democratic Republic, the Mongolian People's Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam. His delegation urged the exclusion from the Conference of the persons who were illegally occupying the place of China, and the seating of the representatives of the People's Republic of China, which maintained cordial relations with all its neighbours and had invariably followed a policy of peaceful coexistence with all nations.

39. Mr. SUBARDJO (Indonesia) expressed regret at the absence of representatives of China and a number of other countries from a conference which would deal with matters of concern to all States.

40. The ACTING PRESIDENT said that all the statements made would be reported in the official summary record.

Election of the President

[Agenda item 2]

41. The ACTING PRESIDENT invited nominations for the office of the President of the Conference.

42. Mr. GUNEWARDENE (Ceylon) nominated Mr. Alfred Verdross (Austria), Professor of International Law and former Rector of the University of Vienna, whose great qualities as a scholar and jurist eminently fitted him for the office.

43. Mr. VALLAT (United Kingdom) seconded the nomination of Mr. Verdross, an eminent member of the International Law Commission and President of the Institute of International Law.

44. Mr. RUEGGER (Switzerland) supported the nomination and said that the election of Mr. Verdross would be a fitting tribute to the Institute of International Law, which had played such an important part in the codification of international law, and to Austria, the host to the Conference.

45. Mr. TUNKIN (Union of Soviet Socialist Republics), supporting the nomination, said that Mr. Verdross, as a member of the International Law Commission, had taken an active part in the preparation of the draft before the Conference. He expressed his delegation's gratitude to the Austrian Government for its hospitality.

46. Mr. CASAS (Uruguay) said that he was particularly pleased, as a former student of Mr. Verdross at Vienna, to support his nomination.

47. Mr. de ERICE y O'SHEA (Spain) said that he had had the privilege of attending, in 1928, Mr. Verdross' lectures at the Academy of International Law at The Hague; his delegation supported the nomination.

48. Mr. MATINE-DAFTARY (Iran) said that he had worked for the past four years with Mr. Verdross in the International Law Commission, and warmly supported the nomination.

49. The ACTING PRESIDENT proposed that, since there was only one nomination, the secret ballot required under rule 43 of the provisional rules of procedure should be dispensed with.

It was so agreed.

Mr. Alfred Verdross (Austria) was elected President by acclamation, and took the Chair.

50. The PRESIDENT thanked the representatives for the honour they had done him, in which he saw an expression of their desire to pay tribute to his country, the Republic of Austria.

51. The Conference was called upon to continue the work of the Congress of Vienna on the codification of diplomatic law. Until the signing of the Regulation of Vienna on 19 March 1815, questions of diplomatic rank had caused much friction in international practice. The success of that regulation in bringing to an end the earlier difficulties raised by the precedence of diplomatic officers encouraged the hope that the " Second Congress of Vienna " would also be crowned with success.

52. However, the task before the Conference covered a much wider field of diplomatic law than the Regulation of Vienna. That regulation had merely settled the classification of the various groups of diplomatic agents and the rank of each class; the Conference was to codify the rules governing diplomatic intercourse and immunities in general. That immense task was, however, greatly facilitated by the International Law Commission's draft (A/CONF.20/4).

53. The rules governing diplomatic intercourse and immunities had a long history. From the inception of international relations, and in particular since the establishment of permanent missions, the need had been felt to give diplomats a special status in order to enable them to carry out their duties unhindered. International practice had thus evolved a number of special rules which constituted the most stable and least disputed part of customary international law. They proceeded so obviously from the need for the peaceful coexistence of States that even the great political, economic and social up eavals of the twentieth century had not broken them down.

54. Although those rules were firmly established, there were sound reasons for codifying them in an international convention rather than leaving them in their traditional setting of customary international law. First, they had grown essentially out of the practice of the European and American States. With the emergence of the new States of Africa and Asia, it was appropriate that a body of customary law which had evolved in an international community consisting only of the western world should be formally recognized by the new world-wide international community. Secondly, codification was never a mere restatement of customary law. Its aim was also to clarify customary rules — always somewhat vague and uncertain — and even to transform practices based on mere courtesy into rules of law, if the new needs of the world-wide international community so required. For example, in article 34 of the International Law Commission's draft it was proposed to transform certain privileges previously granted to diplomats by courtesy into rules of international law.

55. Custom, once the most important source of international law, had lost its predominance. The ever-increasing number of States with different civilizations, and the recent great political, economic and social changes called for a process more rapid than custom for the evolution of rules of law; customary rules could only emerge slowly and under relatively uniform and stable conditions. For that reason, conventions had become the main instrument for developing international law.

56. The Conference's conclusions would affect not only Europe but all mankind. He hoped it would produce satisfactory results capable of strengthening good international relations, and so help to maintain peace in the world.

Adoption of the agenda

[Agenda item 3]

The provisional agenda (A/CONF.20/1/Rev.1) was adopted.

The meeting rose at 5.45 p.m.

SECOND PLENARY MEETING

Friday, 3 March 1961, at 3.40 p.m.

President: Mr. VERDROSS (Austria)

Adoption of the rules of procedure (A/CONF.20/2 and Corr.1)

[Agenda item 4]

1. The PRESIDENT drew attention to the provisional rules of procedure prepared by the Secretariat (A/CONF. 20/2 and Corr.1).

2. Mr. VALLAT (United Kingdom) said that his delegation was grateful to the Secretariat for preparing the excellent provisional rules of procedure, but before the election of the vice-presidents, it wished to propose that rule 13 be amended to provide for a general committee of twenty-two members, instead of twenty-one. The purpose of the amendment was to facilitate agreement on the list of States from which the vice-presidents would be drawn.

3. Mr. MATINE-DAFTARY (Iran) supported the amendment.

4. Mr. BARNES (Liberia) had no objection to the proposed amendment, but pointed out that its adoption would involve the amendment of rule 6, to provide for the election of twenty, instead of nineteen, vice-presidents.

5. The PRESIDENT said that, if the proposed amendment to rule 13 was adopted, the necessary consequential changes in the other rules of procedure would be made automatically.

The amendment was adopted.

The provisional rules of procedure (A/CONF.20/2 and Corr.1), as amended, were adopted.

Election of the chairman of the Committee of the Whole

[Agenda item 6]

6. The PRESIDENT invited nominations for the office of chairman of the Committee of the Whole.

7. Mr. BIRECKI (Poland) proposed Mr. Arthur S. Lall (India), who had served his country in many important positions and had been connected with the work of the United Nations since the seventh session of the General Assembly. His knowledge and long experience would contribute most effectively to the success of the Conference.

8. Mr. MATINE-DAFTARY (Iran) and Mr. WESTRUP (Sweden) seconded the nomination.

9. The PRESIDENT proposed that, since there was only one nomination, the secret ballot required under rule 43 of the rules of procedure should be dispensed with.

It was so agreed.

Mr. Arthur S. Lall (India) was elected chairman of the Committee of the Whole by acclamation.

Election of vice-presidents

[Agenda item 5]

10. The PRESIDENT said that under rule 6 of the rules of procedure, as amended, the Conference was to elect twenty vice-presidents. Subject to the approval of the Conference, he proposed that the vice-presidents should be the representatives of the following States: Argentina, Canada, Chile, China, Colombia, Czechoslovakia, France, Iran, Iraq, Italy, Liberia, Mexico, Nigeria, Philippines, Romania, Spain, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America and Yugoslavia.

It was so agreed.

Appointment of the Credentials Committee

[Agenda item 7]

11. The PRESIDENT said that, under rule 4 of the rules of procedure, the Conference was to appoint a Credentials Committee consisting of nine members. Subject to the approval of the Conference, he proposed that the committee should consist of the representatives of the following States: Australia, El Salvador, Haiti, Mali, Philippines, Spain, Union of Soviet Socialist Republics, United Arab Republic and the United States of America.

It was so agreed.

Organization of work

[Agenda item 8]

12. The PRESIDENT proposed that the Conference should refer items 10 and 11 of the agenda, which constituted the main part of its work, to the Committee of the Whole.

It was so agreed.

The meeting rose at 4.10 p.m.

THIRD PLENARY MEETING

Thursday, 16 March 1961, at 10.30 a.m.

President: Mr. VERDROSS (Austria)

Election of the Drafting Committee

[Agenda item 9]

1. The PRESIDENT pointed out that under rule 48 of the rules of procedure, the Conference was to appoint, on the proposal of the General Committee, a drafting committee consisting of not more than nine members, which would be responsible for the final drafting and co-ordination of the instruments approved by the committees of the Conference. The General Committee [1] had decided to recommend that the membership of the drafting committee should be increased to twelve, to ensure wider representation. It proposed, therefore, that the Conference should amend the first sentence of rule 48 to read:

" The Conference shall appoint, on the proposal of the General Committee, a drafting committee which shall consist of not more than twelve members."

The amendment was adopted.

2. The PRESIDENT announced that, in accordance with rule 48 as amended, the General Committee proposed that the Conference should appoint a drafting committee with the following membership: Mr. Geraldo Eulalio do Nascimento e Silva (Brazil), Mr. R. S. S. Gunewardene (Ceylon), Mr. Hu Ching-yu (China), Mr. Warde N. Cameron (United States), Mr. Jacques Patey (France), Mr. E. K. Dadzie (Ghana), Mr. Endre Ustor (Hungary), Mr. Alfonso de Rosenzweig Diaz (Mexico), Mr. F. A. Vallat (United Kingdom), Mr. Abdullah El-Erian (United Arab Republic), Mr. Rudolf L. Bindschedler (Switzerland) and Mr. G. I. Tunkin (Union of Soviet Socialist Republics).

The drafting committee was appointed with that membership.

The meeting rose at 10.45 a.m.

---

[1] The General Committee, composed of the President of the Conference, the Vice-Presidents and the Chairman of the Committee of the Whole met once only, on 16 March 1961. At this meeting it recommended the amendment of rule 48 of the rules of procedure and the appointment of a drafting committee.

FOURTH PLENARY MEETING

Monday, 10 April 1961, at 3.15 p.m.

President: Mr. VERDROSS (Austria)

1. The PRESIDENT said it would be recalled that at the second plenary meeting (para. 12) the Conference had decided to refer to the Committee of the Whole the substantive items (items 10 and 11) on its agenda. The Committee had completed its work; and the draft convention, protocol and resolution which it had prepared, as recorded by the Drafting Committee, and an account of the proceedings in the Committee of the Whole were contained in the Committee's report (A/CONF.20/L.2 and Corr.1, L.2/Add.1, L.2/Add.2 and L.2/Add.3).[1]

2. He invited the Conference to deal first with item 11 of the agenda.

Consideration of draft articles on special missions in accordance with resolution 1504 (XV) adopted by the General Assembly on 12 December 1960 (item 11 of the agenda)

Draft resolution on special missions

3. The PRESIDENT asked the Conference to vote on the draft resolution on special missions (A/CONF.20/L.2/Add.3).

The draft resolution was adopted unanimously.[2]

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959 (item 10 of the agenda)

4. The PRESIDENT invited debate on the draft convention (A/CONF.20/L.2/Add.1 and Add.1/Corr.3).

Title

The title of the convention was adopted unanimously.

Preamble

5. The PRESIDENT, inviting the Conference to discuss the preamble, drew attention to an amendment submitted by the United Kingdom (A/CONF.20/L.3).

6. Mr. VALLAT (United Kingdom) said his delegation had submitted its amendment because it believed it important to make clear that the Conference had not met to create privileges for the benefit of members of the diplomatic staff, and to say so explicitly in order to forestall reactions from parliaments and public opinion.

7. Mr. CARMONA (Venezuela) supported the United Kingdom amendment, the idea of which was already implied in the draft. The Conference would, however, be well advised to guard against possible misinterpretations of the convention.

8. Mr. MATINE-DAFTARY (Iran) also considered that the United Kingdom delegation had drawn attention to an essential matter. The International Law Commission had never lost sight during its work of the functional necessity theory on which the status of diplomatic staff was based. In laying down that diplomats enjoyed a privileged status, it had not in any way intended to confer privileges upon them, but to facilitate the tasks of their mission.

9. Mr. EL-ERIAN (United Arab Republic) agreed with the previous speakers. In his opinion the amendment was completely in harmony with the spirit of the Convention.

The United Kingdom amendment (A/CONF.20/L.3) was adopted by 68 votes to none, with 4 abstentions.

ARTICLE 1

10. Mr. GASIOROWSKI (Poland) said that the terminology of article 1 was not uniform. It spoke sometimes of " the staff " and sometimes of " the members of the staff ". The same inconsistency existed between article 1 and, for instance, articles 7, 8 and 36. To make the text consistent, therefore, the expressions in article 1, subparagraphs (*d*), (*f*) and (*g*) " diplomatic staff ", "administrative and technical staff ", and " service staff " should each be preceded by the words " the members of the ". He thought those corrections desirable because article 1 was formal and defined the terms used in the Convention.

11. The PRESIDENT suggested that the Polish representative's proposal should be referred to the Drafting Committee.

It was so agreed.

Article 1 was adopted unanimously, subject to drafting changes.[3]

ARTICLE 2

Article 2 was adopted unanimously.

ARTICLE 3

12. Mr. CARMONA (Venezuela) thought that article 3, paragraph 2, as it stood did not reflect the decision taken by the Committee of the Whole at its 9th meeting to adopt the principle of the Spanish delegation's amendment (A/CONF.20/C.1/L.30) providing that a diplomatic mission could perform consular functions " if the receiving State does not expressly object thereto ". The draft before the Conference did not mention either the receiving State's objection, or its agreement or consent as the Italian delegation had proposed. Venezuela was one of the countries which did not allow diplomatic and consular functions to be combined. The draft provision

[1] For the summary records of the 1st to 41st meetings of the Committee of the Whole, see pp. 55 to 240, below.

[2] The resolution was subsequently circulated in an addendum to the Final Act of the Conference (A/CONF.20/10/Add.1). See also vol. II.

[3] The Drafting Committee incorporated the Polish representative's amendments in its final draft of article 1.

under discussion might be construed to mean that the receiving State was obliged, or virtually obliged, to agree to the combination of the two functions. It was essential that the receiving State should have the right to give or refuse its permission. His delegation gave notice of its government's reservations on the point if the Conference did not recognize that right.

13. The PRESIDENT observed that, after adopting the substance of the Spanish amendment, the Committee of the Whole had referred it to the Drafting Committee. He asked Mr. de Rosenzweig-Diaz to explain the matter to the Conference on behalf of the Drafting Committee.

14. Mr. de ROSENZWEIG DIAZ (Mexico), speaking as a member of the Drafting Committee, recalled that several statements had been made on the matter in the Committee of the Whole. The delegation of Mexico, for instance, had defended the view that a diplomatic mission should not be prevented from exercising consular functions. The Drafting Committee had been asked to devise a formula which would take into account all the views expressed in the discussion. The Committee of the Whole had wished to avoid implying that the receiving State was obliged to accept the combination of diplomatic and consular functions. The Drafting Committee had therefore taken account of the principle of the Spanish amendment without ignoring the discussion.

15. Mr. AGO (Italy) paid a tribute to the Drafting Committee, which had carried out a difficult task; but he could not accept the provision as drafted. The Spanish delegation's amendment would allow a diplomatic mission to perform consular functions if the receiving State had no objection. The International Law Commission itself had considered that the right context for such a provision would be a convention on consular intercourse and immunities. The Drafting Committee's text did not say anything about an agreement between the two States, and it was to be feared that a diplomatic mission might from one day to the next begin to carry out consular functions without asking leave of the receiving State. For those reasons, and also because opinions were divided, it would be better to delete paragraph 2.

16. Mr. GLASER (Romania) said there was no reason for the restriction of a long-established practice in the matter of the exercise of consular functions by diplomatic missions. For example, a mission which granted a visa acted in conformity with its function, which was to represent the sending State in the receiving State. Besides, in granting a visa to a citizen of the receiving State, the mission was performing the function of promoting friendly relations between the two States. The fact that the law of some countries, Venezuela for instance, forbade the combination of diplomatic and consular functions, did not mean that the rules applied elsewhere should be made more rigorous. Indeed, there was nothing in the convention to forbid the exercise by a diplomatic mission of so-called consular functions. It would be wrong to reopen the discussion or to reverse the decision of the Committee of the Whole; and his delegation would vote for paragraph 2 as drafted.

17. Mr. TUNKIN (Union of Soviet Socialist Republics) said there were two distinct problems. The first was a matter of procedure and concerned the limits of the Drafting Committee's task. The Committee of the Whole had asked the Drafting Committee to settle the text of the new provision in the light of the discussions. The Committee had agreed that a diplomatic mission could exercise consular functions, and the Drafting Committee has taken full account of the recommendations. It had therefore not exceeded its terms of reference and had found a satisfactory solution.

18. Secondly, there was the problem of substance. It had been generally agreed that current practice authorized the combination of diplomatic and consular functions. It was customary for a diplomatic mission to issue visas and certify documents. Some countries insisted on application for permission in exceptional cases — for example, for a consul to appear as representative in a lawsuit — but those provisions did not in the least affect the principle generally accepted.

19. The provision was carefully worded, and the Soviet delegation would vote for it.

20. Mr. MATINE-DAFTARY (Iran) moved the closure of the debate in order to avoid a new discussion on an already much-debated question, and also asked for a separate vote on article 3, paragraph 2.

21. Mr. BOUZIRI (Tunisia) opposed the motion for the closure. The provision was important, and discussion on it had only just begun. He considered that article 3, paragraph 2, should be retained as drafted, but he also thought that all delegations should be entitled to express their opinions freely.

22. Mr. DADZIE (Ghana) also opposed the motion.

The Iranian representative's motion was rejected by 33 votes to 14, with 19 abstentions.

23. Mr. AGO (Italy) said that the idea expressed in article 3, paragraph 2, had been debated at length in the International Law Commission in connexion with its draft on consular intercourse and immunities (A/4425) and the Commission had reserved a decision pending the receipt of the comments of governments.

24. The Romanian and Soviet representatives had said that there was no need to modify current practice. It was true that diplomatic missions often performed consular functions. But there should be agreement on what consular functions were. Some of them came within the scope of ordinary diplomatic functions, and hence this exercise by diplomatic missions should not usually require the special permission of the receiving State; but others did not come within the scope of diplomatic functions, and consequently this exercise by diplomatic missions would require that State's consent. Paragraph 2 went far beyond established practice, and most States would probably be unable to accept it.

25. Mr. de ERICE y O'SHEA (Spain) recalled that paragraph 2 had its origin in an amendment submitted by his delegation. The convention should certainly contain a provision endorsing established practice. The

Spanish amendment had contained a proviso which the Drafting Committee, concerned to express the idea as tersely as possible, had not seen fit to mention. However, the idea was implied in paragraph 2 if read in conjunction with paragraph 1, and hence his delegation would not oppose paragraph 2.

26. Mr. KRISHNA RAO (India) said that paragraph 2 was a compromise which fully satisfied his delegation.

27. Mr. DADZIE (Ghana) said that, while not opposed to paragraph 2, he was somewhat apprehensive about its results, for paragraph 1, enumerating the functions of a diplomatic mission, gave the impression that all consular functions were excluded. Those apprehensions might perhaps be removed if paragraph 2 became a new sub-paragraph of paragraph 1. Furthermore, his delegation suggested that the words " in the present article " should replace the words " of the present Convention ".

28. Mr. BOLLINI SHAW (Argentina) said he had no objection to a provision in article 3 stating that a diplomatic mission could perform consular functions. Such a provision would be in keeping with current practice. However, to forestall reservations on the part of States embarrassed by that provision, he proposed that the words " in the absence of objection by the receiving State " should be added in paragraph 2.

29. Mr. RUEGGER (Switzerland) proposed that, in order to facilitate the signature of the convention by some States, article 3, paragraph 2, should be amended to read: " Nothing in the present article shall be construed as preventing the performance, by mutual consent, of consular functions by diplomatic missions."

30. Mr. YASSEEN (Iraq) suggested that the Conference should refer paragraph 2 back to the Drafting Committee with instructions to revise it in terms stressing the need for the consent or absence of objection of the receiving State.

31. Mr. GLASER (Romania) said there were two schools of thought. The first took the view, reflected in the instructions given by the Committee of the Whole to the Drafting Committee, that, in accordance with existing practice and without prejudice to the rules of international law, a diplomatic mission might perform consular functions. The other, represented by the Italian representative, held that a diplomatic mission should be allowed to perform consular functions only with the consent of the receiving State. Despite the good intentions of its author, the Swiss proposal implying the consent of the receiving State did not reconcile those two conflicting views. The Romanian delegation preferred the former.

32. Mr. NGUYEN-QUOC DINH (Viet-Nam) said that in the Committee of the Whole his delegation had supported the Spanish proposal, adopted by the Committee, for an additional sub-paragraph to paragraph 1. According to that sub-paragraph a diplomatic mission might perform consular functions unless there was express objection by the receiving State. His delegation was rather surprised not to find that idea of the consent of the receiving State, which it approved and which was in conformity with the accepted rules of international law, reproduced in the Drafting Committee's text. Hence it supported the proposal made by the representative of Iraq that paragraph 2 should be referred back to the Drafting Committee for redrafting on the following lines: " Nothing in the present article shall be so construed as to prevent the performance, in accordance with the existing rules, of consular functions by a diplomatic mission."

33. Mr. VALLAT (United Kingdom) opposed the proposal for referring paragraph 2 back to the Drafting Committee. The provision was perfectly clear; it did not conflict with any opinion expressed and did not affect existing practice in international law.

The proposal of the representative of Iraq was rejected by 53 votes to 13 with 3 abstentions.

34. Mr. GHAZALI (Federation of Malaya) proposed for paragraph 2 the following words incorporating the ideas expressed by the representatives of Switzerland and Ghana: " Nothing in the present article shall be construed so as to prevent the performance by mutual consent of consular functions by a diplomatic mission."

35. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the proposal of the Federation of Malaya might lead to confusion. Some consular functions were already mentioned in paragraph 1 as forming part of the functions of a diplomatic mission, and there was no need at all to lay down a new rule of law requiring the consent of the receiving State for the performance of consular functions. The best course would be to continue the existing practice.

36. Mr. RUEGGER (Switzerland) said that his proposal had been meant to speed up the discussion, not to prolong it. Since the preamble stated that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the Convention, he agreed to amend his original proposal to read: " Nothing in the present article shall be so construed as to prevent the performance, in accordance with existing customary international law, of consular functions by diplomatic missions."

37. Mr. BARTOŠ (Yugoslavia) cited article 2 of the draft on consular intercourse and immunities (A/4425) under which the establishment of consular relations was to take place by mutual consent of the States concerned. In its commentary on that article the International Law Commission noted that consular relations might be established between States which did not maintain diplomatic relations; and it had deferred its decision on the provision proposed by the Special Rapporteur stating that the establishment of diplomatic relations included the establishment of consular relations. Opinion in the Commission was therefore divided on that point. However, in a spirit of conciliation the Yugoslav delegation would support the second proposal by Switzerland, which represented an acceptable compromise.

38. Mr. RIPHAGEN (Netherlands) pointed out that no delegation had proposed any change in the existing

practice governing the performance of consular functions by a diplomatic mission. Since, furthermore, the preamble expressly stated that the rules of customary international law should continue to govern questions not expressly regulated in the Convention, the best course would clearly be to delete paragraph 2. The Netherlands delegation joined the representative of Iran in requesting a separate vote on that paragraph.

39. Mr. BOUZIRI (Tunisia) moved that the vote on paragraph 2 be postponed. The authors of the various oral amendments would then be able, if necessary, to re-draft them, and the delegations would also be able to study at leisure the various aspects of the problem.

The motion was rejected by 30 votes to 12, with 22 abstentions.

40. The PRESIDENT put to the vote the Argentine proposal (see para. 28 above) that the words " In the absence of objection by the receiving State " should be added in paragraph 2.

The proposal was rejected by 34 votes to 23, with 15 abstentions.

41. The PRESIDENT put to the vote the Swiss proposal to insert, between the words " the performance " and " of consular functions ", the words " in accordance with existing customary international law ".

There were 26 votes for and 25 against the proposal, with 18 abstentions. Since the proposal did not obtain the required two-thirds majority, it was rejected.

42. The PRESIDENT put to the vote paragraph 2 as it stood in the draft convention.

Paragraph 2 was adopted by 51 votes to 7, with 14 abstentions.

Article 3 as a whole was adopted by 67 votes to none, with 4 abstentions.

ARTICLE 4

Paragraph 1

Paragraph 1 was adopted unanimously.

Paragraph 2

43. Mr. VALLAT (United Kingdom) said that in Committee his delegation had argued that paragraph 2 was useless and dangerous. On the one hand, since the convention recognized the receiving State's right to refuse the agrément, that State could clearly exercise the discretionary power without giving reasons. On the other hand, since article 4, paragraph 2, and article 8, paragraph 1, provided that the receiving State was not obliged to give reasons, the inference could be drawn that it had to give reasons in any case where it was not expressly stated that it was under no obligation to give reasons. That interpretation could be placed especially on article 5, paragraph 1; article 6; and article 7, paragraphs 2 and 3. His delegation would therefore vote against article 4, paragraph 2.

44. Mr. BOLLINI SHAW (Argentina) recalled that paragraph 2 had its origin in an amendment submitted by his delegation (A/CONF.20/C.1/L.37). It was universally recognized in practice that the receiving State was not obliged to give reasons for its refusals, and the draft convention merely codified that practice. Article 9, paragraph 1, did not contain a provision analogous to that in article 4 for the simple reason that it was complementary to that article. In addition, Argentina had submitted in committee an amendment to article 6 providing that the receiving State was not obliged to give reasons for its refusal (A/CONF.20/C.1/L.38); but that amendment had not been put to the vote. Reserving his right to raise the matter again in connexion with article 6, he pointed out that approval of appointments of attachés came under article 8, which specified that the receiving State was not obliged to explain its decision. Unlike that of the United Kingdom, his delegation considered that article 4, paragraph 2, was in complete harmony with the other articles of the Convention.

Paragraph 2 was adopted by 41 votes to 17, with 11 abstentions.

Article 4 as a whole was adopted.

ARTICLE 5

45. Mr. GOLEMANOV (Bulgaria) requested a separate vote on paragraph 3.

Paragraph 1

46. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the phrase " unless there is express objection by any of the receiving States " might be interpreted to mean that the consent of each receiving State concerned was necessary. That interpretation would give rise to difficulties which had not yet occurred in practice, and it would therefore be wise to delete the phrase, on which the Soviet delegation would therefore ask for a separate vote.

The Conference decided by 54 votes to 17, with 3 abstentions, to retain the phrase in question.

Paragraph 1 was adopted by 60 votes to none, with 11 abstentions.

Paragraph 2

47. Mr. MELO LECAROS (Chile) asked for a separate vote on the words " ad interim ", which he thought should be omitted. Like many other governments, that of Chile considered that no distinction existed between chargés d'affaires, since they all acted as heads of mission pending the appointment of an ambassador or minister. Although the International Law Commission had differentiated between the chargé d'affaires mentioned in article 13 and that mentioned in article 17, the distinction was unreal, since, as the Spanish representative had pointed out in the Committee of the Whole, their functions were the same. But, according to a fundamental principle of law, things were what they were, not what they were said to be. It could no doubt be argued that the distinction enabled States to place their chargés d'affaires in the category which suited them best. But that argument only held good if it was in accordance with the spirit of the convention, which it was not.

During the debate in the Committee of the Whole on the abolition of the class of ministers plenipotentiary, it had been pointed out that that abolition would accord with the trend towards a single class of permanent heads of mission — that of ambassadors. Attention had been drawn at that time to the need to respect the principle of the equality of States. But the maintenance of different classes of heads of mission would be discrimination between States, and endorsement in the convention of a distinction between two categories of chargés d'affaires which were in fact only one would likewise be a mistake.

48. Moreover, in the Committee of the Whole some speakers had maintained that there was a difference between a chargé d'affaires accredited by his government and one appointed by the head of mission. That argument, however, was not very convincing, since the method of appointment was a purely secondary matter.

49. In the opinion of the Chilean delegation the words " ad interim " should be deleted, because by differentiating between chargés d'affaires they might lead to discrimination between States and thus to confusion. The deletion would not in any way change the practice of States. Those which appointed or received permanent chargés d'affaires or chargés d'affaires en pied could continue to do so; while there would be no problem for States which, like Chile, recognized only one category of chargé d'affaires. Thus the convention would be acceptable to both groups of States.

The Conference decided by 53 votes to 9, with 8 abstentions, to retain the words " ad interim ".

Paragraph 3

50. Mr. MARESCA (Italy) said that paragraph 3 was based on an amendment submitted by Colombia (A/CONF.20/C.1/L.36) at the tenth meeting of the Committee of the Whole. In the opinion of the Italian delegation it should be laid down that the sending State was bound to notify the receiving State when appointing its head of mission or a member of the diplomatic staff of its mission to represent it in an international organization. It did not propose any change in paragraph 3, but wished to place on record its interpretation of that paragraph.

51. Mr. de VAUCELLES (France) said his delegation had voted for the Colombian amendment in Committee, but had later taken the view that the proposed provision was rather too restrictive because it only covered international organizations which had their headquarters in the receiving State. The Drafting Committee had enlarged the original text, so that it was important to consider the receiving State's possible reactions. Conceivably, the sending State might appoint as its representative in some international organization a head of mission accredited to a State which considered, rightly or wrongly, that the organization in question was acting against its interests. Accordingly, he proposed that in paragraph 3, between " may " and " act as representative ", the words " in the absence of any objection by the receiving State " should be inserted. It did not seem necessary to obtain the prior consent of the receiving State; but that State should at least be notified of the decision of the sending State.

52. Mr. RUEGGER (Switzerland) supported the French amendment. If that amendment should be rejected, the Italian representative's interpretation of paragraph 3 would be on record. The relations between international organizations and the States in which they had their headquarters were excellent; but it was often necessary in practice that a decision of a sending State to appoint a head of mission or a member of its diplomatic staff to represent it in an international organization should be subject to the agreement of the receiving State. In his delegation's view, the customary consultations between the sending and the receiving State should be preserved, because they were most useful, especially on the appointment of a permanent representative, and even more so if a head of mission was appointed to perform his functions in a city other than that in which the diplomatic mission had its seat. Moreover, that practice derived from customary international law, which was expressly safeguarded in the preamble.

53. Mr. AGUDELO (Colombia) thanked the delegations which had supported his delegation's amendment and appreciated the way in which the Drafting Committee had interpreted it. His delegation saw no difficulty in supporting the Italian suggestion, and thought, indeed, that it should be incorporated in paragraph 3. The French amendment would then be superfluous, since prior notification of the appointment of a chief of mission to an international organization would imply the tacit or express consent of the receiving State.

The French amendment was rejected by 32 votes to 27, with 11 abstentions.

Paragraph 3 was adopted by 55 votes to 2, with 15 abstentions.

Article 5 as a whole was adopted by 72 votes to none, with 1 abstention.

The meeting rose at 6.25 p.m.

FIFTH PLENARY MEETING

Tuesday, 11 April 1961, at 10 a.m.

President: Mr. VERDROSS (Austria)

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959 (item 10 of the agenda) *(continued)*

1. The PRESIDENT invited the Conference to continue its debate on the draft convention (A/CONF.20/L.2/Add.1).

ARTICLE 5 *bis*

2. Mr. BARTOŠ (Yugoslavia) said that his delegation had reservations concerning article 5 *bis*, since it did

not think that a principle which had not been submitted to governments for comment or recommended by the International Law Commission should be introduced into the convention without adequate consideration. The provision would give rise to a number of serious difficulties in practice, as he had said before in the Committee (12th meeting, para. 68). He therefore requested a roll-call vote on article 5 *bis*.

Panama, having been drawn by lot by the President, was called upon to vote first.

In favour: Philippines, Portugal, Saudi Arabia, Senegal, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Union of South Africa, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Argentina, Austria, Belgium, Brazil, Burma, Canada, Ceylon, China, Congo (Leopoldville), Denmark, Finland, France, Federal Republic of Germany, Ghana, Guatemala, Holy See, Iraq, Ireland, Japan, Korea, Lebanon, Liberia, Libya, Liechtenstein, Luxembourg, Morocco, Netherlands, Nigeria, Norway, Pakistan.

Abstaining: Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Viet-Nam, Yugoslavia, Australia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Chile, Colombia, Cuba, Czechoslovakia, Ecuador, Ethiopia, Federation of Malaya, Hungary, India, Indonesia, Iran, Israel, Italy, Mexico.

The result of the vote was 44 in favour and none against, with 25 abstentions.

Article 5 bis *was adopted, having obtained the required two-thirds majority.*

ARTICLE 6

3. Mr. BOUZIRI (Tunisia), introducing his delegation's amendment to article 6 (A/CONF.20/L.8), said that the last sentence of article 6 was unacceptable. Military, naval and air attachés formed a very limited and special category of mission staff. Their appointment was not as frequent as might be inferred from the text of article 6. They were set apart from the other staff of the mission by their training, uniform and functions, and by the close link they retained with the armed forces; their presence was not consistent with the prevailing aspirations of all peoples for peace, and the efforts being made to secure disarmament.

4. The provision that the receiving State might require the names of attachés to be submitted beforehand " for its approval " meant that, although it might refuse to approve a number of names, it could not in the last resort refuse to accept the appointment of an attaché. Thus the principle of the appointment of attachés was implicitly accepted, although many countries were opposed to it or could only accept it with considerable reservations. The sovereignty and freedom of the receiving State were infringed, since it had to ask for the names to be submitted, whereas, on the contrary, the sending State should have to request consent.

5. Accordingly, under his delegation's amendment, the appointment of such attachés required the prior express consent of the receiving State. That formula would stress the exceptional character of their appointment and would be in harmony with the convention and its preamble, which referred to the maintenance of international peace and security and the development of friendly relations among nations.

6. Mr. BOLLINI SHAW (Argentina) said he agreed to a great extent with the representative of Tunisia. He thought, however, that the last sentence of article 6 did not reflect the real intention of the Committee of the Whole; to provide simply that the receiving State might require the names to be submitted " for its approval " left no option but to approve the appointments. He therefore proposed that the words " for its approval " should be replaced by the words " in order that it may give or refuse its consent ".

7. The PRESIDENT called for a vote on the Tunisian amendment.

At the request of the representative of Libya a vote was taken by roll-call.

Senegal, having been drawn by lot by the President, was called upon to vote first.

In favour: Senegal, Spain, Tunisia, United Arab Republic, Venezuela, Viet-Nam, Yugoslavia, Congo (Leopoldville), Ethiopia, Ghana, India, Indonesia, Iran, Iraq, Italy, Lebanon, Liberia, Libya, Morocco, Philippines, Saudi Arabia.

Against: Sweden, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, China, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, France, Federal Republic of Germany, Hungary, Ireland, Israel, Korea, Luxembourg, Norway, Poland, Romania.

Abstaining: Switzerland, Thailand, Turkey, Argentina, Australia, Austria, Burma, Cambodia, Ceylon, Chile, Colombia, Dominican Republic, Federation of Malaya, Guatemala, Holy See, Japan, Liechtenstein, Mexico, Netherlands, Nigeria, Pakistan, Panama, Portugal.

The Tunisian amendment was rejected by 27 votes to 21, with 23 abstentions.

8. The PRESIDENT put to the vote the amendment proposed by the representative of Argentina.

The result of the vote was 29 in favour and 18 against, with 20 abstentions.

The amendment was rejected, having failed to obtain the required two-thirds majority.

Article 6 was adopted without amendment, by 61 votes to 3, with 5 abstentions.

ARTICLE 7

9. Mr. MATINE-DAFTARY (Iran) requested that separate votes be taken on the words " in principle " in paragraph 1, and on paragraphs 2 and 3.

It was decided by 50 votes to 4, with 13 abstentions, to retain the words " in principle ".

Paragraph 1 was adopted without amendment, by 63 votes to 1, with 3 abstentions.

Paragraph 2 was adopted by 66 votes to 3, with no abstentions.

Paragraph 3 was adopted by 60 votes to none, with 3 abstentions.

Article 7 as a whole was adopted without amendment by 70 votes to 1, with no abstentions.

ARTICLE 8

Paragraph 1 was adopted unanimously without discussion.

Paragraph 2 was adopted without discussion by 68 votes to none, with 1 abstention.

Article 8 as a whole was adopted.

ARTICLE 9

10. Mr. OJEDA (Mexico) stated that his delegation accepted the words " or such other ministry as may be agreed ", which appeared after the words " Ministry for Foreign Affairs " in article 9, paragraph 1, and in several other articles of the draft convention, solely and exclusively because assurances has been given in the Committee of the Whole (16th meeting, para. 7) that the only purpose of those was to allow for an established practice by which the diplomatic agents of the Commonwealth countries in London dealt not with the Foreign Office, but with another ministry specially responsible for relations with those countries.

11. Mr. AGO (Italy) introduced the amendment submitted jointly by his delegation and those of Brazil, Italy, Liberia, Libya, Morocco, the Philippines and Tunisia (A/CONF.20/L.11), providing that the Foreign Ministry of the receiving State should be notified of the appointment of members of missions and not merely of their arrival. That provision would emphasize the provision in article 8, paragraph 1, that a person could be declared *non grata* or not acceptable before his arrival in the receiving State; it would obviously be more satisfactory in every way if any objections were made when the person in question was appointed and not after he had already arrived in the receiving State. Moreover, without the amendment it would be difficult for the receiving State to exercise its right of objection.

12. Mr. CARMONA (Venezuela) requested that separate votes be taken on sub-paragraphs (*a*), (*b*), (*c*) and (*d*) of paragraph 1, on which opinions had differed widely in the Committee of the Whole. He had no objection to sub-paragraphs (*a*) and (*b*) but had certain doubts regarding the application of sub-paragraph (*c*). With regard to sub-paragraph (*d*) — which was in effect the second part of the original amendment by Czechoslovakia (A/CONF.20/C.1/L.49) — he thought that the adoption of such a provision was potentially dangerous. While in itself inoffensive, it was open to abuse by countries which did not respect international usage. The inquisitorial practices under the German nazi and Italian fascist régimes provided convincing examples. He was making his request so that delegations which shared his views could put them on record without prejudice to their general approval of the article.

13. Mr. MATINE-DAFTARY (Iran) supported the joint amendment. He suggested the expression " members of the staff of the mission " should be substituted for the expression " members of the mission " which, as defined in article 1 (*b*), included the head of the mission, notification of whose appointment was already provided for in articles 4 ans 12.

14. Mr. AGO (Italy) thanked the representative of Iran and accepted his suggestion.

15. The PRESIDENT put to the vote article 9, paragraph 1 (*a*) as amended by the joint proposal (A/CONF.20/L.11) and by the representative of Iran.

Paragraph 1(a) as amended was adopted by 43 votes to 13, with 9 abstentions.[1]

Paragraph 1 (b) was adopted unanimously.

Paragraph 1 (c) was adopted by 65 votes to none, with 4 abstentions.

Paragraph 1 (d) was adopted by 58 votes to 3, with 3 abstentions.

Paragraph 2 was adopted by 45 votes to 1, with 19 abstentions.

Article 9, as amended, was adopted by 68 votes to none, with 1 abstention.

ARTICLE 10

16. Mr. TUNKIN (Union of Soviet Socialist Republics) moved that a separate vote be taken on the words " by it " in paragraph 1 (" . . . the receiving State may require that the size of the mission be kept within limits considered by it to be reasonable and normal . . . "). Although the receiving State should be allowed some say in the matter, the mission was an organ of the sending State, and it was the sending State which should be mainly responsible for deciding on the size of its own mission. Therefore the deletion of the words " by it " would remove the possibility of misinterpretation.

17. Mr. BOUZIRI (Tunisia) was opposed to a separate vote. The question of substance had been debated at length in the Committee of the Whole, and he did not find the arguments for the deletion of the words in question very convincing. He strongly believed that the final decision should be left to the receiving State, on whose territory the mission was established; otherwise there was no safeguard against an excessive burden being imposed by the unreasonable demands of a sending State. It was essential to respect the receiving State's sovereignty.

18. The PRESIDENT said that, since objection had been made, he would put the motion for the division of the text to the vote in accordance with rule 40 of the

[1] However, the Drafting Committee subsequently advised that the words " of the staff " should be omitted, on the ground that the arrival and departure of the head of mission should be notified to the appropriate ministry. The Conference agreed to this change.

rules of procedure; under that rule, two speakers would be allowed to speak in favour and two speakers against the motion.

19. Mr. BOLLINI SHAW (Argentina) opposed the motion, on the same grounds as the Tunisian representative. Since the retention of the words " by it " would make the meaning of article 10 completely different from that of the provision prepared by the International Law Commission, the proper course was to vote for or against article 10 as drafted rather than for or against those two words.

20. Mr. BIRECKI (Poland) supported the motion. The arguments against the motion did not have much force. The deletion of the words " by it " would not deprive the receiving State of its right to influence the size of the mission; it would merely change the emphasis of the provision.

21. Mr. VALLAT (United Kingdom) also supported the motion. In the past, the sending State had always been regarded, in accordance with international law, as having the main authority to decide on the size of its missions abroad. Article 10 went beyond mere codification, because it reversed that position. The Conference should therefore be given an opportunity of voting on that important innovation; a separate vote on the words " by it " would alone provide such an opportunity.

The motion for a separate vote on the two words in question was carried by 33 votes to 25, with 14 abstentions.

22. Mr. BOLLINI SHAW (Argentina) said that article 10, paragraph 1, as drafted took into account an Argentine amendment (A/CONF.20/C.1/L.119) which had been adopted at the 14th meeting of the Committee of the Whole. Although the Drafting Committee had not used the actual words of that amendment, it had incorporated the idea in article 10, and he therefore strongly opposed the deletion of the words " by it ".

23. The size of a mission would normally be decided by agreement between the two States concerned but, in the absence of agreement, it was essential to recognize the right of the receiving State to decide, in the last resort, whether a particular size was reasonable and normal for a diplomatic mission established in its territory.

24. Mr. GLASER (Romania) said that the choice lay between adopting an objective criterion — that of a " reasonable and normal " size — and giving the receiving State discretionary powers in the matter by allowing it to decide whether a particular size was reasonable and normal, a criterion which was neither reasonable nor normal. The Romania delegation would vote for the first solution.

25. The PRESIDENT put to the vote the words " by it " appearing in article 10, paragraph 1.

The words were adopted by 42 votes to 19, with 6 abstentions.

Paragraph 1 was adopted by 52 votes to 13, with 2 abstentions.

Paragraph 2 was adopted unanimously.

Article 10 as a whole was adopted by 55 votes to 10, with 4 abstentions.

ARTICLE 11

Article 11 was adopted unanimously.

ARTICLE 12

Article 12 was adopted unanimously.

ARTICLE 13

26. Mr. BARTOŠ (Yugoslavia) said that his delegation had not changed the views on paragraph 2 which it had expressed during the discussions in the Committee of the Whole.

27. Mr. WESTRUP (Sweden) said that his delegation was in the same position.

Article 13 was adopted by 65 votes to none, with 3 abstentions.

ARTICLE 14

Article 14 was adopted unanimously.

ARTICLE 15

28. Mr. BIRECKI (Poland) asked for a separate vote on article 15, paragraph 3, in which his delegation would abstain. The paragraph in question referred to a practice which was not followed by the great majority of countries. The Vienna Regulation contained a similar provision on the position of the Papal representative, but conditions had greatly changed since 1815. Only a small number of States had participated in the formulation of the Vienna Regulation and most of them had given a privileged position to a particular religion. In modern times, religious equality was admitted practically everywhere, and the Conference was attended by a much larger number of countries, representing the most diverse social systems, cultures, traditions and religions. There was therefore no reason to give a position of special prominence to any one religion.

29. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) said that paragraph 3 reflected the practice of only a small number of States and consequently had no place in a convention intended to codify general practice. Moreover, the provision was not in tune with the times. He would therefore abstain in the vote on that paragraph.

Article 15, paragraph 3, was adopted by 53 votes to none, with 18 abstentions.[2]

Article 15, as a whole, was adopted unanimously.

30. Mr. TUNKIN (Union of Soviet Socialist Republics) said that he had abstained from voting on paragraph 3 for the reasons he had given in the Committee of the Whole (18th meeting).

[2] For a statement by a delegation absent at the time of this vote see 7th meeting, para. 1.

31. Mr. BARTOŠ (Yugoslavia) said that he had abstained from voting on paragraph 3, but had voted for article 15 as a whole, because his delegation had not changed the views he had expressed on paragraph 3 in the Committee of the Whole.

32. Mr. GLASER (Romania) said that he had abstained from voting on paragraph 3 because he shared the views expressed by the previous speakers on that paragraph.

33. Mr. JEZEK (Czechoslovakia) said that he had abstained from voting on paragraph 3, because it was in conflict with paragraph 1. The special position given to the representative of the Holy See was a relic of past practices and was inconsistent with the universally recognized principle of the sovereign equality of States.

34. Mr. USTOR (Hungary) said that he had abstained from voting on paragraph 3, but had voted in favour of article 15 as a whole for the reasons given by his delegation in the Committee of the Whole.

35. Mr. GOLEMANOV (Bulgaria), explaining his vote, said that he had abstained from voting on paragraph 3 for the reasons he had given in the Committee of the Whole.

ARTICLE 15 *bis*

Article 15 bis *was adopted unanimously.*

ARTICLE 16

Article 16 was adopted unanimously.

The meeting rose at 12.55 p.m.

SIXTH PLENARY MEETING

Tuesday, 11 April 1961, at 3.25 p.m.

President: Mr. VERDROSS (Austria)

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959 (item 10 of the agenda) *(continued)*

1. The PRESIDENT invited the Conference to continue its debate on the draft convention (A/CONF.20/L.2/Add.1).

ARTICLE 17

Paragraph 1

2. Mr. AGUDELO (Colombia) recalled that at the fourth plenary meeting the Conference had decided to retain the words " ad interim " in article 5. Despite that vote some delegations still had doubts; accordingly, in order to avoid any confusion, his delegation requested a separate vote on the words " ad interim " in article 17, paragraph 1.

The Conference decided by 56 votes to 4, with 6 abstentions, to retain the words " ad interim " in paragraph 1.

Paragraph 1 was adopted by 70 votes to none.

Paragraph 2

Paragraph 2 was adopted.

Article 17 as a whole was adopted by 69 votes to none.

ARTICLE 18

3. Mr. CASTREN (Finland) proposed the deletion of the words " including the residence of the head of the mission " in article 18, since, according to article 1 (i) as adopted, the expression " premises of the mission " included the residence of the head of the mission.

4. Mr. EL-ERIAN (United Arab Republic) agreed that the Finnish representative's proposal was sound. The Drafting Committee had indeed appreciated the point, but had thought it better to mention the residence of the head of the mission expressly in article 18.

5. Mr. CASTREN (Finland) agreed that his amendment should be referred to the Drafting Committee.

6. Mr. BOUZIRI (Tunisia) requested a formal vote on article 18. The amendments submitted to that article in the Committee of the Whole had been withdrawn, but his delegation would interpret article 18 in accordance with them, and would therefore abstain from voting on the article.

7. The PRESIDENT put article 18 to the vote, on the understanding that the Finnish amendment would be referred to the Drafting Committee.

Article 18 was adopted by 64 votes to none, with 4 abstentions.[1]

ARTICLE 19

Paragraph 1

8. Mr. BOLLINI SHAW (Argentina) criticized the drafting of paragraph 1.

9. The PRESIDENT suggested that the paragraph should be referred to the Drafting Committee.

It was so agreed.

Article 19 was adopted by 70 votes to none.[2]

ARTICLE 20

Paragraph 1

Paragraph 1 was adopted.

Paragraph 2

Paragraph 2 was adopted.

---

[1] The Drafting Committee subsequently decided that the words " including the residence of the head of the mission " should stand in article 18.

[2] The Drafting Committee decided not to change the wording of article 19.

Paragraph 3

10. Mr. de ERICE y O'SHEA (Spain) recalled that in the Committee of the Whole (21st meeting) his delegation had submitted an amendment (A/CONF.20/C.1/L.168) specifically mentioning the mission's means of transport among the property entitled to inviolability. His delegation had withdrawn the amendment on the understanding that the expression " other property " would be interpreted as including the mission's means of transport. He noted, however, that in the Committee's report (A/CONF.20/L.2, para. 108) the expression in question was taken to mean only property within the premises of the mission. In his opinion, it was necessary to specify that the mission's means of transport were immune from requisition and attachment. Accordingly, he proposed that, after the words " and other property thereon ", the words " and also of its means of transport " should be added.

11. Mr. CARMONA (Venezuela) agreed in principle with the Spanish representative. However, some special cases might occur. For example, a motor-car or other vehicle belonging to the mission might be used for illegal purposes by persons enjoying asylum; in such cases, it could hardly be argued that vehicles so used should be immune. It would be better not to mention means of transport among property enjoying immunity, and his delegation would therefore vote for paragraph 3 as it stood.

12. Mr. BOUZIRI (Tunisia) said he would vote for paragraph 3 on the understanding that article 20 did not prevent the receiving State from using the land on which the premises of the mission stood for public works, as provided by an amendment submitted by Mexico (A/CONF.20/C.1/L.129) in the Committee of the Whole and later withdrawn.

13. Mr. MARESCA (Italy) approved and supported the Spanish representative's oral amendment. There would be a serious gap in the convention if the mission's means of transport were not specifically included among property enjoying immunity. However, means of transport should be immune only when used for official purposes in the course of the mission's normal activities.

The Spanish representative's amendment was adopted by 41 votes to 7, with 16 abstentions.

Article 20 as a whole, as amended, was adopted by 67 votes to one, with 3 abstentions.

14. Mr. de ROSENZWEIG DIAZ (Mexico) said he had voted for article 20, but maintained the opinion on it which he had expressed in the Committee of the Whole.

ARTICLE 21

Paragraph 1

15. Mr. GLASER (Romania) said he approved paragraph 1, which stated the correct principle of the immunity of the sending State and of the head of the mission from taxation, but could not accept paragraph 2 because, no doubt for praiseworthy reasons, it made an exception to a rule which should be absolute. His delegation would therefore request a separate vote on paragraph 2.

16. Mr. de ROSENZWEIG DIAZ (Mexico) did not agree that paragraph 2 contained an exception to the rule stated in paragraph 1. Its object was merely to prevent a private person from taking advantage of the rule.

17. Mr. USTOR (Hungary) said that article 21, paragraph 1, which granted exemption from all dues and taxes in respect of premises of the mission not only owned but also leased by the sending State, was a valuable contribution to the progressive development of international law. Some States could not buy the premises necessary for their missions, and the provision flowed naturally from the principle of the sovereign equality of all States. His delegation would therefore vote for paragraph 1. However, it would vote against paragraph 2, which undermined the principle stated in paragraph 1 and could be interpreted as denying exemption from dues and taxes in respect of leased premises, a possible source of confusion. Accordingly he likewise requested a separate vote on paragraph 2.

Paragraph 1 was adopted by 69 votes to 1, with 2 abstentions.

Paragraph 2 was adopted by 48 votes to 12, with 9 abstentions.

Article 21 as a whole was adopted by 69 votes to none, with 1 abstention.

ARTICLE 22

18. Mr. BAIG (Pakistan) said he would have to vote against article 22, which was too sweeping. The provision as originally drafted by the International Law Commission (A/3859) had been too broad; with the addition of the words " at any time and wherever they may be " the article had become even less acceptable, and his delegation requested a separate vote on the words in question. Pakistan did not in any way challenge the complete immunity of the mission's archives and documents when ordinarily used, stored or despatched in transit. Sometimes, however, documents which were manifestly diplomatic were used for illicit purposes or handed to persons not entitled to hold them. In such cases the Pakistan Government would reserve the right, if article 22 were adopted as it stood, to treat the papers in question as not entitled to the benefit of immunity.

19. The PRESIDENT put to the vote the words " at any time and wherever they may be " in article 22.

The Conference decided by 46 votes to 6, with 13 abstentions, to retain those words in article 22.

Article 22 was adopted by 64 votes to 1, with 7 abstentions.

ARTICLE 23

The article was adopted unanimously.

ARTICLE 24

20. Mr. DEJANY (Saudi Arabia) said that his delegation recognized the principle embodied in article 24, as he had stated at the 24th meeting of the Committee of felt it necessary to explain his government's position restrictions in force in two zones of Saudi Arabia, he felt it necessary to explain his government's position on the application of article 24. The cities of Mecca and Medina, where Islam had been born, were holy cities, and for over 1,300 years they and their surrounding areas had been centres of traditional religious practices which time had not changed. One of those traditions was that surroundings were accessible only to Moslems. That restriction had not been imposed by the Government of Saudi Arabia, but had been strictly enforced for over 1,300 years by every government, without exception, which had administered that part of the Arabian peninsula. It was thus an historical fact, a living tradition, much older than the subject which the Conference had been convened to discuss.

21. When that historical restriction was considered in connexion with the aim of article 24 — that the diplomatic mission should be free to perform its functions — its effect was clearly unimportant, since the two areas were not sealed against any mission as such, and were ordinarily accessible at least to some members of the staff of a mission. Furthermore, there was nothing in the two zones, apart from the religious precincts, which could not be found in any other city of the country, and consequently the diplomatic report of any mission could not be considered incomplete for lack of information obtained from those areas.

22. The restriction should also be viewed in the light of article 40, paragraph 1; and in that regard the members of all diplomatic missions had shown understanding and respect and had never raised any objection. Since the restriction on entry into the two zones was an historical fact well known both to governments and to individuals, his delegation would take its acceptance by all governments which exchanged diplomatic missions with the Government of Saudi Arabia as indicating their tacit consent, and as meaning that they did not regard it as a hindrance to the freedom of movement and travel of members of their missions within the meaning of article 24. His delegation accordingly considered that the restriction was not in degree or nature one to which article 24 applied, but came within the meaning of article 40, paragraph 1.

Article 24 was adopted unanimously.[3]

ARTICLE 25

Paragraph 1

23. Mr. KRISHNA RAO (India), introducing the amendment sponsored by fourteen delegations to paragraph 1 (A/CONF.20/L.15 and Add.1), said that the main, indeed the only, object of the last sentence of paragraph 1 was to stress that the consent of the receiving State had to be obtained both for the installations and for the use of a wireless transmitter by a mission. Those two operations might, however, require different forms of consent. How that consent was given was purely a matter of procedure for the receiving State to decide. It was a matter in which the sending State was not, and naturally could not be, interested. It depended on the provisions of the constitution and municipal law of the receiving State. The part played by municipal law and international regulations was, however, only one of its aspects, not its essence. The essence was consent. The sponsors therefore proposed the deletion as superfluous of the words mentioned in the amendment. On behalf of the sponsors of the amendment, he again appealed for the support of those who in Committee (29th meeting) had either voted in favour or abstained in the vote on a similar amendment. He hoped that those who did not entirely agree with the amendment would at least abstain.

24. He proposed that the last sentence of paragraph 1 should be put to the vote first in its amended form (" However, . . . receiving State "). If the sentence was adopted in that form, it would, according to the rules of procedure, be unnecessary to put to the vote the words which the amendment proposed to delete.

25. Mr. VALLAT (United Kingdom) welcomed the spirit in which the fourteen delegations had submitted their amendment. The United Kingdom delegation had stated in the Committee of the Whole that the last sentence of article 25, paragraph 1, was quite unacceptable. The wording proposed in the amendment still raised difficulties, and he was obliged to reserve the position of his government towards it. However, in view of the conciliatory spirit shown by the sponsors of the amendment, he would merely abstain from the vote on the amendment and also on paragraph 1 as a whole.

26. Mr. MATINE-DAFTARY (Iran) said that in the Committee of the Whole his delegation had abstained from voting on the amendment (A/CONF.20/C.1/L.264) on which the new amendment was based. Its reason had been that, whereas it considered that the provision requiring the receiving State's consent to the installation of a wireless transmitter was relatively unimportant, yet the receiving State should be empowered to suspend transmission in case of misuse by the diplomatic mission; for instance, if it used the transmitter for propaganda, or for purposes harmful to the security of the State.

27. He asked what was the exact meaning of the word " use " in the amendment. If its sponsors simply wished to say that the consent of the receiving State was necessary for the operation of the transmitter, he could not approve the amendment. If, however, the words meant that the receiving State was entitled to withdraw its consent in case of misuse by the diplomatic mission, the Iranian delegation would have no difficulty in voting for it.

28. Mr. BOUZIRI (Tunisia), speaking as one of the sponsors of the amendment, thanked the United Kingdom representative for his understanding attitude. In reply to the Iranian representative, he said that the inten-

[3] Subject to a drafting change suggested by the representative of Spain and affecting the Spanish text only.

tion was to forestall the misuse of radio transmitters by diplomatic missions. That was why the consent of the receiving State was considered necessary both for the installation and for the operation of a transmitter. The amendment expressed that idea very clearly, and the receiving State could obviously withdraw its consent at any time in case of misuse.

29. Mr. MATINE-DAFTARY (Iran) said he was satisfied with the Tunisian representative's explanation, which he noted.

The amendment was adopted by 57 votes to 1, with 12 abstentions.

Paragraph 1, as amended, was adopted by 65 votes to none, with 6 abstentions.

Paragraphs 2, 3, 4 and 5

Those paragraphs were adopted unanimously.

Paragraph 6

30. Mr. de VAUCELLES (France) pointed out that paragraph 6 was incomplete. In adopting an amendment sponsored by Chile and Liberia (A/CONF.20/C.1/L.133) at its 29th meeting, the Committee of the Whole had in effect decided that a courier *ad hoc* should enjoy personal inviolability and inviolability as far as the diplomatic bag was concerned, but that such inviolability should not extend to his personal effects and baggage. No such qualifying words appeared in the paragraph 6 before the Conference. The French delegation nevertheless considered the point important, since, as it had pointed out, a courier *ad hoc*, who was not an official of the sending State, could not be granted the same immunities as other couriers. The Chilean delegation had accepted that view.

31. He suggested that paragraph 6 should be referred to the Drafting Committee with instructions to add a proviso that the inviolability enjoyed by an *ad hoc* courier should not apply to his personal effects and baggage.

It was so agreed.

Paragraph 6 was adopted unanimously.[4]

Paragraph 7

32. Mr. de SOUZA LEAO (Brazil) considered that paragraph 7 had no place in the convention: it added nothing and might even be interpreted dangerously. It was a rule of interpretation that anything not expressly prohibited should be considered lawful. Since, however, under paragraph 7 the captain of an aircraft was not deemed to be a diplomatic courier, he should be placed on the same footing as any other person to whom diplomatic bags were committed; and it was difficult to see why, for instance, ships' masters or the drivers of motor vehicles should not also be mentioned in that paragraph. If the convention mentioned only captains of aircraft, it might be inferred that to entrust a diplomatic bag to other persons was unlawful. Since the diplomatic bag was sufficiently protected by other paragraphs of article 25, and in third States by article 39, paragraph 3, it would be preferable to delete paragraph 7 and settle particular cases by bilateral agreement.

33. Mr. JEZEK (Czechoslovakia) said that he would ask for a separate vote on the last sentence of paragraph 7 (" The mission may send . . . "). Since it went into unnecessary detail, it was likely to cause complications. The way in which the diplomatic bag was handed over to the mission was normally regulated by the receiving State, and those regulations had to be respected. Hence the Czechoslovak delegation would have to vote against the sentence.

The Conference decided by 49 votes to 9, with 10 abstentions, to retain the sentence in question.

Paragraph 7 was adopted by 53 votes to 3, with 13 abstentions.

Article 25 as a whole, as amended, was adopted by 70 votes to none, with 1 abstention.

34. Mr. TUNKIN (Union of Soviet Socialist Republics), explaining his vote, said his delegation had voted for the amendment (A/CONF.20/C.1/L.15) to paragraph 1 because it slightly improved the provision. That did not mean, however, that the wording was entirely satisfactory. The Soviet delegation had voted for the deletion of the last sentence of paragraph 7, the wording of which did not seem to be clear. He would also like to point out that, if a delegation gave its own interpretation of a text, whether already put to the vote or not, the silence of the Conference should not be taken to denote agreement with that interpretation.

ARTICLE 26

Article 26 was adopted unanimously.

ARTICLE 27

Article 27 was adopted unanimously.

ARTICLE 28

Article 28 was adopted unanimously.

ARTICLE 29

35. Mr. RIPHAGEN (Netherlands), introducing his delegation's amendment (A/CONF.20/L.5), recalled that, at the time when the Committee of the Whole had adopted article 29, paragraph 1 (*c*),[5] it had not yet considered article 32. If paragraph 1 (*c*), which did not appear in the International Law Commission's draft, were adopted, it should apply to all taxes from which a diplomatic agent was not exempt. There was no reason why the exception to the diplomat's immunity should be restricted to a single tax category.

36. In addition, he asked for a separate vote on paragraph 1 (*b*), in which the words " as a private person and not on behalf of the sending State " had been added to

[4] The Drafting Committee subsequently decided not to amend paragraph 6 in the manner suggested by the representative of France.

[5] The provision had been proposed by Australia (A/CONF.20/C.1/L.288).

the International Law Commission's text. If the diplomatic agent was involved as executor, administrator, heir or legatee on behalf of the sending State, the sending State and not he was the executor, administrator, heir or legatee. But the immunities enjoyed by a foreign State did not fall within the terms of reference of the Conference and therefore could not be dealt with in the convention.

37. Mr. BOLLINI SHAW (Argentina) said he had doubts about paragraph 1. In view of the terms of article 40 *bis*, paragraph 1 (*d*) was superfluous. In the Committee, Colombia had proposed the deletion of the provision (A/CONF.20/C.1/L.173). The question of the income a diplomatic agent might receive as a writer, for instance, was adequately covered by paragraph 1 (*c*).

38. Mr. de ROSENZWEIG DIAZ (Mexico) supported the Netherlands amendment. With regard to paragraph 1 (*b*), he thought it would be difficult to contest the domestic law of the State in whose territory the will had been made. In Mexico, the domestic law applied.

39. Mr. AGUDELO (Colombia) shared the views expressed by the Argentine representative. His delegation had earlier proposed the deletion of the provision which had since become paragraph 1 (*d*), on which he asked for a separate vote. Since it conflicted with article 40 *bis*, it would be better to delete it.

40. Mr. ROMANOV (Union of Soviet Socialist Republics) pointed out that the Netherlands amendment considerably extended the scope of paragraph 1 (*c*), for article 32 mentioned indirect taxes, for example, those incorporated in the price of goods or services, and taxes on immovable property, such as estate duty. If the scope of the exception were so enlarged, the immunity of a diplomatic agent would be severely restricted. His delegation considered that the Netherlands amendment would make the text of article 29 obscure, and would therefore vote against it.

41. Mr. AGO (Italy) said that paragraph 1 (*c*) did not appear in the International Law Commission's draft, and he wondered why the Conference, when it was so liberal on other points, should be so inclined to subject a diplomatic agent to jurisdiction in the matter of taxation. The Netherlands amendment had the merit of making delegations face the facts, for its logic was so extreme that it forced a decision on the diplomat's immunity from jurisdiction. He proposed as the best course the deletion of paragraph 1 (*c*).

42. So far as paragraph 1 (*d*) was concerned, he said that the delegations of Argentina and Colombia had made out a strong case for its deletion; he wished to point out, however, that the clause was closely related to article 40 *bis*. If a diplomatic agent were entirely debarred from professional and commercial activities, taxes on income from that source would naturally not be mentioned in article 29. However, article 40 *bis* forbade such activities " in principle " only. Only if they were strictly forbidden would he favour the deletion of paragraph 1 (*d*).

43. Mr. KRISHNA RAO (India) said he had stated before in the Committee that paragraph 1 (*c*) was superfluous. The Conference should take into account article 32 and reconcile the two articles. His delegation considered that the Netherlands amendment clarified the matter, and would vote for it.

44. Mr. VALLAT (United Kingdom) said he had voted against paragraph 1 (*c*) in the Committee of the Whole for reasons both of principle and of practical convenience. His delegation had preferred the International Law Commission's draft, and he had pointed out that the exceptions listed in paragraph 1 (*a*), (*b*) and (*d*) were of a particular kind different from that in (*c*). He had emphasized that it was not the Conference's purpose to confer privileges on individuals; but it was essential that it should protect diplomats in carrying out their duties. If they were exposed to lawsuits, the performance of their functions might obviously be made more difficult. The Netherlands amendment would restrict immunity from jurisdiction, and his delegation would ask for a separate vote on paragraph 1 (*c*), believing that it would be a mistake to infringe the principle of immunity from jurisdiction in tax cases.

45. Mr. AGUDELO (Colombia) said that he had listened with great interest to the Italian representative's remarks. When the Conference considered article 40 *bis*, his delegation would propose that the words " in principle " be deleted. That would restore harmony to the text, and article 29, paragraph 1 (*d*) would then be superfluous.

The meeting rose at 6 p.m.

SEVENTH PLENARY MEETING

Wednesday, 12 April 1961, at 10 a.m.

President: Mr. VERDROSS (Austria)

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959 (item 10 of the agenda) *(continued)*

1. The PRESIDENT said he had received a letter from the representative of Lebanon in which that representative stated that his delegation approved of article 15, paragraph 3, in the vote on which (see 5th meeting) he had been unable to take part for reasons beyond his control.

2. He invited the Conference to continue its debate on the draft convention (A/CONF.20/L.2/Add.1).

Article 29 (continued)

Paragraph 1 (a)

3. The PRESIDENT drew attention to the amendment submitted by Australia (A/CONF.20/L.17).

The Australian amendment was rejected by 23 votes to 13, with 23 abstentions.

Paragraph 1 (a) was adopted by 60 votes to none, with 2 abstentions.

Paragraph 1 (b)

4. Mr. de ROSENZWEIG DIAZ (Mexico), referring to comments made at the 6th meeting (paras. 36-38), requested a separate vote on the words " as a private person and not on behalf of the sending State ".

The words in question were adopted by 39 votes to 13, with 12 abstentions.

Paragraph 1(b) was adopted by 61 votes to none, with 3 abstentions.

Paragraph 1 (c)

5. The PRESIDENT drew attention to the Netherlands amendment (A/CONF.20/L.5) and to the Italian representative's proposal (6th meeting, para. 41) that paragraph 1 (*c*) be deleted.

6. Mr. WESTRUP (Sweden) said that in spite of the arguments advanced in support of paragraph 1 (c) he was strongly opposed to the exception which it introduced, in the case of an action for the recovery of tax to the general principle of diplomatic immunity. It was contrary to international practice, which recognized that a diplomatic agent should not be hindered in his official work, and he could see no reason for introducing fiscal matters into the convention. He supported the statement made by the representative of Italy at the sixth meeting and would prefer to see the sub-paragraph deleted.

7. Mr. MATINE-DAFTARY (Iran) suggested that a vote should be taken on the principle underlying paragraph 1 (c). If the Conference approved that principle then it would be logical to adopt the Netherlands amendment extending the exception to actions for the recovery of all taxes mentioned in article 32.

8. The PRESIDENT said that it was impossible to vote specifically on a principle; the voting on the clause would *ipso facto* show whether the principle was approved or not.

The Netherlands amendment was rejected by 46 votes to 6, with 6 abstentions.

Paragraph 1 (c) was rejected by 35 votes to 24, with 11 abstentions.

Paragraph 1 (d)

9. Mr. AGO (Italy) proposed that consideration of paragraph 1 (*d*) should be deferred until after article 40 *bis* had been voted on, as the two were closely linked.

10. Mr. TUNKIN (Union of Soviet Socialist Republics) said that although at first sight there appeared to be a close connexion between article 40 *bis* and article 29, paragraph 1 (*d*), careful examination showed that they were not entirely interdependent. Article 40 *bis* referred solely to diplomatic agents, whom it prohibited from practising professional or commercial activities in the receiving State. Article 36, however, made the immunities specified in article 29 (among other articles) applicable also to the families of diplomatic agents. Thus, if paragraph 1 (*d*) of article 29 was omitted, the family of a diplomatic agent would enjoy diplomatic privileges and immunities while engaged in professional or commercial activities — whether article 40 *bis* was adopted or not.

11. Replying to a question from the PRESIDENT whether he wished to maintain his proposal, Mr. AGO (Italy) pointed out that if article 40 *bis* was retained as drafted, it would not entirely exclude the possibility of a diplomatic agent carrying on a professional or commercial activity; and hence, in that event, paragraph 1 (*d*) of article 29 should also be retained. If, however, the words " In principle " were deleted from article 40 *bis* — as proposed by the representative of Colombia at the sixth meeting (para. 45) — ir would obviously be impossible to retain paragraph 1 (*d*) of article 29, because it would then refer to activities prohibited under article 40 *bis*. The question of the diplomatic agent's family would not then arise. He therefore maintained his proposal.

12. Mr. GLASER (Romania) thought that even if the words " In principle " were deleted from article 40 *bis*, with the consequence that professional and commercial activities would be completely prohibited, there was no assurance that a diplomatic agent might not engage in prohibited activities. It might therefore be wise to retain paragraph 1 (*d*) of article 29 as a safeguard.

13. Mr. AGUDELO (Colombia) supported the views of the representative of Italy.

14. Mr. EL-ERIAN (United Arab Republic) said that there was a clear distinction between the situations referred to in article 29 and article 40 *bis*. Article 29 established the principle, approved by the International Law Commission and the Committee of the Whole, that a diplomatic agent should be subject to the jurisdiction of the receiving State with respect to professional or commercial activities. Article 40 *bis*, on the other hand, was the result of an entirely new proposal for a provision prohibiting such activities in the Convention. He therefore considered that paragraph 1 (*d*) of article 29 should stand, irrespective of the decision on article 40 *bis*. As had been pointed out, the prohibition of professional and commercial activities would not necessarily prevent them, any more than prohibition necessarily prevented crime. Moreover, both the International Law Commission and the Committee of the Whole had endorsed the principle that the diplomatic agent should not be entirely immune from the jurisdiction of the receiving State.

15. Mr. de ERICE y O'SHEA (Spain) moved that the Conference suspend the debate on article 29 and proceed forthwith to consider article 40 *bis*.

16. Mr. AGO (Italy) said a distinction should be drawn between gainful activities that were legitimate and those that were not. If the words " In principle " were main-

tained in article 40 *bis*, that would imply that some such activities might be legitimate and it would then be appropriate to maintain paragraph 1 (*d*) of article 29. If, however, the words in question were deleted, such activities would in all cases constitute a violation of the terms of the convention, and some appropriate sanction would have to be considered.

17. For those reasons, he supported the Spanish representative's motion.

18. Mr. REGALA (Philippines) also supported the motion.

The motion was carried by 52 votes to 3, with 15 abstentions.

19. The PRESIDENT said that, in pursuance of the decision just taken, the Conference would next consider article 40 *bis*, after which it would resume debate on article 29.

Article 40 bis

20. Mr. AGUDELO (Colombia) recalled that article 40 *bis* had its origin in a Colombian proposal (A/CONF.20/C.1/L.174) which had been adopted by the Committee of the Whole (36th meeting) by a very large majority and referred to the Drafting Committee. Unfortunately, the introduction by the Drafting Committee of the words " In principle " had altered the sense of the article and greatly weakened it. He therefore asked for a separate vote on those words.

21. Mr. CAMERON (United States of America) was in favour of retaining the words " In principle ". His delegation supported the principle that a diplomatic agent should not practise any professional or commercial activity for personal profit, and considered that the words " In principle " were necessary in the context because there was no agreed definition of the meaning of " commercial activity ". He had discussed the expression with a number of other representatives who had given many different interpretations. He mentioned, by way of example, the case of a diplomatic agent who was a stockholder and member of the board of directors of the parent company in the sending State of a company operating in the receiving State; that might be regarded as a case of commercial activity in the receiving State, though for his part he would not consider such an interpretation of the term " commercial activity " to be correct. It was precisely in order to find a way out of that type of difficulty that the Drafting Committee had introduced the useful words " In principle ".

22. The PRESIDENT put the words " In principle " to the vote.

The result of the vote was 31 in favour and 29 against, with 6 abstentions.

The words were rejected, having failed to obtain the required two-thirds majority.

Article 40 bis, *as amended, was adopted by 61 votes to 2, with 8 abstentions.*

Article 29 (resumed from para. 18 above)

23. The PRESIDENT put paragraph 1 (*d*) to the vote.

Paragraph 1 (d) was adopted by 36 votes to 13, with 21 abstentions.

Paragraph 2 was adopted unanimously.

24. The PRESIDENT pointed out that, in consequence of the deletion of paragraph 1 (*c*), the reference in paragraph 3 would be amended to read " sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 1 of this article ".

Paragraph 3, with that drafting change, was adopted unanimously.

Paragraph 4 was adopted unanimously.

Article 29 as a whole, as amended, was adopted by 69 votes to none, with 1 abstention.

Article 30

Paragraphs 1, 2 and 3 were adopted unanimously, without comment.[1]

Paragraph 4

25. Mr. BOUZIRI (Tunisia) said that he would vote against paragraph 4. He recalled that his delegation, together with those of Libya and Morocco, had proposed in the Committee of the Whole the addition of a proviso that if there was no waiver of immunity in respect of execution, the sending State should, in case of need, consult with the receiving State on suitable means of enforcing execution of the judgment (A/CONF.20/C.1/L.200/Rev.2, para. 3). That proposal had been rejected at the Committee's 29th meeting, and paragraph 4 as it stood meant that where immunity of jurisdiction had been waived in respect of proceedings, a separate waiver would be required for the execution of the judgment. That position was morally untenable, since a diplomatic agent would be able to avail himself of the judgment if he won the action, but resist it with impunity if he lost. The provisions of paragraph 4 disregarded the law of the receiving State, ignored the authority of its courts and injured the interests of its nationals.

26. Mr. CARMONA (Venezuela), supporting the previous speaker, recalled the amendments deleting paragraph 4 submitted by his delegation and a number of others in the Committee of the Whole (A/CONF.20/C.1/L.230 and Add.1 and L.179 and Add.1). His delegation could not possibly accept the proposition that a waiver of immunity in respect of proceedings did not imply a waiver of immunity in respect of execution of the judgment. Such a proposition would flout the justice of the receiving State.

27. If paragraph 4 was deleted, the countries in which a separate waiver was necessary for the execution of a judgment would still be free to apply that rule if they wished.

Paragraph 4 was adopted by 43 votes to 14, with 11 abstentions.

[1] But see 10th meeting, *in fine*, statement by the President concerning a lacuna in article 30, paragraph 3.

Article 30 as a whole was adopted by 65 votes to none, with 5 abstentions.

Article 31

28. Mr. CAMERON (United States of America) recalled that article 31 had been discussed at length in the Committee of the Whole, which, at its 30th meeting, had appointed a working party to draft a provision in the light of the discussion. He drew attention specifically to the report of that working party and to the statements made by its chairman at the 32nd meeting of the Committee of the Whole.[2]

Paragraphs 1, 2, 3, 4 and 5 were adopted unanimously.

Article 31 as a whole was adopted by 69 votes to none, with 2 abstentions.

Article 32

29. The PRESIDENT said he understood that the Australian delegation did not wish to press for a vote on its amendment to article 32 (A/CONF.20/L.18), similar in purpose to the Australian amendment to article 29 (A/CONF.20/L.17) which the Conference had rejected.

30. Mr. BOLLINI SHAW (Argentina) asked for a separate vote on sub-paragraph (*e*). Since article 40 *bis* had been adopted without the words " In principle " it was difficult to see how a diplomatic agent could incur the charges specified in sub-paragraph (*e*), inasmuch as he was completely debarred from practising any professional or commercial activity.

31. Mr. OJEDA (Mexico) asked for a separate vote on the words " with respect to immovable property " in sub-paragraph (*f*). Stamp duty was sometimes charged otherwise than with respect to immovable property. For example, in his country, there was a small stamp duty on attestations and certifications; a cumbersome procedure would be needed to exempt diplomatic agents from that type of duty. If the words " with respect to immovable property " were deleted, however, stamp duty would in all cases be payable by diplomatic agents and the problem would not arise.

Sub-paragraph (a) was adopted by 68 votes to none, with 2 abstentions.

Sub-paragraph (b) was adopted unanimously.

Sub-paragraph (c) was adopted unanimously.

Sub-paragraph (d) was adopted unanimously.

Sub-paragraph (e) was adopted by 59 votes to 5, with 7 abstentions.

The words " with respect to immovable property " in sub-paragraph (f) ware adopted by 48 votes to 10, with 12 abstentions.

Sub-paragraph (f) as a whole was adopted by 69 votes to 1, with 3 abstentions.

Article 32 as a whole was adopted unanimously.

[2] For the report of the working party (A/CONF.20/C.1/L.310) see vol. II; for the statement by the chairman of the working party see summary record of the 32nd meeting of the Committee of the Whole.

32. Mr. MARESCA (Italy) pointed out that there was a difference between immunity from taxation and immunity from jurisdiction. Immunity from jurisdiction remained in effect only so long as the diplomat retained his official status, whereas immunity from taxation continued beyond the duration of his mission.

Article 33

Article 33 was adopted unanimously without comment.

Article 34

33. Mr. KRISHNA RAO (India) said that the understanding of his delegation coincided with that of the International Law Commission when it had drafted article 34, namely, that the receiving State had power to make " regulations, *inter alia*, restricting the quantity of goods imported or the period during which the imported articles for the establishment of the agent must take place, or specifying a period within which goods imported duty free must not be resold ", and that " such regulations could not be regarded as inconsistent with the rule that the receiving State must grant the exemption in question " (A/3859, commentary on article 34). It was significant that that understanding of article 34 had been accepted without objection by the Committee of the Whole.

34. His delegation would, however, welcome the amendment of paragraph 2 so as to make the personal baggage of a diplomat entirely exempt from inspection. It could understand inspection for the articles not covered by paragraph 1, but in practice it was not possible to enforce the rule concerning goods the import or export of which was prohibited by the law of the receiving State.

35. Mr. MELO LECAROS (Chile) stated that the words " in accordance with such laws and regulations " in paragraph 1 should be interpreted, in accordance with the International Law Commission's commentary, as allowing States to establish quotas.

36. Mr. MATINE-DAFTARY (Iran) pointed out a discrepancy between the French and English texts of paragraph 1 which might give rise to difficulties of interpretation. While the English words " in accordance with such laws and regulations as it may adopt " applied to the future as well as to the present, the French words " qu'il peut avoir adoptées " did not.

37. The PRESIDENT said that the matter would be referred to the Drafting Committee.

Paragraph 1 was adopted unanimously, subject to drafting changes.[3]

38. Mr. GHAZALI (Federation of Malaya) said that his delegation found it difficult to vote for paragraph 2, which appeared to be an exception to the rule of the inviolability of the property of a diplomatic agent as declared in article 28, paragraph 2. The commentary of the International Law Commission made it clear that

[3] The Drafting Committee subsequently redrafted the French text of the passage in question to read: *Suivant les dispositions législatives et réglementaires qu'il peut adopter...*

inviolability applied to articles intended for the diplomat's personal use. If he carried with him other articles, he did so at his own peril. If the receiving State had reason to believe that a diplomatic agent was carrying such articles, it had to take the risk of searching his baggage and exposing his folly; and if articles were actually found which were not covered by article 28, paragraph 2, or by article 34, paragraph 1, he could not claim inviolability. If no such articles were found, however, the receiving State would have to take the consequences of a violation of the personal property of a diplomatic agent. The provision as it stood would permit the receiving State to search the baggage of a diplomatic agent with impunity, owing no explanation to anyone. It was silent on who should authorize the search, which could therefore be made by the most junior customs official if he were satisfied that he had serious grounds for his presumption. It thus contained an element of ambiguity and uncertainty which might lead to embarrassment for the receiving State as well as to annoyance for the diplomatic agent. The Malayan delegation believed that sufficient remedy was offered to the receiving State by article 34, paragraph 1, and that it would not be wise to legislate in the Convention for exceptions. It would therefore urge the deletion of paragraph 2.

39. Mr. BARNES (Liberia) requested a separate vote on the words in paragraph 2 from " unless there are serious grounds for presuming " to the end of the paragraph.

It was decided, by 52 votes to 10, with 6 abstentions, to retain those words.[4]

Article 34 was adopted by 62 votes to none, with 4 abstentions.

Article 35

40. Mr. LINARES (Guatemala) said that his delegation considered that article 35 should be deleted. A provision on the acquisition of nationality might be appropriate in a convention on private international law, but was out of place in a convention on diplomatic privileges and immunities. The adoption of the article would cause serious difficulties for those States, including Guatemala, whose legislation was not in accordance with the provisions of the article or which had no law concerning the acquisition of nationality. The number of amendments submitted to article 35, and the attempt by the working group to draft a more satisfactory text (A/CONF.20/C.1/L.314) was sufficient proof that the best course would be deletion. If the article were not deleted, his delegation would have to make express reservations on behalf of its government, as the provisions were incompatible with the Guatemalan Constitution.

41. Mr. PONCE MIRANDA (Ecuador) said that article 35 as drafted was out of place in a convention concerning diplomatic relations and immunities, for it dealt with a case of conflict of laws. In the matter of the acquisition of nationality there was not truly a conflict of laws, inasmuch as by reason of public policy, the municipal law invariably applied. The article was not acceptable because it raised a conflict of laws and, in addition, offered a solution which in his delegation's opinion was wrong. Article 4 of the Bustamante Code of private national law,[5] which was in force among many American countries, provided that " constitutional precepts are of an international public order "; that was a most important provision if it was borne in mind that in a number of American States nationality questions were governed by the constitution itself. Furthermore, article 9 of the said Code provided that each contracting State would " apply its own law for the determination of nationality ... whenever one of the nationalities in controversy is that of the said State ". In other words, the Bustamante Code did not accept the existence of a conflict of laws in nationality questions in that case. In short, the immunity to the operation of nationality laws should be recognized by the unilateral act of the particular State. What was more, the immunity provided for in article 35 was extended, mistakenly, to all the members of the mission, including even the service staff, even though as a general rule that staff enjoyed immunity only in respect of acts performed in the discharge of their functions. With a view to avoiding difficulties and delays in the ratification of the convention it would be advisable to omit article 35.

42. Mr. AMAN (Switzerland) supported the proposal that article 35 should be deleted. If the provision should be adopted, his delegation would have to formulate a reservation, for the Federal Constitution of Switzerland provided that a foreign woman acquired Swiss nationality by her marriage to a Swiss citizen.

The meeting rose at 1 p.m.

[4] In consequence of this vote it became unnecessary to vote on the proposal of the delegation of the Federation of Malaya.

[5] Annexed to the Convention on Private International Law, Havana, 20 February 1928, League of Nations *Treaty Series*, vol. 86, pp. 254 *et seq.*

EIGHTH PLENARY MEETING

Wednesday, 12 April 1961, at 4.15 p.m.

President: Mr. VERDROSS (Austria)

Consideration of the report of the Credentials Committee

1. The PRESIDENT drew attention to the report of the Credentials Committee (A/CONF.20/L.14) which had been appointed at the second plenary meeting (para. 11).

2. Mr. USTOR (Hungary) stated that under rule 4 of the rules of procedure the Credentials Committee was obliged to examine representatives' credentials and report to the Conference. The report showed that the Committee had adopted a United States proposal in virtue of which no decision had been taken regarding the credentials submitted on behalf of the Hungarian representative (para. 7). That attitude was absurd, and in

flagrant breach of recognized principles of international law. It was also a clear violation of the rules of procedure and of the terms of reference of the Credentials Committee.

3. If the Committee had doubted the standing of the Hungarian delegation, it could have said so in its report. However, even if it had really been entitled to refrain from a decision, it should at any rate have given reasons for its attitude. But it had done nothing of the sort, and had merely referred to the spirit of General Assembly resolutions. As distinguished speakers had stressed during the discussions, the Conference comprised plenipotentiaries representing sovereign States and should itself be considered sovereign. It was therefore not obliged to conform to the practices of other bodies. That view was corroborated by the decision taken in 1958 by the Conference on the Law of the Sea, which had refused to approve the passage in its Credentials Committee's report concerning Hungary and had decided that the credentials of the Hungarian representatives were perfectly valid.[1]

4. The reason for which the report before the Conference did not state why the Committee had not unconditionally approved the credentials of his delegation was surely that it had had no doubt whatsoever of their validity; it was impossible to believe that the authors of the United States proposal, and those members of the Committee who had supported it, had had the slightest doubt on the subject.

5. His delegation had been appointed by the Government of the People's Republic of Hungary, and its credentials derived from the Presidential Council of that Republic. His government was the sole and legitimate Government of Hungary. No other political body or group, either inside or outside Hungary, could lay claim to the rights and duties of the legitimate Government of Hungary. That government enjoyed the wholehearted support and confidence of the Hungarian people, as had been amply demonstrated by the general elections of 1958.

6. Hungary's international position was well known and its diplomatic relations were wider than ever before. The United States of America, which never missed a chance to question the validity of Hungarian representatives' credentials, maintained diplomatic relations with his country. It was therefore greatly to be regretted that American imperialist circles and their spokesmen in the State Department had not renounced their cold-war policy, and that the new United States Government had learnt nothing from the bankruptcy of the previous government's policy. It was equally regrettable that, in a conference whose keynote was courtesy and cordiality, the United States delegation should raise political questions calculated to revive the cold war.

7. His government protested vehemently against that conduct. It respected the principles of the United Nations Charter, and those of peaceful coexistence and of the equality of sovereign States. The Conference could not endorse a cold-war policy contrary to those principles. He would be obliged to vote against the Credentials Committee's report.

8. U BA THAUNG (Burma) said that his delegation, bearing in mind the atmosphere of harmony and conciliation that had prevailed throughout the Conference, would vote for the report of the Credentials Committee, but with certain reservations. It could not recognize the credentials of the Kuomintang representative as valid. Burma recognized the Government of the People's Republic of China as the only lawful government of China and as the only government having effective control over the whole Chinese mainland.

9. Regarding Korea and Viet-Nam, he said that Burma maintained friendly relations with each of the regimes in authority in the northern and southern parts of the two countries. His government would have liked the governments of both regimes to participate in the Conference and become parties to the Convention. However, since his government was not in favour of the artificial partition of those two countries, it had extended only *de facto* recognition to their governments. His delegation's acceptance of the report of the Credentials Committee should not therefore be construed as recognizing *de jure* that the governments of Korea and of Viet-Nam represented in the Conference exercised authority over the whole of each of the countries concerned.

10. His delegation also reserved its position with regard to the credentials of the delegation of the Republic of the Congo (Leopoldville). Moreover, since Burma had in 1960 established diplomatic relations with Hungary, his delegation considered the credentials of the Hungarian delegation as valid.

11. Mr. KRISHNA RAO (India) said that, as the representative of the United Arab Republic had pointed out in the Credentials Committee, valid credentials to represent China at a conference could be issued only by the competent authorities of the Central People's Government of the People's Republic of China (report, para. 6).

12. With regard to the credentials of the Hungarian representatives, he said that the Committee's report showed the extent to which States could be led by political considerations to apply the same legal principles in absolutely contradictory ways. The arguments advanced in the report (para. 5) for recognizing the validity of the credentials of the representatives of China could be applied equally to the case of the representatives of Hungary; and it was impossible to see why the Committee had acted differently. The Indian delegation, considering that the same principles should be applied to all States, had no difficulty in recognizing the validity of the Hungarian delegation's credentials. There again it agreed wholeheartedly with the remarks made by the representative of the United Arab Republic in the Credentials Committee (para. 8).

13. Mr. YASSEEN (Iraq) said that he would vote for the Credentials Committee's report. His vote would, however, in no way conflict with the position of the Government of the Republic of Iraq towards, first, the People's Republic of China and the People's Republic

[1] *United Nations Conference on the Law of the Sea, Official Records*, vol. II, 16th plenary meeting, United Nations publication, Sales No. 58.V.4, vol. II, p. 51.

of Hungary, and secondly, the Government of the Congo (Leopoldville). That position had been defined in statements made by spokesmen for the Government of Iraq and by its representatives in bodies of the United Nations and in other international organizations.

14. Mr. GUNEWARDENE (Ceylon), agreeing with the Indian representative, said that paragraphs 5 and 7 of the report were contradictory; he regretted that the Credentials Committee had not obeyed its terms of reference in regard to the credentials of the Hungarian representative. Independently of any political considerations, it had to be admitted that the Committee's decision was legally indefensible. The Hungarian Government had been invited to take part in the Conference on the same footing as China — in pursuance of General Assembly resolution 1450 (XIV). The United States proposal was all the less comprehensible inasmuch as the United States had diplomatic relations with Hungary.

15. So far as the representation if China was concerned, he deeply regretted that the government of a country containing a quarter of the world's population had not been able to take part in the work of the Conference.

16. Mr. SINACEUR BENLARBI (Morocco) said that he would vote for the Committee's report, though his delegation did not approve of it entirely and wished to make various remarks and reservations. In the first place, it was correct that the Secretary-General of the United Nations had done no more than apply resolution 1450 (XIV) to China; however, Morocco maintained normal diplomatic relations with the People's Republic of China and recognized only credentials issued by the Central Government of Peking. Secondly, Morocco considered that the credentials of the Hungarian representative were in due form, and that the arguments against their validity were groundless. Thirdly, the Moroccan Government considered, in regard to the representation of the Congo (Leopoldville), that only credentials issued by the Government of Mr. Gizenga were valid.

17. Mr. CAMERON (United States of America) considered the action taken by the Credentials Committee entirely correct. The question of participation in the Conference had been settled by the United Nations Assembly, and under resolution 1450 (XIV) an invitation to attend had been sent to all States Members of the United Nations and of the specialized agencies, and to States parties to the Statute of the International Court of Justice. Hence, since the Republic of China was a Member of the United Nations and of the specialized agencies, and its government represented it in all their organs, that government alone was entitled to represent China at the Conference.

18. With regard to the Republic of the Congo (Leopoldville), he said the invitation to attend the Conference had been addressed to the government which was recognized by the United Nations and whose representatives had been seated in the General Assembly by a specific decision of the Assembly. That government was therefore the government competent to represent the Republic of the Congo at the Conference.

19. In the view of the United States delegation, the Credentials Committee's decision concerning the credentials of the delegation of Hungary was likewise wholly justified. It conformed to United Nations policy and, more particularly, to the course adopted by the Credentials Committee of the General Assembly ever since the tragic events of 1956 and followed by the other organizations within the United Nations family.

20. The Conference was essentially a technical conference. It should not duplicate the important work of the General Assembly and the Security Council, nor complicate the labours of the United Nations bodies which were alone competent to deal with political questions.

21. The specialized agencies and the special conferences convened by the United Nations had invariably recognized that political questions, including those concerning the representation of governments within the United Nations system, fell within the competence of the United Nations as such, and they had consistently followed the policy adopted by the General Assembly in such matters. If every organization and conference took separate and conflicting decisions on the same matters, chaos would inevitably result.

22. Accordingly the United States delegation would vote for the Credentials Committee's recommendation in paragraph 12 of its report.

23. Mr. TUNKIN (Union of Soviet Socialist Republics) regretted having to take part in such a discussion on the very day on which a man had been launched into space and a new field had been opened for conquest by human genius. It was evident and incontestable that the representatives appointed by the Government of the People's Republic of China were alone qualified to represent that country at the Conference; the USSR delegation could not recognize credentials submitted by other persons, since they could represent no one but themselves. The repeated efforts of some countries to obtain recognition of the credentials of the Kuomintang representatives were bound to impair the development of friendly relations between States.

24. A similar tendency was apparent to legitimize persons who, in the Congo (Leopoldville), did not represent the lawful government of that country. The manoeuvres of the colonialists to obstruct the independence of the Congo, and the long series of provocations which had ended in the murder of Patrice Lumumba, had not overcome the Congolese people. The murdered Congolese leader had been succeeded by Mr. Gizenga, who was the head of the sole legitimate Government of the Congo. Therefore the credentials issued by that government alone had legal validity, and the Soviet Union did not recognize the credentials of the representatives of the Congo (Leopoldville) seated at the Conference.

25. The Committee's decision concerning the credentials of the Hungarian delegation had no substance. Those credentials had been issued by the legitimate Hungarian Government in accordance with the constitutional procedure of that country. Their legal validity was therefore incontestable. The Committee had taken

a decision contrary to the rules of procedure, to General Assembly resolution 1450 (XIV), and to the purpose of the Conference itself, which was to promote the development of normal relations among countries.

26. Subject to those reservations, the Soviet Union would vote for the Committee's report.

27. Mr. PECHOTA (Czechoslovakia) entered a formal protest against the decision of the Credentials Committee concerning the representation of China. The Committee was wrong in supporting the discredited Kuomintang regime and recognizing credentials issued by a group of impostors. The sole legitimate representatives of China were those of the People's Republic of China, and the only valid credentials to represent China at international conferences were those issued by the Central People's Government of the People's Republic of China.

28. The Credentials Committee had no legal ground for doubting the validity of the credentials issued by the competent authorities of the People's Republic of Hungary, in accordance with the Hungarian Constitution, to the representatives of that country, which had been invited to take part in the Conference as a State Member of the United Nations. The report of the Credentials Committee which called in question the validity of those credentials amounted to interference in Hungary's domestic affairs. Likewise, his delegation could not recognize the credentials of the representative of the Republic of the Congo (Leopoldville) because it only recognized as the legitimate government of that State the government which had its seat in Stanleyville and of which Mr. Gizenga was the head. The Czechoslovak delegation's vote in favour of the report of the Credentials Committee did not mean that Czechoslovakia accepted the paragraphs of the report which dealt with those three questions.

29. Mr. DADZIE (Ghana) said that he would not have thought it desirable to raise the question of the validity of the credentials of certain delegations. His delegation was reluctant to do anything that might exacerbate feelings. Nevertheless, for reasons of principle, it wished to define its position. With regard to the participation of the Government of Leopoldville he said that, in view of the hopeless political confusion surrounding the whole Congo situation, he would not comment at length. But he wished to emphasize that the participation of Ghana in the Conference should not in any way be interpreted as constituting recognition of the illegal government of the Republic of the Congo. There was only one legitimate government in that country, that of which Mr. Antoine Gizenga was Prime Minister.

30. He stated, furthermore, that his delegation's position with regard to the representation of the Hungarian People's Republic was unchanged. The persons duly accredited by the Hungarian People's Republic were the legitimate representatives of that country. His delegation was surprised that the government of the 600 million inhabitants of the People's Republic of China had not been invited to take part in the Conference, and he hoped that its unjust exclusion would be condemned by all those who had a sense of what was right, and that justice would be done to the People's Republic of China in the near future. In conclusion, he said that ha would vote for the report of the Credentials Committee subject to these reservations.

31. Mr. SUBARDJO (Indonesia) associated himself with the representatives who had argued for the validity of the credentials issued by the Government of the Hungarian People's Republic; his attitude was consistent with that adopted by his government at international conferences. Indonesia maintained diplomatic relations with Hungary, and the two peoples followed the common purpose of establishing a durable peace throughout the world. The Hungarian People's Republic had been invited to send representatives to the Conference because it was a Member of the United Nations (General Assembly resolution 1450 (XIV)); it would therefore be illogical not to recognize the credentials of the representatives of that government.

32. With regard to China, his delegation considered that the credentials of the representatives of the Republic of China should not be considered valid, since the Government of the People's Republic of China alone represented the Chinese people.

33. The fact that Indonesia was participating in a conference attended by the delegation of the Government of the Congo (Leopoldville) should not be construed as meaning that Indonesia recognized that government; Indonesia has recognized the government headed by Mr. Gizenga. He would vote for the acceptance of the Credentials Committee's report subject to those reservations.

34. Mr. EL-ERIAN (United Arab Republic) said that his delegation's position was stated in the Credentials Committee's report (paras. 6, 10 and 14). The Government of the People's Republic of China was the only government which effectively represented China. With regard to Hungary, he said the procedure followed was contrary to rule 4 of the rules of procedure. He added that the only lawful representative of the Republic of the Congo (Leopoldville) was the government of Mr. Gizenga, who had the support of the people and parliament of his country and was defending the independence and unity of the Congo.

35. Subject to those remarks, the delegation of the United Arab Republic would vote for the report.

36. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) protested against the presence of the representative of Chiang Kai-shek, who had no authority to speak on behalf of the Chinese people. Only the Government of the People's Republic of China could issue valid credentials. On that point, the report of the Credentials Committee violated law, justice and common sense.

37. He was surprised at the absence of representatives of the Government of the Congo Republic headed by Mr. Antoine Gizenga, the successor of Patrice Lumumba, the only government with power to act on behalf on the Congolese people. The colonialists had continued to pillage the Congo, but had not broken its struggle for independence personified by Mr. Gizenga, whose lawful standing was recognized by many countries.

38. Base machinations had been employed to raise a spurious Hungarian question. The attitude of the Credentials Committee in no way contributed to co-operation between peoples; instead, it raised again an issue of the cold war.

39. His delegation would vote for the report subject to those reservations.

40. Mr. HU (China) said that his delegation was being attacked by the countries of the Soviet bloc for the second time during the Conference. He hoped that, like the earlier attempts, the latest attempt would fail.

41. The participants in the Conference had been convened in virtue of resolution 1450 (XIV) of the United Nations General Assembly to codify the principles of international law concerning diplomatic relations and to draft a convention. The Conference was therefore bound by the General Assembly resolution, and only the States invited under that resolution were qualified to take part. Since the Conference was not competent to determine its own composition, *a fortiori* the Credentials Committee could not do so. It could do no more than examine the credentials submitted to it in keeping with its terms of reference. In the opinion of the Chinese delegation and of many others, the report should be adopted as it stood without further discussion. He deplored the adverse remarks made about his government, and declined to be drawn into an undesirable debate unrelated to the Conference's business.

42. Mr. GOLEMANOV (Bulgaria) said he would vote for the report, but did not approve its remarks about China, the Congo (Leopoldville), and Hungary. The representatives occupying the place reserved for China represented only themselves and had no authority to commit the Chinese people, for that right was vested in the Government of the People's Republic of China.

43. With regard to the so-called representatives of the Congo (Leopoldville), he said his delegation did not recognize their credentials as valid, for they did not emanate from the legitimate government of Mr. Antoine Gizenga. To recognize their credentials as valid would be to help the colonialists in their bloodthirsty struggle against the Congolese people. Their presence affronted the dignity of the Conference. The paragraph dealing with Hungary was an injustice and a calumny against that country. Besides, the Credentials Committee's decision was devoid of foundation and infringed both international law and common sense.

44. The Government of the Hungarian People's Republic had received an invitation in good and due form and was perfectly entitled to sit in the Conference.

45. Mr. NGO-DINH-LUYEN (Viet-Nam) said that the task of the Conference was to draft a convention on diplomatic law, and it would be strange if it were to discuss resolution 1450 (XIV) by which it had been convened and its composition determined.

46. Some delegations had seen fit to express reservations on the credentials issued by certain governments, notably that of the Republic of China. His country was bound to China by a common culture and civilization and regarded itself as no less qualified than any other to understand China's part in the quest for peace, which after all was the object of the Conference.

47. Beyond the actual documents, the basis of the various delegations' credentials was their fitness to represent faithfully what Article 9 of the Statute of the International Court of Justice called " the main forms of civilization of the world ". The civilization of half Asia was, in spite of appearances, a Confucian civilization. The ideal of the peoples of that part of the world was universal harmony. A regime imposed by force was seeking to root that age-old ideal out of the soul of the peoples of the Far East.

It was claimed that a regime which had been notoriously unco-operative in the matter of peaceful coexistence could legitimately represent those peoples in a conference whose object was the codification of peace. It was an illusion to hope to appease a regime which had refused to say that war was not desirable. For those reasons his delegation unreservedly approved the conclusions of the Credentials Committee, and affirmed the validity of the credentials of the delegation of the Republic of China.

48. Mr. BIRECKI (Poland) said that a majority of the Committee had seen fit to deal with the question of the representation of China in a manner which constituted an attempt to legalize illegality, in contravention of the principles of international laws it had recognized a private group, representing no one except the discredited Kuomintang, as the official representatives of the Chinese people. The Government of the Chinese People's Republic, with which several countries represented in the Conference maintained normal diplomatic relations, was the sole lawful Government of China, the only one entitled to represent the great Chinese nation.

49. The refusal to take a decision on the question of the representation of Hungary was all too reminiscent of the cold war. The Government of the People's Republic of Hungary was the only lawful government of the country; it maintained diplomatic relations with nearly all the States represented in the Conference. As the Hungarian representative had pointed out, the Credentials Committee's decision contravened the rules of procedure.

50. So far as the representation of the Congo was concerned, he said his delegation could not recognize as representatives of that country persons not accredited by the only legitimate government, that of Mr. Gizenga, with which the Polish Government maintained diplomatic relations.

51. His delegation's vote on the Credentials Committee's report as a whole should be considered in the light of his statement.

52. Mr. DIMITRIU (Romania) stated that his government's well-known attitude on the questions of the representation of China, Congo (Leopoldville) and the Hungarian People's Republic remained unchanged. The Government of the People's Republic of China was the only government qualified to represent China; similarly, Mr. Antoine Gizenga's government was the only

one qualified to represent the Congo (Leopoldville). The Government of the Hungarian People's Republic was the only effective and lawful government of Hungary, and consequently its credentials entitled the Hungarian delegation to sit, vote and sign in common with all other delegations holding valid credentials.

53. The supporters of the cold war, who were responsible for the Committee's decisions concerning China, the Congo (Leopoldville) and Hungary had evidently not realized that it would have been better for their own prestige and particularly for that of the Conference, to refrain from such demonstrations. Interference in the internal affairs of the Hungarian People's Republic and discrimination against a different political and social regime contravened international law and the provisions of the convention which the Conference was drafting. For those reasons the Romanian delegation associated itself with those which had protested against the inclusion in the Credentials Committee's report of the passages in question.

54. Mr. ÇARÇANI (Albania) said that the report of the Credentials Committee was a discriminatory report reflecting the cold war. In the view of his delegation, the so-called representatives of China represented no one, and the credentials issued to them were invalid. They could therefore neither speak nor act on behalf of China, since only representatives designated by the Central People's Government of the People's Republic of China were qualified to do so. As for the so-called delegation of the Republic of the Congo (Leopoldville), he said that the Conference should not and could not recognize its credentials as valid, since they did not emanate from the legitimate government of the country, the government of which Mr. Gizenga was head.

55. With regard to the delegation of Hungary, he said that that delegation was fully competent to represent Hungary, which had been invited to participate in the Conference as a State Member of the United Nations; the Government of Hungary had the support of the entire Hungarian people, who were fighting for international peace and co-operation. The attitude adopted by some States towards the Hungarian People's Republic was not merely unjustified; it amounted to interference in the internal affairs of a free and sovereign State and a serious breach of the principles which should govern relations between States.

56. His delegation would vote for the report of the Credentials Committee, but its vote should not be interpreted as signifying approval of the report as a whole.

57. Mr. BARNES (Liberia) said that, although he would vote for the adoption of the Credentials Committee's report, his vote should not be interpreted as meaning that his delegation accepted the paragraphs of the report dealing with the credentials of the Hungarian delegation, which had been issued in the manner prescribed in rule 3 of the rules of procedure and the validity of which could consequently not be challenged. On the other hand, his delegation unreservedly approved paragraph 11 of the Committee's report, because, in its opinion, the credentials of the representatives of the Congo (Leopoldville) emanated from the legitimate Head of State, President Kasavubu.

58. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said he would vote for the adoption of the Credentials Committee's report as a whole, although he disagreed with the Committee on a number of points in the report. His delegation considered in particular that the recognition of the credentials of the puppet regime of Chiang Kai-shek impaired the authority and prestige of the Conference and conflicted with the spirit of the Charter of the United Nations and with the established practice of States with regard to credentials. The right to act on behalf of a State was vested in the government which exercised effective authority in the territory of that State with its people's approval. Consequently, only the representatives of the Central People's Government of the People's Republic of China could represent China at the Conference. Furthermore, his delegation protested against the presence at the Conference of the representatives of the regime which claimed to constitute the central authority in the Congo (Leopoldville) and which, in defiance of the Security Council's decision to preserve the integrity and independence of the Congo, had dismembered that country, plunged it into anarchy, and restored the rule of colonialism.

59. Likewise, his delegation protested most strongly against paragraph 7 of the report of the Credentials Committee, which questioned the validity of the credentials of the delegation of the Hungarian People's Republic; there was no reason why the Committee should not have taken a decision regarding those credentials. That attempt to interfere in the internal affairs of a sovereign State could only be explained by a desire to poison the atmosphere of constructive co-operation which had prevailed throughout the Conference. The partisan attitude of certain countries to the Hungarian People's Republic was entirely due to the difference between the economic and social system of that country and theirs.

60. Mr. LILIC (Yugoslavia) said he would vote for the adoption of the Credentials Committee's report, with the following reservations. In the opinion of the Yugoslav delegation: (i) valid credentials to represent China at the Conference could be issued only by the competent authorities of the Central People's Government of the People's Republic of China; (ii) the only valid credentials to represent the Congo (Leopoldville) were those issued by the lawful government of that State, the head of which was Mr. Gizenga; (iii) the validity of the credentials of the Hungarian delegation could not be impugned.

61. Mr. KAHAMBA (Congo: Leopoldville) said he had little to say about the Credentials Committee's report, paragraphs 11 and 12 of which he approved unreservedly. However, in view of the statements made by the representatives of countries of the Soviet bloc, he felt bound to state: (i) the Conference on Diplomatic Intercourse and Immunities had been convened under the auspices of the United Nations; (ii) the General Assembly of the United Nations had invited all States Members of the United Nations to take part in the Conference; (iii) the

Republic of the ex-Belgian Congo had been a Member of the United Nations since 1960; (iv) the United Nations General Assembly had recognized President Kasavubu as head of the State, and had also recognized the sovereignty of the State; (v) only the United Nations could have accepted or refused the participation of delegations the composition of which had been communicated to it before the opening of the Conference; (vi) the question of the representation of the Republic of the Congo (Leopoldville) should be raised in the United Nations General Assembly and not at the Conference.

62. He was surprised at the contradictory attitude adopted by the representatives of the countries of the Soviet bloc towards the validity of the credentials of some delegations. They recognized the validity of the credentials of the representative of Hungary because that country was a Member of the United Nations; and at the same time they challenged the credentials of the delegation of the Republic of the Congo (Leopoldville).

63. Mr. IBRAHIM (Ethiopia) said that some of the governments represented at the Conference did not recognize others also represented at the Conference. Surely, however, the important point was that they were all Members of the United Nations, and as such had been invited to take part in the Conference. The Ethiopian delegation would vote for the adoption of the Credentials Committee's report, but it did not approve of the conclusions that committee had reached concerning the credentials of some delegations. In other words, all the credentials of the delegations participating in the Conference were, in the opinion of the Ethiopian delegation, valid for the purposes of the Conference.

64. Mr. LINTON (Israel) said he would vote for the adoption of the Credentials Committee's report, but considered that the Committee should have recognized the validity of the Hungarian delegation's credentials.

65. The PRESIDENT put the Credentials Committee's report (A/CONF.20/L.14) to the vote.

The report was adopted by 69 votes to 1, with 1 abstention.

The meeting rose at 6 p.m.

NINTH PLENARY MEETING

Thursday, 13 April 1961, at 10 a.m.

President: Mr. VERDROSS (Austria)

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959 (item 10 of the agenda) *(resumed from the seventh meeting)*

1. The PRESIDENT invited the Conference to resume its debate on the draft convention (A/CONF.20/L.2/Add.1).

ARTICLE 35 *(resumed from the seventh meeting)*

2. Mr. JEZEK (Czechoslovakia) said that article 35 was an important provision and should be retained. Exemption of diplomatic agents from the automatic application of the nationality law of the receiving State was a generally recognized privilege, and the convention would be incomplete if it did not contain an article stating that privilege.

3. It was essential, as a guarantee of the independence of diplomatic agents vis-à-vis the authorities of the receiving State, that the nationality of that State should not be imposed upon their children. The arguments for the deletion of article 35 were not convincing, and a decision to delete it would be open to dangerous interpretations.

4. Mr. OJEDA (Mexico) said that he would vote for the deletion of article 35. His delegation accepted the principle that diplomatic immunity exempted a foreign diplomatic agent and his family from application of the nationality law of the receiving State in cases where the effect of that State's law was to attribute its nationality to a person by reason of birth in its territory or of marriage. However, he could not accept the extension of the privilege to all members of the mission and their families; it should be limited to persons enjoying full immunity from jurisdiction.

5. If the Conference should decide to delete or not to adopt article 35, he would interpret that decision to mean that, in the case of foreign diplomatic agents, nationality questions would continue to be governed by the rules of customary international law, as was stated in the fifth paragraph of the preamble.

6. If article 35 were retained, his delegation would be compelled to sign the convention with an express reservation in respect of that article.

7. Mr. CAMERON (United States of America) supported the proposal that article 35 should be deleted. It had become quite clear during the discussions in the Committee of the Whole that no wording would be generally acceptable. The provision as it stood conflicted with the municipal law of many countries and, in the case of the United States of America and some other States, with the Constitution or fundamental laws. If, therefore, article 35 were adopted as drafted, many delegations would have to make express reservations. His own delegation would have to make a reservation limiting the application of the article to persons not born subject to the jurisdiction of the United States of America.

8. The deletion of article 35 would not affect the existing practice of States, since according to the fifth paragraph of the preamble questions not regulated by the provisions of the convention would continue to be governed by the rules of customary international law.

9. Mr. REGALA (Philippines) also thought that article 35 should be deleted. Because of the fundamental differences between the legal and constitutional provisions governing nationality in the various States, it was neither appropriate nor practical to adopt such a provision.

10. Matters of nationality were extremely complex, and efforts to regulate them by international instruments had not been successful. The Hague Convention and protocols had been ratified by only a few States, and the special protocol concerning statelessness had not received sufficient ratifications to enter into force.[1]

11. In the *Nottebohm* case, in which Guatemala had refused to recognize the grant by Liechtenstein of the nationality of the Principality to a German national, the International Court of Justice had ruled against the validity of the naturalization on the ground of the absence of any bond of attachment between the person concerned and Liechtenstein.[2] The Court had stated that the diversity of demographic conditions had thus far made it impossible for any general agreement to be reached on the rules relating to nationality, although the latter by its very nature affected international relations.

12. For those reasons it was preferable to delete article 35, in which event nationality questions affecting diplomats would be settled by municipal law.

13. Mr. GASIOROWSKI (Poland) recalled that the Committee of the Whole, after a prolonged discussion, had appointed a working group to prepare a generally acceptable text for article 35 (31st meeting). At the 34th meeting, the draft prepared by the working group (A/CONF.20/C.1/L.314) had, however, been rejected by the Committee of the Whole, which had previously also rejected an amendment deleting article 35 altogether (A/CONF.20/C.1/L.204). The Committee had then, after rejecting a number of amendments, adopted the International Law Commission's text of article 35, by the large majority of 46 votes to 12, with 12 abstentions.

14. An effort was being made to reopen debate on the question of the deletion of article 35. The purpose of the Conference was to clarify and develop diplomatic privileges and immunities and so to foster the maintenance of diplomatic relations. The aim was to maintain and extend existing facilities, not to restrict them, still less abolish them. Diplomatic agents, precisely because of their duties, served abroad, and if the nationality of the place of birth were imposed upon their children, they might be placed in the intolerable situation of having children of several different nationalities, who might later even find themselves at war with each other.

15. The *jus soli*, imposing the nationality of the place of birth, was very useful to countries of immigration, and fully justified in the normal case of the children of permanently settled immigrants. The case of the child of a diplomatic agent was, however, completely different and exceptional, and to apply the *jus soli* to his child would be manifestly unjust.

16. It had been objected that matters of nationality pertained to private international law and should be therefore regulated by appropriate conventions. Nationality questions in general undoubtedly belonged to private international law; but the specific question of the nationality of a diplomatic agent and of members of his family was a matter, not of private, but of public international law and therefore fully within the competence of the Conference.

17. He was not impressed by the argument that nationality questions were regulated by municipal law. The proposition that municipal law should prevail over international law was untenable; if it were accepted, any State could repudiate its international obligations by passing laws inconsistent with them.

18. For those reasons he urged that the determination of the nationality of members of a diplomatic mission and of members of their families should not be left to the internal law of the receiving State, and that the text of article 35, so carefully prepared by the International Law Commission, should be accepted by the Conference. It was, of course, unfortunate that certain countries might have to make reservations, but that was better than leaving the whole matter unregulated.

19. Mr. VALLAT (United Kingdom) agreed with those representatives who favoured the deletion of article 35. The language of the article was extremely vague and general; its interpretation largely turned on the meaning of the word " solely "; and serious difficulties of interpretation had been raised by words of that type in the Covenant of the League of Nations and in the United Nations Charter. He had no objection to the principle laid down in article 35, but thought that many countries would find the article almost impossible to apply as it stood. Nationality law dealt with a great variety of cases, and had to be drafted very precisely.

20. For those reasons he would vote against article 35, the deletion of which would leave the matter still subject to the general rules of customary international law.

21. Mr. YASSEEN (Iraq) favoured the retention of article 35, for it reflected an international practice sufficiently general to deserve endorsement in the convention. It was a rule of customary international law that a State had sovereign jurisdiction over its own nationals. Precisely for that reason, an exception to the rule was mentioned expressly in article 36.

22. As for the substance of article 35, he said there was ample reason for exempting a diplomatic agent from the application of laws which, but for that provision, would impose on his children the nationality of a State in whose territory he was present purely for the purpose of his duties.

23. In fact the diplomatic agent himself, not only his children, required to be protected from the automatic application of the nationality laws of the receiving State. In some countries, a person was deemed to be a national by reason of his mere residence on its territory. Under the law of some countries a national who became a naturalized citizen of another country was deprived of his nationality of origin; but if he returned to his country

[1] (i) Convention on certain questions relating to the Conflict of Nationality Laws, 12 April 1930, League of Nations, *Treaty Series*, vol. 179; (ii) Protocol relating to Military Obligations in certain cases of Dual Nationality, *ibid*, vol. 178; (iii) Protocol relating to a certain case of statelessness, *ibid*, vol. 179; (iv) Special Protocol concerning Statelessness, L. of N. doc. C.227. M.114. 1930 V. All these instruments are reprinted in United Nations *Legislative Series, Laws concerning Nationality* (ST/LEG/SER. B/4), United Nations publication, Sales No. 1954.V.1, pp. 567-577.

[2] Nottebohm case (second phase), Judgment of 6 April 1955, *ICJ Reports, 1955*, p. 4.

of origin its nationality was automatically restored to him. Accordingly, if the country of which he had become a naturalized citizen sent him as a diplomatic agent to the State of his former allegiance, he would find that the laws of that receiving State imposed its nationality on him.

24. That example, like others that had been mentioned, showed the need for a provision which, like article 35, exempted not only the children of diplomatic agents but also the agents themselves from the automatic operation of the nationality laws of the receiving State.

25. He fully understood the demographic reasons which had led to the adoption of the *jus soli* principle by countries of immigration; but article 35 would exempt only a very small number of families from the operation of that principle, and its adoption would not therefore materially conflict with the policy followed by those countries in nationality questions.

26. Mr. AGO (Italy) said that he had the greatest respect for the position of those who applied the *jus soli*, but asked them to show the same respect for the position of other countries which would be faced with great difficulties if article 35 were not adopted. The article was perfectly clear. Its purpose was to exempt diplomatic agents and their children from the automatic operation of the nationality laws of the receiving State. Thus under article 35 the child of a diplomat born in a *jus soli* country would not, merely by the operation of the law, become a national of a country to which he was unlikely ever to return. Similarly, a woman diplomat accredited to Italy who married an Italian citizen would not acquire Italian nationality by the mere operation of the law, as a foreign woman marrying an Italian national usually did.

27. The PRESIDENT put to the vote article 35.

There were 42 votes in favour and 28 against, with 6 abstentions.

Article 35 was not adopted, having failed to obtain the required two-thirds majority.

28. Mr. de ERICE y O'SHEA (Spain) said that article 35 contained a useful principle; he proposed that since its inclusion in the body of the convention had been rejected, it should form the subject of a separate optional protocol. Since the convention would remain open for signature until 31 March 1962, there would be ample time for States to decide whether they wished to sign the convention with or without a protocol on nationality. Such an additional protocol would certainly be of interest to many States, and would be of great assistance to diplomats in regard to the nationality of their children.

The proposal was adopted by 54 votes to 4, with 11 abstentions.[3]

ARTICLE 36

29. The PRESIDENT, inviting debate on article 36, drew attention to the amendment submitted by Libya, Morocco and Tunisia (A/CONF.20/L.9/Rev.1) and to that submitted by nineteen delegations (A/CONF.20/L.13 and Add.1).

Paragraph 1 was adopted unanimously.

Paragraph 2

30. Mr. PINTO de LEMOS (Portugal) recalled the doubts expressed by his delegation in the Committee of the Whole (32nd meeting) regarding the extension of diplomatic privileges and immunities to members of the administrative and technical staff of a diplomatic mission. The arguments put forward had failed to convince him that that extension was consistent with the stage of development of international law or with the basic principles underlying the relevant section of the convention.

31. There existed no generally accepted practice to warrant the adoption of a rule embodying that extension. Nor was there any good reason, on grounds either of "functional necessity" or of the "representational character" of the mission, to grant to members of the administrative and technical staff the privileges prescribed for diplomatic agents.

32. Diplomatic privileges and immunities were, by definition, an exception to the normal freedom of action of States within the bounds of their domestic jurisdiction. States were prepared to concede that exception only for a specific purpose and for very special reasons. Any attempt to broaden its scope unduly would weaken the whole system of diplomatic privileges and immunities, which was effective and respected precisely because it was exceptional.

33. Members of the administrative and technical staff should, of course, enjoy privileges and immunities in respect of acts performed by them in the course of their duties. To ensure the smooth functioning of the mission, they should also be exempted from tax on their remuneration, from social security legislation (article 31) and from public service (article 33). They should enjoy the exemption from customs duty set forth in article 34, paragraph 1, in respect of articles imported at the time of first installation. Naturally, the receiving State could always grant staff of that category wider privileges, either unilaterally or subject to reciprocity. His delegation's vote on article 36, paragraph 2, and the amendments thereto would be guided by the principles which he had stated.

34. Mr. BOUZIRI (Tunisia) introduced, on behalf of its sponsors, the three-nation amendment to article 36 (A/CONF.20/L.9/Rev.1).

35. The problem raised in article 36 was the extremely grave one of determining which persons were entitled to privileges and immunities. There was complete agreement on paragraph 1, granting those privileges to the diplomatic agent's family. The position of members of the administrative and technical staff was, however, much more difficult to settle.

36. The commentaries of the International Law Commission (A/3859) and the discussion in the Committee

[3] For debate on the optional protocol concerning the acquisition of nationality see 12th plenary meeting.

of the Whole (32nd and 33rd meetings) showed that the provision extending privileges and immunities to that category of persons was based on the consideration that some of them performed confidential tasks. He could not accept the idea that, because some of the persons concerned might need protection from pressure by the receiving State, all of them should enjoy diplomatic immunities. The number of such persons was very large, and many States would never agree to extend privileges and immunities to them all, particularly since their training and selection did not provide the same safeguards as did those of diplomatic agents.

37. That was why the three-nation amendment proposed that the privileges set forth in paragraph 2 should be limited to " members of the administrative and technical staff of the mission performing confidential duties ", and to their families. The number of persons covered by that definition would necessarily be small. The amendment required the receiving State to apply the limitation without discrimination between the various missions, and to take into account the reasonable needs of the mission.

38. The amendment also proposed an additional paragraph extending to all members of the administrative and technical staff immunity in respect of acts performed in the course of their duties, the exemptions set forth in articles 31, 32 and 33, and, in respect of articles imported at the time of their first installation, the privileges mentioned in article 34, paragraph 1.

39. He believed that the proposed formula was a satisfactory compromise. It went further than existing international law, but the sponsors had put it forward in order to meet to some extent the views of others. Clearly no one formula could satisfy all delegations.

40. The nineteen-nation proposal (A/CONF.20/L.13 and Add.1) was a commendable attempt to solve the difficulties raised by paragraph 2. It was satisfactory in that it would grant to members of the administrative and technical staff immunity from jurisdiction only in respect of acts performed in the exercise of their functions. It went somewhat too far when it granted them, without any discrimination, the privileges set forth in articles 27 (personal inviolability) and 28 (inviolability of residence and property), which were not necessary to persons not performing confidential duties.

41. For those reasons he considered that the nineteen-nation amendment improved upon article 36; but he naturally preferred the three-nation amendment, and urged the Conference to adopt it as the least unsatisfactory solution.

42. Mr. de VAUCELLES (France), introducing the nineteen-nation amendment, said that its sponsors intended the immunity from jurisdiction should be in conformity with all the provisions of article 29. The privileges of a diplomat might be envied, but it was his immunity from jurisdiction which aroused the greatest resentment, and to extend that immunity too widely might have serious consequences.

43. The Government of France, in its agreement with the United Nations Educational, Scientific and Cultural Organization (UNESCO), which had its headquarters in Paris, had granted some high officials of the Organization the same privileges as those granted only to the purely diplomatic members of missions; the administrative and technical staff of diplomatic missions in France enjoyed in principle, unless a reciprocal agreement provided otherwise, immunity from jurisdiction only in respect of acts performed in the exercise of their functions. The other officials of UNESCO enjoyed similar immunity, under article 22 of the French Government's agreement with the Organization. If the administrative and technical staff of diplomatic missions were granted complete immunity from jurisdiction, the UNESCO officials would be entitled to claim it too. The result would be that 25,000 persons, including members of families, would enjoy immunity from jurisdiction. It would be much more dangerous to extend privileges and immunities too far than to appear to discriminate between the different categories of staff.

44. The French delegation appreciated the motive for the three-nation amendment, and would support it, should the nineteen-nation amendment be defeated, as an improvement on the existing text, although it might give rise to disputes and divergent interpretations. The Government of France regretted that it would have to vote against paragraph 2 as it stood, even if that resulted in the deletion of the paragraph. The existing practice, which had caused no difficulty, would continue in any case.

45. Mr. CAMERON (United States of America) recalled that the text of article 36 had been adopted in the Committee of the Whole as a compromise, by a substantial majority. His delegation would have preferred the original proposal of the International Law Commission, but had voted for the compromise text in the spirit of co-operation which had moved all delegations. A number of delegations now sought to amend the article; but the reasons they gave for eliminating or curtailing the grant of privileges and immunities to members of administrative and technical staff were no more persuasive than similar arguments had been in the Committee of the Whole. It had been suggested that opposition to the compromise text arose from considerations extraneous to the convention. For example, concern had been expressed that article 36 might be applied automatically, as a precedent, to international organizations. His delegation believed that concern unwarranted. The reasons for granting privileges and immunities to the administrative and technical staff of missions in relations between States might or might not apply to missions to international organizations, or to the staff of an international organization. It should be kept in mind that the whole question of the relationship between States and international organizations was a distinctly separate one, which had yet to be considered thoroughly by the International Law Commission. If it would assist in allaying concern, however, his delegation would agree that the Conference should express, in a resolution or otherwise, its view that article 36 was not to be considered a prece-

dent with respect to international organizations, and that the International Law Commission should consider that question *de novo*.

46. Concern had been expressed by the delegations of some countries in which international organizations had their seat that the provisions of existing headquarters agreements might require the automatic application of article 36 to missions to those organizations. If any additional burden did accrue from the aodption of article 36, it should be weighed against the advantages to the receiving State resulting from the presence of the international organization. It was by no means clear, however, that the headquarters agreements required the automatic application of article 36. Under section 15 of the United Nations Headquarters Agreement of 1947,[4] for example, article 36 would apply only to such resident members of the staffs of missions to the United Nations in New York as were agreed upon by the Secretary-General, the Government of the United States, and the government which sent the mission concerned. Similarly, article 12 of the Ottawa Agreement of 1951 on the Status of the North Atlantic Treaty Organization [5] provided that, apart from the principal permanent representative, only such members of the staff of a mission as might be agreed upon between the sending State, the Organization, and the receiving State should enjoy the immunities and privileges accorded to diplomatic representatives and their official staff of comparable rank. Clearly, therefore, the receiving State was not powerless to regulate the extent to which article 36 should be extended to the administrative and technical staff of international organizations.

47. The proposal in sub-paragraph (*a*) of the nineteen-nation amendment was an apparently unobjectionable drafting change. It would, however, cause difficulty in regard to the new sentence proposed in sub-paragraph (*c*) beginning with the word " They ", the antecedent of which included members of families. The result was an incongruity: members of the family would enjoy immunity for " acts performed in the exercise of their functions ". More significantly the proposal in sub-paragraph (*b*) was to omit article 29 from the articles applicable to members of the administrative and technical staff, who would in consequence be subject, except for official acts, to the criminal as well as to the civil jurisdiction of the receiving State. That possibility was fraught with many dangers. Any prosecution or civil suit which might ensue would, moreover, be a curious one, since both article 27 and article 28 were still enumerated. Under article 27 the person of the member of the administrative and technical staff was inviolable; consequently, he was not liable to arrest or dentention. Under article 28 his residence and other property were inviolable. If the amendment were adopted, therefore, the receiving State could not compel the attendance of the staff member at a trial, nor could a penal sentence be carried out or a civil judgment executed; the jurisdiction of the receiving State would be more or less illusory.

48. The new compromise text proposed by Tunisia, Libya and Morocco would create more problems than it would solve, and demonstrated the wisdom of not attempting to make extensive changes at the last minute. During the discussions of the International Law Commission and again at the Conference it had become abundantly clear that the distinction between different categories of personnel was often very difficult. The amendment would add an additional category by dividing the administrative and technical staff into what might be called superior and inferior categories. It was not at all clear what criteria would determine the category in which a staff member should be. The words " to the extent of the reasonable needs of the mission " were so elastic that they would cause endless controversy and confusion, which the Conference was trying to eliminate. His delegation would find it difficult, if not impossible, to support such language. The duties of an individual might not be confidential, yet he might have confidential information as important as a person " performing confidential duties ". Again it was not clear whether the sending State or the receiving State would judge who was performing confidential duties. Could the receiving State make a sound judgment without access to the records of the mission ?

49. The purpose of privileges and immunities was, as was stated expressly in the preamble, not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions. His delegation would therefore strongly urge the Conference to approve the existing text of article 36.

50. Mr. RIPHAGEN (Netherlands) said that there had been a general tendency to affirm, and sometimes even to extend, the traditional privileges and immunities, which his delegation thought needed some adaptation to modern conditions, particularly as members of foreign missions had become much more numerous and were in much closer contact with the everyday life of the receiving State. The adaptations proposed had, however, not been incorporated in the convention, and the majority of delegations seemed reluctant to modify the classical privileges and immunities, or even to place any legal obligation on the sending State to waive immunity. His delegation therefore considered that the only course was to limit the number of persons eligible for privileges and immunities, and it would vote in favour of the amendments which would do so.

51. Mr. GASIOROWSKI (Poland) said that the Conference found itself in an almost unprecedented situation. The Committee of the Whole at its 33rd meeting had adopted paragraph 2 by 59 votes to none, with only 7 abstentions. Yet two amendments, one proposed by three and the other by nineteen delegations, had been submitted to the paragraph in plenary. The amendment submitted by Tunisia, Libya and Morocco provided that certain privileges and immunities should be granted " to the extent of the reasonable needs of the mission ". The representative of Tunisia had admitted, in introducing the amendment, that the receiving State would be the judge of whether, for example, a diplomatic mission was claiming too many cipher clerks. But surely the

[4] Agreement regarding the Headquarters of the United Nations, signed at Lake Success on 26 June 1947: United Nations, *Treaty Series*, vol. 11, p. 26.

[5] United Nations, *Treaty Series*, vol. 200, p. 10.

sending State could hardly agree that the receiving State should be the judge of how it would allocate its staff, or of which members were " performing confidential duties ". The effect of the amendment in practice would be to remove all privileges and immunities from the administrative and technical staff. It was therefore the further removed from the existing text of article 36 and should be voted on first.

52. The nineteen-nation amendment dropped the reference to article 29, which provided for immunity from jurisdiction. How then was it possible, despite the omission of the reference to article 29, to mention article 27, which provided that the person of a diplomatic agent was inviolable ? The amendment further proposed that administrative and technical staff should enjoy immunity from jurisdiction in respect of acts performed in the exercise of their functions. That provision would be absurd in practice, since a cipher clerk, for example, could hardly be arrested for any failure to perform adequately his duties of coding and decoding. The amendment, however, would afford protection only in that case.

53. The Conference had worked in an excellent atmosphere of co-operation. If, however, the amendments to article 36, a key provision of the convention, were put to the vote, it was probable that no text would receive the required two-thirds majority and the convention would be wrecked. He therefore appealed to the sponsors of the amendments not to press them.

54. Mr. GLASER (Romania) said that article 36 had to reconcile two conflicting interests: that of the sending State, which wished to ensure that the members of its missions should not be subjected to pressure or exposed to other dangers detrimental to the exercise of their official functions; and that of the receiving State, which wished to ensure that the smallest possible number of persons in its territory were immune from its laws. The problem was difficult, and as the representative of Tunisia had said, no solution was likely to be entirely satisfactory to everyone. The only course, therefore, was to seek a solution that would do the least harm and the most good.

55. The fundamental principle of diplomatic law was *ne impediatur legatio*; but that principle could not be applied without regard to existing conditions. Diplomacy had become very complicated since the time of the Vienna Regulation, and many more people were involved in it. If States wished to maintain diplomatic relations, they had to accept all the consequences, and one of those was the protection of the persons concerned, however many they might be. The duty to protect foreign diplomatic personnel might place a heavy burden on receiving States; but it was essential, for there was ample evidence to show that the dangers to which they could be subjected were real and not imaginary.

56. In his opinion, the best solution would be one that followed the evolution of diplomacy. Thus the first need was to grant immunities to all the personnel of diplomatic missions, whether or not specifically engaged in confidential work — for even the service staff often received confidential information. It was artificial and unrealistic to separate administrative and technical staff into those who performed confidential duties and those who did not; and in any case it was scarcely feasible to determine which members were engaged on confidential work. The real principle to be decided was whether or not the administrative and technical staff should be protected; he did not think diplomatic relations could exist in modern times unless they were. The Romanian delegation would therefore vote for article 36 as approved by the Committee of the Whole. The amendments would destroy the entire work both of the Committee and of the International Law Commission.

57. Mr. RUEGGER (Switzerland) said he wished to explain Switzerland's attitude concerning the problem dealt with in article 36.

58. In conformity with its government's instructions, the Swiss delegation supported the nineteen-power amendment of which Switzerland was a sponsor. During the debate in the Committee of the Whole, the Swiss delegation had stated — and that had also been the opinion of other delegations — that in the matter covered by article 36 it would be desirable to do no more than codify the law, not to create new law. While acknowledging the authority of the International Law Commission, the Swiss delegation had referred during the debate in the Committee to the evolution which had been taking place and which was adverse to the extension of " privileges ". That was why the Swiss delegation had spoken in the Committee in support of the view held by the great majority and had approved a formula which was more in conformity with current practice. There still remained, however, the question of " immunities ". After the discussion in the Committee, several of the governments represented at the Conference had in the normal course of events given closer attention to the delicate problem of immunities. Among those was the Swiss Government. In the light of its assessment of the situation the Federal Government had directed the Swiss delegation to vote, so far as immunities likewise were concerned, in favour of a provision that preserved the *status quo*. That was why his delegation supported the amendment.

59. If the amendment should not be adopted, the Swiss delegation would regretfully be obliged not to vote in favour of article 36 in the form in which it was before the Conference. That attitude would likewise mean that Switzerland might possibly have to enter a reservation concerning that article later. Conceivably, neither the amendment nor the provision as approved by the Committee would receive the required majority. In that event, article 36 would lose its paragraph 2. In his delegation's opinion that would not be an irreparable misfortune, for, according to the preamble, the rules which would then apply would be those of customary international law which were, after all, sound and yet flexible and capable of progressive development.

60. Mr. EL GHAMRAOUI (United Arab Republic) said that he would vote against article 36 as approved by the Committee of the Whole because he believed that

there should be a distinction between diplomatic staff and administrative and technical staff. The Committee had rightly indicated in the preamble that functional necessity and representative character were the basis of diplomatic privileges and immunities. The administrative and technical staff could not be said to have representative character, and it was only logical that that difference between them and the diplomatic staff should be reflected in their respective privileges and immunities. The limitation of privileges and immunities for administrative and technical staff to acts performed in the exercise of their functions should be an essential principle under article 36, and he would therefore support any amendment to that effect.

61. Mr. KRISHNA RAO (India), speaking also on behalf of the representatives of Burma and Indonesia, supported article 36 as drafted. The most important point on which the text proposed in the nineteen-nation amendment differed from that of the Committee of the Whole was its denial to administrative and technical staff of the immunities provided under article 29, except in respect of acts performed in the exercise of their functions. The omission of a reference to article 29 was serious, for as a consequence whatever immunities were granted under the other articles would be nullified. In the light of the purpose for which protection was given to the category of staff in question (as explained by the International Law Commission in its commentary), the immunity given by article 29 was the most important. Yet if the amendment were adopted, an ambassador's secretary or an archivist — who through their very work were repositories of secret and confidential knowledge equally with the diplomatic staff — would be subject to the criminal and civil jurisdiction, to a summons to appear in court to give evidence, and to measures of execution. It was very difficult to draw a line between official and personal activities, and a receiving State would be able to put pressure on persons who — in their possession of vital and confidential information — were on a par with heads of missions and members of the diplomatic staff.

62. Commenting on the references to international organizations made by some representatives, he said that the subject was entirely irrelevant. The fact that a State had linked the privileges and immunities of the staff of missions with those of the staff of international organizations established in its territory did not justify an attempt to reduce the immunities and privileges which States in general wished to obtain for their diplomatic staff.

63. The three-nation amendment was even less acceptable than the nineteen-nation amendment. It granted immunities to members of the administrative and technical staff " performing confidential duties ". But how could the receiving State be expected to know which members of a foreign mission performed confidential duties, and what diplomatic mission was likely to divulge particulars of such purely internal arrangements ? Moreover, how could a receiving State pronounce on the " reasonable needs " of the mission in regard to each member of its administrative and technical staff ? He would therefore vote for article 36 as drafted, on the understanding that in respect of the privileges specified in article 34, paragraph 1 (referred to in article 36, paragraph 2), the receiving State should have power to make regulations concerning the importation of certain articles by the administrative and technical staff.

64. Mr. VALLAT (United Kingdom) cautioned the Conference against any hasty or ill-considered rejection of the work of the International Law Commission and the Committee of the Whole on a vital and integral part of the Conference's task — to determine what immunities were necessary to enable diplomatic missions to fulfil their function. If the legal background of paragraph 2 were examined, ample precedent would be found in international law for the grant of privileges and immunities to the technical and administrative staff. The generally, if not universally, accepted practice was to grant technical and administrative staff the same immunities as to diplomats. If there were any doubt on the matter, the Conference should remove it. The International Law Commission had recognized in its commentaries that there was room for doubt and had therefore, after prolonged discussion, produced a text providing the necessary immunity.

65. Its reasons for doing so were worth considering. Briefly, it had taken the view that the function of the mission as a whole should be taken into consideration, rather than the work done by individuals; that many of the technical and administrative staff performed more important confidential tasks than some of the diplomatic staff; that an ambassador's secretary or an archivist was as likely to possess secret or confidential information as the diplomatic staff; and that it was difficult to distinguish between members within the administrative and technical category. The Commission's conclusion had been that staff of the category in question should be given " not only immunity from jurisdiction in respect of official acts performed in the course of their duties but, in principle, all the privileges and immunities granted to the diplomatic staff " — a conclusion that was particularly important in the light of the three-nation amendment. Both amendments would give rise to difficulties in application, and the resulting controversy would inevitably interrupt the mission's work.

66. The United Kingdom delegation fully agreed with the wise statements of Professor Ago and of the late Professor Scelle at the ninth session of the International Law Commission (409th meeting) and supported article 36, paragraph 2, as approved by the Committee of the Whole. The three-nation amendment was entirely unacceptable. The nineteen-nation amendment (although he sympathized with the representative of France because of his country's special cricumstances) was equally unacceptable, and indeed impracticable, for its provisions infringed the principle of inviolability. Moreover, the deletion of paragraph 2 would leave a serious gap in the convention, which would then provide for all categories of staff and members of a mission, as well as their families, except administrative and technical staff. In his opinion there was no proper safeguard in the paragraph of the preamble which stated that the

rules of customary international law should govern questions not expressly regulated in the convention. It was better to retain paragraph 2, protecting the life-blood of the mission, and leave the question of civil jurisdiction to be settled by waiver of immunity when necessary. That subject was dealt with in the draft resolution submitted by Israel (A/CONF.20/L.4/Rev.1).

67. Mr. AGO (Italy) said that all speakers were agreed on the importance and delicacy of the issue. The central point of discussion was a conflict of interest, not between States, but within States; for each wished to protect its interests both as sending and as receiving State; and each wished the law of the receiving State to be the rule and everything else, including privileges, the exception. He fully sympathized with the need of the sending State to ensure the best conditions for its missions, and therefore supported the views of the representative of Romania. He could declare that he maintained the opinion he had expressed as a member of the International Law Commission and to which the representative of the United Kingdom had referred. Nevertheless, he appealed to representatives not to forget that some countries were faced with special conditions: his own, for example, was host to a very important specialized agency of the United Nations. The representative of France had described what the situation in Paris would be if article 36 were applied without limitation; the situation in Rome would be similar.

68. The nineteen-nation amendment, of which Italy was a sponsor, was a compromise seeking to reconcile the two conflicting interests (the provision approved by the Committee of the Whole was not a compromise, for it protected only one side). It had been argued that the amendment did not provide the protection required by the principle *ne impediatur legatio*. In fact, however, it gave the administrative and technical staff of the mission the privileges and immunities specified in articles 27, 28, 30, 31, 32 and 33 — including (article 27) the privilege essential to inviolability, immunity from arrest. Moreover, the immunity covered not only the person but the home, papers and correspondence of the persons concerned. The discussion really centred on article 29, which provided immunity from jurisdiction in the receiving State: he and his co-sponsors could only agree to such immunity for technical and administrative personnel in respect of their official functions. He could see no reason why such persons should be immune from jurisdiction in the case, for example, of traffic offences: it would be invidious for them to escape penalties to which nationals of the receive State were subject. He could not agree with the suggestion that States which did not agree with the article could make reservations; for a convention with reservations would not be a satisfactory outcome of the Conference. As the representative of the United Kingdom had said, it was essential to resolve all controversial issues.

69. He appealed to representatives to show the same spirit of compromise as the sponsors of the amendment, and to approve a generally acceptable text, for otherwise the convention would be either incomplete or weakened by reservations.

70. The PRESIDENT drew attention to a correction to the French text of the nineteen-nation amendment: the words " et immunités " should appear between the word " privilèges " and the word " mentionnés " in the proposed paragraph 2.

The meeting rose at 1.20 p.m.

TENTH PLENARY MEETING

Thursday, 13 April 1961, at 3.20 p.m.

President: Mr. VERDROSS (Austria)
later: Mr. BOLLINI SHAW (Argentina)

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1951 (item 10 of the agenda) *(continued)*

1. The PRESIDENT invited the Conference to continue its debate on the draft convention (A/CONF.20/L.2/Add.1).

ARTICLE 36 *(continued)*

2. The PRESIDENT said that, in addition to the amendments submitted at the previous meeting (para. 29), an amendment submitted by the United Kingdom (A/CONF.20/L.20) was before the Conference.

Paragraph 2

3. Mr. de ERICE y O'SHEA (Spain) said he had listened carefully to the comments made by the various delegations on the amendments to article 36, paragraph 2, and, in particular, on the nineteen-nation amendment (A/CONF.20/L.13), of which Spain was one of the sponsors. The object of the amendment was to restrict the privileges granted to the administrative and technical staff of the mission, without thereby hindering them in the performance of their duties. He believed that the proposed provision would facilitate the work of the mission. Obviously, the head of the mission should enjoy immunities; but it was difficult for him to supervise a staff which was tending to grow considerably. Thus a member of the staff might misuse his privileges and the head of the mission find it hard to intervene. Moreover, the population of the receiving State did not readily understand the need for such privileges. The convention would be submitted for ratification to parliaments, which might have some difficulty in understanding or accepting the scope of the privileges and immunities. Any government might, of course, enter reservations, and that was current practice; but it was not desirable that there should be too many reservations to the text adopted by the Conference.

4. If the Conference adopted neither of the two amendments (A/CONF.20/L.9/Rev.1 and L.13) nor paragraph 2, the established rules of customary international

law would continue to govern the treatment of the administrative and technical staff of missions. Alternatively, it would be possible to apply article 44, paragraph 2 (*b*), and base the treatment on an agreement between the States. He hoped that the Conference would give careful consideration to the nineteen-nation amendment.

5. Mr. VALLAT (United Kingdom), introducing his delegation's amendment, thought it would be dangerous not to adopt paragraph 2. The United Kingdom amendment offered a compromise solution. If it were adopted, it might perhaps be necessary to make a few changes to the article as a whole, but that could be left to the Drafting Committee. He was not enthusiastic about the amendment, but it had the merit of providing a way out of a deadlock. Perhaps the sponsors of the other amendments would agree to withdraw them; if not, he hoped that those amendments would be put to the vote first and then the United Kingdom amendment.

6. Mr. AGO (Italy) moved that the meeting be suspended for ten minutes in order that the delegations concerned could confer.

The meeting was suspended at 3.45 p.m. and resumed at 3.55 p.m.

7. The PRESIDENT invited the Conference to take up article 38 and to resume consideration of article 36 later in the meeting (see para. 30 below).

ARTICLE 38

8. Mr. CAMERON (United States of America) stated for the record his delegation's understanding of the status of a member of the mission who was already in the territory of the receiving State at the time of his appointment.

9. Article 38, paragraph 1, was concerned with two categories of persons: (1) those appointed before their arrival in the receiving State; and (2) those already present in the territory of the receiving State at the time of their appointment.

10. With respect to persons in the first category, he said it was quite clear from the text of the article and from the statements made in the Committee of the Whole that they enjoyed privileges and immunities from the moment they entered the territory of the receiving State. It would be undesirable, he agreed, to select a point later in time for such privileges and immunities to begin. With respect to the second category, the text was less precise. If article 38 were read out of context, it could be contended that such persons enjoyed inviolability and immunity from jurisdiction from the moment their appointment was notified to the authorities of the receiving State, even if the receiving State promptly notified the mission that the appointment was unacceptable.

11. If that were so it might happen that, for instance, a national of the sending State who had entered the territory of the receiving State as a tourist committed a crime in the receiving State. If either before or after his apprehension by the police, his appointment were notified to the authorities of the receiving State, would article 38 automatically confer inviolability upon him until he left the country ?

12. In the opinion of the United States delegation, such an interpretation would obviously be inadmissible and clearly not in keeping with the spirit of the convention. The clause should therefore be read as if the word " provisionally " appeared between the words " if already in its territory " and the words " from the moment when his appointment is notified ".

13. He would vote for article 38 subject to that interpretation.

14. Mr. de VAUCELLES (France) said that, in view of the opinion expressed by his delegation in the Committee of the Whole (35th meeting), it would ask for a separate vote on paragraph 1.

Paragraph 1 was adopted by 71 votes to 1, with 2 abstentions.

15. Mr. MARESCA (Italy) said that the reference in paragraph 1 to " every person entitled to privileges and immunities " should be interpreted to mean persons whose appointment had been notified to the receiving State and had been formally or tacitly accepted.

Paragraph 2

Paragraph 2 was adopted without discussion.

Paragraph 3

Paragraph 3 was adopted without discussion.

Paragraph 4

16. The PRESIDENT drew attention to an amendment submitted by the Netherlands (A/CONF.20/L.7).

17. Mr. GHAZALI (Federation of Malaya) asked for a separate vote on the words " with the exception of any property acquired in the country the export of which was prohibited at the time of his death ". His delegation could not vote for the retention of those words, since they were liable to raise difficulties. The Indian delegation had told him that it agreed with his views.

18. Mr. RIPHAGEN (Netherlands), explaining his delegation's amendment, said that it was not intended to exempt the property of a person only remotely related to a diplomat but living in his household from the taxes and duties normally levied.

The Netherlands amendment was adopted by 70 votes to none, with 3 abstentions.

19. The PRESIDENT put to the vote the passage " with the exception of any property acquired in the country the export of which was prohibited at the time of his death ".

The Conference decided by 48 votes to 12, with 12 abstentions, to retain the passage.

Paragraph 4, as amended, was adopted by 70 votes to 1, with 2 abstentions.

Article 38 as a whole, as amended, was adopted by 74 votes to none, with 1 abstention.

ARTICLE 39

Paragraph 1

Paragraph 1 was adopted without discussion.

Paragraph 2

Paragraph 2 was adopted without discussion.

Paragraph 3

20. Mr. MELO LECAROS (Chile) recalled that in the Committee of the Whole (35th meeting, para. 38) the Chilean delegation had expressed the view that the protection granted by third States to diplomatic couriers should extend to diplomatic couriers *ad hoc*. The suggestion had been referred to the Drafting Committee, which had not, however, taken it into account in its draft of article 39, paragraph 3. He suggested that the provision should be referred back to the Drafting Committee for redrafting on those lines.

It was so agreed.

Paragraph 4

Paragraph 4 was adopted without discussion.

Article 39 as a whole was adopted by 73 votes to none, with no abstentions, on the understanding that paragraph 3 would be referred back to the Drafting Committee.[1]

ARTICLE 40

Paragraph 1

Paragraph 1 was adopted without discussion.

Paragraph 2

21. Mr. OJEDA (Mexico) stated for the record that, by article 3 of the Decree concerning Protocol in force in Mexico, the Ministry for Foreign Affairs was the sole official channel between diplomatic missions and national bodies.

22. Mr. KRISHNA RAO (India) requested a separate vote on the passage " and also with other departments and agencies to the extent compatible with existing rules or established practice in the receiving State ", which had not appeared in the International Law Commission's draft (A/3859).

The Conference decided by 33 votes to 31, with 9 abstentions, not to retain the passage in question.

Paragraph 2 as amended was adopted by 64 votes to none, with 9 abstentions.

Paragraph 3

Paragraph 3 was adopted without discussion.

Article 40 as a whole, as amended, was adopted by 74 votes to none, with no abstentions.

[1] The Drafting Committee decided that the expression " diplomatic couriers " in article 39, paragraph 3, covered also diplomatic couriers *ad hoc* and that it was therefore not necessary to amend the provision.

ARTICLE 41

Article 41 was adopted by 70 votes to none, with no abstentions.

ARTICLE 42

23. Mr. GHAZALI (Federation of Malaya) recalled that in the Committee of the Whole (37th meeting) his delegation, together with the Australian delegation, had submitted an amendment limiting to persons enjoying privileges and immunities who were nationals of the sending State, and to members of their families irrespective of nationality, the facilities granted by the receiving State to enable persons to leave at the earliest possible moment. That amendment had unfortunately been rejected. The Drafting Committee's version of article 42 placed an unduly heavy burden on certain States, among them his own. While it was reasonable for the receiving State to grant to such persons facilities for leaving its territory, it could not unreasonably be required to place at their disposal the means of transport necessary to convey not only themselves but also their property. Moreover, that obligation would depend on nothing more than necessity, and would in fact become permanent. It would also apply to the numerous persons covered by article 42. Lastly, " property " was a very broad term, and the consequence of the provision was to add an obligation which overstrained the means of smaller countries. The deletion of the second sentence of article 42 would not harm the convention in the least, for the matter could be settled by rules of customary law. His delegation therefore requested a separate vote on that sentence and would vote against its retention.

24. Mr. PUPLAMPU (Ghana) recalled that his delegation had suggested in the Committee of the Whole that the term " property " should be replaced by the more suitable expression " personal effects ". That suggestion had been referred to the Drafting Committee, which had apparently not noted it. His delegation therefore submitted it again as an oral amendment.

25. Mr. BOUZIRI (Tunisia) recognized that the second sentence of article 42 was full of good intentions. No one, however, could give more than he possessed. Therefore, to relieve the anxieties of certain delegations, he proposed that in the second sentence of article 42 the words " to the extent of its power " should be added.

26. The PRESIDENT put to the vote the oral amendment of Ghana to the second sentence of article 42.

The result of the vote was 30 in favour, 20 against and 15 abstentions.

The amendment was not adopted, having failed to obtain the required two-thirds majority.

27. The PRESIDENT put the Tunisian oral amendment to the vote.

The result of the vote was 26 in favour, 24 against and 17 abstentions.

The amendment was not adopted, having failed to obtain the required two-thirds majority.

28. The PRESIDENT put to the vote the second sentence of article 42.

The Conference decided by 49 votes to 12, with 10 abstentions to retain the second sentence of article 42.

Article 42, as a whole, was adopted by 59 votes to 1, with 10 abstentions.

ARTICLE 43

Article 43 was adopted by 72 votes to none, with no abstentions.

ARTICLE 43 *bis*

Article 43 bis *was adopted by 74 votes to none, with no abstentions.*

ARTICLE 44

Paragraph 1

Paragraph 1 was adopted without discussion.

Paragraph 2

Sub-paragraph (a)

29. Mr. YASSEEN (Iraq) said that, for the reasons he had explained in Committee (37th meeting), he would not be able to vote for sub-paragraph (*a*), on which his delegation requested a separate vote. The International Law Commission had not included a similar provision in its draft on consular intercourse and immunities (A/4425) and the Conference should follow that example.

Sub-paragraph (a) was adopted by 48 votes to 16, with 8 abstentions.

Sub-paragraph (b)

Sub-paragraph (b) was adopted without discussion.

Article 44, as a whole, was adopted by 61 votes to none, with 9 abstentions.

ARTICLE 36 *(resumed from para. 7)*

Paragraph 2

30. The PRESIDENT put to the vote the nineteen-nation amendment (A/CONF.20/L.13 and Add.1) as the further removed in substance from the original proposal.

The result of the vote was 37 in favour and 29 against, with 7 abstentions.

The amendment was not adopted, having failed to obtain the required two-thirds majority.

31. The PRESIDENT put to the vote the amendment sponsored by Tunisia, Libya and Morocco (A/CONF.20/L.9/Rev.1).

The amendment was rejected by 38 votes to 18, with 15 abstentions.

32. Mr. de ERICE y O'SHEA (Spain) thanked the United Kingdom delegation for its conciliatory gesture in submitting its amendment (A/CONF.20/L.20) to article 36, paragraph 2. Wishing to take a further step in the same direction, the Spanish delegation submitted an oral sub-amendment to the United Kingdom amendment, to the effect that the words " administrative and " should be inserted before " civil jurisdiction ".

33. Mr. VALLAT (United Kingdom) regretted that he could not accept the Spanish sub-amendment.

34. Mr. BARTOŠ (Yugoslavia) pointed out that a whole series of exceptions to the principle of immunity from civil jurisdiction was already provided for in article 29, paragraph 1. What, then, was the exact scope of the further exception proposed in the United Kingdom amendment ? Did it apply to article 29 as a whole, or only to paragraph 1 ?

35. Mr. VALLAT (United Kingdom) explained that the exception proposed in his delegation's amendment related exclusively to article 29, paragraph 1.

36. Mr. TUNKIN (Union of Soviet Socialist Republics) noted that the members of the Conference were divided into two groups in their views on article 36, paragraph 2. In the Committee of the Whole the point of view that had prevailed had been that of the delegations which had thought that members of the administrative and technical staff should be granted the privileges and immunities mentioned in articles 27 to 33, and some of the privileges mentioned in article 34, paragraph 1.

37. The United Kingdom amendment constituted a compromise which, so far as he could judge by private conversations, should largely meet the objections raised by delegations which thought that privileges and immunities should be much more restricted. It implied that acts committed by members of the administrative and technical staff outside the course of their duties should be subject to the law of the receiving State. But that seemed to have been precisely the object of the nineteen-nation amendment. Apparently, therefore, the United Kingdom amendment offered the only way out of the deadlock, and he thought the Conference should adopt it.

38. Otherwise there was a danger that article 36, paragraph 2, would not be adopted. Contrary to what the Spanish representative had said, that would leave a serious gap in the convention, since it would then say nothing whatever about the position of administrative and technical staff, whereas it would contain provisions concerning both diplomatic staff and service staff. Besides, it would be very debatable to what extent the position of administrative and technical staff could be said to be regulated by customary international law.

39. For all these reasons the Soviet Union delegation considered that the United Kingdom amendment should be adopted and would vote for it.

40. Mr. CAMERON (United States of America) said he would vote against the United Kingdom amendment. If the members of the administrative and technical staff of a mission did not enjoy immunity from the civil jurisdiction of the receiving State in respect of acts performed outside their official duties, the United States Government would face considerable difficulties, because it had always considered that, when such a condition

was included in a convention, it was for the United States courts to decide whether the act had or had not been performed in the course of official duties. If the provision in the United Kingdom amendment were adopted, he thought that the United States Government would consider that the question whether an act was performed in the course of official duties was one to be determined by the United States courts.

41. The PRESIDENT put to the vote the Spanish sub-amendment inserting the words " and administrative " between the words " civil " and " jurisdiction " in the United Kingdom amendment.

The result of the vote was 31 in favour, 22 against, and 24 abstentions. The sub-amendment was not adopted, having failed to obtain the required two-thirds majority.

42. The PRESIDENT put the United Kingdom amendment to the vote.

The result of the vote was 41 in favour, 24 against and 20 abstentions.

The amendment was not adopted, having failed to obtain the required two-thirds majority.

43. The PRESIDENT put paragraph 2 to the vote.

At the request of the representative of the United Kingdom, a vote was taken by roll-call.

Libya, having been drawn by lot by the President, was called upon to vote first.

In favour: Luxembourg, Nigeria, Norway, Poland, Romania, Sweden, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, China, Congo (Leopoldville), Cuba, Czechoslovakia, Denmark, Federation of Malaya, Finland, Federal Republic of Germany, Ghana, Hungary, India, Indonesia, Iran, Ireland, Israel, Korea, Liberia.

Against: Libya, Liechtenstein, Morocco, Portugal, Saudi Arabia, Spain, Switzerland, Thailand, Tunisia, United Arab Republic, Venezuela, Viet-Nam, Yugoslavia, Argentina, Cambodia, Colombia, Dominican Republic, Ecuador, France, Iraq, Italy, Japan, Lebanon.

Abstaining: Mexico, Netherlands, Pakistan, Panama, Peru, Philippines, Senegal, Union of South Africa, Uruguay, El Salvador, Ethiopia, Greece, Guatemala, Haiti, Holy See, Honduras.

The result of the vote was 39 in favour and 23 against, with 16 abstentions. Paragraph 2 was not adopted, having failed to obtain the required two-thirds majority.

44. Mr. VALLAT (United Kingdom) thought it would be wrong for the Conference to leave the problem raised by article 36, paragraph 2, unsolved. To give delegations an opportunity of finding an acceptable formula, he proposed the reconsideration of paragraph 2 and, if necessary, that the discussion on paragraph 2 be adjourned until the following day.

45. Mr. de ERICE y O'SHEA (Spain), opposing the procedure, pointed out that the Conference could only reopen the discussion on paragraph 2 by a decision requiring a two-thirds majority.

46. Mr. BOUZIRI (Tunisia) thought it regrettable that the Conference had been unable to reach agreement on paragraph 2, but considered that the absence of that paragraph hardly reduced the scope of the convention at all since the fifth paragraph of the preamble expressly provided that the rules of customary international law should continue to govern questions not expressly regulated by the convention. Moreover, a decision to reconsider paragraph 2 required a two-thirds majority.

47. Mr. CARMONA (Venezuela) said he was definitely opposed to the United Kingdom representative's proposal for the reconsideration of paragraph 2. The discussion on that paragraph, which was closed, had shown that it was impossible to reconcile the divergent views of the members of the Conference. Any attempt to make the view of any particular group of delegations prevail was doomed to failure, and both the compromises put forward had been rejected. There was therefore no reason to reopen the discussion. In any case, a decision to reconsider paragraph 2 would require a two-thirds majority vote.

48. Mr. CAMERON (United States of America) supported the United Kingdom representative's proposal. Unlike those who thought that the discussion on paragraph 2 was exhausted, he believed that a generally acceptable formula could still be found; he pointed out that paragraph 2 had been adopted by the Committee of the Whole by 47 votes to 7, with 13 abstentions. New efforts should therefore be made and he requested that the United Kingdom proposal be put to the vote.

Mr. Bollini Shaw, First Vice-President, took the chair.

At the request of the representative of Ghana, a vote was taken by roll-call.

The Holy See, having been drawn by lot by the President, was called upon to vote first.

In favour: Honduras, Hungary, India, Iran, Iraq, Ireland, Israel, Japan, Korea, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands, Nigeria, Norway, Pakistan, Philippines, Poland, Romania, Senegal, Sweden Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Viet-Nam, Yugoslavia, Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Congo (Leopoldville), Czechoslovakia, Denmark, Dominican Republic, Ecuador, El Salvador, Federation of Malaya, Finland, France, Federal Republic of Germany, Ghana, Greece, Guatemala.

Against: Italy, Lebanon, Libya, Morocco, Portugal, Saudi Arabia, Spain, Tunisia, United Arab Republic, Venezuela.

Abstaining: Holy See, Indonesia, Panama, Peru, Ethiopia, Haiti.

The United Kingdom proposal for the reconsideration of paragraph 2 was adopted by 60 votes to 10, with 6 abstentions.

49. Mr. BARTOŠ (Yugoslavia) said he had voted in favour of the United Kingdom proposal because he believed that a sincere effort should make it possible to reconcile the various points of view and settle the question under consideration which, in practice, was of very great importance. Recourse to customary international law was impossible since there were no universal rules in the matter, and in fact, four different systems were applied in different countries. Hence it was the duty of the Conference to find a generally acceptable solution.

50. Mr. OJEDA (Mexico) said that he shared that view and had accordingly voted for the United Kingdom proposal. He emphasized, however, that that vote was without prejudice to his delegation's decision on paragraph 2.

51. Mr. VALLAT (United Kingdom) said that as a conciliatory gesture, his delegation would be prepared to co-sponsor an amendment taking into account the sub-amendment proposed by Spain, adding the words " and administrative " between the words " civil " and " jurisdiction ".[2]

52. Mr. de VAUCELLES (France) thanked the United Kingdom representative for his courageous and constructive attitude. It was because the Spanish sub-amendment had been rejected that the French delegation had had to abstain in the vote on the United Kingdom amendment.

53. Mr. YASSEEN (Iraq) said he had voted against paragraph 2 as approved by the Committee of the Whole, but had voted in favour of reopening the discussion because he thought new efforts could usefully be made to find a solution acceptable to the majority. On the other hand, it hardly seemed proper to revert to rejected amendments or to a text combining them.

54. Mr. BOUZIRI (Tunisia), agreed with the representative of Iraq that the Conference should not revert to rejected texts. He had voted against the Spanish sub-amendment because he did not understand very clearly what " administrative jurisdiction " implied and would like to have that point clarified. In any case, the addition of those words would not reconcile the different points of view. The reason why the Conference had rejected the texts submitted to it was that it had considered them contrary to international law. The participants in the Conference were not expected to legislate and they should seek a solution that took account of the fundamental interests of the States which would become parties to the convention.

55. He reserved the right to speak again, if necessary, when a new text was submitted to the Conference.

56. Mr. REGALA (Philippines) moved the adjournment of the debate.

[2] A fresh amendment on those lines was subsequently circulated (A/CONF.20/L.21); see 11th meeting, para. 58.

The motion was carried by 55 votes to 1, with 6 abstentions.

ARTICLE 30, PARAGRAPH 3 *(resumed from the 7th plenary meeting)*

57. The PRESIDENT said he considered it his duty to draw attention to what seemed to be a lacuna in article 30, paragraph 3, adopted at the seventh plenary meeting.

58. Paragraph 1 of that article dealt with the waiver of immunity from jurisdiction " of diplomatic agents and of persons enjoying immunity under article 36 ".

59. Paragraph 3 provided that " The initiation of proceedings by a diplomatic agent shall preclude him invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim."

60. It would be noted that the paragraph only referred to diplomatic agents and made no mention of other persons who enjoyed immunity from jurisdiction under article 36. It therefore appeared to follow *a contrario* that if a person who enjoyed immunity from jurisdiction without being a diplomatic agent initiated porceedings, he could invoke immunity from jurisdiction in respect of a counter-claim.

61. If the Conference agreed that that was simply a lacuna, he suggested that the Drafting Committee should be asked to add the words " or by a person enjoying immunity under article 36 " after the words " diplomatic agent " in article 30, paragraph 3.

It was so agreed.[3]

The meeting rose at 6.25 p.m.

[3] The Drafting Committee amended the provision in question accordingly.

ELEVENTH PLENARY MEETING

Friday, 14 April 1961, at 10 a.m.

President: Mr. VERDROSS (Austria)

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959 (item 10 of the agenda) *(continued)*

1. The PRESIDENT proposed that, as the Conference was to finish its work that day, in order to allow time for preparations for the signing ceremony on Tuesday, 18 April, the time allowed for each speaker should be limited to five minutes.

The proposal was adopted by 59 votes to 1, with 2 abstentions.

Provisions concerning the settlement of disputes

2. The PRESIDENT said that in conformity with the decision of the Committee of the Whole (38th meeting)

the Drafting Committee had prepared a draft optional protocol (CA/CONF.20/L.2/Add.2) concerning the compulsory settlement of disputes relating to the interpretation or application of the convention. He also drew attention to a proposal submitted by Switzerland (A/CONF.20/L.16).

3. Mr. RUEGGER (Switzerland) said that his delegation's proposal was that the provision which had originally been article 45 in the International Law Commission's draft (A/CONF.20/4) should be inserted as a new article between articles 44 and 45 of the draft convention under discussion (A/CONF.20/L.2/Add.1). Explaining the purpose of the proposal, he said his delegation did not wish to reopen the discussion that had taken place in the Committee of the Whole (37th and 38th meetings), which had shown that there was still not a sufficient majority in favour of including in the convention an arbitration or jurisdiction clause of a truly compulsory character. His delegation thought, however, that the logical conclusion of that discussion should have been a vote, as had been the case at the Geneva Conference on the Law of the Sea, 1958; the application of the rules of procedure had, however, made the vote impossible in the Committee of the Whole — a vote which would be of great importance from several points of view. It would show which States were ready to accept the principle of the compulsory settlement of disputes, at least to the limited extent of an arbitration clause in a convention which did not deal with serious political issues: that would be of considerable importance from the point of view of general international law. The Institute of International Law, after long and patient work, had drawn up a model clause of that kind. Switzerland had very recently approached many States, including those which had recently entered the international community, with a view to extending the network of bilateral treaties of jurisdiction and arbitration which Switzerland had already concluded.

4. Admittedly, the vote would not reflect the whole picture. Several delegations would be bound by their instructions to vote against the Swiss proposal. Others would consider, in the absence of instructions, that they should abstain. In their case, it would be known — and that was a valuable pointer — that their governments were not opposed outright to the principle of jurisdiction. If the result of the vote should be adverse to the Swiss proposal, then his delegation hoped that the Conference would adopt the protocol of optional signature, which had been proposed in Committee by Iraq, Italy, Poland and the United Arab Republic (A/CONF.20/C.1/L.316 and Add.1) and which was analogous to the protocol proposed by Switzerland itself at the Geneva Conference on the Law of the Sea, 1958.[1] In that event, Switzerland would, of course, be prepared to sign the protocol.

5. Mr. KRISHNA RAO (India) thought it strange that a delegation should wish to reintroduce an article after the Committee of the Whole had decided (38th meeting) by 49 votes to 7, with 16 abstentions, that it should be deleted and that its subject matter should be dealt with in a separate protocol. The Swiss proposal should be considered in conjunction with the protocol which he proposed should be put to the vote first.

6. The Government of India had filed a declaration under Article 36, paragraph 2, of the Statute of the International Court of Justice accepting the compulsory jurisdiction of the Court. If further information was required, and if that was the object of reintroducing the article, the latest Yearbook of the International Court would show how many countries had put their faith in the Court by filing declarations under Article 36, paragraph 2. It was neither the time nor the place, nor was it necessary, to introduce such a proposal. If the draft optional protocol was put to the vote first and approved, there would be no need to put the Swiss proposal to the vote.

7. Mr. CAMERON (United States) supported the Swiss proposal, for the reasons he had stated when the original article 45 had been under consideration by the Committee of the Whole. If that proposal was not adopted, the United States would vote in favour of the optional protocol.

8. Mr. REGALA (Philippines) said that his delegation's position had been fully explained in the Committee of the Whole. It backed the compulsory jurisdiction of the International Court of Justice. Unfortunately, the Court had decided only seventeen contentious cases since its establishment, because certain Powers had not accepted its compulsory jurisdiction. It was gratifying to hear that the United States would accept that jurisdiction as far as the convention on diplomatic relations was concerned, since the acceptance of the Court's jurisdiction was the keystone of the establishment of the rule of law and of a just and lasting peace.

9. Mr. AMLIE (Norway) expressed his appreciation (with which the delegation of Sweden had asked to be associated) of the Swiss proposal.

10. At an early stage Norway had become a party to the Statute of the International Court of Justice and had accepted the optional clause of that Statute. By doing so, it had recognized, on a basis of reciprocity, the compulsory jurisdiction of the Court in all legal matters, in the hope that it would eventually be recognized by all States, since only then could it truly be said that the rule of law had been established as governing relations between them.

11. His government had warmly welcomed the original article 45 and had hoped that many States, even though they might not find it possible at the moment to accept the optional clause, might find it possible as a first step to accept compulsory jurisdiction in the limited field of the convention under discussion. It had hoped that at some future time, when a third Vienna Conference was held, the delegations might look back to the Vienna Conference of 1961 and see that the nations had had

[1] For discussion of Switzerland's proposal at the 1958 Conference, see *United Nations Conference on the Law of the Sea, 1958, Official Records*, United Nations publication, Sales No. 58.V.4, vol. II, seventh and thirteenth plenary meetings. For the text of the Optional Protocol adopted by the 1958 Conference, see *ibid.*, annexes, pp. 145 and 146.

enough confidence to include an article on compulsory jurisdiction. His delegation had come prepared to vote in favour of such an article.

12. It would seem, however, from the outcome of the debate in Committee, that the goal could not yet be attained, since confidence among the nations was not yet great enough. His delegation did not consider the optional protocol to be a worthy alternative to the inclusion of an article and had therefore voted against it in Committee for the sake of the principle involved. However, although the optional protocol was only a second-best alternative that was almost worthless, his delegation would vote for it in the plenary meeting as being the best it could get; but it would do so with regret and disillusionment.

13. Mr. de ROMREE (Belgium) strongly supported the Swiss proposal, which was in full conformity with Belgium's traditional policy. He requested a roll-call vote on the proposal, to show which States were favourable to the cause of international justice.

14. Mr. MATINE-DAFTARY (Iran) regretted that he had been absent during the debate on the question in Committee and expressed his satisfaction that the Swiss proposal had given him an opportunity of stating his views. The representative of Switzerland was known in the world of international law as an advocate of the extension of the powers of the International Court ol Justice. When Switzerland had submitted a like proposaf at the United Nations Conference on the Law of the Sea, 1958, he had doubted, not the impartiality of the International Court of Justice, but the advisability of referring to it disputes on such vitally important questions as the continental shelf and fishing limits, for a number of the small nations were not very well prepared to defend their cases before the Court. He had therefore supported the optional protocol on the settlement of disputes and not the inclusion of an article in the conventions. The convention on diplomatic relations, however, would not give rise to disputes of such gravity. His delegation would therefore accept the compulsory jurisdiction of the International Court of Justice in regard to the convention and would vote for the Swiss proposal.

15. Mr. AGO (Italy) said that he had greatly regretted the decision to delete the original article 45 which, as a member of the International Law Commission, he had supported. An instrument codifying international law should include a provision for the peaceful settlement of disputes. Italy was, in general, in favour of arbitration or international jurisdiction as a means of settling disputes. It could understand that some States might be reluctant to submit for judicial settlement disputes on questions that were not well defined, when it was uncertain which law the judge would apply. The convention on diplomatic relations, however, concerned a field in which the law was clearly established and there was no such uncertainty. He therefore expressed his gratitude to the Swiss delegation and hoped that its appeal would be heeded by the Conference.

16. Mr. de VAUCELLES (France) recalled that in Committee he had opposed the deletion of the original article 45. He maintained his opinion, and would vote for the Swiss proposal. He was firmly opposed to the proposal of the representative of India that a vote should first be taken on the optional protocol, which was an inferior solution. The Conference should not try to avoid taking a decision on such a vital issue, and should vote first on the Swiss proposal.

17. Mr. BAYONA (Colombia) said that his government, in keeping with a long tradition, had no objection even to compulsory jurisdiction for the peaceful settlement of international disputes. Colombia was a party to the Statute of the International Court of Justice, and in Committee his delegation had voted against the optional protocol because it had hoped that the original article 45 would be adopted; unfortunately, however, the rules of procedure had not permitted a vote to be taken on that article. His delegation would vote for the Swiss proposal, but if it was not adopted, Colombia would sign the optional protocol.

18. Mr. TRAN VAN MINH (Viet-Nam) expressed his surprise that a provision which the Committee of the Whole had rejected by a large majority had been reintroduced. The reversal of a decision scarcely a week later would injure the prestige of the Conference and the integrity of its discussions. His delegation therefore supported the representative of India.

19. Mr. GASIOROWSKI (Poland) said the situation was unprecedented. The Italian delegation was supporting the restoration of the original article 45, after having been one of the sponsors of the proposal, submitted in Committee, that it should be deleted.

20. Mr. EL-ERIAN (United Arab Republic) said that it had been suggested that a vote on the Swiss proposal would show which States supported the Statute of the International Court of Justice and which did not. In his opinion, it could not be argued that a vote in favour of the optional protocol would show opposition to the Statute of the International Court. Only when States had had the opportunity of considering the convention carefully and of deciding whether or not to sign the optional protocol, would it be clear which of them accepted the compulsory jurisdiction of the International Court of Justice.

21. Mr. BOLLINI SHAW (Argentina) supported the opinions expressed by the representatives of India, Viet-Nam, Poland and the United Arab Republic. He recalled that Argentina had been one of the sponsors of an amendment (A/CONF.20/C.1/L.139 and Rev.1) making submission to the jurisdiction of the International Court of Justice optional. That amendment had not been put to the vote, however, because of the adoption of the proposal for the deletion of article 45, for which proposal he had voted in a spirit of compromise. The Government of Argentina had not filed a declaration accepting the " optional clause " of the Statute of the International Court of Justice. He would vote in favour of the draft optional protocol, though without committing his government to signing it.

22. Mr. GHAZALI (Federation of Malaya) said that the Committee of the Whole had decided very definitely

against the inclusion of the original article 45 in the body of the convention, and consequently the Swiss proposal seemed entirely out of place. His own government had always respected international law and supported the principle that disputes should be submitted to the International Court of Justice. The Conference had not, however, been convened for the purpose of committing governments. He proposed that in accordance with rule 42 of the rules of procedure, which provided that proposals should be voted on in the order in which they had been submitted, the Conference should vote first on the draft optional protocol.

23. Mr. WESTRUP (Sweden) supported the views expressed by the representatives of Iran and France. It would be unworthy of the Conference if the real issue were evaded and a vitally important matter were dealt with by a mere procedural vote.

24. Mr. CARMONA (Venezuela) said that the settlement of international disputes by peaceful means was a fundamental principle of the Venezuelan Constitution. But while he was in favour of the principle that disputes should be submitted to the International Court of Justice, he was not empowered to commit his government, for such matters could only be decided by the legislature. He was therefore in favour of the draft optional protocol, though he hoped that it would one day be possible for a provision on the lines of the original article 45 to be adopted.

25. Mr. MARESCA (Italy), replying to the representative of Poland, said that his delegation had always supported the principle embodied in the original article 45; it had joined the sponsors of the proposal for a special protocol in a spirit of compromise, in order to help the Committee reach a solution. That being so, he was bound to support the Swiss proposal.

26. Mr. OJEDA (Mexico) said that he was prepared to accept the original article 45. However, since several representatives of Latin American countries had explained in the Committee of the Whole that they could not accept the compulsory jurisdiction of the International Court of Justice, and since the draft optional protocol seemed to be a fairly widely acceptable solution, he would abstain from voting.

27. Mr. TUNKIN (Union of Soviet Socialist Republics) said he could see no reason for reopening the discussion on the original article 45. The Committee of the Whole had accepted the proposal for an optional protocol by a large majority and it was unlikely that a vote in the plenary conference would have a different result. The arguments in favour of the Swiss proposal had not convinced him. The adoption of that proposal could only be harmful, for it would weaken the convention by reducing the number of ratifications and increasing the number of reservations. In his opinion the draft optional protocol offered the best solution of the problem.

28. Mr. SUBARDJO (Indonesia) recalled that in Committee many representatives had said that the inclusion of the original article 45 might make it impossible for them to sign the convention. He had voted against the article and supported the proposal made by the representative of India.

29. Mr. de ERICE y O'SHEA (Spain) recalled that the adoption of the proposal for an optional protocol and the deletion of article 45 had been approved by 49 votes to only 7. The draft optional protocol was a compromise and a proof of the will for peace, mutual understanding and international friendship and he could not understand the move to reintroduce the original article 45. If it succeeded, the Conference would be back in the very situation from which it had emerged by an effort at compromise. Many States would be unable to ratify the convention and many would have to make reservations. He was strongly opposed to the reintroduction of article 45.

30. Mr. GLASER (Romania) said the Swiss proposal was a surprising one. The argument that it would give delegations an opportunity of showing their support for the International Court of Justice was hardly tenable, for a State might conceivably submit a particular problem to the International Court of Justice without ever having signed the protocol; and it was possible to accept the "optional clause" of the Statute of the International Court of Justice with reservations that amounted to a denial of the Court's juridiction. Reference had been made to a change of attitude on the part of certain representatives, and he hoped that the spirit of compromise would lead to the rejection of the Swiss proposal.

31. Mr. SUCHARITAKUL (Thailand) said that he had voted in favour of the deletion of article 45 because he considered an optional protocol more satisfactory. He was opposed to the Swiss proposal and did not think the reasons — namely, to discover which States were ready to accept the principle of the compulsory settlement of disputes — were valid, for the States which rejected an arbitration clause in the body of the convention might voluntarily accept the jurisdiction of the International Court of Justice by signing the protocol later, which was a question to be decided by the governments of the States concerned.

32. Mr. RUEGGER (Switzerland), exercising his right of reply, said that it had not been possible to vote on the original article 45 in the Committee of the Whole, because the procedure followed at the Conference on the Law of the Sea had not been applied. At that conference, a vote had been taken first on the principle embodied in the corresponding article, and only when the article and the amendments thereto had been rejected had the representative of Switzerland introduced the draft protocol as a last resort. That was the model on which the protocol prepared by the Drafting Committee was based: it was not in fact an amendment to article 45. The adoption of the Indian proposal would prevent a vote in plenary just as it had been prevented in Committee, despite the wishes of many representatives.

33. The PRESIDENT put to the vote the proposal of India that the Conference should vote first on the draft optional protocol.

The proposal was adopted by 40 votes to 28 with 7 abstentions.

The draft optional protocol concerning the compulsory settlement of disputes (A/CONF.20/L.2/Add.2) was adopted by 63 votes to 3, with 9 abstentions.[2]

34. The PRESIDENT invited the Conference to continue its debate on the draft convention (A/CONF.20/L.2/Add.1).

ARTICLES 45, 46 AND 47

35. Mr. CAMERON (United States of America) said that article 45, dealing with signature, and article 47, dealing with accessions, were interrelated. Together they established the categories of States eligible to become parties to the Convention.

36. The formulation of those articles, which had its origin in a proposal co-sponsored by his delegation (A/CONF.20/C.1/L.289), was not new; it was substantially the same as that of the provisions adopted without dissent at the United Nations Conference on the Law of the Sea in 1958. The provisions appeared as articles 26 and 28 of the Convention on the Territorial Sea and the Contiguous Zone, articles 31 and 32 of the Convention on the High Seas, articles 15 and 17 of the Convention on Fishing and Conservation of the Living Resources of the High Seas and articles 8 and 10 of the Convention on the Continental Shelf.[3]

37. Articles 45 and 47 were based on the idea that, in the case of conventions drafted within the United Nations system or at a conference convened by the United Nations, the proper organ to decide the complex political question of the categories of States to be authorized to become parties was the General Assembly. Articles 45 and 47 therefore included all those States which the General Assembly had invited to attend the Conference. In addition, they permitted any other State which subsequently might be invited by the General Assembly to become a party. The decision in the matter was thus appropriately left to the competent political organ of the United Nations.

38. Article 45 constituted a conceptual whole; it covered the States which the General Assembly had already decided might become parties to the convention and the States which the Assembly might invite to do so in the future. Neither of those provisions could be changed without abandoning the policy on which the article was based — viz., that the question which States could sign the convention was a political question to be decided by the General Assembly. The same was true of article 47.

39. For those reasons, his delegation would oppose any attempt to excise part of the provisions of the two articles, since such excision would destroy the policy on which they were based. He would therefore oppose any motion to put to the vote separately any part of either article 45 or article 47, and urged that each of the two articles should be voted on as a whole.

40. Mr. MITRA (India) said that the universality of international law was not a political question. He recalled that, in his opening speech, the President of the Conference had said that whereas the 1815 Congress of Vienna had met in the presence of Europe alone, the 1961 Conference affected all humanity. It was accordingly fitting that the convention resulting from the Conference should be open to all the States of the world.

41. His delegation had no intention to propose any amendment to article 45, dealing with signature, but, since the United States delegation had also referred to article 47, he moved that a separate vote be taken on the passage in the first sentence of that article: " belonging to any of the four categories mentioned in article 45 ". If, as he hoped, that passage was not adopted, the first sentence of the article would then read: " The present convention shall remain open for accession by any State."

42. The question of which States could sign the convention had not been discussed at the fourteenth session of the General Assembly; the Assembly had only decided by its resolution 1450 (XIV) which States were to be invited to participate in the Conference. The question of eligibility to sign was a matter for the Conference itself to decide, and since the convention was of interest to all States which maintained diplomatic relations with other States, discrimination was most undesirable. In addition to being unfair, such discrimination would create difficulties for certain States which maintained diplomatic relations with States other than those belonging to the four categories mentioned.

43. Mr. GHAZALI (Federation of Malaya) endorsed the views expressed by the representative of India. The third paragraph of the preamble gave expression to the Conference's belief that the convention would contribute to the development of " friendly relations among nations, irrespective of their differing constitutional and social systems ". By adopting that paragraph, the Conference had voiced the hope that the convention would be applied universally, despite the differences that might exist among nations.

44. Furthermore, the fifth paragraph of the preamble stated that " the rules of customary international law should continue to govern questions not expressly regulated " by the convention. The Conference had thereby confirmed that the convention should be a codification of international law whose application could be nothing less than universal.

45. Having compiled a set of rules which should govern diplomatic relations between States, the Conference should be unanimous in wishing those rules to bind all nations.

46. Whatever could be said for or against British colonial rule, it had left his country a heritage of respect for the rule of law. From Britain his people had learned that all were equal in the eyes of the law and that the law

[2] See, however, 12th meeting, when an amendment extending the application of this protocol to the optional protocol concerning requisition of nationality was adopted.

[3] See *United Nations Conference on the Law of the Sea, 1958, Official Records*, United Nations publication, Sales No. 58.V.4, vol. II, annexes, pp. 132-143.

applied to all, regardless of colour or creed; that the rule of law was extensive and should reach the four corners of the world, and that international law was binding upon all States. His delegation was therefore surprised at the proposal that those rules of international law which had been codified in the convention should apply only to States invited by the General Assembly of the United Nations.

47. International law was independent of the special consent of individual States or groups of States. The underlying principle of articles 45 and 47, however, was that the convention was in the nature of a set of club rules: that was contrary to the principle that international law should be binding on every nation which consented to be found by it. Such an approach presupposed the existence of States which should be placed outside the law of nations, an attitude which his deelgation could not possibly accept.

48. The convention was not intended to bestow any benefit, but merely to regulate and thereby to restrain States from acting as they pleased in their diplomatic relations. He saw no reason why any State should be denied the right to accept that restraint.

49. His government had steadfastly supported the United Nations and its Secretary-General, but it believed that the General Assembly of the United Nations should have no part in determining which States should accede to the convention. There was no authority for the view that the General Assembly had the power, under international law, to determine which States could be bound by the rules of international law.

50. Moreover, the General Assembly should not be exposed to the indignity of having its invitation rejected, and he appealed to the Conference to make the convention open for accession by all States which were independent under international law and could therefore fulfil their international obligations.

51. Mr. JEZEK (Czechoslovakia) referred to the view expressed by his delegation earlier, in Committee, that the convention should be open to all States without discrimination. Any discriminatory clause would, apart from being unjust, have the practical disadvantage of not meeting the needs of States which maintained diplomatic relations with States outside the scope of article 45. In addition, such discrimination would be contrary to the whole purpose of the convention, the effectiveness of which depended on acceptance by the largest possible number of States.

52. For those reasons, he supported the India representative's motion for a separate vote on the passage " belonging to any of the four categories mentioned in article 45 ".

53. Mr. EL GHAMRAOUI (United Arab Republic) supported the Indian motion. He considered that the convention should be open to accession by the largest possible number of States.

54. The PRESIDENT put articles 45 and 46 to the vote.

Article 45 was adopted by 72 votes to none, with 4 abstentions.

Article 46 was adopted unanimously.

55. The PRESIDENT said that as the Indian representative had moved that part of article 47 be voted on separately, and objection had been made by the United States representative, he would put the motion for division to the vote in accordance with rule 40 of the rules of procedure.

The motion was defeated by 49 votes to 24, with 3 abstentions.

Article 47 was adopted by 53 votes to 2, with 20 abstentions.

56. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation had abstained from voting on article 47 but had not voted against because it did not wish to kill the article and thereby close the door to accession, though it considered the terms of the article unjust. There was no legal justification for preventing certain States from acceding to a convention. Such action was contrary to the fundamental principles of international law and to the principles on which the particular convention was based. It was simply a manifestation of the cold war.

57. Mr. SINACEUR BENLARBI (Morocco) said that he had abstained from voting on articles 45 and 47.

ARTICLE 48

Article 48 was adopted unanimously.

ARTICLE 49

Article 49 was adopted by 75 votes to none, with 1 abstention.

ARTICLE 50

Article 50 was adopted unanimously.

ARTICLE 36 *(resumed from the 10th plenary meeting)*

58. The PRESIDENT recalled that at the previous meeting the Conference had decided to reconsider article 36, paragraph 2. He drew attention to a fresh amendment to that paragraph (A/CONF.20/L.21 and Add.2) submitted by ten delegations.

59. Mr. AGO (Italy) said that his delegation had little enthusiasm for the amendment, the adoption of which would mean a considerable sacrifice for Italy. However, it was prepared to make that sacrifice and vote for the amendment in a spirit of conciliation, because it believed that some provision of the kind contained in article 36, paragraph 2, was necessary. It was essential to avoid a vacuum in the codification of international law: what mattered above all was that there should be certainty with regard to the content of rules of law. Because of that overriding consideration, his delegation would

accept the proposed formula in preference to the absence of any rule at all.

60. His delegation hoped that the large number of persons classed as administrative and technical staff would prove worthy of the privileges the Conference was granting them, and that if they did commit offences — in particular offences leading to loss of life — the heads of mission concerned would have sufficient sense of responsibility to see that justice was not frustrated.

The meeting rose at 12.50 p.m.

TWELFTH PLENARY MEETING

Friday, 14 April 1961, at 3.15 p.m.

President: Mr. VERDROSS (Austria)

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959 (item 10 of the agenda) *(concluded)*

1. The PRESIDENT said that the Conference still had to dispose of two articles of the draft convention (A/CONF.20/L.2/Add.1), articles 36 and 37.[1]

ARTICLE 36

Paragraph 2 (continued)

2. The PRESIDENT said that, in addition to the ten-nation amendment (A/CONF.20/L.2 and Add.2), an amendment submitted jointly by Libya, Morocco and Tunisia (A/CONF.20/L.23) was before the Conference.

3. Mr. BOUZIRI (Tunisia) said he noted with surprise and some resentment that after rejecting the United Kingdom amendment to paragraph 2 (A/CONF.20/L.20) at the tenth meeting, the Conference again had the same amendment before it in the guise of a compromise proposal, incorporating a similarly unsuccessful sub-amendment, but submitted under a different symbol (A/CONF.20/L.21) by a cohort of new sponsors. The procedure was strange, to say the least, and it reflected on the dignity of the Conference. If the ten sponsors thought that fatigue would make the Conference weaken and reverse its earlier, firm decision, the Tunisian delegation hoped that their plan would be frustrated. Tunisia, on the other hand, had made a genuine effort to find an aceptable compromise by submitting, jointly with the delegations of Libya and Morocco, a new paragraph 2 (A/CONF.20/L.23), which took account of, and sought to reconcile, the different views expressed.

4. Mr. de SOUZA LEAO (Brazil) thought that the ten-nation amendment merited the two-thirds majority required for its adoption. It was a commendable effort to reconcile the two schools of thought present in the Conference. It would be regrettable if the convention failed to mention a whole class of staff which was becoming increasingly important for the proper working of a diplomatic mission. The gap which would be left if paragraph 2 disappeared could not be filled by a general reference to the rules of customary international law in the preamble. The delegation of Brazil would therefore vote in favour of the amendment.

5. The PRESIDENT suggested that the Conference should vote on the amendments submitted to paragraph 2; he thought that the amendment proposed by Tunisia, Libya and Morocco, which was furthest removed in substance from the original text, should be put to the vote first.

6. Mr. BOISSIER-PALUN (Senegal) thought that the discussion was not yet exhausted. His own delegation, for example, would like to receive some explanations concerning the meaning of the terms used in the amendments. What, for instance, was meant by the reference to administrative jurisdiction in the ten-nation amendment ? That jurisdiction was concerned with disputes between private persons and the authorities. Hence, it was not clear how it could affect the diplomatic or administrative staff of a mission. In some countries, the administrative jurisdiction was a form of penal jurisdiction, equivalent to that of the police courts in France and in countries whose judicial system was similar to that of France. Accordingly, if immunity from administrative jurisdiction was mentioned, it would also be necessary to refer to immunity from the jurisdiction of police courts, as was done in the joint amendment submitted by Libya, Morocco and Tunisia. Consequently, the delegation of Senegal would vote in favour of that amendment, while reserving the right to propose drafting changes.

7. Mr. BOLLINI SHAW (Argentina) thanked the United Kingdom delegation for the conciliatory spirit it had shown in agreeing to add the words " and administrative " as originally suggested by Spain (10th meeting, paragraphs 30 and 51). As a consequence, the Argentine delegation would be able to vote in favour of the ten-nation amendment. He then gave a detailed explanation of the operation of administrative courts in the countries of Latin America.

8. Mr. TRAN VAN MINH (Viet-Nam) said he wished to refer, not to the legal or technical aspects of the question, but to the moral aspect. Much had been said during the Conference about compromise and conciliation, but he could not help noticing that the compromises had been in one direction and the concessions unilateral. The nineteen delegations which had submitted their amendment to paragraph 2 (A/CONF. 20/L.13 and Add.1) had made all the concessions. They had proposed a provision under which the administrative and technical staff would be eligible not only for the privileges mentioned in articles 27, 28, 30, 31, 32, 33 and 34, paragraph 1, but also for immunity from jurisdiction, subject only to one qualification. They had taken a step forward, but their opponents had not

[1] Paragraph 1 of article 36 had been adopted at the 9th meeting. At the 10th meeting the Conference decided, after voting on paragraph 2 of that article, to reconsider the paragraph.

taken the necessary step to meet them. Admittedly, the United Kingdom delegation had accepted a sub-amendment making the " except " clause applicable to immunity from administrative jurisdiction; but the delegation of Viet-Nam was mainly concerned about immunity from criminal jurisdiction, where much more important matters were at stake since public order, good conduct and morality in the receiving State were involved. The joint amendment by Libya, Morocco and Tunisia met the concern of the delegation of Viet-Nam, which would accordingly vote in favour of it.

9. To remove any misunderstanding, Mr. BOUZIRI (Tunisia) explained that the last sentence of the paragraph 2 as proposed by Libya, Morocco and Tunisia should be interpreted to mean that the number of members of the administrative and technical staff enjoying privileges and immunities could be equal to or greater than the number of members of the diplomatic staff of the mission.

10. The PRESIDENT put to the vote the amendment to paragraph 2 submitted by Libya, Morocco and Tunisia (A/CONF.20/L.23).

At the request of the representative of Tunisia, a vote was taken by roll-call.

Senegal, having been drawn by lot by the President, was called upon to vote first.

In favour: Senegal, Spain, Tunisia, Viet-Nam, Yugoslavia, France, Iraq, Italy, Libya, Liechtenstein, Morocco, Portugal.

Against: Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Ecuador, Federation of Malaya, Finland, Federal Republic of Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Iran, Ireland, Israel, Japan, Korea, Luxembourg, Mexico, Nigeria, Norway, Panama, Peru, Poland, Romania.

Abstaining: Switzerland, Thailand, Turkey, Union of South Africa, United Arab Republic, Venezuela, Cambodia, Congo (Leopoldville), Dominican Republic, Ethiopia, Holy See, Indonesia, Liberia, Netherlands, Pakistan, Philippines, Saudi Arabia.

The amendment was rejected by 45 votes to 12, with 17 abstentions.

11. The PRESIDENT invited the Conference to vote on the ten-nation amendment to paragraph 2 (A/CONF. 20/L.21 and Add.2).

12. Mr. BOISSIER-PALUN (Senegal) said he wished to submit an oral sub-amendment to the ten-nation amendment, in order to ensure that the reference to administrative jurisdiction had the same meaning for all countries.

13. Mr. GLASER (Romania), speaking on a point of order, pointed out that, under rule 39 of the rules of procedure, after the President had announced the beginning of voting, no representative could interrupt the voting except on a point of order in connexion with the actual conduct of the voting. As the President had announced the voting on the ten-nation amendment, the representative of Senegal could not speak in order to submit a sub-amendment.

14. Mr. BOISSIER-PALUN (Seneral) challenged that interpretation. The voting on the amendment submitted by Libya, Morocco and Tunisia had been concluded and the voting on the ten-nation amendment had not yet begun. Consequently, he considered it was perfectly in order to submit a sub-amendment to the proposal at that stage.

15. After referring to rule 22 of the rules of procedure, the PRESIDENT ruled in favour of the Romanian representative's interpretation.

16. Mr. de VAUCELLES (France) appealed against the President's ruling. Rule 39 of paragraph 2 stated that the term " voting " referred to the voting on each individual proposal or amendment; in the particular case, that meant the ten-year amendment, on which the Conference had not yet begun to vote. The representative of Senegal was therefore fully entitled to submit a sub-amendment.

The French representative's appeal was put to the vote.

The President's ruling was overruled by 34 votes to 26, with 9 abstentions.

17. Mr. BOISSIER-PALUN (Senegal) expressed satisfaction at the decision taken by the Conference. The oral sub-amendment he wished to propose to the ten-nation amendment did not alter the sense, but merely clarified the meaning of the expression " administrative jurisdiction "; he proposed that the words " and the jurisdiction of police courts " should be added after the words " paragraph 1 of article 29 ". If that sub-amendment was accepted by the sponsors of the ten-nation amendment, the delegation of Senegal would vote in favour of that amendment; otherwise it would vote against it.

18. Mr. VALLAT (United Kingdom) regretted that the President's decision had been overruled on appeal, for it had been fully in conformity with the rules of procedure.

19. The ten-nation amendment represented a considerable effort at conciliation and was the outcome of numerous consultations among delegations. Its sponsors could not accept a sub-amendment which, by further extending the scope of the exceptions to immunity from jurisdiction, would reduce the results of the efforts made to nothing. Moreover, the distinction between criminal jurisdiction and civil and administrative jurisdiction was already drawn in article 29 and there was no need for further definition in article 36.

20. The PRESIDENT put to the vote the oral sub-amendment proposed by Senegal.

The sub-amendment was rejected by 46 votes to 13, with 14 abstentions.

21. The PRESIDENT invited the Conference to vote on the ten-nation amendment (A/CONF.20/L.21 and Add.2).

A vote was taken by roll-call.

The Ukrainian Soviet Socialist Republic, having been drawn by lot by the President, was called upon to vote first.

In favour: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Argentina, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ethiopia, Federation of Malaya, Finland, France, Federal Republic of Germany, Ghana, Greece, Holy See, Honduras, Hungary, India, Iran, Ireland, Italy, Japan, Korea, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands, Nigeria, Norway, Pakistan, Panama, Philippines, Poland, Romania, Spain, Sweden, Turkey.

Against: Venezuela, Lebanon, Libya, Morocco, Saudi Arabia, Senegal, Tunisia.

Abstaining: Union of South Africa, United Arab Republic, Uruguay, Viet-Nam, Yugoslavia, Australia, Burma, Congo (Leopoldville), Ecuador, Guatemala, Indonesia, Iraq, Israel, Peru, Portugal, Switzerland, Thailand.

The ten-nation amendment was adopted by 52 votes to 7, with 17 abstentions.

22. The PRESIDENT then put to the vote paragraph 2 as amended.

At the request of the representative of Morocco, a vote was taken by roll-call.

Libya, having been drawn by lot by the President, was called upon to vote first.

In favour: Liechtenstein, Luxembourg, Mexico, Netherlands, Nigeria, Norway, Panama, Philippines, Poland, Romania, Spain, Sweden, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Argentina, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ethiopia, Federation of Malaya, Finland, France, Federal Republic of Germany, Ghana, Greece, Holy See, Honduras, Hungary, India, Iran, Ireland, Israel, Italy, Japan, Korea, Liberia.

Against: Libya, Morocco, Saudi Arabia, Senegal, Tunisia, Venezuela, Lebanon.

Abstaining: Pakistan, Peru, Portugal, Switzerland, Thailand, Union of South Africa, United Arab Republic, Viet-Nam, Yugoslavia, Australia, Burma, Congo (Leopoldville), Ecuador, Guatemala, Indonesia, Iraq.

Paragraph 2, as amended was adopted by 52 votes to 7, with 16 abstentions.[2]

[2] Subject to drafting changes consequential on the adoption of the ten-nation amendment.

Paragraph 3

Paragraph 3 was adopted without comment.

Paragraph 4

Paragraph 4 was adopted without comment.

Article 36 as a whole, as amended, was adopted by 61 votes to 5, with 7 abstentions.

23. Mr. de VAUCELLES (France) said that he had voted in favour of all the amendments to paragraph 2 of article 36, and in favour of that paragraph as amended, because the amended provision was more satisfactory than the text submitted to the Conference. On the other hand, he had abstained from voting on article 36 as a whole, because it did not entirely meet the wishes of the French delegation. He accordingly reserved the French Government's position in regard to article 36.

24. Mr. CARMONA (Venezuela) commended the efforts made to reach a solution acceptable to the majority but, in accordance with the instructions he had received, reserved his government's position in regard to paragraphs 2, 3 and 4 of article 36.

ARTICLE 37

25. The PRESIDENT, inviting debate on article 37, drew attention to amendments submitted by the Netherlands delegation (A/CONF.20/L.6).

26. Mr. RIPHAGEN (Netherlands), introducing his delegation's amendment to article 37, paragraph 1, said that the International Law Commission, in its commentary on article 50 of its draft on consular relations (A/4425), expressed the view that the immunity from jurisdiction enjoyed by consular officials employed by a foreign State who were nationals of the receiving State in respect of official acts performed in the exercise of their functions was not a personal immunity, but rather an immunity attaching to the sending State. By analogy, therefore, his delegation considered that the immunity provided for in article 37, paragraph 1, of the draft convention on diplomatic relations should apply to all members of the mission, regardless of rank or nationality, provided that they were performing official acts in the exercise of their functions. The amendment submitted by his delegation would produce that effect.

27. Mr. EL-ERIAN (United Arab Republic) pointed out that in the draft which formed the basis of the Conference's work, the International Law Commission had drawn a distinction between nationals of the receiving State who were diplomatic agents and those who formed part of the administrative and technical staff of the mission. Immunity was granted only to nationals of that State who were in the first category, and article 7, paragraph 2, expressly provided that members of the diplomatic staff of the mission could not be appointed from among persons having the nationality of the receiving State except with the consent of that State. During the discussion on that article in Committee it

had, moreover, been pointed out that it was comparatively rare for a diplomatic agent to be a national of the receiving State. On the other hand, it was quite common for members of the administrative and technical staff to be nationals of the receiving State, and it was therefore necessary to avoid placing that State in the position of having either to grant immunities to its nationals or to prohibit them from joining the administrative or technical staff of a foreign diplomatic mission. The criterion to be applied was that stated in the second sentence of article 37, paragraph 2, but the Conference could not challenge the unanimously accepted principle that the receiving State had jurisdiction over its own *nationals* in its territory.

28. Mr. CAMERON (United States of America) thought that the Netherlands amendment, if adopted, would make article 37 even less clear. As it stood, the article did not mention members of the family of a diplomatic agent who were nationals of the receiving State. If the Netherlands amendment should be adopted, it might be advisable to add at the beginning of article 37, paragraph 2, the words " Members of the family of a member of the mission . . . "

29. Mr. VALLAT (United Kingdom), speaking on behalf of the delegations of the Commonwealth countries, pointed out that the nationals of a number of those countries possessed British nationality, but were citizens of their respective countries. Consequently, the words " nationals of the receiving State " should be understood in the Commonwealth countries to mean " citizens of the receiving State ".

30. Mr. OJEDA (Mexico) agreed with the representative of the United Arab Republic that article 37 was linked with article 7. A State could not be obliged to grant privileges and immunities to its nationals if they joined the staff of a foreign diplomatic mission. Consequently, the adoption of the Netherlands amendment would only hinder the satisfactory operation of the mission; for under the constitutions of a number of countries, including Mexico, such privileges and immunities could not be granted to nationals and those countries would consequently be obliged to object to the employment of their nationals on the staff of a foreign diplomatic mission. The Mexican delegation would therefore vote against the Netherlands amendment.

31. Mr. WICK KOUN (Cambodia) explained that, as he had pointed out in the Committee of the Whole, Cambodian citizens were forbidden to join the diplomatic staff of a foreign mission, on pain of losing their nationality. Furthermore, under the Cambodian Constitution, privileges and immunities could not be granted in Cambodia to members of the administrative and technical staff, members of the service staff and private servants employed by a foreign mission who were Cambodian nationals. However, as article 37, paragraph 2, made it possible for the receiving State not to grant such privileges and immunities, the Cambodian delegation would vote in favour of article 37. On the other hand, it would be obliged to vote against the Netherlands amendment.

32. Mr. CARMONA (Venezuela) said that the Venezuelan Constitution, which was based on the principles of the French Revolution, declared that all citizens were equal before the law. Hence Venezuela did not grant privileges or immunities to Venezuelan citizens who were on the staff of a foreign diplomatic mission, and his delegation would not be able to accept a text providing that Venezuelan nationals, whether acting in the course of their official functions or not, were not subject to Venezuelan law. His delegation would therefore vote against article 37.

33. Mr. BOISSIER-PALUN (Senegal) said he would vote against the Netherlands amendment, as he thought it destroyed the balance of article 37.

The first of the Netherlands amendments (A/CONF. 20/L.6) was rejected by 44 votes to 12, with 13 abstentions.

Article 37, paragraph 1, was adopted by 63 votes to 1, with 8 abstentions.

34. Mr. RIPHAGEN (Netherlands) withdrew the second of his delegation's amendments (A/CONF.20/L.6).

Article 37 as a whole was adopted by 63 votes to 1, with 9 abstentions.

35. Mr. MATINE-DAFTARY (Iran) said he had abstained from voting on article 37 because it was the corollary to article 7, the adoption of which his delegation had opposed.

Adoption of the draft convention as a whole

36. The PRESIDENT said that the Conference had concluded the consideration of all the articles of the draft convention and of the amendments thereto. He invited the Conference to vote on the Vienna Convention on Diplomatic Relations, as a whole.

The Vienna Convention on Diplomatic Relations was adopted, as a whole, by 72 votes to none, with 1 abstention.[3]

Draft resolution on the consideration of civil claims

37. The PRESIDENT invited debate on the draft resolution submitted by Israel concerning the consideration of civil claims (A/CONF.20/L.4/Rev.1).

38. Mr. LINTON (Israel) said that his delegation had drawn the attention of the Committee of the Whole (29th meeting, paragraph 2) to the comment made by the United Kingdom in 1959 on the International Law Commission's draft and to the preamble of the Havana Convention of 1928. The delegation of Israel had submitted its draft resolution for both practical and humanitarian reasons. While the immunity enjoyed by diplomats was necessary for the exercise of their functions, it would be unjust if a private person were denied what was due to him as a result of that immunity. The draft resolution proposed by Israel was designed to help the nationals of the receiving State in that it recommended that the sending State should waive diplomatic immunity in

[3] The text of the Convention was subsequently circulated as document A/CONF.20/13 and Corr.1. See also vol. II.

civil claims or use its best endeavours to bring about a just settlement. It was also intended to eliminate causes of misunderstanding and tension which might be prejudicial to the good name of a diplomatic mission and consequently to the performance of its functions.

39. The draft resolution had not, of course, the mandatory character of an article of the Convention, but it created a moral obligation. If adopted, it would express the opinion of the Conference and constitute a guiding principle by which sending States could solve a serious problem on which the Convention said nothing, except for the provision concerning the waiver of immunity by the sending State.

40. He earnestly hoped that the Conference would adopt the draft resolution.

The draft resolution (A/CONF.20/L.4/Rev.1) was adopted by 50 votes to 2, with 18 abstentions.[4]

Draft optional protocol concerning acquisition of nationality

41. The PRESIDENT invited the Conference to consider the draft optional protocol concerning acquisition of nationality (A/CONF.20/L.14/Add.1). The protocol had been prepared by the Drafting Committee in pursuance of a decision taken by the Conference at its ninth plenary meeting.

The draft optional protocol concerning acquisition of nationality was adopted.[5]

Optional protocol concerning the compulsory settlement of disputes *(resumed from the 11th meeting and concluded)*

42. Mr. KRISHNA RAO (India) proposed that the optional Protocol concerning the compulsory settlement of disputes, adopted at the eleventh meeting, should be amended so as to extend its application to the optional Protocol, concerning acquisition of nationality.

43. The PRESIDENT noted that the Conference appeared to support the proposal. He thought it could safely be referred to the Drafting Committee and that there would be no need for the Conference to examine the final text.

It was so agreed.[6]

Tribute to the International Law Commission

44. The PRESIDENT drew attention to a draft resolution submitted by the United Arab Republic (A/CONF. 20/L.22), expressing the Conference's gratitude to the International Law Commission for its outstanding work.

45. Mr. EL-ERIAN (United Arab Republic) said he was happy to announce that Spain had agreed to be co-sponsor of his delegation's proposal.

46. Despite the differences of opinion that had arisen during the discussion, the Conference had been unanimous in its admiration for the International Law Commission's draft, which was a truly outstanding document. Numerous amendments had been submitted, but in many cases it had proved wiser to revert to the Commission's text and be guided by its commentaries.

47. His tribute included the President of the Conference, who was an eminent member of the Commission. The delegation of the United Arab Republic was sure that the International Law Commission would prove equal to its task and preserve international law while adapting it to modern needs.

48. Mr. MATINE-DAFTARY (Iran) expressed the gratitude of the International Law Commission to the delegations which had honoured it by their draft resolution. As a member of the Commission he would abstain from voting on that resolution, for reasons which the Conference would appreciate.

The draft resolution proposed by the United Arab Republic and Spain (A/CONF.20/L.22) was adopted.[7]

Tribute to the Government and people of the Republic of Austria

49. The PRESIDENT invited the Conference to consider the draft resolution submitted jointly by Ceylon, the Federation of Malaya, Ghana, India, Indonesia and Spain (A/CONF.20/L.24) expressing the Conference's appreciation to the Government and people of Austria.

50. Mr. DADZIE (Ghana), speaking on behalf of the sponsors of the draft resolution, recalled Vienna's historic role in diplomatic history and thanked the Austrian Government for its generous hospitality.

51. Mr. BOISSIER-PALUN (Senegal) associated himself with the words spoken by the representative of Ghana and thanked all the Conference staff.

52. Mr. KIRCHSCHLAEGER (Austria) expressed his appreciation of the gratitude that had been showered on his government and his country. He thanked the delegations which had made Austria's task so easy and had done it the great honour of accepting its invitation.

The draft resolution (A/CONF.20/L.24) was adopted by acclamation.[7]

53. The PRESIDENT proposed that in accordance with the recommendation of the Committee of the Whole (41st meeting) the Final Act of the Conference should be deposited in the archives of the Federal Government of Austria.

It was so decided.

[4] The resolution was subsequently embodied in an addendum to the Final Act (A/CONF.20/10/Add.1). See also vol. II.

[5] For a definitive text of this protocol see document A/CONF. 20/11.

[6] For the definitive text of the protocol incorporating the necessary amendments, see document A/CONF.20/12 (article IV and article IX (*b*)).

[7] The resolution was embodied in an addendum to the Final Act (A/CONF.20/10/Add.1).

54. The PRESIDENT said that, in accordance with the usual practice, the Final Act would be drafted by the Secretariat under the supervision of the President and approved by the Drafting Committee.[8]

Closure of the Conference

55. Mr. GUNEWARDENE (Ceylon), speaking on behalf of a group of delegations of African and Asian States, paid a tribute to the President of the Conference whom his delegation had had the honour to propose. There could not have been a more suitable choice and the name of President Verdross would go down in history for the leading part he had played in the proceedings of the Conference.

56. On behalf of his own delegation and those of the Federal Republic of Germany, Belgium, France, Ireland, Luxembourg, the Netherlands, Portugal and Spain, Mr. RUEGGER (Switzerland) expressed their gratitude to the President, to the Government of Austria and to the city of Vienna for the warm welcome extended to the Conference. It was thanks to that welcome that the Conference had been able to complete a vital task, which would contribute greatly to the strengthening of the principles of international law.

57. Mr. REGALA (Philippines), Mr. HAYTA (Turkey), Mr. BARTOŠ (Yugoslavia) and Mr. CAMERON (United States of America) also expressed their gratitude to the Government of Austria and the city of Vienna, to the President of the Conference, the representative of the Secretary-General and the Executive Secretary and to all the staff who had contributed to the success of the Conference.

58. Speaking on behalf of the delegations of the Commonwealth countries, Mr. GHAZALI (Federation of Malaya) endorsed the words of the previous speakers.

59. Mr. WESTRUP (Sweden), speaking for the delegations of Finland, Norway, Denmark and Sweden, and Mr. MARESCA (Italy) also joined in the thanks expressed.

60. Mr. BIRECKI (Poland) said that he had been asked by the delegations of Albania, Bulgaria, the Byelorussian SSR, Czechoslovakia, Hungary, Romania, the Ukrainian SSR, and the USSR to express their great appreciation of the courtesy and objectivity shown by the President and of the welcome given by the Government of Austria and the city of Vienna. He regretted that despite even such favourable conditions the Conference had not been able to accept a provision which would have made the Convention universal and to admit the participation of all sovereign States. He hoped that the work accomplished would contribute to the development of relations of peaceful coexistence among nations with different social structures.

61. Mgr. CASAROLI (Holy See) expressed his delegation's thanks to the Government of Austria and to the city of Vienna for their generous hospitality. He was happy to think that Vienna would in future centuries, too, remain the capital of diplomatic law.

62. At the same time he wished to pay a tribute to the great jurist who had presided over the Conference's proceedings.

63. The proceedings had not always been easy; there had been clashes, not so much of opinions as of different legal traditions and of almost irreconcilable divergences of interests. In keeping with its own tradition, his delegation had sought only after truth, intervening only to support the cause of justice and equity, to facilitate understanding and promote friendship among nations and States. Fortunately, the Conference had been characterized by a spirit of co-operation, and the new Vienna Convention augured well for the work of diplomats. The provision in the Convention which confirmed an ancient principle concerning the Holy See should be taken as a tribute to the higher values which the Holy See had upheld steadfastly in the international community. He expressed the earnest wish that the new Convention would succeed in its purpose.

64. Mr. HU (China), Mr. LINTON (Israel), Mr. BOLLINI SHAW (Argentina), the latter speaking also on behalf of the Latin American delegations, and Mr. ZLITNI (Libya), all expressed their gratitude to the President of the Conference, the Government of Austria and the city of Vienna.

65. Mr. MATINE-DAFTARY (Iran) pointed out that whereas at the first Congress of Vienna in 1815 a great Austrian, Prince Metternich, had stood for force, at the second Congress of Vienna another great Austrian, President Verdross, had stood for the rule of law.

66. The PRESIDENT noted that after more than six weeks of sustained and sometimes intensive work, the Conference had adopted, by an overwhelming majority, a convention on diplomatic relations which was to bear the name of the city of Vienna. Although it might be said that the results were modest and that the Conference had not achieved the brilliance or the fame of the Congress of Vienna, it should not be forgotten that lasting works were characterized by modesty, which was often the sign of true success. The Conference had been convened not to settle the grave problems of the hour, but to prepare the instruments with which others could settle them, with order, method, calm and serenity.

67. He thanked the Austrian Government and the officials of the Austrian Republic for the technical preparations made for the Conference and for their friendly welcome. He paid a tribute to Mr. Lall, Chairman of the Committee of the Whole, and Mr. Gunewardene, Chairman of the Drafting Committee, who had performed their duties with such ability and tact, and thanked the rapporteur, the vice-presidents and the representatives, who had created the friendly atmosphere in which the work of the Conference had been conducted. He also

[8] For the text of the Final Act, see document A/CONF.20/10.

thanked the representative of the Secretary-General, the Executive Secretary and the secretariat staff for the important work they had done.

68. In conclusion, he expressed the hope that the spirit of co-operation which had guided the work of the Conference would live on and contribute to the solution of other international problems in the interests of world peace and the wellbeing of all nations.

69. He declared the United Nations Conference on Diplomatic Intercourse and Immunities closed.

The meeting rose at 7.15 p.m.

FIRST MEETING

Monday, 6 March 1961, at 10.55 a.m.

Chairman: Mr. LALL (India)

Election of vice-chairmen

1. The CHAIRMAN invited nominations for the office of vice-chairman. The Committee was to elect two vice-chairmen.

2. Mr. NAFEH ZADE (United Arab Republic) proposed Mr. Birecki (Poland).

3. Mr. de ERICE y O'SHEA (Spain) proposed Mr. Iriniz Casas (Uruguay).

Mr. Birecki (Poland) and Mr. Iriniz Casas (Uruguay) were elected vice-chairmen by acclamation.

Election of rapporteur

4. Mr. RUEGGER (Switzerland) proposed Mr. Riphagen (Netherlands).

5. Mr. MELO LECAROS (Chile) and Mr. de ROMREE (Belgium) seconded that proposal.

Mr. Riphagen (Netherlands) was elected rapporteur by acclamation.

Organization of work

6. The CHAIRMAN said that the Conference at its second plenary meeting (para. 12) had referred to the Committee agenda item 10 (Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959) and agenda item 11 (Consideration of draft articles on special missions in accordance with resolution 1504 (XV) adopted by the General Assembly on 12 December 1960).

7. He suggested that, for the sake of the orderly conduct of proceedings, the Committee should first take up the first of those two items. Since it had very little time, the best method seemed to be to consider the draft prepared by the International Law Commission (A/CONF.20/4) article by article. That would not, of course, preclude speakers, when discussing any one article, from referring to other related or pertinent articles.

It was so agreed.

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4)

Article 1 (Definitions)

8. The CHAIRMAN said that article 1 should be studied with special care for it defined the terms used in the subsequent articles of the draft. He suggested that the definitions should form the subject of a preliminary debate and be approved provisionally, subject to later review. In that way, rule 33 of the rules of procedure would not have to be applied.

9. Mr. USTOR (Hungary) remarked that the draft of a Convention concerning Diplomatic Immunities and Privileges (A/CONF.20/6) adopted at Colombo in 1960, and the Convention regarding Diplomatic Officers (A/CONF.20/7) signed at Havana in 1928, were both preceded by a preamble. He suggested that the draft being considered by the Committee should likewise be preceded by a preamble, for it might facilitate interpretation of the articles.

10. The CHAIRMAN said that the question of inserting a preamble would be for the Committee to decide, but it must first have a text before it. For the time being, it should merely take note of the Hungarian representative's suggestion.

It was so agreed.

11. Mr. de ERICE y O'SHEA (Spain) also considered that the draft articles should be preceded by a preamble, and supported the Hungarian representative's suggestion. He thought it would be best to consider each sub-paragraph of article 1 separately.

12. The CHAIRMAN said that article 1 would be put to the vote sub-paragraph by sub-paragraph at a later stage. At the first reading, however, members of the Committee could comment on the article as a whole or on particular sub-paragraphs.

13. Mr. AMAN (Switzerland) said that the terminology to be used in the convention should be clear and in conformity with usage. The expressions " Etat accréditant " and " Etat accréditaire ", for instance, which were used in the French text of the International Law Commission's draft, did not appear in law dictionaries such as Capitant & Sirey, or in general dictionaries such as the new Littré or Robert. Hence, they should be replaced by the expressions " Etat d'envoi " and " Etat de résidence ", which were used in the Commission's draft articles on consular intercourse and immunities (A/4425, chapter II). Furthermore, the expression " administrative and technical staff " was not a very happy one; it would be better to say " chancery staff ".

14. Mr. de ROMREE (Belgium) thought that none of the governments represented at the Conference would deny that, far from being of secondary importance in international life, diplomatic immunity and inviolability were essentials without which relations between States would be impracticable. In that connexion, his delegation could not forbear to refer to recent events of which Belgian diplomatic representatives abroad had been victims. In one country the Belgian Embassy building had been ransacked and set on fire. The head of mission and his assistants had barely escaped serious maltreatment. The indispensable precautions had not been taken

and, in fact, the guards at the entrances who should have protected the Embassy had disappeared. At Brussels, on the contrary, the precautions taken by the Belgian Government had been so exceptional as to cause dissatisfaction among the public.

15. The receiving State had not only failed to pay due compensation, but had not even apologized. Nor was there any evidence that it had proceeded against the offenders. All protests had been rejected and all responsibility declined. In the circumstances, the Belgian Government had been forced to conclude that its representatives could no longer be considered safe. Hence it earnestly hoped that the Conference would succeed.

16. Mr. EL-ERIAN (United Arab Republic), speaking on a point of order, protested against the Belgian representative's statements on the ground that he had attempted to introduce a political question into the discussion for purposes of political propaganda. He reserved the right to reply later to the allegations made.

17. Mr. REGALA (Philippines), referring to article 1, sub-paragraph (*g*), noted that the draft articles nowhere required service staff to register. In practice, however, members of service staff had to register before they could enjoy privileges of any kind. Accordingly, article 36, paragraph 2, which dealt with the position of service staff, should contain a more specific provision.

18. The practice of the courts in the matter varied widely. In one United States case, for instance, the court had refused to admit that service staff were entitled to privileges because they were not duly registered; in another, a federal court had held that such privileges existed by virtue of international law, even in the absence of registration.

19. Mr. LINTIB (Israel) considered that a unified convention should be adopted dealing both with permanent and with special missions. Consequently, a definition of " special missions " should perhaps be included in article 1.

20. Sub-paragraphs (*f*) and (*g*) did not draw a sufficiently clear distinction between " administrative and technical staff " and " service staff ". Such a distinction was particularly important for the purpose of the application of article 36. The categories of staff to which those two sub-paragraphs referred should therefore be defined in greater detail.

21. The CHAIRMAN said that the drafting committee would revise the definitions in the light of the decisions taken by the Committee of the Whole. With reference to the remarks of the representative of Israel, he said that the International Law Commission had considered the possibility of combining the draft on permanent missions with that on special missions (A/4425, chapter III).

22. Mr. WALDERON (Ireland) said that the categories of diplomats covered by article 1, sub-paragraph (*d*), should be defined in more specific terms, if only because — unlike the Commission's draft — the convention to be prepared by the Conference would not be accompanied by a commentary.

23. Mr. BOLLINI SHAW (Argentina) said that the convention should be introduced by a preamble, as were the regional conventions prepared by the American States.

24. In sub-paragraph (*f*), he thought the words " administrative and " should be retained, but " administrative " categories should be defined. In sub-paragraphs (*g*) and (*h*), a clearer distinction should be made between the categories referred to, in order to avoid any difference in interpretation.

25. He agreed with the representative of Israel that article 1 should contain a definition of special missions.

26. Mr. SUBARDJO (Indonesia) said that persons holding diplomatic passports too often claimed diplomatic privileges even though they were not diplomats approved by the receiving State. It should therefore be specified that only members of staff listed at the Ministry of Foreign Affairs of that State could enjoy the privileges provided for in the convention. He therefore proposed the addition, at the end of sub-paragraph (*d*), of the words: " and whose names are on the list of the Ministry of Foreign Affairs of the receiving State."

27. Mr. LINARES (Guatemala) pointed out that the definition of " diplomatic staff " in sub-paragraph (*d*) contravened the rule of logic that the term to be defined must not be used in the definition. To remedy the defect he proposed that " diplomatic staff " should be defined as meaning the head of the mission, ministers, minister-counsellors, counsellors, secretaries and attachés.

28. Mr. OJEDA (Mexico) agreed that the definition in sub-paragraph (*d*) was tautological. It should specify that the diplomatic staff meant the members of the mission authorized by the receiving State to exercise diplomatic functions properly so called.

29. In sub-paragraph (*g*) it was hardly possible to give a clearer definition of " service staff ", for the expression was interpreted differently in different countries. The general criterion applied by the International Law Commission was the nature of the functions performed by all the categories of staff covered by the convention. While that criterion was sufficient for the sending State, the receiving State should know the exact status of the person who was to enjoy the privileges granted.

30. Mr. de ERICE y O'SHEA (Spain) said that the definition in sub-paragraph (*a*) did not bring out the official status of the head of the mission. There were some officials having duties of an internal character who were accredited by the head of the mission himself. The term " head of the mission " should accordingly be replaced by the expression " official representative of one State to another ".

31. Mr. KRISHNA RAO (India) referred to the timely suggestion made by the Netherlands Government which had led the International Law Commission to include the definitions in article 1. He considered that the Committee should follow the method of the Commission and should not adopt definitions until after it had studied the draft as a whole, particularly article 36.

32. The definitions themselves should be sufficiently detailed to preclude all misunderstanding. For example, the expression " head of the mission " should be clarified. Another instance was the meaning of the term " family ". The implied definition in article 36, paragraph 1, was flexible enough to cover various family systems in different parts of the world; consequently there was no need to define " family ". " Private servant " did not require a separate definition, but the category could be covered by sub-paragraph (*g*) relating to service staff.

33. Since the final text would not be followed by a commentary, the articles should be sufficiently explicit in themselves.

34. Mr. BARTOŠ (Yugoslavia) said that the International Law Commission had not defined the terms used in the draft articles until after it had finished the drafting. The Committee was, of course, free to discuss the definitions provisionally and point out their shortcomings; but for reasons of method it would be better if delegations submitted amendments, not to the definitions in article 1, but to the other articles. Once the text of the articles had been settled, the Committee could decide how the definitions were affected.

35. Mr. MAMELI (Italy) agreed with the speakers who had suggested the addition of a preamble.

36. He said the Committee should beware of making excessively radical amendments or additions to the definitions: *omnis definitio in jure periculosa est*. Some expressions, such as " technical staff ", might indeed need explanation later, but generally speaking the Committee should proceed very cautiously in the matter.

The meeting rose at 12.30 p.m.

SECOND MEETING

Monday, 6 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (*continued*)

1. The CHAIRMAN invited the Committee to continue its debate on the International Law Commission's draft.

2. Mr. NAFEH ZADE (United Arab Republic) said that the statement made by the representative of Belgium at the previous meeting (paragraphs 14 and 15) concerning the treatment of a Belgian diplomatic mission had obviously referred to recent events at Cairo. He felt bound to refer in reply to certain facts, from which delegations could draw their own conclusions.

3. The Government and people of the United Arab Republic respected international law and knew their duties in that regard. The events to which the representative of Belgium had referred, however, had been a demonstration of indignation at the policy adopted by certain powers in Africa. The anger of young Africans at Cairo — which had become a focal point for hopes of independence and freedom — had been aroused by the barbarous acts in the province of Katanga and the brutal murder of Mr. Lumumba, head of the lawful Congolese government, who had invited the United Nations to come to the Congo.

4. The authorities at Cairo had been taken unawares by the demonstrations. In fact, they could not have foreseen them, since at the time of the Suez crisis in 1956 there had been no similar demonstrations against the embassies of the United Kingdom and France.

5. The United Arab Republic had refused to accept the Belgian notes of protest not only for reasons of form, but also because they had been presented at a time when the Embassy of the United Arab Republic at Brussels was being subjected to repeated and organized attacks, even though the Ambassador, who had known exactly for what time each of the three demonstrations was planned, had alerted the Belgian authorities. It was also significant that, although demonstrations similar to those at Cairo had taken place against Belgian embassies in other capitals, there had been no demonstrations at Brussels against the embassies or missions of any other country.

6. In conclusion, he would merely point out that the Conference, which had met to consider general principles of international law and not particular issues, was not the proper place for the airing of grievances, still less for accusations and propaganda.

7. Mr. SEID (Chad) said that while codification, which was the purpose of the Conference, was obviously desirable, to be effective — especially in the rather delicate field of diplomatic relations — it should allow some freedom to individual States. Experience showed that the excessive rigidity of an instrument discouraged ratifications: for instance, the Convention regarding Diplomatic Officers adopted by the Sixth International American Conference at Havana in 1928 had been ratified by only fifteen States, two of which had made reservations. Moreover, the new States, which were the prospective signatories of the convention to be prepared by the Conference, might find themselves bound by rules which they had not helped to draft and which they could not hope to improve or develop in the future as society evolved.

8. He had been much impressed by the statement made by the President of the Conference on his election (1st plenary meeting), and hoped that the President's wishes for the outcome would be fulfilled.

Article 1 (Definitions) (*continued*)

9. Mr. BARUNI (Libya) proposed that in sub-paragraph (*c*) the technical staff should be divided into two categories: (1) military, and (2) technical, comprising social, cultural, economic and commercial staff. Such a division would have a bearing on article 6.

Article 2 (Establishment of diplomatic relations and missions)

10. Mr. CAMERON (United States of America) strongly favoured the conclusion of a convention on diplomatic

intercourse and immunities, despite certain doubts that had been expressed during debates in the United Nations. His delegation was ready to co-operate fully with the other delegations on the urgent task of codifying the international law on the subject. The clarification and codification of the duties of sending and receiving States would be a constructive contribution to international co-operation. It would also prevent such incidents as that referred to by the representative of Belgium.

11. While he had no objection to the draft of article 2, he intended to propose the inclusion of a reference to temporary missions.

12. Mr. JEZEK (Czechoslovakia) stressed the importance of drawing up a code based on the needs of modern life and taking into account developments within States and in the international community. It was essential that rules of international law should be based on peaceful co-existence and co-operation in accordance with the United Nations Charter. To that end he would submit two amendments to article 2: the first would provide that every State should have the right of legation, which included the right to receive and send diplomatic agents; and the second would provide that differences in constitutional, legal and social systems should not prevent the establishment and maintenance of diplomatic relations between States.

13. Mr. PONCE MIRANDA (Ecuador) also stressed the importance of the right of legation, and considered that it should be specified in article 2; for instance, the article might begin with the words: " In the exercise of the right of legation ". Article 1 (Definitions) would be more appropriately placed at the end of the Convention.

14. Mr. de ERICE y O'SHEA (Spain) fully shared the views of the representative of Ecuador, but considered that it would be more correct to speak of the " right of mission ". He suggested that a new paragraph should be added indicating that the form of the accrediting documents might also be fixed by mutual consent.

15. Mr. MARESCA (Italy) did not consider it appropriate to introduce a reference to the right of legation or mission. He was satisfied with the draft of article 2, which placed the emphasis on mutual consent.

16. Mr. RUEGGER (Switzerland) said he could not consider any addition to the text until all possible implications had been studied.

Article 3 (Functions of a diplomatic mission)

17. Mr. OJEDA (Mexico) drew attention to paragraph 4 of the International Law Commission's commentary on article 3 (A/3859), which was so important that in his delegation's opinion it should be incorporated in sub-paragraph (*b*).

18. Mr. de ERICE y O'SHEA (Spain) proposed that the exercise of consular functions should be mentioned in sub-paragraph (*b*). In sub-paragraph (*e*) the words " economic, cultural and scientific relations " should be replaced by a reference to " friendly relations of all kinds ".

19. Mr. MARESCA (Italy) suggested that in the English text the words " *inter alia* " in the first line should be replaced by a term closer to the French " notamment ".

20. Mr. DASKALOV (Bulgaria) was content that article 3 should mention merely the principal functions, without giving a detailed list. He was satisfied with the existing sub-paragraph (*e*).

21. Mr. BARTOŠ (Yugoslavia) said it was unfortunate that Mr. Sandström, the International Law Commission's Special Rapporteur for the topic of diplomatic intercourse and immunities, was not present to explain the draft. After extensive discussion in the Commission, the majority had concluded that the establishment of diplomatic relations did not automatically involve that of consular relations (449th meeting of the Commission). The diplomatic protection of the nationals of the sending State mentioned in sub-paragraph (*b*) was quite distinct from consular protection. The establishment of consular relations was thus a separate matter, and his delegation would not support the proposal to mention it in sub-paragraph (*b*).

22. His delegation supported sub-paragraph (*e*), which recognized the recent expansion of the economic, cultural and scientific activities of diplomatic missions.

23. Mr. KRISHNA RAO (India) said that, because the Commission's commentaries would not form part of the final instrument or instruments to be adopted by the Conference, and in view of the importance of paragraph 4 of the commentary on article 3, his delegation would propose an amendment to sub-paragraph (*b*) limiting the protection of the interests of the sending State and of its nationals to the extent recognized by international law.

24. Mr. DIMITRIU (Romania) said that a draft on diplomatic intercourse should state that contemporary international law regarded aggression as a crime, recognized the principle of self-determination, and imposed respect for the sovereignty and equality of all States. His delegation would propose an additional provision specifying that diplomatic law should serve the interests of peace.

25. Mr. VALLAT (United Kingdom) recalled that his government, in its comments on the International Law Commission's 1957 draft, had suggested that the article concerning the functions of a diplomatic mission should include a reference to cultural activities, " the function of projecting the culture and way of life of the sending State in the receiving State, which seems in modern times to be one of the acknowledged functions of a diplomatic mission " (A/3859, p. 54). His delegation thanked the Commission for taking that suggestion into account in drafting sub-paragraph (*e*), and would vote in favour of that sub-paragraph and indeed of the whole of article 3.

26. Monsignor CASAROLI (Holy See) pointed out that, as drafted, article 3 placed five functions on the same footing. In fact, the function of representation was the fundamental one; the other four — protection, negotia-

tion, observation and promotion of friendly relations — were only adjuncts to it. His delegation therefore proposed that article 3 be re-drafted on the following lines: " The functions of a diplomatic mission consist in representing the sending State in the receiving State for the purpose, *inter alia*, of: (*a*) Protecting in the receiving State . . ."

27. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) recalled that Article 1, paragraph 2, of the Charter made the development of friendly relations among nations one of the purposes of the United Nations. Hence, the functions set forth in sub-paragraph (*e*) were obviously of cardinal importance.

28. Mr. WESTRUP (Sweden) asked whether the word " nationals " (of the sending State) used in sub-paragraph (*b*) covered bodies corporate.

29. The CHAIRMAN said that the question would be considered and a reply given later.

30. Mr. LINTON (Israel) said that his delegation was, in general, satisfied with the text of article 3, which rightly recognized the non-exhaustive character of the enumeration it contained. Diplomatic functions and relations were in a state of constant development, and he therefore believed that the Commission had acted wisely in not attempting to draw up an exhaustive list. Such an attempt could hinder the development and further broadening of the field of diplomatic functions and relations. The words " *inter alia* " allowed for further change and development, and should be retained.

31. With regard to the suggestion made by the representative of India that article 3, sub-paragraph (*b*) should include a provision specifying that protection of nationals should be exercised only to the extent recognized by international law, he thought that the most appropriate place to discuss the suggestion would be in connexion with article 40, which dealt generally with the conduct of the mission towards the receiving State. The duty of the mission to respect the law, both domestic and international, was relevant to all the provisions of the draft, and not only to article 3.

32. Mr. BARUNI (Libya) said that his delegation accepted draft article 3, but suggested that the provision contained in sub-paragraph (*e*) should, because of its importance, be placed immediately after sub-paragraph (*a*).

33. Mr. de LEMOS (Portugal) supported the proposal of the Holy See; it was right to mark the profound difference between the essential function of representation and the consequential functions set forth in the later sub-paragraphs.

34. Mr. de VAUCELLES (France) said that his delegation would support the Spanish proposal for including in sub-paragraph (*b*) a provision to the effect that a diplomatic officer could perform consular functions if the receiving State so agreed. That proposal was broader than the provision put forward by Czechoslovakia in its comments on the final draft, which specified that the functions of a diplomatic mission also comprised consular functions " in those cases where official consular relations between the sending State and the receiving State do not exist " (A/4164). He had himself, as head of a French diplomatic mission, exercised consular functions in the capital of a receiving State where, although consular relations between France and that State had always existed, there had been no French consul.

35. He agreed with the representative of Israel that the words " *inter alia* " should be retained to allow for future developments.

36. Mr. de SOUZA LEAO (Brazil) said that his delegation agreed with the substance of article 3, but urged a fuller concordance of the texts in the three languages.

37. Mr. BARNES (Liberia) said that his delegation agreed generally with the description of the functions of a diplomatic mission set forth in article 3, but proposed that the order should be changed to reflect the degree of their importance. The most important function, that of representation, would remain as sub-paragraph (*a*) and be followed by those of negotiation and observation. Next in importance was the promotion of friendly relations, and last would come the existing sub-paragraph (*b*) concerning protection.

38. Mr. BOUZIRI (Tunisia) supported the proposal of the representative of the Holy See for the re-drafting of the beginning of the article, for a diplomatic mission's basic function was representation. He also agreed that the draft enumerated the functions in the wrong order. The existing sub-paragraph (*b*) should come last and be preceded by the existing sub-paragraph (*c*), which was of greater importance.

39. Mr. BARTOŠ (Yugoslavia) was not in favour of the Holy See's amendment. The function of representation changed from one period to another. He would prefer the traditional definition of diplomatic functions found in every classical textbook: representation, protection, negotiation and observation. The International Law Commission had wished to give a certain weight to each of those functions in its draft, and had added sub-paragraph (*e*) to bring the list up to date.

40. Mr. de ERICE y O'SHEA (Spain) said that the intention of his amendment to sub-paragraph (*e*) had apparently been misunderstood. The importance of developing " economic, cultural and scientific relations " was recognized, but to specify them in that way would exclude other important fields, such as sport. He therefore proposed that the sub-paragraph should refer simply to the development of " relations of all kinds ".

41. Mr. DANKWORT (Federal Republic of Germany) said that his delegation was satisfied with the Commission's draft of article 3. It agreed with the representative of Spain, however, that the exercise of consular functions by a diplomatic mission should be expressly mentioned in article 3.

Article 4 (Appointment of the head of the mission: agrément)

42. Mr. REGALA (Philippines) suggested that article 4 should be amended to provide that the receiving State had to decide within a reasonable time whether to give its agrément.

43. Mr. BOLLINI SHAW (Argentina) said that his delegation would submit an amendment providing that the receiving State should not be obliged to give its reasons for refusing to grant the agrément, a matter entirely within its own competence.

44. Mr. de ERICE y O'SHEA (Spain) fully supported that view. He suggested, however, that since the agrément was not usually required for chargés d'affaires ad interim who might act as heads of mission, the word " permanent " should be inserted before " head of the mission ".

45. Mr. CAMERON (United States of America) announced that his delegation would submit an amendment to cover the case in which a chargé d'affaires ad interim had been directed to fill the post until the arrival of the permanent head of the mission. The term " agrément " was not technically correct in that case, and it was proposed that the words " or other sign of approval " should be added in the first line, before the words " of the receiving State ".

Article 5 (Appointment to more than one State)

46. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that his delegation would submit an amendment to article 5. Although it accepted the principle that a receiving State had the right to withhold its agrément, the regulation of that principle by international law might complicate the procedure of presenting credentials.

47. Mr. CAMERON (United States of America) said that his delegation was submitting an amendment to article 5, requiring that the receiving State should first be notified of the intention of the sending State to accredit the head of mission to a third State, so that it might object if it so desired; the proposed amendment also extended the article to cover diplomatic staff accredited to the third State.

48. Mr. de ERICE y O'SHEA (Spain) had no objection to article 5 or to the amendment proposed by the representative of the United States, which would clarify it. He suggested, however, that the article should be amended to provide for the case in which several States agreed to accredit a single head of mission to one or more States.

49. Mr. BOLLINI SHAW (Argentina) observed that that point was covered by the Havana Convention of 1928, article 5 of which provided that " Several States may entrust their representation before another to a single diplomatic officer."

The meeting rose at 5.20 p.m.

THIRD MEETING

Tuesday, 7 March 1961, at 10.45 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (*continued*)

Article 6 (Appointment of the staff of the mission)

Article 7 (Appointment of nationals of the receiving State)

Article 8 (Persons declared *persona non grata*)

Article 9 (Notification of arrival and departure)

Article 10 (Size of staff)

1. The CHAIRMAN invited the Committee to consider articles 6 to 10, which were interdependent, together. He drew attention to the amendments submitted by the delegation of France to articles 6, 7, 8 and 9 (A/CONF. 20/C.1/L.1, L.2, L.3, L.4), by the delegation of the United Kingdom to article 9 (A/CONF.20/C.1/L.9) and by the delegation of Italy to article 6 (A/CONF.20/ C.1/L.48).[1]

2. Mr. PHILOPOULOS (Greece) observed that article 8, which dealt with the recall of a member of the mission, should not be mentioned in article 6, which dealt with the appointment of the staff of the mission. Furthermore, the phrase " subject to the provisions of article 7 " should be inserted at the beginning of article 10, paragraph 1.

3. Mr. de VAUCELLES (France) said that the object of his delegation's amendment ot article 6 (L.1) was to make it clear that, while the appointment of a member of the staff of a diplomatic mission should not be subject to the agrément of the receiving State, that State remained free to discuss the question of his entry on the diplomatic list. It was, of course, the sending State which conferred diplomatic status on its nationals, but that status had to be recognized by the receiving State, and it was, precisely, entry on the list which constituted such recognition. The point was very important, for it established a distinction between the diplomatic staff proper and the administrative and technical staff of the mission, who, in the opinion of the French delegation, should not enjoy such extensive privileges and immunities as diplomats. The purpose of the second part of the amendment was to extend to specialized technical advisers and attachés the generally recognized right of the receiving State to refuse its agrément to military attachés. The procedure would apply only to the head of the specialized technical services, since it had gradually become the custom — recognized in fact by all States — for him to act as the representative of his particular ministerial department,

[1] All references in this and subsequent records of the Committee of the whole to " L " documents are references to documents in the series A/CONF.20/C.1/L. . . .

and to have direct access to the corresponding departments of the receiving State.

4. The French delegation was also submitting an amendment to article 7 (L.2), for it considered — contrary to the views expressed by the International Law Commission in paragraph 9 of its commentary on article 7 (A/3859) — that the provision applicable to the nationals of the receiving State should be extended to cover nationals of a third State. In such cases, however, the formula would be less strict, and would leave it to the receiving State to decide whether or not to exercise its right.

5. The object of the amendment to article 8 (L.3) was merely to restore a provision which had appeared in article 3 of the draft submitted to the International Law Commission by Mr. Sandström (A/C.N.4/91), but which the Commission had not adopted. The receiving State might often consider it preferable not to give any official reason for requesting the recall of a member of a diplomatic mission, in order not to embitter its relations with the sending State. In most cases, moreover, the person whose recall was requested was well aware of the reasons, even if he was unwilling or unable to admit the fact publicly. In cases where the person concerned was not the head of the mission, the head was generally warned of the action it was proposed to take, so that the person concerned could leave even before the request was made.

6. Mr. BOLLINI SHAW (Argentina) shared the views of the French representative, particularly the amendment concerning the receiving State's right not to explain its decision on the acceptability or its request for the recall of members of the staff of the mission. The Argentine delegation had submitted a like amendment to article 4 (L.37) and would also submit amendments to the same effect to articles 6 and 8 (L.38 and L.39). With regard to article 10, it would prefer the words " what is reasonable and normal," in paragraph 1, to be replaced by the words " what it considers reasonable and normal " (L.119). Lastly, he asked for an explanation of the meaning to be attached to the words " officials of a particular category " in paragraph 2 of the same article.

7. Mr. MATINE-DAFTARY (Iran), referring to article 7, said that, as he had pointed out during the debate in the International Law Commission, the practice of choosing members of the diplomatic staff from among the nationals of the receiving State was unusual and obsolete. The receiving State could not grant to its own nationals all the privileges and immunities usually enjoyed by the members of a diplomatic mission, and such a situation was bound to be embarrassing for them. His delegation would prefer article 7 to be deleted entirely.

8. Mr. SUBARDJO (Indonesia) explained that his country had never allowed its nationals to become members of diplomatic missions sent to Indonesia by other States. Burma and the United Arab Republic had expressed much the same view in the debate of the Asian-African Legal Consultative Committee on the functions, privileges and immunities of diplomatic envoys or agents. The Indonesian delegation would submit a formal amendment to article 7 (L.66).

9. Mr. CHAVEZ (El Salvador) considered that article 6 should mention attachés specializing in atomic matters.

10. Mr. MAMELI (Italy), agreeing with the French representative's remarks concerning article 6, referred to the Italian delegation's amendment to that article (L.48).

11. His delegation considered article 7 very important and did not wish to amend it in any way. With regard to article 8, it considered that the receiving State was not under an obligation to explain its decision and that the sending State was bound to recall a member of the staff who had been declared persona non grata. In article 10, the concept of " what is reasonable and normal " should be dropped.

12. Mr. OJEDA (Mexico) considered that, in so far as article 6 laid down the rule that the sending State might " freely " appoint the members of the staff of the mission, it did not correspond to the facts. The receiving State could take various measures which drastically limited the sending State's freedom of choice. For example, it could withhold its agrément, refuse an entry visa, or declare a particular member of the staff of the mission persona non grata even before he arrived in the country. Since the exceptions to the rule were very numerous, it would be better to state in article 6 that the receiving State could refuse admittance to a member of the mission staff appointed by the sending State. Article 8 of the Havana Convention (A/CONF.20/7) contained a similar provision.

13. Mr. CARMONA (Venezuela) supported the views of the representatives of Argentina, France, Italy and Mexico to a great extent. Article 6 was not fully satisfactory, and he considered that the first sentence was dangerous. It gave the sending State complete freedom to grant diplomatic status. It should be specified what persons were covered by the expression " staff of the mission ", and, as the French representative had said, diplomatic staff proper should be distinguishable from administrative and technical staff of the mission. The French delegation's amendment requiring an agreement with the receiving State was a clearer and more precise formula, though more stringent than Venezuela wished in that it specifically provided for the entry of diplomatic officials on the diplomatic list. Less categorical language, such as the provision taken from the Havana Convention, as suggested by the Mexican delegation, might be better. In any event, however, article 6 could not stand as drafted, for the principle it stated was subject to too many exceptions. It was difficult to determine whether the refusal of the agrément should be notified before or after the appointment. The custom was that the receiving State made its views known before the appointment, and traditional protocol had forms of refusal which were not too offensive.

14. The question of military, naval or air attachés had provoked long and controversial discussions. Venezuela considered that the receiving State should have the right to require the names of the staff of the mission to be communicated beforehand. Moreover, that rule should apply not only to military attachés, but also to technical

attachés and counsellors who, by virtue of their functions, maintained direct relations with the authorities of the receiving State. Preferably, the Convention should not lay down separate rules for military attachés.

15. On article 7, Indonesia and Iran had expressed very definite views. Venezuela did not allow its nationals to represent foreign countries diplomatically, for if they did they would enjoy privileges contrary to the democratic principle of the equality of citizens laid down in the constitution. If other countries saw fit to act differently, it was not for Venezuela to object; but he would prefer article 7 to be an exception, not a principle.

16. Turning to article 8, he said that if the receiving State did not give reasons for declaring a diplomat persona non grata, that was because it was not required to do so; the sending State was free to ask for the reasons, but it then ran the risk of creating new difficulties. Article 8 contained, in the second sentence of paragraph 1 and in paragraph 2, an element which did not fit the facts. In order to avoid friction, a receiving State enjoying good relations with the sending State would try to be courteous in declaring a member of the staff of the mission persona non grata. Often, however, a government would act more brusquely, and the draft article did not seem to allow for such a situation. He would not propose an amendment, but thought it would be wise to bear those possibilities in mind and draft a clearer text.

17. The Venezuelan delegation had instructions to vote in favour of article 10, but fully appreciated the Argentine amendment (L.119).

18. Mr. MELO LECAROS (Chile), referring to article 7, supported the French amendment (L.2). The principle should be stated that a diplomatic agent must be a national of the sending State; otherwise, the concept of a " mercenary " diplomacy resulted. He saw little force in the International Law Commission's argument against that principle (paragraph 9 of commentary) — namely, that the position of the technical and administrative staff not of diplomatic rank would cause difficulties. He agreed with the Venezuelan delegation that it was unnecessary for a receiving State to explain why it declared a member of the staff of a mission persona non grata.

19. Mr. SUCHARITAKUL (Thailand) said, with reference to article 7, that the nationality laws of the receiving State might differ from those of the sending State. In that case, the nationality of the person concerned should be determined according to the laws of the receiving State. He submitted an amendment to that effect (L.50).

20. Mr. EL-ERIAN (United Arab Republic) was opposed to article 7. The appointment of nationals of the receiving State to a foreign diplomatic mission was contrary to the whole idea of diplomatic relations that the agent should represent his own government. Such a practice reversed the normal situation and there was no need for it. The International Law Commission had itself recognized that fact at its tenth session, when it had explained in its commentaries on articles 4, 5, 6, 7 and 8 that the custom was rare and there were grounds for believing that it would disappear.

21. He considered that a diplomatic mission should recruit technical staff, such as interpreters, draftsmen and typists locally, but they were not of diplomatic rank. Diplomacy had a representative character, which — again according to the International Law Commission — was borne out only if a person represented his own government. Thus it was not desirable to sanction an obsolete custom in an article. However, he would support the Indonesian amendment (L.66) if the majority considered that provision should be made for the situation contemplated in article 7.

22. U SOE TIN (Burma) said that his government was, in principle, opposed to the appointment of its nationals as members of the diplomatic staff of foreign governments. However, in view of the safeguards requiring the express consent of the receiving State and also of the provisions of article 8, his government would take a liberal view of the inclusion of article 7, and would also support the French amendment (L.2). Articles 8 and 9 seemed acceptable, but in article 10, paragraph 1, he would prefer the words " it considers reasonable " to be substituted for the words " is reasonable ".

23. Mr. LINTON (Israel) said that his delegation agreed with the idea underlying the French amendment to article 6 (L.1) that recognition or acceptance by the receiving State of foreign diplomatic agents was necessary. However, the way in which the acceptance was granted was a matter for the receiving State and its domestic law. The proposed amendment was liable to confer international status on the diplomatic list, which was a creation of, and was governed by, domestic law. In his country, as in some others, registration on the diplomatic list was in itself of no particular legal value, and acceptance of a foreign diplomatic agent could be granted in other ways. While the receiving State should be allowed to refuse acceptance of a particular diplomatic agent, that need not necessarily have a bearing on the domestic question of registration on the diplomatic list.

24. He hoped that the right to declare a person persona non grata would be used with the greatest restraint. A diplomat normally exercising the functions enumerated in article 3 should not be declared persona non grata. Such a declaration should be made only in most serious cases, otherwise the receiving State could commit an " abus de droit ". For humanitarian reasons, a diplomat declared persona non grata should be given reasonable time in which to leave the receiving country. Referring to the words " within a reasonable period " in article 8, paragraph 2, he suggested that as persons were sometimes requested to leave the receiving country within an extremely short time, it would be preferable to avoid hardship, particularly for those with children, by providing that in no case should a person declared persona non grata be required to leave in less than some specified period, say seven days.

25. Mr. BARTOŠ (Yugoslavia), referring to the amendment to article 6 proposed by France (L.1), said that the practice, current in many countries, of establishing a diplomatic list was commendable. However, it had the disadvantage that the legal status of a member of the diplomatic staff was undetermined between the time

of his arrival in the receiving State and the time when that State recognized his entry on the list as valid. That gap had often given rise to disputes. The amendment to article 6 proposed by Italy (L.48) might determine the Yugoslav attitude to the French amendment.

26. The Yugoslav delegation considered that the principle stated in article 7 was meaningless in the modern world and raised a point of conscience. However, if a majority of the Committee was in favour of retaining that article, the Yugoslav delegation would support Indonesia's amendment and the French amendment.

27. The Yugoslav delegation was in sympathy with the French amendment to article 8 (L.3) but did not consider it necessary. There was, in fact, nothing in article 8 that obliged the receiving State to give reasons for its decision, and consequently the amendment was superfluous. On the other hand, the receiving State was not prohibited from explaining its decision if it saw fit to do so.

28. The first of the United Kingdom amendments to article 9 (L.9) was justified, and the second undoubtedly clarified the text; on the other hand, the Yugoslav delegation could not accept the third amendment. It was also frankly opposed to the amendment submitted by France (L.4) to article 9. The intervention of administrative authorities in the issue of withdrawal of residence permits and cards would only complicate the process and delay completion of the necessary formalities. Hence, the Yugoslav delegation could not vote in favour of that amendment.

29. Mr. BARUNI (Libya) considered that the provisions of article 7 might prove very embarrassing to the receiving State, as had been rightly pointed out by the representatives of Iran, Indonesia and the United Arab Republic. The receiving State would, for instance, be in a difficult position if immunity from jurisdiction was claimed for one of its nationals who was on the staff of a foreign mission. Although the rule laid down in article 7 conflicted with the Libyan Constitution, his delegation would be able to accept that article, if it were suitably amended.

30. Mr. RUEGGER (Switzerland) said he could support the French proposal that the non-diplomatic staff of missions should not be eligible for the benefit of diplomatic privileges and immunities. The Swiss delegation might submit amendments to articles 6, 7, 8 and 10, but would endeavour to depart as little as possible from the excellent draft prepared by the International Law Commission. It approved the principle stated in article 7, which the Commission had adopted by a majority after long discussion. It understood the doubts to which that article had given rise, but considered that the sovereign right of States was safeguarded by the discretion given to the State of residence to give or refuse its consent. The Swiss delegation hoped that it would be clearly stated, however, either in the convention itself or in the report of the Committee of the Whole, that the consent of the receiving State was not required in the case of non-diplomatic staff.

31. With regard to article 8, he referred to the Federal Government's comment (A/4164) that it should be expressly provided that the receiving State was not obliged to give reasons for its decision not to accept a diplomatic agent. In addition, it should be laid down that the sending State should refrain from sending a diplomatic agent to the receiving State if the latter made it known that he would not be acceptable.

32. The Swiss delegation was in favour of article 10 as drafted by the International Law Commission, but thought it should be specified what was considered to be a reasonable and normal size. As a general rule, the size of the staff of a mission should be in keeping with the mission's volume of work.

33. Mr. AMLIE (Norway) agreed with the representatives of Iran and the United Arab Republic that the convention should not contain a provision which indirectly endorsed the practice of recruiting diplomatic staff from among the nationals of the receiving State. Such a practice was abnormal and liable to embarrass both the sending and the receiving State. However, it was not a question of great importance, and if the majority of the Committee was in favour of the text of article 7, the Norwegian delegation would not vote against it. His delegation would be favourable to a provision along the lines of the amendment proposed by France (L.2).

34. He had the impression that various delegations were going to submit amendments to articles 4, 5, 6, 7 and 8, introducing in each of those articles a provision which explicitly stated that there was no obligation on the part of the receiving State to explain the reasons for a negative decision concerning the acceptance of personnel, etc. In his opinion, the inclusion of such a provision in the text was superfluous. If such an express statement was desired, however, it should not be repeated in each article, but should be made once in a separate article referring to the articles concerned.

35. With regard to the other articles under consideration, his delegation would be prepared to vote for them as they stood.

The meeting rose at 12.50 p.m.

FOURTH MEETING

Tuesday, 7 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (*continued*)

Article 6 (Appointment of the staff of the mission)

Article 7 (Appointment of nationals of the receiving State)

Article 8 (Persons declared persona non grata)

Article 9 (Notification of arrival and departure)

Article 10 (Size of staff)

1. The CHAIRMAN invited the Committee to continue its debate on articles 6 to 10 of the International Law Commission's draft (A/CONF.20/4) and on the amendments proposed to those articles (A/CONF.20/C.1/L.1, L.2, L.3, L.4, L.9, L.48).

2. Mr. BOUZIRI (Tunisia) said that his delegation, though it recognized the practice, and even the necessity, of appointing military, naval or air attachés, was not anxious to have the principle of their appointment or exchange enunciated as clearly as it was in article 6. The Commissoin had clearly been aware of the difficulty, since its draft provided that the receiving State might require the names of attachés to be submitted beforehand for approval. His delegation would not submit a formal amendment, but would prefer the last sentence of article 6 to be re-drafted to oblige the sending State to ask for approval of its appointments, rather than to permit the receiving State to require names to be submitted.

3. The amendment to article 6 submitted by France (L.1) might cause some difficulty, since it provided that entry on the diplomatic list should constitute recognition of diplomatic rank by the receiving State, and if the entry were delayed for any reason, the member would not be recognized as a diplomat.

4. His delegation could not support article 7. There, too, the Commission had apparently been aware of the difficulty, since the draft provided that the express consent of the receiving State was required before its nationals could be appointed members of the diplomatic staff of a foreign mission. The amendment submitted by France (L.2), which would give the receiving State the same right with regard to nationals of a third State, was desirable. Although in some cases such appointments might be useful, the receiving State should have the right to refuse them. His delegation would prefer article 7 to be deleted, but would agree that a receiving State might accept nationals of a third State if it so desired.

5. The amendment proposed by France to article 8 (L.3) added nothing to the existing text, which was satisfactory.

6. In article 10, paragraph 1, his delegation would prefer the words " what is reasonable and normal " to be deleted, since their interpretation would give rise to endless controversy.

7. Mr. de ERICE y O'SHEA (Spain) said that article 6 should distinguish between diplomatic staff, who were appointed by the sending State, and subordinate staff, who in many cases were freely appointed by the head of the mission. The second sentence should not refer specifically to military, naval or air attachés, since such a reference would omit certain other (e.g., scientific) attachés to whom the provision should apply. His delegation would propose an amendment empowering the receiving State to require prior submission of the names of attachés in general (L.46).

8. He agreed that the question of the appointment of nationals of the receiving State, covered by article 7, was no longer of practical importance. By the law of Spain and of some other countries, a national who without his government's leave entered the service of a foreign country as a diplomat lost his nationality. His delegation supported the French amendment (L.2) covering the case — also very rare — of the appointment of a national of a third State.

9. Article 8, paragraph 1, should not apply to all members of the staff of the mission. For a member of diplomatic staff a formal declaration of persona non grata was appropriate; if the person concerned belonged to the administrative and technical staff, or to the service staff, or was a private servant, the receiving State should be entitled at any time to request the head of the mission to dismiss him and send him out of the country. The Spanish delegation would introduce an amendment to that effect (L.78).

10. In article 10, paragraph 1, the expression " reasonable and normal " was much too vague. His delegation would introduce an amendment permitting the receiving State, in the absence of specific agreement on the size of the mission, to refuse to accept a size at variance with the circumstances and conditions in the receiving State and the sending State (L.80). The reference to " the needs of the particular mission " should be dropped, because that question concerned the sending State only.

11. Although Spain did not favour the principle of reciprocity in diplomatic intercourse, its delegation would put forward an amended text for article 10, paragraph 2, which would permit the receiving State either to refuse to accept officials of a particular category altogether, or to accept them only subject to reciprocity (L.80).

12. Mr. BARNES (Liberia) said that his delegation was in principle opposed to the appointment of a national of the receiving State as a member of the diplomatic staff of a foreign country. It was the duty of a diplomatic officer to foster the understanding of his country and his people among the people of the receiving State and so to promote friendly relations between the two countries. Clearly, that duty could not be performed satisfactorily by a national of the receiving State. However, in view of the large number of the newly independent States, it would be undesirable to prevent altogether an arrangement which would enable a new State to overcome its initial financial and other difficulties. His delegation would therefore accept article 7 if suitably amended to mark the exceptional character of the appointment of a national of the receiving State.

13. Mr. DIARRA (Mali), speaking on a point of order, said that his government regretted the absence from the Conference of the representatives of the only lawful government of the Congo (Leopoldville), that headed by Mr. Gizenga.

14. Referring to article 7, he said his delegation was opposed in principle to the appointment of a national of the receiving State, which would run counter to the whole spirit of the draft. Certain newly independent African States needed, however, to call upon the services of persons who were nationals of a receiving State in order to solve the problems connected with the establishment and initial organization of their diplomatic missions.

15. Mr. KRISNA RAO (India) said that the existing practice whereby persons appointed under article 7 did not enjoy fiscal privileges in respect of their imports or private acts was recognized in customary international law, and clearly referred to in article 15 of the Cambridge draft of the Institute of International Law. In any case, the receiving State, in consenting to the employment of its nationals by a foreign State, could specify in advance the conditions governing such employment. That proposition was supported by recognized publicists, and sanctioned by precedent in Germany, France and the United Kingdom. A further reason why remuneration for such employment should be subject to income tax was that any attempt at exemption would be strongly resisted by governments and parliaments as infringing the principle of the equality of all citizens before the law. The point was indirectly covered in article 37, which provided only for immunity in respect of acts performed in the course of duty, but he had thought it useful to clarify his delegation's interpretation of the relevant articles.

16. With regard to article 8, paragraph 1, his delegation would propose an amendment inserting after the words " the head of the mission " the words " appointed in accordance with article 4 " (L. 64). A State which had not objected to the appointment of a person as head of mission might subsequently find reasons for declaring him persona non grata.

17. Mr. de SOUZA LEAO (Brazil) said that his government felt considerable doubt whether article 10, paragraph 1, on the size of staff, should be retained. The best course might be to delete it and place paragraph 2, suitably re-worded, in article 6.

18. Mr. RIPHAGEN (Netherlands) said that articles 4 and 8 enabled the receiving State to object to the appointment or to the continued presence of any member of a foreign diplomatic mission. Article 7 made its consent necessary for the appointment of one of its nationals as a member of the diplomatic staff of a foreign mission. Clearly, such an appointment could not be precluded if the receiving State had no objection. To delete article 7 altogether would imply that the sending State was free to appoint nationals of the receiving State as members of the diplomatic staff.

19. His delegation had no objection in principle to the French amendment to article 7 (L.2), but did not feel that the receiving State should be entitled to forbid the appointment of a person who had the nationality both of the sending State and of a third State; he suggested that after the words " nationals of a third State " words to the following effect should be added: " who do not possess the nationality of the sending State ".

20. Mr. NGO-DINH-LUYEN (Viet-Nam) agreed with the Netherlands representative that article 7 should be retained. The receiving State and the sending State could not be prevented from agreeing on the appointment of a national of the receiving State. His delegation supported the French amendment regarding nationals of a third State; it might save embarrassment in cases where relations of the receiving State with the third State were strained, and without the amendment the receiving State would have to declare the appointed persons unacceptable.

21. With regard to article 10, he announced that his delegation would submit an amendment (L.88).

22. Mr. PONCE MIRANDA (Ecuador) thought the French amendment to article 6 (L.1) deserved consideration. To provide that entry on the diplomatic list constituted recognition of diplomatic rank by the receiving State would offer a simple means of indicating that a person was not acceptable.

23. Article 7 should prohibit absolutely the appointment of a national of the receiving State or of a third State to the diplomatic staff of a mission. Ecuadorian law forbade the grant of diplomatic status to nationals as representatives of a foreign Power. To give them diplomatic privileges in their own country would violate the democratic principle of equality before the law. Such appointments could be admitted only exceptionally.

24. Mr. KIRCHSCHLAEGER (Austria) said that his delegation could accept the articles as drafted, but thought some of the proposed amendments desirable. It would give them careful consideration and support them unless they changed the draft in principle.

25. Mr. DASKALOV (Bulgaria) said that his delegation could not support article 7. It was illogical to grant diplomatic privileges to nationals of the receiving State; the practice was rare and appeared to be dying out. The Secretariat might be asked to supply information on existing cases. The provision might be abused, as had happened in the past, to influence the domestic affairs of newly independent States. Moreover, a national of a receiving State might have a conflict of loyalty to his fatherland and to the sending country, and should not be placed in such a situation.

26. Article 7 was closely linked with article 37. The diplomatic privileges of a national who had become an agent of another government raised a delicate question. One view was that he should be granted all diplomatic privileges, another that he should receive only those which the receiving State saw fit to grant. Neither course was satisfactory, and whichever was adopted by the Conference would always give rise to difficulties and friction. The only solution was to delete article 7.

27. Mr. MECHECHA HAILE (Ethiopia) said that his delegation had decided after careful consideration to support articles 6 and 7 as they stood. It would not support the French amendment to article 7 since, although the appointment of a national of the receiving State seemed undesirable, a State which wished to appoint a national of a third State as its representative should be able to do so.

28. It supported the amendments proposed by France to articles 8 and 10 (L.3 and L.4).

29. Mr. HO-EUL WHANG (Republic of Korea) said that his delegation could not support article 7 as it stood. Under his country's Foreign Service Act, a Korean national could not be appointed to the staff of a foreign diplomatic mission. Since, however, it did not wish to

exclude the possibility completely so far as other countries were concerned, his delegation would support the amendment proposed by Indonesia (L.66), which followed article 7 of the draft convention adopted by the Asian-African Legal Consultative Committee (A/CONF.20/6).

30. Mr. VALLAT (United Kingdom) supported article 7 in principle. To be able to appoint nationals of the receiving State to the diplomatic staff of a mission was important, particularly to new and smaller countries, which might not be able to find other qualified persons. The interests of the receiving State were amply protected, since the article clearly stated that its nationals could be appointed only with its express consent. There seemed no reason, therefore, why any State should object to the inclusion of article 7. Immunities should be considered under article 37.

31. Mr. JEZEK (Czechoslovakia) said that the appointment of nationals of the receiving State was very rare and an obsolescent practice. The retention of article 7 might damage the whole concept of the convention as a modern code. Citizens of Czechoslovakia could not be appointed to the diplomatic staff of foreign missions. If, however, article 7 was not deleted altogether, it might be amended to make the receiving State's express consent necessary before one of its nationals could be appointed to any category of the staff of a foreign mission. In many countries the administrative and technical staff of a diplomatic mission, who fulfilled important functions, included nationals of the receiving State, and their appointment must be subject to its knowledge and consent.

32. Mr. WESTRUP (Sweden) fully supported the views of the Netherlands representative on article 7. The Conference should depart from the Commission's text only if absolutely necessary. Cases to which article 7 applied might still occur, and the Conference should take a long-term view.

33. Mr. TAWO MBU (Nigeria) also strongly favoured the retention of article 7. In the first attempt to codify the international law on diplomatic practice, a serious gap would be left if it were deleted. Although the appointment of nationals of the receiving State to the diplomatic staff of a mission might not be a desirable practice, it was expedient and economically wise for young States to do so when they felt confidence in the receiving State in regard to international relations. His delegation did not share the fears of some speakers. The provision should be available to States which wished to take advantage of it.

34. Mr. KRISHNA RAO (India) explained that his reference to article 37 did not imply opposition to article 7, which he fully supported.

35. Replying to the representatives of Yugoslavia and Tunisia, Mr. de VAUCELLES (France) said that his delegation, in proposing its amendment to article 6, wished to stress that while the sending State was free to appoint the members of the staff of the mission, the receiving State still retained a " droit de regard " which in practice took the form of entering the names of the members of the mission on the diplomatic list and issuing special identity cards to them. Several speakers had rightly remarked that not all States had a diplomatic list, which in any case was published only at fairly long intervals. His delegation therefore held that it was by issuing a special identity card to a person that the receiving State gave outward expression to the act of placing his name on the list and, in effect, recognized him as enjoying diplomatic status. The interval between the arrival of a member of a mission and the moment when he received his card might admittedly raise delicate problems, but the French delegation did not see how that could be remedied.

36. He fully supported the provisions of article 7, which should be retained. Monaco, for example, had long been represented in Paris by a French citizen and it would be regrettable if the Conference took any discriminatory action.

37. Mr. BOUZIRI (Tunisia) said that the explanations of the representative of France confirmed his earlier doubts. The French delegation's amendment to article 6 was not a satisfactory answer to the problem of the interim period, which should be solved in precise and explicit terms.

38. Mr. BARTOŠ (Yugoslavia) was also dissatisfied with the proposed amendment to article 6. What, for instance, would be the position of a member of a mission who was refused a diplomatic card after, say, three months in the country to which he had been assigned ?

39. With regard to article 7, he said he was aware of the case of Monaco referred to by the representative of France, and could give other examples, such as Liechtenstein and San Marino. That, however, was an entirely different case from that for which article 7 was designed to provide.

40. Mr. USTOR (Hungary) considered that the appointment of members of a diplomatic mission from among nationals of a receiving State was contrary to the very nature of diplomacy. The task of the Conference was to codify rules of international law on diplomatic relations, on the basis of existing law and practice. In his opinion the case covered by article 7 was a rare exception and therefore not appropriate for codification. Nor did it conform with the interests of the new States, which were eager to maintain their national independence and free themselves from foreign influence. It was to be hoped that they would be able to staff their diplomatic missions with their own nationals.

41. Mr. MARESCA (Italy) said that the principle underlying articles 6, 7 and 10 was the consent of the receiving State and that principle should be brought out clearly in all three articles.

42. Monsignor CASAROLI (Holy See) agreed with the representative of Hungary that the case provided for in article 7 was becoming rarer, and that it was desirable for States to be represented by their own nationals. Nevertheless, some States still found it necessary, and would continue to do so, to employ nationals of other countries; he therefore considered that the article should

be retained as a safeguard. It might perhaps be amended to indicate that the Conference thought the practice was rare and not to be recommended.

43. Mr. TAKAHASHI (Japan) said that, while the comments and the amendments seemed to him valid, he felt that it would be unwise to depart too far from the draft prepared with such care by the International Law Commission.

44. Mr. HORAN (Ireland) supported the amendment to article 6 proposed by France. With regard to article 8, paragraph 2, he agreed with the representative of Israel that it would be wise to define " a reasonable period ". His delegation had not yet made up its mind concerning article 7.

45. Mr. do NASCIMENTO e SILVA (Brazil) proposed an amendment to article 7, which he thought might reconcile the views expressed during debate. The article should lay down the basic principle that the staff of diplomatic missions should be appointed from the nationals of the sending States; in exceptional cases, and only with the express consent of the receiving State, the staff could include nationals of the receiving State or of a third State (see L.77).

46. Mr. SUCHARITAKUL (Thailand) announced that he was submitting an amendment to article 9 deleting the words " of the staff " (L.51). The reason was that the words " members of the staff of the mission " excluded the head of the mission; but " members of the mission ", as defined in article 1 (*b*), included him.

47. Mr. KRISHNA RAO (India) pointed out that article 9 did not indicate when notice should be given of the arrival and departure of members of a mission.

48. Mr. CARMONA (Venezuela) considered article 9 useful but had doubts regarding its second sentence, which seemed to give locally engaged members of the mission the same status as diplomats.

49. Mr. OJEDA (Mexico) supported article 9 as it stood. It was essential that the arrival and departure of all members of a mission should be notified.

The meeting rose at 5.55 p.m.

FIFTH MEETING

Wednesday, 8 March 1961, at 10.55 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (*continued*)

Article 1 (Definitions)

Article 2 (Establishment of diplomatic relations and missions)

Article 3 (Functions of a diplomatic mission)

Article 4 (Appointment of the head of the mission: agrément)

Article 5 (Appointment to more than one State) (*resumed from the second meeting*)

1. The CHAIRMAN invited the Committee to resume its debate on articles 1 to 5 of the International Law Commission's draft (A/CONF.20/4). He drew attention to a number of amendments submitted to those articles.[1] He referred to his earlier suggestion (first meeting, para. 8) concerning the procedure for dealing with article 1 (Definitions). The terminological amendments proposed by the Swiss delegation (L.24) would, with that delegation's agreement, be referred to the Drafting Committee.

2. Mr. PUPLAMPU (Ghana) said that, as it could not accept the definition of the head of the mission in article 1, sub-paragraph (*a*), his delegation would submit an amendment (L.89). The amendment proposed jointly by Colombia and Spain (L.5) did not satisfy his delegation. He supported the Irish delegation's amendment to sub-paragraph (*d*) (L.16) and recalled the practice followed by various countries in drawing up the diplomatic list. The amendment to sub-paragraph (*e*) proposed by the Guatemalan delegation (L.8) failed to take account of established custom and was too restrictive. In his opinion, the definition of " diplomatic agent " proposed by the International Law Commission should stand. He supported the United States amendment to article 1, sub-paragraph (*h*) (L.17) and also that delegation's proposal for the addition of a sub-paragraph (*i*) defining " members of the family ".

3. Mr. TUNKIN (Union of Soviet Socialist Republics) expressed his country's great interest in the development of diplomatic relations. A codification in the form of a multilateral convention would enable diplomats to perform their duties more efficiently and would help to strengthen international co-operation and establish friendly relations among nations.

4. He believed that the International Law Commission's draft took good account of generally accepted rules and constituted an excellent working basis.

5. Article 1 was exclusively terminological, and he regretted the tendency of some delegations to stray from its subject matter.

---

[1] The following amendments had been submitted by the date of the meeting:

To article 1: A/CONF.20/C.1/L.5, L.8, L.16, L.17, L.23, L.24, L.25, L.35, L.73 (and Corr.1), L.81, L.89, L.90, L.91.

To article 2: A/CONF.20/C.1/L.6, L.15.

To article 3: A/CONF.20/C.1/L.13, L.14, L.26, L.27, L.30, L.31, L.33, L.82.

To article 4: A/CONF.20/C.1/L.18, L.28, L.37, L.42, L.43.

To article 5: A/CONF.20/C.1/L.19, L.22, L.36, L.40, L.41, L.44 (and Corr.1), L.71, L.75, L.83.

In addition, a new article had been proposed (A/CONF.20/C.1/L.7).

6. The amendment submitted by Colombia and Spain (L.5) did not introduce any improvement. The novel expression " official diplomatic representative " which it employed could lead to misunderstanding, since it was nowhere defined. It would therefore be unwise to adopt that amendment. With regard to the Swiss amendments (L.23), he approved of the definition of " head of the mission " as " the person accredited as such ", and the Soviet delegation would vote in favour of that text.

7. He agreed that the definition of " diplomatic staff " was of importance. But the amendments proposed by Guatemala (L.8) and Ireland (L.16) did not seem to be satisfactory or in accordance with existing practice. Even if it were possible to reach agreement on a realistic definition, it would be inadvisable to place it within such a narrow framework, for difficulties might arise if a country's practice differed from the future convention. He therefore thought it preferable to retain the less categorical definition drafted by the International Law Commission.

8. Mr. ASIROGLU (Turkey), commenting first on certain suggestions concerning the draft as a whole made earlier in the debate by some delegations, said that his delegation supported the suggestion that the convention should be introduced by a preamble (first meeting, para. 9). It also supported the suggestion that article 1 should define " special mission " (*ibid.*, para. 19).

9. With regard to articles 1 to 5, his delegation approved on the whole the provisions of article 1 as drafted by the International Law Commission. It was difficult, perhaps even impossible, to work out clear and comprehensive definitions which would satisfy everybody. It was a delicate and complex matter to draft definitions, as was proved by the difficulties encountered by United Nations organs in their efforts to define certain terms used in the Charter of the United Nations, such as " aggression ", " peoples " and " nations ". Guatemala and Ireland, for instance, took the view, reflected in their amendments (L.8 and L.16), that the members of the diplomatic staff should be specified. But, he pointed out, usage differed from country to country. In Turkey, for example, there was a class of diplomats called " chargé d'affaires en pied ". Because it was hard to work out less ambiguous definitions, he would prefer the Commission's definitions to stand.

10. Nevertheless, some purely drafting changes should perhaps be made. In article 1, sub-paragraph (*h*), for example, the words " of the head or " might be deleted. That was, of course, only a suggestion, not a formal proposal. The Turkish delegation would accordingly vote for article 1 of the International Law Commission's draft and would abstain from voting on the amendments submitted to that article, with the exception of the United States amendment concerning members of the family (L.17).

11. With regard to the Czechoslovak proposal for a new article to be added before article 2 (L.7), he said that the introduction of a reference to the right of legation in the draft might be open to dangerous interpretations. The establishment of diplomatic relations between States could only be effected by mutual agreement. He would therefore vote against the Czechoslovak proposal.

12. The amendment submitted by the Czechoslovak delegation to article 2 (L.6) contained a perfectly acceptable idea. His own government entertained diplomatic relations with countries whose constitutional, legal and social systems differed from Turkey's. Nevertheless, it attached great importance to the principle of mutual consent in the establishment of diplomatic relations between States. Inasmuch as the Czechoslovak amendment might be misconstrued, he would vote against it.

13. Nor was there any reason to change article 3. The idea expressed in the Indian amendment (L.13) was implicit in paragraph (*b*) of the article in question.

14. So far as articles 4 and 5 were concerned, he considered that the International Law Commission's text should be retained.

15. Mr. BIRECKI (Poland) said it was fitting that the Conference should be held at Vienna, a city of tradition and inspiration. Yet, times had changed since the Congress of Vienna. Already during the life-time of its architects, the principles of the Holy Alliance had been upset by reality; the membership of the Conference proved how profound the change had been. The modern world consisted of a great many States with different systems. For the sake of peace, all those States had to maintain relations with each other. One of the objects of the Congress of Vienna had been to lay down rules governing diplomatic representatives with a view to preventing the frequently embarrassing incidents of earlier times. Subsequent events had made it doubtful whether that aim had been fully achieved. The Conference of 1961 would probably not achieve perfect results either, but if it was willing to take account of existing new conditions it would certainly do useful work. The Polish delegation would have preferred the Conference to be enlarged, which would have enhanced its authority; he had earlier expressed regret at certain absences, and in that connexion he endorsed the apt remarks of the representative of Mali at the fourth meeting (para. 13).

16. The draft prepared by the International Law Commission provided a satisfactory basis for the Conference's work. It was a well-balanced draft, and even though there were certain omissions which should be made good, the Conference should not depart too much from it. The object was to codify, simplify and improve diplomatic relations between States, and in particular those between States with different systems. In striving to attain that objective, the Conference would make a substantial addition to the Regulation of Vienna. It was with that aim in mind that the Polish delegation would participate in the proceedings of the Conference.

17. Mr. YASSEEN (Iraq) said that as early as the General Assembly's thirteenth session in 1958, during the debate on the International Law Commission's report (A/3859), his country had paid a tribute to the work done by the Commission. The delegation of Iraq

had then expressed the opinion that the Commission's draft formed an adequate basis for the preparation of a convention and had the merit of faithfully stating existing practice while at the same time taking international requirements into account. Nevertheless, it had felt bound to make reservations concerning certain articles which it had not found entirely satisfactory. It was in the same spirit that the Iraqi delegation to the Conference would make his contribution to the examination of the draft articles.

18. In general, it would defend the original draft and would comment on some articles which it did not think entirely satisfactory. But it would consider without prejudice any amendment that might improve the Commission's draft.

19. For the moment, in connexion with the debate on article 1, his delegation would merely speak on procedure. By reason of the nature of that article, which was intended to explain the meaning of a few terms used in the draft, it would have been better to discuss it later. Only after discussing the rest of the draft should the Committee take up article 1. That was why his delegation was reluctant at that stage to express an opinion regarding the article and the amendments relating thereto.

20. The Chairman had wisely suggested that any decisions concerning article 1 should be provisional; but even provisional decisions would be justified only in so far as they related strictly to drafting.

21. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) said that the International Law Commission's draft was an acceptable basis for discussion. The Commission had done useful work, and its draft would contribute to the codification of the rules governing diplomatic relations, for it dealt with all the essential problems and reflected recognized international practice.

22. The object of the amendment to article 1 submitted jointly by his own and the Bulgarian delegation (L.25) was to supplement the article by defining the expression " premises of the mission ", which occurred in articles 20 and 21 of the draft. The proposed definition was based on the Commission's commentary on article 20.

23. In his delegation's opinion, the amendment to article 1 proposed by Ireland (L.16) did not correspond with recognized practice and was of a restrictive nature. The same criticism applied to the amendment submitted by Guatemala (L.8), which did not improve the Commission's text.

24. Mr. HU (China) said that article 1 was the key to the subsequent articles. It should probably be supplemented by other definitions established in the light of the decisions taken on those articles. Accordingly, the Chairman's suggestion that only provisional decisions be taken on article 1 was wise.

25. The Chinese delegation approved the amendment (L.5) to article 1 proposed by Colombia and Spain, which emphasized the representative character of the head of the mission.

26. The first of the Guatemalan amendments (L.8) and the Irish amendment (L.16) had the same object — to clarify the meaning of " diplomatic staff ". The Chinese delegation approved those amendments, but considered that their sponsors should confer with a view to working out an agreed joint amendment.

27. The first of the United States amendments (L.17) was acceptable to the Chinese delegation, which would also support the proposed addition of a definition of " member of the family ".

28. The Commission's draft of article 3 had its merits, but the text proposed for it by Liberia and the Philippines (L.14) was more satisfactory because it laid less emphasis on protection in the receiving State of the interests of the sending State and of its nationals, which might be a pretext for interference in the internal affairs of the receiving State.

29. The Chinese delegation would support the Spanish delegation's amendment (L.42) to article 4, and the United States amendments (L.18 and L.19) to articles 4 and 5.

30. Mr. CARMONA (Venezuela) agreed with the representative of Iraq that it was premature to take final decisions on article 1. The article should be referred to a drafting committee for revision in the light of amendments to and comments on the other articles.

31. Mr. de ERICE y O'SHEA (Spain) said that the definition of " head of the mission " in article 1, subparagraph (*a*), was tautological. The Colombian and Spanish delegations considered that the head of the mission should be the representative of the sending State, be officially invested with the diplomatic functions enumerated in draft article 3, and act on behalf of one State in another State. That was the idea behind their joint amendment (L.5), which he hoped would be acceptable to the majority of the Committee.

32. The definition proposed in the first of the Swiss amendments (L.23) was an improvement on that of the draft but still too vague. With reference to the second of the Swiss amendments he said that some countries did not make a categorical distinction between " chancery staff " and " diplomatic staff "; for that reason it would be preferable to retain the expression " administrative and technical staff ". On the other hand, the third of the Swiss amendments was acceptable.

33. He supported the amendment proposed by the Byelorussian and Bulgarian delegations (L.25) and also the first of Guatemala's amendments (L.8): Unlike the Turkish representative, he considered that the list of diplomatic staff proposed by Guatemala did not exclude chargés d'affaires, for when they held a diplomatic post abroad they belonged of necessity to one of the categories mentioned in the list. On the other hand, the second of Guatemala's amendments, defining " diplomatic agent " as meaning the head of the mission or the member of the diplomatic staff replacing him, was unnecessary, for those officials were already defined elsewhere. With reference to the Irish amendment (L.16), he suggested that, as it was very close to the first of the

Guatemalan amendments, the two delegations might try to work out a joint text. The Guatemalan amendment defining " diplomatic official " (L.35) might be referred to the drafting committee.

34. He would comment on the first of the United States amendments (L.17) when the Committee discussed the article relating to private servants; but he unreservedly approved of the United States definition of " member of the family ".

35. Mr. GLASER (Romania) considered that the International Law Commission had very wisely endeavoured to draft definitions sufficiently elastic to be acceptable to the majority of States. While the great number of amendments submitted by delegations no doubt proved their sincere desire to prepare as satisfactory a convention as possible, the Committee should be very cautious in trying to improve on the Commission's draft.

36. The definition proposed by Colombia and Spain (L.5), for instance, was not as clear as it seemed at first sight. The word " official " could in some languages mean " public ", and the term " representative " could very easily be applied to an adviser negotiating on behalf of a State. The Spanish delegation had obviously realized the difficulty, since it had offered further explanations. But delegations would eventually vote on the articles before them, not on the explanations or comments relating to the articles.

37. The Swiss amendment (L.23) undoubtedly improved the original text, since the word " accredited " implied that the sending State had invested the head of the mission with his functions and the receiving State had given its agrément. The Romanian delegation would therefore support the amendment, though still convinced that the word " accredited " might also be variously interpreted.

38. With reference to the amendments submitted by Ireland (L.16) and Guatemala (L.8), he said that it would be dangerous to give an exhaustive list of diplomatic staff. In the first place, some diplomats did not fall into any of the categories mentioned; secondly, the convention should not fetter future developments. Diplomatic activities were certain to expand, and the Conference would surely not wish to write a convention that might be obsolete even before entering into force. Thirdly, Guatemala's amendment to sub-paragraph (*e*) (L.8) touched on substance and conflicted with the general character of the draft as a whole. Hence, Romania would vote against those two amendments.

39. On the other hand, his delegation would support the amendment submitted by Bulgaria and the Byelorussian SSR (L.25), which added a very useful definition. It would also vote for the first of the United States amendments (L.17); but the second of the United States amendments should be studied more thoroughly before being put to the vote, since it was a very delicate matter to draft a satisfactory definition of " member of the family ".

The meeting rose at 1 p.m.

SIXTH MEETING

Wednesday, 8 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (*continued*)

Article 1 (Definitions)

Article 2 (Establishment of diplomatic relations and missions)

Article 3 (Functions of a diplomatic mission)

Article 4 (Appointment of the head of the mission: agrément)

Article 5 (Appointment to more than one State) (*continued*)

1. The CHAIRMAN invited the Committee to continue its debate on articles 1 to 5 of the International Law Commission's draft (A/CONF.20/4), and on the amendments relating to those articles.[1]

2. Mr. TUNKIN (Union of Soviet Socialist Republics), commenting on the amendments to article 1, said that his delegation supported the proposal by Czechoslovakia for the addition of a new sub-paragraph defining a " diplomatic mission " (A/CONF.20/C.1/L.34). It would also support the United States proposal (L.17) that a new sub-paragraph (*i*) should be added defining the family of a member of the mission. The United States definition improved the text, but students should perhaps be excluded from it, since not all governments granted diplomatic privileges to adult children, even if they were full-time students. Students might more suitably be covered by the last part of the United States amendment: " such other members of the immediate family of a member of the mission residing with him as may be agreed upon between the receiving and sending States ".

3. His delegation would support the amendment submitted jointly by the Byelorussian SSR and Bulgaria (L.25), adding a new sub-paragraph defining the premises of a mission. It was consistent with the intention of the International Law Commission as expressed in paragraph 2 of the commentary on article 20 (A/3859).

4. Switzerland's amendments to sub-paragraphs (*c*) and (*f*) of article 1 (L.23) would not improve the text. The replacement of the widely recognized and appropriate expression " administrative and technical staff " by the words " chancery staff " would involve considerable revision of the draft as a whole.

[1] For an interim list of those amendments, see footnote to summary record of the fifth meeting. In addition, it had been suggested that a preamble should be prepared (first meeting, para.9), and a proposal relating to the preamble was submitted (A/CONF. 20/C.1/L.29).

5. Guatemala's arguments for enumerating the members of the diplomatic staff in sub-paragraph (*d*) were unconvincing. Adoption of the amendment (L.8) might even prevent some States from accepting the sub-paragraph.

6. The Guatemalan amendment to sub-paragraph (*e*) (L.8) would mean that only the head of the mission, or a member of the diplomatic staff replacing him, could be considered a " diplomatic agent ". The proposal was out of keeping with contemporary practice, which was reflected in the draft articles. In the past, an ambassador had been considered as representative of a sovereign, his collaborators being simply part of his suite. The Commission had taken the view that the situation had changed and that the organ of representation was now the diplomatic mission, of which the ambassador was merely the head. It might, however, be better to avoid the term " diplomatic agent "; and he would therefore support the further proposal by Guatemala (L.35) that a new sub-paragraph should define a diplomatic official as the head of the mission or a member of the diplomatic staff of the mission. It could, in fact, be adopted instead of sub-paragraph (*e*), which embodied an obsolete concept of international law.

7. Mr. BESADA RAMOS (Cuba) thought that article 1 was generally acceptable, but that the term " diplomatic mission " should not be left undefined, since the word " mission " was used in articles 2 and 3. His delegation would therefore welcome any proposal to add a definition.

8. He expressed particular interest in the amendment submitted by Colombia and Spain (L.5) to sub-paragraph (*a*). It seemed inconceivable, however, that a diplomatic representative could be other than an official representative, since the use of the term implied recognition of his official status.

9. His delegation supported the proposal by Bulgaria and the Byelorussian Soviet Socialist Republic (L.25) that article 1 should contain a clear definition of the premises of a diplomatic mission.

10. He warmly welcomed the new article proposed by Czechoslovakia (L.7) concerning the right of legation.

11. He criticized article 3 (*b*) of the draft on the grounds that it might authorize acts incompatible with the domestic jurisdiction of the receiving State. The functions of a diplomatic mission should be exercised in a manner compatible with the internal law of the receiving State; accordingly, the Cuban delegation had submitted an amendment to article 3 (L.82) which would rectify the misconception on which the article was apparently based — viz., that the receiving State did not adequately protect aliens admitted to its territory.

12. Mr. KAHAMBA (Congo: Léopoldville) said that article 1 was governed by the introductory phrase " For the purpose of the present draft articles ", meaning the draft articles as a whole. The definitions in article 1 appeared to have been drafted after the rest of the articles to clarify certain terms used in them, and not to define terms in general use in the world of diplomacy.

13. His delegation was not in favour of expanding the definition of " diplomatic staff " in sub-paragraph (*d*). The amendments proposed by Guatemala (L.8) and Ireland (L.16) were interesting, but did not appear to command general agreement and would be unduly restrictive. The nomenclature varied from State to State. Some States, but not all, gave diplomatic rank to chancellors of embassy. Many gave diplomatic passports to consuls-general, who were then recognized as diplomats in the receiving State even if the sending State had no embassy there. The problem was more complex in cases where persons not members of the diplomatic staff were entrusted with temporary missions. Officials of ministries usually travelled with diplomatic passports when fulfilling temporary missions with an embassy. Diplomatic status should not depend on the rank of the agent, but should be conferred by the sending State. His delegation had accordingly submitted a proposal (L.73) to amend sub-paragraph (*d*) in that sense.

14. The expression " chancery staff ", which Switzerland proposed (L.23) in lieu of " administrative and technical staff " in sub-paragraphs (*c*) and (*f*), seemed rather too traditional to describe the staff of the commercial and information sections which often existed in modern embassies, especially those of the great Powers. The language used by the draft seemed more appropriate.

15. Article 2 was clear and sensible, and acceptable to his delegation. The right of mission, referred to in an amendment submitted by Ecuador and Spain (L.15), or the right of legation, which was the subject of an amendment submitted by Czechoslovakia (L.6), should preferably be mentioned in the preamble.

16. His delegation was also satisfied with articles 3 and 4 of the draft. It did not support the United States amendment (L.18) to article 4. The existing text referred only to the essential principle of agrément. The form of the agrément should be recognized by both States, whereas the United States proposal might mean that the sending State alone could erroneously recognize a sign of approval.

17. The amendment proposed by Italy and the Philippines (L.43) to article 4 was undesirable and might cause embarrassment. It might, for example, be impossible to give the agrément within fifteen days but possible to give it later. No problem arose where normal relations existed, but at a time of internal crisis it might be difficult for the receiving State to give a favourable reply even if it had no desire to refuse the representative of the sending State.

18. The CHAIRMAN suggested that, as the discussion of articles 1 to 5 promised to be lengthy, the remaining speakers should confine their remarks to article 1.

It was so agreed.

19. Mr. ANTONOPOULOS (Greece) said that his delegation accepted the International Law Commission's draft of article 1 and rejected in principle all the amendments to it, and not only those of Guatemala (L.8) and Ireland (L.16), which if approved would probably hamper the ratification of the future convention.

20. Mr. USTOR (Hungary) said that the title " Definitions " for article 1 did not correspond to general usage; the drafting committee might prefer a better title such as nomenclature, catalogue, or terminology. There

should be no attempt to make in article 1 a scientific and detailed analysis of general application; its object was simply to decide what each term meant in the context of the draft articles. In order to prevent misinterpretation, no unnecessary details should be given. The Commission had followed that principle, and had shown restraint in drawing up its catalogue. The amendment to sub-paragraph (*a*) proposed by Colombia and Spain (L.5) infringed the principle and was therefore unacceptable.

21. The amendment proposed by Switzerland to sub-paragraph (*a*) (L.23) appeared at first sight commendable, though it would have to be considered in relation to article 38, under which a head of mission enjoyed immunities even before presenting his letters of credence. There seemed to be no merit in the proposed change of the words " administrative and technical staff " to " chancery staff ".

22. The proposals of Guatemala (L.8) and Ireland (L.16), which were essentially the same, were also unacceptable because unnecessarily detailed.

23. Nor could his delegation support Guatemala's amendment to sub-paragraph (*e*) (L.8). Although it had no objection to the use of " diplomatic agent " in article 1, it would not oppose the further proposal by Guatemala (L.35) that a new sub-paragraph should be added defining a diplomatic official as the head of the mission or a member of the diplomatic staff of the mission. " Diplomatic official " or simply " diplomat " might be used as a general term including heads of mission and all members of mission with diplomatic rank. His delegation had not submitted a formal amendment to that effect, but commended the suggestion to the Drafting Committee.

24. The delegation of Hungary supported the United States amendment (L.17) to sub-paragraph (*h*).

25. The proposal by Czechoslovakia (L.34) complemented the other sub-paragraphs of article 1, and his delegation willingly endorsed it and also the proposal by Bulgaria and the Byelorussian SSR (L.25). Difficulties had arisen in interpreting immunities concerning the gardens of diplomatic premises, and the amendment would be useful.

26. Mr. LINARES (Guatemala) considered that the term " diplomatic agent " should mean only the head of a mission or the member of the diplomatic staff replacing him (article 17), and not, as implied in the existing definition, other members. That was the reasoning underlying his delegation's amendment (L.8) to sub-paragraph (*e*). That amendment would mean, however, that the diplomatic privileges and immunities set out in articles 27, 28, 29, 30, 32, 36, 37 and 39 as drafted would apply only to the head of a mission. In those articles, and also in article 18 (Use of flag and emblem), it might be better to use the expression " diplomatic official ", proposed by his delegation in another amendment (L.35).

27. Mr. EL-ERIAN (United Arab Republic) said he would refrain from defining his government's position towards the amendments, for he agreed with the representative of Yugoslavia that it would be unwise to take decisions on the definitions too early in the debate (first meeting, para. 34). He also agreed with the representative of Venezuela that the amendments should be referred to a drafting committee (fifth meeting, para. 30).

28. The International Law Commission had produced an excellent draft and a valuable commentary (A/3859), which took into account the comments of the Sixth Committee of the General Assembly and of the governments of Member States. For the moment, he would speak only on two points: the preamble; and the principles to be observed in the drafting of the definitions.

29. So far as the preamble was concerned, he shared the views expressed by the representative of Hungary (first meeting, para. 9). He also supported the Romanian proposal (L.29), which emphasized one of the most important functions of diplomacy.

30. The drafting of the definitions should be governed by two fundamental principles. First, the definitions should cover only important terms used throughout the convention. Terms which occurred in only a few articles should be defined in the articles in question. For example, the definition of " members of a family " should be considered when the Conference dealt with the substance of the convention. Indeed the Commission, in paragraph 11 of its commentary on article 36, had not considered it desirable to lay down criteria for determining who should be included in the family of a member of a mission. Secondly, definitions should not be too analytical.

31. Mr. CAMERON (United States of America) said that he would be prepared to vote for sub-paragraphs (*a*), (*b*), (*d*) and (*e*) of article 1 as they stood. His delegation believed, however, that it was important to reach a uniform interpretation of article 36 (Persons entitled to privileges and immunities), and had therefore submitted two amendments to article 1 (L.17).

32. In paragraph (*h*) it was proposed that the words " and who is not an employee of the sending State " should be added at the end. Receiving States did not normally expect that diplomatic privileges would be requested for private servants of members of a mission; any servant for whom such privileges were desired should be an employee of the mission.

33. Secondly, his delegation proposed that a new sub-paragraph (*i*) should be added defining " member of a family ". His delegation would be prepared to leave to local law such questions as the age at which a child ceased to be a minor. The standing of a student who had reached majority but was wholly or partly dependent on his family was expressly stated in the definition. Physically incapacitated children, adult unmarried daughters not gainfully employed, and other dependent relatives such as a sister acting as hostess would be the subject of agreement between the sending and the receiving State. He believed, however, that the proposal would meet many of the constructive suggestions made at the previous meeting.

34. With reference to sub-paragraph (*c*) (members of the staff of the mission), he suggested that two cate-

gories should be established: diplomatic rank, and subordinate rank (to include " administrative and technical " and " service "). That could be achieved by deleting the words " and of the service staff " from sub-paragraph (*c*), with the consequential amendment of sub-paragraph (*f*) and the deletion of sub-paragraph (*g*). As long as the two categories he proposed for inclusion in " subordinate " rank remained separate, there were bound to be difficulties over classification.

35. Mr. JEZEK (Czechoslovakia) suggested that the new clause proposed by his delegation (L.34) to define " diplomatic mission " should be placed at the beginning of the article. It would, he thought, help greatly to clarify the distinction between service staff (members of the staff of a mission employed by the mission) and private servants (persons employed in the private service of members of a mission).

36. Commenting on amendments submitted by other delegations, he said that he could not support the joint amendment of Colombia and Spain to sub-paragraph (*a*) (L.5), those of Guatemala to sub-paragraphs (*d*) and (*e*) (L.8), or the amendment to paragraph (*d*) proposed by Ireland (L.16). He fully supported the joint Byelorussian and Bulgarian proposal for a new sub-paragraph (*i*) (L.25). He also supported in principle the proposals just described by the United States representative (L.17), and the Indian delegation's proposed definition of " family " (L.90), which he thought might be referred to a drafting committee.

37. Mr. TAWO MBU (Nigeria) was strongly in favour of maintaining the Commission's draft of article 1. It was the product of very careful consideration, and any change would be an attempt to define definitions. Nevertheless, there was need for a more precise definition of the term " head of a mission ", and he proposed: " A head of a mission is the principal diplomatic representative of a State in another State."

38. With regard to the definition of diplomatic staff, he preferred the proposal of Ireland (L.16) to that of Guatemala (L.8), but considered it unwise to anticipate changes in the diplomatic hierarchy.

39. He also supported the amendments to article 1 proposed by the United States of America (L.17).

40. If article 28 were to be effective, it was essential to define precisely the " premises of a mission ". He therefore supported the joint proposal by Bulgaria and the Byelorussian SSR (L.25). The preamble was an important part of any codification, and he supported in principle the paragraph proposed by Romania (L.29).

41. Mr. WESTRUP (Sweden) strongly supported the statement of the representative of Romania (fifth meeting, paras. 35 to 39), which, he hoped, would be an inspiration to the Conference. He also welcomed the proposal of the United States of America for a definition of " member of a family ". It was essential that some agreement should be reached on that matter, and that it should either be defined explicitly or left to bilateral agreement, for no government could be expected to assume obligations without knowing exactly what they were.

42. Mr. OJEDA (Mexico) said he was still not satisfied with article 1, sub-paragraph (*d*). He had carefully studied the proposed amendments, and would support that submitted by the Congo (Leopoldville) (L.73 and Corr.1). The danger was undue rigidity; the Congo proposal provided a flexible formula and would, if approved, solve the problems of many representatives, including himself. The mechanism of notification would be better left to the States themselves. He was in favour of the United States delegation's proposal for defining the families of members of missions, but suggested that dependants not actually residing with the member of the mission should be mentioned.

43. Mr. NGO-DINH-LUYEN (Viet-Nam) agreed that the title " Definitions " did not correspond to the contents of article 1, which was rather a list of terms used in the draft.

44. Some of the amendments were intended to change the definitions contained in the various sub-paragraphs of article 1, others to add new terms to the list. Of the former, some would amend the definition of the head of the mission; that proposed by Switzerland (L.23) would exclude a chargé d'affaires ad interim, who, however, in the absence of the permanent head of mission, would have the same privileges.

45. Attempts had also been made to clarify the term " diplomatic agent ". It would be sufficient to state that a diplomatic agent was the permanent head of the mission or a member of its diplomatic staff. One amendment (L.35) would introduce the term " diplomatic official " into article 1, but define it so that it replaced the term " diplomatic agent ". He preferred " agent " to " official " because in a great many countries, including his own, an ambassador was often not a career officer and hence not a public official.

46. His delegation agreed in principle with the amendment (L.73 and Corr.1) proposed by the Congo (Leopoldville) to sub-paragraph (*d*), but thought that its intention could be adequately expressed by some such phrase as " recognized as having diplomatic rank ".

47. All the elements of the Cuban amendment to sub-paragraph (*a*) (L.81) were already contained in the Commission's draft.

48. The Czechoslovak proposal (L.34) for defining a " diplomatic mission " was too restrictive, for it mentioned only the functions " foreseen in the present Convention ", whereas draft article 3 was patently not an exhaustive enumeration of the functions of a diplomatic mission.

49. Of the amendments which would add new definitions to article 1, that proposed by Bulgaria and the Byelorussian SSR (L.25) usefully defined the " premises of the mission ". The question of mission premises had led to difficulties, particularly where premises were so extensive that the receiving State could not ensure complete vigilance over them.

50. With regard to the proposed definitions of the family of a member of a mission, his delegation thought that the Indian amendment (L.90) was too broad in referring to " persons who belong to his family ". At the same time, it was too narrow in restricting the

family to members of the household, and thus excluding, for example, a minor child who attended a boarding school outside the receiving State. The United States definition (L.17) was satisfactory because it required the consent of the receiving State for inclusion in the family of persons other than the spouse, minor children, and unmarried children who were students. He would suggest, however, that the family be limited to persons morally or materially dependent upon the member of the mission.

51. Mr. BAIG (Pakistan) said that the United States amendment to sub-paragraph (*h*) (L.17) would discriminate unjustifiably between a servant paid directly by the sending State and a servant paid by an ambassador out of his emoluments and so paid indirectly by the sending State.

52. The Pakistan delegation accepted the whole of the Commission's article 1.

53. Mr. GOLEMANOV (Bulgaria) said that his delegation generally approved the Commission's draft, which constituted a satisfactory basis for a convention. In particular, article 1 was both necessary and useful, but called for a few improvements. For that reason his delegation, jointly with that of the Byelorussian SSR, had proposed an amendment (L.25), to define " premises of the mission " used in many places in the draft articles.

54. His delegation could not support the joint amendment by Colombia and Spain to sub-paragraph (*a*) (L.5), because it did not clarify the text and indeed introduced a new undefined term (" official diplomatic representative "). He could not support either the Swiss amendments to sub-paragraphs (*c*) and (*f*) (L.23) or the Guatemalan amendments (L.8), which departed unduly from the concepts adopted by the Commission as the basis of the whole draft. If the Guatemalan definitions of " diplomatic staff " and " diplomatic agent " were accepted, the whole structure of the draft would have to be altered.

55. On the other hand, his delegation supported the Czechoslovak amendment (L.34), which by defining a " diplomatic mission " filled a gap in article 1.

56. Mr. AMAN (Switzerland) said that, as the Chairman had mentioned at the fifth meeting (para. 1), his delegation agreed that its terminological amendments (L.24) to the whole of the draft articles should be referred to the drafting committee. Their effect would be to revert to traditional terminology.

57. With regard to article 1, sub-paragraph (*a*), his delegation proposed (L.23) that the term " head of the mission " be limited to persons so accredited. As drafted by the Commission, the definition would include a chargé d'affaires ad interim or even an acting head of post, who, though in charge of the mission, were not heads of mission. Article 13 gave an exhaustive list of the classes of heads of mission, the third being that of chargé d'affaires accredited to Ministers of Foreign Affairs. The reference was clearly to chargés d'affaires en pied, but his delegation reserved the right to introduce the words " en pied " when article 13 was discussed. Article 17 stated the universally accepted rule that, where the affairs of the mission were conducted by a chargé d'affaires ad interim, there was no need for accreditation; his name was merely notified to the Ministry of Foreign Affairs of the receiving State. For those reasons a chargé d'affaires ad interim could clearly not be regarded as a head of mission.

58. The amendments proposed by Switzerland to sub-paragraphs (*c*) and (*f*) would replace the words " administrative and technical staff " by the traditional term " chancery staff ", which had an accepted meaning in diplomatic practice.

59. Mr. PINTO de LEMOS (Portugal) said that his delegation would accept article 1 as it stood, for it adequately reflected the existing international law and was sufficiently flexible to allow for new developments.

60. Mr. BARTOŠ (Yugoslavia) said he could not support the Swiss terminological amendments (L.24). In particular the expression " State of residence " could not be used in connection with diplomatic officers. It was suited to consuls, who necessarily resided in the receiving State; but a diplomat was often accredited to several countries.

61. He stressed that the purpose of article 1 was to list expressions used in the draft articles, not to deal with questions of substance.

62. He supported the Swiss amendment to sub-paragraph (*a*) (L.23), which introduced an objective element into the definition of the head of the mission. He could not, however, support the Swiss amendments to sub-paragraphs (*c*) and (*f*). It was necessary to retain the expression " administrative and technical staff ", which the Commission had used advisedly in order to include radio operators and other technicians who were increasingly employed by diplomatic missions and who were not covered by the term " chancery staff ".

63. His delegation could not agree to Guatemala's proposal that the expression " diplomatic agent " should be replaced by " diplomatic official " (L.35), for diplomats were often leading political personalities and not public officials. Moreover, in certain countries the term " diplomatic agent " applied only to heads of mission.

64. In connexion with the proposals by India and the United States of America for a definition of the family, he recalled that his government, in its comments on the Commission's 1957 draft (A/3859, annex, pp. 60 and 61), had stated that such a definition would be desirable; he had himself, as a member of the Commission, made a proposal to the Commission which had, however, been unable to agree on a suitable criterion in its discussion of articles 34, 35 and 36. The question had great practical importance and it was most desirable that the Conference should settle it; but he was not certain that the discussion on article 1 was the appropriate place. Perhaps it should be settled in connexion with articles 34, 35 and 36. Similarly, the definition of the premises of the mission could be discussed in connexion with the appropriate articles of section II.

65. Mr. KRISHNA RAO (India) said he saw no need to define the term " family ", for articles 34, 35 and 36 implicitly defined the term, since they provided that

only members of the family forming part of the household of a member of the mission enjoyed the specified privileges. In that respect, they conformed to a well-established principle of international law recognized by Hyde and other writers. The Commission had been wise in refraining from laying down an explicit criterion for determining who should be regarded as a member of the family and what should be the age-limit for children. The composition of the household varied from country to country, depending on the family system. In India, there was a legal obligation to support aged parents and unmarried sisters, and the same might be true elsewhere.

66. In any case, the definition of the family proposed in the United States amendment (L.17), apart from being inconsistent with articles 34, 35 and 36 and the commentary thereon, was open to a number of objections. The expression " any minor child or any other unmarried child " involved the definition of minority for purposes of marriage, a definition which differed from country to country. The term " full-time student ", which had a definite meaning in the United States university system, would be inapplicable elsewhere. In any event there did not appear to be any reason why an unmarried daughter living with her father should not be regarded as belonging to his household, even if she was not a student. Last but not least, it was undesirable to require an agreement between the receiving and the sending State in the event of the diplomat's wishing to take with him persons not covered by the United States. The adoption of the United States definition, which would require such an agreement, would mean that a diplomat might have to wait for the conclusion of lengthy negotiations between the two countries before he could take with him persons whom he considered part of his family. In the final analysis a diplomat, for financial or other reasons, was most unlikely to take with him as part of his household persons not really dependent upon him. His delegation, he repeated, took the view that no definition of the family was necessary. If, however, the Committee thought it necessary to define the term, he would commend to its attention the definition contained in the Indian amendment (L.90) which was based on articles 34, 35 and 36, and was also in accordance with a recommendation of the Harvard Research Group. His delegation would accept any drafting amendments making that definition acceptable to other delegations.

67. Mr. VALLAT (United Kingdom) agreed generally with the comments of the representative of the United Arab Republic on article 1. The purpose of that article was only to provide the terms to be used in the rest of the draft, not to deal with substantive matters, which were covered by other provisions.

68. The United Kingdom delegation meant, whenever the acceptance of an amendment was doubtful, to adhere to the Commission's text. It had been prepared by experts with great care, after consideration of government comments, and should take priority in the thoughts of the Conference.

69. Mr. de SOUZA LEAO (Brazil) said it was very difficult to agree on general definitions such as those in article 1. Perhaps the wisest course would be to retain the text prepared by the Commission after mature consideration.

70. Two of the amendments before the Committee (L.8 and L.16) attempted to enumerate the classes of diplomatic officers covered by the term " diplomatic staff ". Such an enumeration, if adopted, would be more appropriately placed after article 13, which enumerated the classes of heads of mission.

71. With regard to the definition of the family, his delegation felt that the existing practice of considering only dependants as members of the household should be recognized.

The meeting rose at 6.20 p.m.

SEVENTH MEETING

Thursday, 9 March 1961, at 10.55 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (*continued*)

Article 1 (Definitions) (continued)

1. The CHAIRMAN invited the Committee to continue its debate on article 1 of the International Law Commission's draft (A/CONF.20/4) and on the amendments proposed to that article.[1]

2. Mr. WALDRON (Ireland) said that the debate at the fifth and sixth meetings suggested that his delegation's amendment to article 1, sub-paragraph (*d*) (L.16) had little chance of acceptance. Accordingly, and also wishing to facilitate the proceedings, his delegation withdrew the amendment.

3. Mr. BESADA RAMOS (Cuba) said that his delegation withdrew its amendment (L.81) to sub-paragraph (*a*), and would support the similar Czechoslovak amendment (L.34), of which Cuba had become a co-sponsor.

4. Mr. KAHAMBA (Congo: Léopoldville) withdrew his delegation's amendment (L.73) to sub-paragraph (*d*).

5. Mr. de ERICE y O'SHEA (Spain) said that his delegation had agreed with that of Colombia not to press their joint amendment (L.5) to sub-paragraph (*a*) to a vote.

6. The CHAIRMAN suggested that the Swiss amendment (L.23) to sub-paragraph (*a*), which involved merely a drafting change, should be referred to the drafting committee.

It was so agreed.

[1] For a list of the amendments, see footnote 1 to the summary record of the fifth meeting.

7. The CHAIRMAN said the delegation of Ghana had informed him that it would not press for a vote on its amendment (L.89) to sub-paragraph (*a*) at that stage, but reserved the right to revert to it when the Committee took a final decision on article 1. In consequence of the withdrawal of amendments, he suggested that sub-paragraph (*a*) as drafted by the Commission should be regarded as provisionally adopted. Similarly, he suggested that sub-paragraph (*b*), to which no amendment had been proposed, should be regarded as provisionally adopted.

It was so agreed.

8. Mr. RUEGGER (Switzerland) said that his delegation did not press for a vote on its amendment to sub-paragraph (*c*).

9. The CHAIRMAN observed that, since no other amendment to sub-paragraph (*c*) had been proposed, that sub-paragraph could be considered as provisionally adopted by the Committee.

It was so agreed.

10. The CHAIRMAN noted that two of the three amendments submitted to sub-paragraph (*d*) had been withdrawn. Thus all that remained to be considered was the Guatemalan amendment (L.8) to the sub-paragraph.

11. Mr. LINARES (Guatemala) withdrew his delegation's amendment.

12. The CHAIRMAN suggested that sub-paragraph (*d*) as drafted by the Commission should be regarded as provisionally adopted.

It was so agreed.

13. Mr. LINARES (Guatemala) said he would not press for a vote on his delegation's amendment (L.8) to sub-paragraph (*e*), though he would reserve the right to re-submit it later.

14. The CHAIRMAN suggested that sub-paragraph (*e*) should be considered as provisionally adopted.

It was so agreed.

15. The CHAIRMAN said that as the Swiss delegation was not pressing for a vote on its amendment (L.23) to sub-paragraph (*f*), the Committee had before it only the Guatemalan amendment (L.35).

16. Mr. LINARES (Guatemala) said that since the amendment was linked to the other amendments to article 1 previously withdrawn by Guatemala, his delegation would likewise withdraw that amendment.

17. The CHAIRMAN suggested that sub-paragraph (*f*) be considered as provisionally adopted.

It was so agreed.

18. The CHAIRMAN suggested that sub-paragraph (*g*), to which no amendments had been proposed, should be considered as provisionally adopted.

It was so agreed.

19. The CHAIRMAN invited the Committee to consider the United States amendment to sub-paragraph (*h*) (L.17). The amendment seemed to have the support of the majority of the Committee and accordingly he suggested that, without being put to the vote, it might be regarded as provisionally adopted.

20. Mr. VALLAT (United Kingdom) said he was aware that the decisions being taken by the Committee on article 1 were only provisional. But if sub-paragraph (*h*) was put to the vote, the United Kingdom delegation would ask for a separate vote on the words " of the head or " which it regarded as superfluous and due to an error.

21. Mr. TUNKIN (Union of Soviet Socialist Republics) agreed with the United Kingdom representative. The Committee might instruct the drafting committee to review the sub-paragraph in question.

22. The CHAIRMAN suggested that, subject to that reservation, sub-paragraph (*h*), as amended by the United States, should be considered as provisionally adopted.

It was so agreed.

23. The CHAIRMAN suggested that the three proposals, submitted by the United States of America (L.17), India (L. 90) and Ceylon (L.91), respectively, concerning the addition of a definition of " family or " member of the family " of a member of a mission might be considered together.

24. Mr. GUNEWARDENE (Ceylon) and Mr. KRISHNA RAO (India) said that they did not press their amendments, which were merely meant to reconcile their views and those of the United States delegation on the particular question raised. The existing text of article 1 was entirely satisfactory to them.

25. Mr. CAMERON (United States of America) was glad to note that the United States proposal had gained the approval of many delegations. In view of some of the comments made on its amendment, the United States delegation was prepared to delete the words " or any other unmarried child who is a full-time student ".

26. Mr. TUNKIN (Union of Soviet Socialist Republics) thanked the United States representative for that concession, which made the amendment acceptable to the Soviet delegation. The meanings attached to " spouse " and " minor child " were generally the same in all countries, but the meaning of " other members of the family " was not. Hence, it should be left to the States concerned to agree on which other members of the family should enjoy diplomatic privileges and immunities.

27. Mr. WESTRUP (Sweden) said that the Swedish delegation could accept the United States proposal, as amended.

28. Mr. BOLLINI SHAW (Argentina) said that his delegation had prepared a definition of " members of the family ". The United States proposal, as amended by its sponsor, was acceptable to the Argentine delegation and rendered its own definition superfluous. Nevertheless, he suggested that the following words should

be added to the enumeration in the United States proposal: " sons of full age incapable of work, unmarried daughters and ascendants in the first degree ".

29. Mr. de ERICE y O'SHEA (Spain) considered that the United States proposal, as amended, was too narrow, for, except as otherwise agreed, between the sending and the receiving States, it meant that the family would, in effect, be restricted to the spouse and minor children. Furthermore, in Spain, for example, girls attained majority at the age of 18. The Spanish delegation was consequently unable to support the United States proposal. If Argentina decided not to submit its amendment, Spain would do so in its place.

30. Mr. KRISHNA RAO (India) thanked the United States representative for his conciliatory gesture, but thought that a procedure requiring the conclusion of an agreement between the receiving State and the sending State was too complicated. It would accordingly be preferable to delete the words " as may be agreed upon between the receiving and the sending States ". He proposed to revert to the amendment submitted by the Indian delegation on the same question (L.90) in due course.

31. Mr. OJEDA (Mexico) suggested the following definition: " ' Members of the family ' are the members economically dependent on a member of the mission and the members who form part of his household." The Mexican delegation considered that definition sufficiently broad to be acceptable to the majority of States, but submitted it merely as a suggestion and did not ask that it be put to the vote.

32. Mr. EL-ERIAN (United Arab Republic) welcomed the spirit of co-operation shown by the United States delegation, but thought that its amended proposal was not entirely satisfactory. It would therefore be preferable not to put it to the vote at once, but to leave delegations time to study the matter more thoroughly.

33. Mr. YASEEN (Iraq) shared that opinion. He drew attention to the difficulties to which the interpretation of the term " minor child " might give rise. If the age of majority was not the same in the sending State as in the receiving State, which law would apply? Minority was there regarded as a condition for the enjoyment of diplomatic status, and it would doubtless be difficult — especially with regard to immunity from criminal jurisdiction — to determine such minority by reference to a foreign law. The question merited further study, and it would be wise to defer consideration of the United States proposal.

34. Mr. VALLAT (United Kingdom) agreed. The words " immediate family " were vague, and the adjective " immediate " should be deleted, since it was provided in any case that the members of the family should be determined by agreement between the receiving and the sending States. The procedure would in fact be much simpler if the agreement were concluded directly between the diplomatic mission and the receiving State.

35. Mr. de ERICE y O'SHEA (Spain), after consulting with the Argentine representative, said that a joint proposal [2] would be submitted by the Argentine and Spanish delegations on the definition of the family. Since India and Mexico had also submitted draft definitions, it would be advisable to compare the various texts and to defer for the moment consideration of the United States proposal.

36. Mr. BARNES (Liberia) and Mr. NGO-DINH-LUYEN (Viet-Nam) supported the suggestion that consideration of the United States proposal should be postponed.

37. Mr. TUNKIN (Union of Soviet Socialist Republics) also supported that suggestion. The definition of the members of the family entitled to diplomatic privileges and immunities was not a mere terminological matter. Logically, the problem should be studied in connexion with article 31 or article 36.

38. Mr. CAMERON (United States of America) said he would not press for an immediate vote on his delegation's proposal, and agreed to the postponement of the discussion.

It was agreed that the question of defining " family " would be discussed at a later meeting.

39. The CHAIRMAN drew attention to the definition of " premises of the mission " proposed jointly by the delegations of Bulgaria and the Byelorussian SSR (L.25). As the proposed definition seemed to have received general support during the discussion at the sixth meeting, he suggested that it should be considered as provisionally adopted.

It was so agreed.

40. The CHAIRMAN drew attention to the draft definition of " diplomatic mission " proposed jointly by Cuba and Czechoslovakia (L.34) (see para. 3 above).

41. Mr. CAMERON (United States of America) suggested that the words " functions particularly foreseen " should be substituted for " functions foreseen ", since the list in draft article 3 was not exhaustive.

42. Mr. TUNKIN (Union of Soviet Socialist Republics) thought that the amendment suggested by the United States representative might be referred to the drafting committee.

43. Mr. VALLAT (United Kingdom) said he would vote against the proposed definition, as he considered it entirely unnecessary.

The proposal (L.34) was rejected by 27 votes to 14, with 21 abstentions.

44. Mr. WICK KOUN (Cambodia) explained that he had voted for the proposal because he considered that the meaning of " diplomatic mission " should be defined, equally with the other expressions used in the draft articles.

45. Referring back to the United States amendment to sub-paragraph (*h*) (L.17) provisionally adopted, he asked what was the meaning of the phrase " and who is not an employee of the sending State ". Under Cambodian

[2] Later circulated as document L.105.

practice, the servants of Cambodia's diplomatic missions abroad were paid by the Cambodian Government and considered to be employed by the sending State.

Article 1 of the International Law Commission's draft, as amended by the United States amendment to sub-paragraph (h) (L.17), and with the definition of "premises of the mission" proposed by Bulgaria and the Byelorussian SSR (L.25), was provisionally adopted.

Proposed new article concerning the right of legation

46. The CHAIRMAN drew attention to the new article proposed by Czechoslovakia (L.7).

47. Mr. YASSEEN (Iraq) said that the Commission had quite rightly and intentionally avoided mentioning a "right of legation", and it was unnecessary, indeed dangerous, to introduce that phrase into the convention. The so-called "right of legation" actually depended entirely on the will of States, and insertion of the new article would give rise to misunderstanding both in theory and practice. He therefore opposed the Czechoslovak proposal.

48. Mr. PUPLAMPU (Ghana) said he had carefully studied the Czechoslovak proposal. His government did not practise discrimination in establishing its diplomatic relations, but the proposal did not seem to contribute anything to the convention.

49. M. BOUZIRI (Tunisia) said that diplomatic relations were quite clearly based on mutual consent, as was correctly stated in article 2. If the concept of a right of legation were included, the text would appear unduly aggressive. The Tunisian delegation would vote against the Czechoslovak proposal.

50. Mr. JEZEK (Czechoslovakia) said he had followed attentively the remarks of the previous speakers. His delegation firmly believed that the right of legation was a well-established principle of international law and hence it would be right to embody the principle in the text. However, in view of the differences of opinion it would withdraw its proposal.

Article 2 (Establishment of diplomatic relations and missions)

51. The CHAIRMAN drew attention to the amendments to article 2: one by Czechoslovakia (L.6), one by Ecuador and Spain (L.15), and a drafting amendment by Belgium (L.61, French only), which, however, had agreed that it should be referred to the drafting committee.

52. Mr. JEZEK (Czechoslovakia) said that his delegation's proposal was self-explanatory: it would prevent a State or group of States from isolating a country and thus hindering it from co-operating with other States. The proposal, by opposing any idea of discrimination, conformed to the United Nations Charter and the spirit of the International Law Commission's draft. He was convinced that the principle of his proposal should be written into the convention.

53. Mr. YASSEEN (Iraq) said that article 2 was perfectly satisfactory as it stood. It accurately reflected the existing positive law and, in addition, did not raise any controversial doctrinal questions. He opposed the Czechoslovak amendment.

54. Mr. BOUZIRI (Tunisia) approved the contents of the Czechoslovak amendment, which corresponded with a generally accepted point of view, but did not consider it should be inserted in the article itself. It contained a recognition of certain realities which would be better embodied in a preamble.

55. Mr. MATINE-DAFTARY (Iran) held that constitutional, legal and social systems concerned domestic law. In the past, countries with very dissimilar, if not opposed, customs and religions had none the less been on friendly terms. He feared lest, if the Czechoslovak amendment were put to the vote, it might not obtain enough votes and the result could be construed as a sign that the Committee was hostile to the principle of peaceful coexistence.

56. Mr. MITRA (India) noted that nearly all delegations agreed to the principle propounded by Czechoslovakia. However, he suggested that the words "of themselves" be added to the text, which would then read: "Differences in ... systems shall not of themselves prevent ..." That addition would have the merit of allowing for other hindrances which might exist to the establishment of diplomatic relations. As the principle was unanimously accepted, he thought it should be stated in a preamble, if not in an article.

57. Mr. JEZEK (Czechoslovakia) thanked the Indian delegation for its support and agreed to the insertion of the words "of themselves".

58. Mr. NGO-DINH-LUYEN (Viet-Nam) stated that though there was no disagreement in substance between his delegation's views and the Czechoslovak text, he considered it superfluous. Either diplomatic relations were established by mutual consent, or there was no consent, in which case the amendment would be meaningless unless the receiving State was bound to give reasons for its negative attitude.

59. Mr. CAMERON (United States of America) considered that article 2 as it stood confirmed the generally accepted practice in regard to mutual consent, and his delegation was not inclined to support any amendment. It would therefore vote against the text proposed by Czechoslovakia.

60. Mr. TUNKIN (Union of Soviet Socialist Republics) observed that, apart from the United States, all delegations had approved the principle of the amendment, which was an attempt to define the concept of equal rights among States. In modern law, matters pertaining to the internal structure of a State concerned that State alone. There was therefore no room for discrimination on account of differences in social systems. The Czechoslovak amendment reflected those realities faithfully. The Soviet delegation favoured its approval, but had no objection to some drafting changes. If the Czechoslovak

delegation was agreeable, it might perhaps be better to place the text in the preamble than in an article of the convention.

61. Mr. BAROUNI (Libya) approved article 2 as drafted, and favoured the insertion of the text proposed by Czechoslovakia in a preamble.

62. Mr. CAMERON (United States of America) noted that there had been some discussion on whether the Czechoslovak text should be placed in an article or in a preamble. For the moment, he would have to reserve his position on that question.

63. The CHAIRMAN said he gathered that the Czechoslovak delegation agreed to the insertion of its proposed text in a preamble.

The meeting rose at 12.55 p.m.

EIGHTH MEETING

Thursday, 9 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (*continued*)

Article 2 (Establishment of diplomatic relations and missions) *(continued)*

1. The CHAIRMAN said that the one remaining amendment to article 2 (L.15, submitted jointly by Ecuador and Spain) had been withdrawn. He asked if the Committee was prepared to approve article 2 as drafted by the International Law Commission.

2. Mr. LINTON (Israel) stated his delegation's position on article 2. The important role of diplomatic relations in the fulfilment of the purposes of the United Nations had been rightly stressed by the International Law Commission in its commentary (A/3859) on article 2. The modern international community was based on the rules of conduct contained in the Charter of the United Nations and on the radically new concepts which the Charter had introduced into international law and relations. Peaceful co-existence and co-operation among States; prohibition of the use or threat of force in international law and relations; the duty to settle international disputes peacefully; and the principle of non-intervention by one State in the internal and external affairs of another State, were now legal as well as moral principles of the Charter governing the new order of the community of nations. Guided and animated by these principles, his government regarded normal and orderly diplomatic relations between all States as an essential instrument under the Charter for the maintenance of international peace and security, for international coexistence and co-operation, and for the prevention of international tensions. He would therefore have preferred article 2 to be drafted in a form more in keeping with the spirit of article 1 of the Havana Convention, which was reflected in the Commission's comments.

Article 2 was approved.

Article 3 (Functions of a diplomatic mission)

3. The CHAIRMAN drew attention to the amendments to article 3.[1]

4. The changes proposed by Liberia and the Philippines (L.14) affecting the drafting only, he suggested that they should be referred to the drafting committee.

It was so agreed.

5. The CHAIRMAN said that there were no amendments to sub-paragraph (*a*), and invited comment on the amendments to sub-paragraph (*b*) (L.13, L.27, L.33 and L.82).

6. Mr. KRISHNA RAO (India) withdrew his delegation's amendment (L.13) in favour of that proposed by Mexico (L.33).

7. Mr. YASSEEN (Iraq) supported the Mexican amendment. Although the additional words were not necessary, being a statement of the obvious, they might psychologically curb a diplomat's zeal in protecting the interests of his State or of its nationals.

8. Mr. BESADA (Cuba) introduced his delegation's amendment (L.82) to sub-paragraph (*b*). The existing text might leave the way open to possible interference in the affairs of the receiving State, and even give the sending State's mission and members an extraterritorial quality. The Mexican amendment had some merit in that it mentioned international law, but its terms were rather vague.

9. Mr. AGUDELO (Colombia), referring to sub-paragraph (*b*), said that the protection of interests was sometimes carried to extremes — as countries on the American continent were all too well aware. He would support the proposal that the provisions should be qualified by a reference to international law.

10. Mr. GUNEWARDENE (Ceylon) said that, though article 3 was a useful provision, he was uneasy over the wording of two of its sub-paragraphs. In the first place, sub-paragraph (*b*) was far too broad and should be qualified by some proviso. Secondly, in sub-paragraph (*d*) the words " by all lawful means " were open to differing interpretations.

11. Mr. RUEGGER (Switzerland) agreed with the many representatives who had urged the Committee to be very cautious in amending the International Law Commission's draft. Article 3, sub-paragraphs (*a*) and (*b*) and (*c*) — especially (*b*) — were a true codification of law. He regretted that the representative of Iraq saw any value in the addition proposed by Mexico. In his delegation's opinion — and Switzerland had long expe-

[1] For the list of amendments to article 3, see fifth meeting, footnote to para. 1.

rience in the matter of protection — it had none. A State asking for protection within the law might be met with delaying action by the receiving State, on the pretext that the legal situation had to be studied. He opposed any addition to sub-paragraph (*b*), especially since the law concerning the protection of nationals abroad was not yet well defined — indeed, the Institute of International Law was working on the subject.

12. Mr. DIAZ (Mexico) pointed out that his delegation's amendment to sub-paragraph (*b*) did not really modify the work of the International Law Commission. On the contrary, it expressed an important idea, contained in paragraph 4 of the Commission's commentary to article 3 (A/3859) which should be incorporated in the convention. He agreed with the representative of Switzerland that article 3 was a codification; the Mexican amendment was intended not to alter but to clarify the concept.

13. Mr. TUNKIN (Union of Soviet Socialist Republics) said he was prepared to vote for sub-paragraph (*b*) as drafted. It was a strictly legal formula and required no addition. The draft articles neither superseded nor abolished the rules of international law relating to the protection of the interests of States and their nationals in the territory of other States. Nor did they touch on particular fields of international law. In sub-paragraph (*c*) for example (negotiating with the government of the receiving State), negotiation comprised the conclusion of agreements, which fell under specific rules of international law. Those rules were not mentioned, because their application was obvious. Similarly a reference to international law was unnecessary in sub-paragraph (*b*) and would not add anything legally useful. Nevertheless, some States had reason to wish for a safeguard: they were apprehensive because of their experience with the protection by the sending State of its nationals, which was sometimes carried to extremes. He respected such views, and therefore suggested that the Committee should agree in principle that a safeguard was desirable and refer the various amendments to the drafting committee.

14. Mr. CARMONA (Venezuela) said that the Committee was dealing with one of the most crucial questions of the Conference. Many countries of the American continent had had unfortunate experiences. After years of difficulty, the principle of non-intervention had been established and finally the United Nations set up; but the sovereignty of the smaller and weaker countries was still not fully protected. The International Law Commission was a scientific body and had produced a somewhat academic text. The Conference's task was to relate it to national policy, and with that in mind he strongly supported the Mexican amendment to sub-paragraph (*b*).

15. Mr. EL-ERIAN (United Arab Republic) said that article 3 was one of the most important of the draft articles. He approved the inclusion of sub-paragraph (*e*) because, as the Commission stated in paragraph 6 of its commentary, it described one of the functions that had steadily increased in importance as a consequence of the establishment of the United Nations and of modern developments.

16. He was not surprised that sub-paragraph (*b*) had caused apprehension — not only at the Conference but also within the Commission, in the comments of governments on the provisional draft, and in the Sixth Committee of the General Assembly. Reference had been made to the unfortunate associations of the word " protection ". He was apprehensive on technical grounds, and felt that a clear distinction should be made between diplomatic protection in the legal sense, and the duty of diplomatic missions to look after the interests of their nationals. Admittedly some reassurance was given by the second sentence in article 40, paragraph 1. Nevertheless he was in favour of introducing a safeguard into sub-paragraph (*b*) and proposed that the amendments of Mexico, India and Ceylon should be referred to the drafting committee.

17. Mr. de VAUCELLES (France) said that he had at first been favourably disposed towards the Mexican amendment (L.33), but that he had been much impressed by the arguments of the Swiss representative, and had concluded that the Commission's text, which represented several years' work, should be retained, especially where it expressed a leading principle, as in sub-paragraph (*b*).

18. The question of due regard for international law in the exercise of diplomatic functions and the enjoyment of diplomatic privileges was clearly going to be raised in connexion with many of the draft articles. He therefore felt that perhaps the most appropriate place for a provision concerning it was the preamble, where it could be stated that the convention should be construed in conformity with international law.

19. Mr. LINARES (Guatemala) supported the Mexican amendment (L.33) for the reasons given by other representatives.

20. Mr. MAMELI (Italy) said that none of the various amendments to sub-paragraph (*b*) added anything useful, and agreed with the Swiss representative that article 3 should remain as drafted by the Commission. He did not consider the preamble should be discussed at that stage.

21. Mr. TAKAHASHI (Japan) supported the Mexican amendment.

22. Mr. BOUZIRI (Tunisia) said that his delegation was much perturbed, both at the proposal to introduce a reference to the rules of international law in sub-paragraph (*b*), and at the presence of the words " by all lawful means " in the Commission's sub-paragraph (*d*). The whole codification was obviously subject to national and international law, and such provisos were not only unnecessary, but also dangerous. He suggested that they should be referred to the drafting committee which should be asked to work out a harmonious and consistent text.

23. Mr. WESTRUP (Sweden) repeated his question whether the word " nationals " used in sub-paragraph (*b*) covered bodies corporate. (See summary record of second meeting, para. 28.)

24. Mr. STAVROPOULOS, Legal Counsel, representative of the Secretary-General, said that no one but the Commission itself was authorized to give an authentic interpretation of the draft. He had studied its records and had been unable to find any trace of a discussion on whether " nationals " included bodies corporate. The members of the Commission had probably thought it obviously did. That interpretation would conform to the general usage of the term " nationals " in international law.

25. Mr. VALLAT (United Kingdom) said that, of the amendments proposed to article 3, that of Mexico had alone withstood debate. The others would not improve sub-paragraph (*b*). It could be argued that the Mexican amendment was unnecessary, because the whole convention should be read as subject to international law. However, the protection of the interests of the sending State and of its nationals was a special diplomatic function differing from others, and, having regard to the fears expressed by certain delegations, his delegation would vote in favour of the amendment. The reference to international law was sufficient, for breach of the domestic law of the receiving State was also breach of international law. Article 40, paragraph 1, obliged all diplomatic officers to respect the laws and regulations of the receiving State.

26. Mr. CAMERON (United States of America) said that the discussion had shown that all delegations agreed with the proposition that the text was intended to be carried out consistently with the principles of international law. His delegation found the Commission's text acceptable, but in view of the arguments which had been put forward it would support the Mexican amendment.

27. Mr. KRISHNA RAO (India) noted with satisfaction the general support of the Mexican amendment which had the same intention as the Indian amendment (L.13). He drew particular attention to the word " must " in paragraph 4 of the Commission's commentary to article 3: " The functions mentioned in sub-paragraph (*b*) must be carried out in conformity with the rules of international law." It was significant that the Commission had felt the need to make that comment only on article 3 (*b*).

28. The recognition of a principle by customary law was no argument against stating it in the articles. Thus the well-established principle of non-interference in the internal affairs of the receiving State was specifically laid down in article 40, paragraph 1. In fact, of course, the Mexican amendment covered more than that principle, since many other rules of international law were relevant: for example, the rule concerning the exhaustion of local remedies, to which reference was made in commentary 4; and the rule that a diplomatic mission should not, in carrying out its functions of protection, deal with local officials otherwise than through the Ministry of Foreign Affairs of the receiving State.

29. Mr. JEZEK (Czechoslovakia) also stressed the importance of article 3. The function of protecting in the receiving State the interests of the sending State and its nationals was subject to certain limitations of international law, and also to the limitations laid down by the receiving State. He suggested that the Committee should approve the principle contained in the Mexican amendment, and instruct the drafting committee to prepare a suitable form of words.

30. Mr. BARTOŠ (Yugoslavia) said that all diplomatic functions must be exercised in accordance with the rules of international law. However, there was nothing against the Mexican addition (L.33), which would allay the fears left behind by past controversies. In some cases, a receiving State had prevented a diplomatic mission from carrying out its protective function. In others a mission had abused that function and interfered in the internal affairs of the receiving State. The Mexican amendment expressed an idea contained in commentary 4, and in adopting it the Committee would not be departing from the Commission's views. His delegation would therefore support it.

31. Mr. RIPHAGEN (Netherlands) said that some speakers had confused the limits within which international law allowed claims against the State — State responsibility at international law — with the functions of a diplomatic mission. It was part of a diplomatic mission's functions to protect the interests of the sending State and of its nationals regardless of the rules of State responsibility. A diplomat was often called upon to put forward the views and protect the interests of the sending State in humanitarian and other matters in which no claim could lie.

32. Mr. BESADA RAMOS (Cuba) said that his delegation had submitted its amendment (L.82) because of its concern at the sweeping statement of the right of protection in sub-paragraph (*b*). The diplomatic function of protection had been abused in Cuba: for example, a foreign diplomatic mission accredited to Cuba had recently placed notices on premises claiming that they and the persons in them were protected by it. The Cuban delegation was therefore particularly interested in ensuring that the limits of the right of protection were most precisely drawn in sub-paragraph (*b*). It would not press its own amendment, but supported the suggestion that the Committee should approve the principle of the Mexican amendment.

33. Mr. USTOR (Hungary) said that to a lawyer it was clear that the functions specified in sub-paragraph (*b*) were exercisable only in accordance with the rules of international law. However, the desire expressed by several delegations for a safeguard against abuse was quite understandable, because there had been a long history, not yet closed, of infringements by powerful countries of the rights of smaller ones on the pretext of the protection of nationals. His delegation therefore considered it advisable, *ex abundante cautola*, to state in sub-paragraph (*b*) that the right of protection had clear-cut limits and that any infringement of them was contrary to international law.

34. The CHAIRMAN said that the Committee had before it only two amendments to sub-paragraph (*b*), that submitted by Mexico (L.33) and that of Ceylon (L.27). The discussion had shown a preponderant feeling

in favour of the Mexican amendment, and the subject now appeared ripe for the drafting committee. If there were no objection, he suggested that the Committee should approve sub-paragraph (*b*) with the addition of a proviso on the lines of the Mexican amendment, and request the drafting committee to take into account the wording of the amendment submitted by Ceylon.

It was so agreed.

35. The CHAIRMAN invited comments on the new sub-paragraph proposed by Spain (L.30) concerning the exercise of consular functions by a diplomatic mission.

36. Mr. ROMANOV (Union of Soviet Socialist Republics) said that his delegation doubted the value of the proposed addition. Under a practice of long standing, embassies had consular sections, and in the Soviet Union no special agreement was required for the exercise of consular functions by an embassy. If the Spanish delegation's amendment meant that the receiving State was entitled to object to the existence of a consular section in an embassy, his delegation would vote against it. Such a provision would greatly complicate relations which had been established for a long time and would, for example, enable the receiving State to object to the granting of visas by the consular section of an embassy, thus interfering in one of the embassy's day-to-day functions.

37. Mr. CARMONA (Venezuela) said that under a Venezuelan law of 1876, diplomatic could not be combined with consular functions. Venezuela could not accept the exercise of consular functions by a diplomatic officer. If, therefore, the Spanish delegation's amendment were accepted, his delegation would have to make an express reservation.

38. Mr. de SILVA (Brazil) said that it was not advisable to include a provision along the lines proposed by Spain. A consular section of an embassy operated as a consulate, not as a part of the embassy. Indeed, some countries insisted on granting an *exequatur* as a consular official to the secretary of the embassy in charge of the consular section. Not infrequently, in cases where diplomatic relations between two countries were severed, their consular relations remained unaffected and the consulates and consular sections of embassies continued to operate.

39. Mr. BARTOŠ (Yugoslavia) said that the topic of consular intercourse and immunities was totally separate from the Conference's task. The International Law Commission had considered it at several sessions and had submitted a first draft to governments for their comments (A/4425). It was true that since 1919 the practice of setting up consular sections in embassies had become general; but many receiving States required the head of a consular section to be provided with letters patent as a consul and to obtain an *exequatur*. Most countries were prepared to tolerate the performance of some, but not all consular functions, in the premises of diplomatic missions. If the Conference dealt with consular relations, it would be exceeding its terms of reference and compromise the Commission's work. His delegation would therefore oppose the Spanish delegation's amendment without expressing any views on the substance.

40. Mr. de ERICE y O'SHEA (Spain) said that the purpose of his delegation's amendment was to enable countries like Spain, which were short of staff and foreign exchange, to combine their diplomatic and consular services. The draft articles on consular intercourse and immunities prepared by the International Law Commission provided for the performance of diplomatic acts by consuls. It was therefore very appropriate that an instrument on diplomatic intercourse and immunities should provide likewise for the exercise of consular functions by diplomatic missions.

41. The protection of nationals abroad meant, more often that not, looking after the interests of workers; the issue of passports and other documents, which was a consular function, was an essential feature of that protection. It was therefore not inappropriate for a diplomatic mission to be entrusted with consular functions.

42. Certain countries required the head of the consular section of an embassy to obtain an *exequatur* to act as a consul. A great many countries, however, did not, and by not objecting to the performance of consular functions by an embassy, thereby tacitly permitted it. The Spanish delegation had therefore provided in its new paragraph that diplomatic missions could perform consular functions " if the receiving State does not expressly object thereto ", rather than refer to the granting of an *exequatur*.

43. The proposal would obviate the need for a consular convention whenever it was desired to set up a consular section in an embassy.

44. The Venezuelan representative's reservation was already contained in the Spanish amendment, because the provision in the Venezuelan law of 1876 constituted an express objection.

45. He saw no merit in the argument that the practice of consular sections of embassies was well established. It was precisely the purpose of the Conference to embody the existing practice.

46. Mr. DIARRA (Mali) said that the new States, which were short of experienced staff, needed to combine their diplomatic and consular services. For that reason his delegation would support the Spanish delegation's proposal.

47. Mr. NGO-DINH-LUYEN (Viet-Nam) supported that view. The Committee should consider sympathetically the difficulties of young States whose restricted interests and means did not always justify the creation of separate consulates. The fact that many diplomatic missions already exercised consular functions should be no obstacle to acceptance of the Spanish amendment. On the contrary, there would be an advantage in stating the principle explicitly. The text proposed by Spain gave those States which did not allow the combination of diplomatic and consular functions the right to object. It had also been argued that the Conference was not competent in the matter because the International

Law Commission was considering consular intercourse and immunities. A future conference on consular intercourse might say in its turn, however, that the matter, which touched on diplomatic functions and had not been settled by the Conference on Diplomatic Intercourse and Immunities, was outside its competence. His delegation would support the Spanish amendment.

48. Mr. BARTOŠ (Yugoslavia), opposing the amendment, said that he had not intended to deny the rights of small or less-developed countries. In many cases heads of mission in fact also performed consular functions; but when they did so they had to observe the separate rules which governed those functions. There was no need to divide embassies and consulates and their staffs, but their responsibilities and the rules governing them should be clearly differentiated. If that was not done, a diplomatic official might, for example, be accused of violating diplomatic rules by making contact in the performance of his consular functions with the local authorities of the receiving country. If he followed the diplomatic rules he might be unable to perform those functions. Particular consideration should be given to the question in connexion with the protection of nationals.

49. Mr. da SILVA (Brazil) said he was not opposed to the performance of consular functions by a diplomatic mission. Almost all the embassies and legations of Brazil had a consular section. The representative of Yugoslavia had pointed out the difficulty of including a reference to the practice in article 3. The two sets of functions should be clearly separated. In particular, it should be recognized that diplomatic protection and consular assistance were two quite different matters. His delegation would vote against the Spanish amendment.

50. Mr. MAMELI (Italy) agreed with the representative of Yugoslavia. If the Spanish amendment were to stand, however, he would propose that the phrase " if the receiving State does not expressly object thereto " should be replaced by a provision requiring the sending State to ask for the receiving State's consent.

51. Mr. GLASER (Romania) pointed out that the object of article 3, as shown by its introductory phrase, was to define diplomatic, not consular functions. That was clearly expressed in each of the sub-paragraphs, and in none was there any question of allowing the receiving State to object, because they were dealing with the exercise of a diplomatic function. Only in sub-paragraph (*b*), dealing with the protection of the interests of the sending State and of its nationals, was there any possibility of the overlapping of diplomatic and consular functions and the question had not been raised in that connexion. The introduction of the concept that the receiving State might " expressly object " or of the alternative suggested by the representative of Italy, that the sending State should ask for consent, would be inappropriate in an article which defined the functions of a diplomatic mission.

52. The Conference was not competent to discuss consular functions, which would probably be the subject of a later conference. If the delegation of Spain pressed its proposal, Romania would vote against it.

53. Mr. WALDRON (Ireland) supported the amendment. He was not convinced by the argument that a reference to consular functions would interfere with the preparation of a subsequent convention concerning them. His government would find it helpful if consular functions were specifically mentioned among the functions of a modern diplomatic mission.

54. Mr. NGO-DINH-LUYEN (Viet-Nam) agreed that the functions, activities and immunities of consular officials differed from those of diplomatic agents and that it might be difficult to determine how to treat a diplomat who was performing consular functions. It was, however, the practice in many countries to combine these functions. The amendment proposed by Spain required the tacit consent of the receiving State, which granted the *exequatur* with full knowledge of the case and its particular problems. A slight re-drafting of the Spanish amendment might make it more generally acceptable.

55. Mr. BOLLINI SHAW (Argentina) supported the amendment. The purpose of the Conference was to codify customary international law. It was surely not unnecessary to include a reference to a practice merely because it was already customary. Diplomatic missions often, in fact, exercised consular functions, mostly without previous agreement; the practice was therefore tacitly admitted in general. There was no need to define consular functions in article 3. As had been pointed out, there would be a separate conference to discuss consular intercourse and immunities; but that should not prevent the current conference from adding a provision stating that diplomatic missions might perform consular functions if the receiving State did not expressly object.

56. Mr. LINTON (Israel) said that it was important particularly for the small and poorer countries that the instrument being prepared should make provision for the performance of consular functions by the consular sections of embassies. That generally accepted practice should be recognized, and he would therefore support the Spanish delegation's amendment.

57. Mr. DJOYOADISURYO (Indonesia) considered that the inclusion of the proposed provision would be premature. His delegation had no definite instructions on the point and would abstain from voting.

58. Mr. TALJAARD (Union of South Africa) said that the diplomatic missions of a considerable number of countries in fact exercised consular functions. There should not be too fine a legal distinction between diplomatic and consular functions, which overlapped in many cases. Consular missions were sometimes appointed by the head of the diplomatic mission, and were always subordinate to him in law. The South African delegation would therefore support the Spanish amendment.

59. Mr. ROMANOV (Union of Soviet Socialist Republics) noted the general agreement that a diplomatic mission had an established right to exercise consular functions. The Spanish proposal, however, was to pro-

vide that a diplomatic mission might perform consular functions " if the receiving State does not expressly object thereto." It was true that consular sections of embassies had been exercising consular functions for many years without objection; but to write into the convention, as a rule of law, that the receiving State might object would be inadvisable. It would endanger the position of those small States which could not maintain separate consular and diplomatic missions; and it would not strengthen relations between States. If a small country met with an objection, it would find itself in a very difficult position. Consular functions were closely linked with the protection of nationals in the receiving State, and that important function should not be prejudiced by exposing it to objection by the receiving State. The International Law Commission had considered a proposal very similar to that made by Spain, but had not felt that it should be included. The Soviet Union had a consular section in each of its diplomatic missions abroad, and so did not object to the practice; but it did not wish to create unnecessary official barriers. His delegation therefore suggested that the Spanish amendment should not be pressed or else that the phrase " if the receiving State does not expressly object thereto " should be dropped. If the amendment were maintained as it stood, his delegation would oppose it.

60. Mr. AGUDELO (Colombia) said he had himself been in charge of consular functions as first secretary of the Colombian embassy at Berne. When he had applied to the Swiss Federal Political Department for an *exequatur*, the Chief of Protocol had asked him whether he wished to hold diplomatic or consular rank, for only in the latter case could he have an *exequatur*. He had preferred to retain his diplomatic status and had not been granted an *exequatur*, but of course had continued to carry out his consular functions. He could therefore support the Spanish proposal.

61. Mr. FERNANDES (Portugal) suggested that a reference to the performance of consular acts rather than consular functions might prove more acceptable to certain delegations.

The meeting rose at 6.45 p.m.

NINTH MEETING

Friday, 10 March 1961, at 10.30 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (*continued*)

Article 3 (Functions of a diplomatic mission) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 3 of the International Law Commission's draft (A/CONF.20/4), in particular on the new sub-paragraph proposed by Spain (A/CONF.20/C.1/L.30) concerning the exercise of consular functions by a diplomatic mission.

2. Mr. AMLIE (Norway) recognized the orthodox distinction between diplomatic and consular functions, but noted that diplomatic missions to a large degree in fact performed consular functions. The Conference ought to sanction expressly that practice in the convention it was to draw up. Norway would accordingly vote in favour of the principle of the Spanish amendment.

3. Mr. BARNES (Liberia) said that, at the fourteenth session of the General Assembly of the United Nations, his delegation with others had submitted a draft resolution calling for the convocation in 1963 of a conference to consider both diplomatic and consular intercourse and immunities at the same time. The proposal had not been adopted, but in practice a tendency to abolish the existing distinction between diplomatic and consular staff could be observed. In Liberia, for example, a first or second secretary could perform the functions of a consul. That practice was fully justified by the fact that the functions of diplomatic and consular officers were sometimes of the same kind, as was shown by the functions mentioned in article 3 (*b*). Moreover, as the representative of Mali had said at the eighth meeting (para. 46), States which had recently become independent found it difficult to employ separate diplomatic and consular staffs. Lastly, since article 19 of the draft prepared by the International Law Commission on consular intercourse and immunities (A/4425) expressly provided that a consul could perform diplomatic functions in certain cases, there appeared to be no reason why the converse should not be possible. For all those reasons, Liberia would vote in favour of the Spanish delegation's amendment.

4. U SOE TIN (Burma) said he could rebut the three arguments advanced against the Spanish amendment. First, although the Conference was admittedly concerned with diplomatic functions only, it would certainly not be going beyond its terms of reference by recognizing that diplomatic staff could perform consular functions. Secondly, the fact that the law of certain countries did not allow the combination of diplomatic and consular functions was not a decisive argument, for the amendment specified that consular functions could be performed " if the receiving State does not expressly object thereto." Thirdly, some speakers considered the additional sub-paragraph unnecessary because the existence of consular sections within diplomatic missions was already recognized in fact. Yet, precisely because the object of the convention was to codify existing practice, the proposed sub-paragraph was necessary.

5. For reasons of economy, Burma entrusted consular functions to its diplomatic staff, after obtaining the agreement of the receiving State where appropriate. It would therefore vote in favour of the Spanish amendment, or at least in favour of the principle.

6. Mr. TUNKIN (Union of Soviet Socialist Republics) said that in all States diplomatic missions performed

certain consular functions and that in practice it was not necessary to obtain the consent of the receiving State. The International Law Commission draft of article 3 could very well be adopted as it stood, since it in no way prevented diplomatic missions from performing consular functions. In fact, for example, the functions mentioned in sub-paragraphs (*a*) and (*b*) of the article implied consular functions. It would therefore appear wise to retain the original text, which had the merit of being sufficiently flexible; for the adoption of the Spanish amendment would mean that the express consent of the receiving State was required. In deference to the views of some delegations, however, he suggested that the Committee might approve the principle embodied in the Spanish amendment and instruct the drafting committee to draw up a suitable text.

7. Mr. GASIOROWSKI (Poland) said that customary law already entitled diplomatic missions to perform consular functions without having to obtain the consent of the receiving State. The adoption of the Spanish amendment would establish a new rule of international law at variance with the present practice. Since the purpose of the convention was to facilitate diplomatic relations between States the Committee might, at the most, refer to the drafting committee the question whether the text should expressly state that diplomatic missions could exercise consular functions; the drafting committee would not, of course, express a judgement on the alleged right of the receiving State to withhold its consent — that being the essence of the Spanish amendment.

8. Mr. de ERICE y O'SHEA (Spain) accepted the suggestion of the Soviet Union representative.

9. Mr. OJEDA (Mexico) proposed that a new paragraph 2 should be added to article 3, reading: " No provision in the present Convention shall prohibit diplomatic missions from performing consular functions."

10. The CHAIRMAN noted that the procedure suggested by the representative of the Soviet Union and agreed to by the representative of Spain appeared to have met with general support in the Committee.

11. Mr. BARTOŠ (Yugoslavia) stated that the Yugoslav delegation did not approve that procedure.

12. Mr. VALLAT (United Kingdom) said he did not object to the procedure, but suggested that the drafting committee should be asked to take the Mexican delegation's proposal into account.

13. Mr. BOUZIRI (Tunisia) supported the principle that diplomatic missions could perform consular functions, but could not accept a provision requiring the consent of the receiving State. He proposed that the drafting committee should consider the following text: " Performing consular functions in conformity with international practice and under the conditions laid down by the receiving State."

14. Mr. de ROMREE (Belgium) supported that proposal. In his view, the drafting committee would be expected to draft simply a provisional text which would not bind the Committee.

15. Mr. GLASER (Romania) and Mr. MATINE-DAFTARY (Iran) supported the first part of the Spanish delegation's amendment only, and thought that the question of the receiving State's consent should not be referred to the drafting committee.

16. The CHAIRMAN suggested that the Committee should provisionally accept the principle that diplomatic missions could perform consular functions, and that the drafting committee should be asked to draft an appropriate text in the light of the comments made in the discussion.

It was so agreed.

17. The CHAIRMAN said that the amendment submitted by Ceylon to sub-paragraph (*d*) (L.27) related purely to drafting. Accordingly, he suggested that the Committee should provisionally approve sub-paragraph (*d*) and ask the drafting committee to take the amendment into account.

It was so agreed.

18. The CHAIRMAN drew attention to the amendments to sub-paragraph (*e*) submitted by Spain (L.30) and Belgium (L.31); the amendments did not affect the substance of the provision.

19. Mr. de ROMREE (Belgium) said that, in a conciliatory spirit, his delegation would withdraw its amendment.

20. Mr. TUNKIN (Union of Soviet Socialist Republics) said he had no fundamental objection to the Spanish amendment, though he thought the Commission's text was less restrictive. Since the two texts were not really irreconcilable, the Spanish delegation might perhaps be willing to withdraw its amendment, and the drafting committee could reconsider the final wording of the text without altering its substance.

21. Mr. de ERICE y O'SHEA (Spain) announced that his delegation had decided to withdraw its amendment and would support the International Law Commission's text.

Article 3, as amended, was adopted, subject to revision by the drafting committee.

Proposed new article concerning the protection of interests of a third State

22. The CHAIRMAN drew attention to the proposal (L.103) submitted by Colombia, Spain and Guatemala that a new article should be inserted between articles 3 and 4 of the draft.

23. Mr. AGUDELO (Colombia), introducing the proposal, said it embodied a principle which was constantly applied in practice; hence it should be written into the convention.

24. Mr. TUNKIN (Union of Soviet Socialist Republics), speaking on a point of order, said that the proposal raised a question closely related to article 43 of the draft. Accordingly, the Committee could either discuss the proposal forthwith or else, as he would prefer, discuss it in connexion with article 43.

25. The CHAIRMAN suggested that the Committee should consider the proposal in connexion with article 43.

It was so agreed.

Article 4 (Appointment of the head of the mission: agrément)

26. The CHAIRMAN invited debate on article 4 and drew attention to the amendments submitted by the United States (L.18), Spain (L.42), Ceylon (L.28), Italy and the Philippines (L.43) and Argentina (L.37).

27. Mr. VALLAT (United Kingdom) said he approved of article 4 as drafted by the International Law Commission. While appreciating the point of the United States amendment (L.18), in so far as it interpreted "agrément" to mean the agreement of the receiving State to the appointment of any head of mission, including a chargé d'affaires, he suggested that the United States representative might consider withdrawing it.

28. Mr. CAMERON (United States of America) accepted the suggestion and withdrew the amendment.

29. Mr. REGALA (Philippines) explained that the purpose of the amendment submitted jointly with the Italian delegation was to bring article 4 into line with other provisions of the draft. Articles 8, 10 and 38, for example, used the expression "reasonable time". It seemed natural, therefore, to provide a time limit for the grant or refusal of the agrément. The principle was recognized in modern law. The agrément involved, first, a request and then consent, which constituted the actual agrément. The interval between those two formalities should not exceed a certain period, and that rule should be laid down in the text. In reply to the United Kingdom representative, he said that the agrément was restricted to heads of mission — in other words, to ambassadors or ministers, excluding chargés d'affaires.

30. Mr. GLASER (Romania) saw no objection to a reasonable time being provided for in the convention, but doubted whether the proposed addition was really advisable, for it was an implied term of all the provisions that they would be applied in good faith and in a reasonable manner. It would be better to keep to the International Law Commission's draft of article 4, which his delegation considered entirely satisfactory.

31. Mr. BOLLINI SHAW (Argentina) said he had no objection to article 4, but thought its scope should be broadened by the addition of the sentence proposed by his delegation (L.37).

32. Mr. NAFEH ZADE (United Arab Republic), referring to the amendment submitted by Ceylon (L.28), agreed that the agrément should be given in the shortest possible time; that was a condition for good relations between the two States. Various circumstances might, however, cause delay; for instance, inquiries might have to be made or the head of State might be away from the capital. Moreover, the agrément should be given as the result of a considered decision and without restrictions.

33. Commenting on the Argentine amendment, he said there was no real reason for stating expressly what was a unanimously accepted custom.

34. The Spanish delegation's amendment (L.42) was open to conflicting interpretations. A head of mission held, by definition, a permanent appointment; in the case of a special mission the acceptance of his letters of credence took the place of the agrément. So far as the joint amendment (L.43) was concerned he said it was standard practice to observe a reasonable time limit, and hence he could not support that amendment either. Consequently, his delegation considered that no change should be made in article 4.

35. Mr. BARTOŠ (Yugoslavia) said that the idea underlying the Ceylonese amendment was unexceptionable, but the amendment could hardly be said to lay down a rule of law. It was the duty of the receiving State to give its reply as soon as possible; however, a period of time might be considered reasonable by one State and not by another. If no precise time limit were specified, there was no point in referring to the matter. In fact, if a request for agrément was followed by a long silence, the sending State should draw the necessary conclusion. The substance of the article as it stood was acceptable to his delegation.

36. With regard to the Spanish amendment (L.42), he considered that, in the case of a permanent mission, the head of the mission was presumed to be permanent. Accordingly, the amendment served no purpose.

37. He approved of the Argentine amendment (L.37) in principle, but considered that the International Law Commission had been wise not to mention the question.

38. Although commending the ideas put forward in the various amendments, except that proposed by Spain, he did not consider that they would contribute anything very useful to the drafting of the convention.

39. Mr. TUNKIN (Union of Soviet Socialist Republics) said that, though not opposed to the amendments submitted for article 4, he did not think they were necessary. The Ceylonese amendment (L.28) and the joint amendment of Italy and the Philippines (L.43) had the same object: to speed up the agrément of the receiving State. Although in practice quite rare, a delay by the receiving State in granting agrément could be embarrassing for the sending State. But there were cases where the receiving State had solid reasons for withholding its agrément, and its silence was then a polite form of refusal. In any case the wording of the Ceylonese amendment was not very fortunate and should be modified. The Argentine amendment (L.37) merely confirmed a generally established practice and was therefore superfluous. Similarly, the Spanish amendment (L.42) was unnecessary, since in the draft articles a head of mission was by definition a permanent diplomatic agent.

40. Mr. MENDIS (Ceylon) thanked the Soviet representative for his suggestion concerning the Ceylonese amendment. However, the wording was secondary. What was important was that the principle of a time limit within which the receiving State should grant its

agrément should be written into the convention. It was not enough to say that the time limit should be reasonable, as in the amendment of Italy and the Philippines. That reasonable time limit should be specified. What was the criterion ? The Ceylonese amendment was more categorical and unequivocal.

41. Mr. CARMONA (Venezuela) said that, as his delegation had stated before, the receiving State should have the right not to give its reasons for refusing the agrément. He therefore supported the Argentine amendment (L.37), which codified a universally accepted principle of international law.

42. The time limit within which the receiving State should grant its agrément was the subject of two similar amendments (L.28 and L.43). It was a fact that excessive delay by the receiving State in granting the agrément created an equivocal situation which in some cases had led to the rupture of diplomatic relations. For that reason the amendments, each of which had its merits, were justified.

43. Mr. de ERICE y O'SHEA (Spain) said that, in view of the remarks of the United Kingdom and Soviet representatives, his delegation withdrew its amendment (L.42) to article 4. It would support the joint amendment of Italy and the Philippines (L.43) and the Ceylonese amendment (L.28), although the wording of the latter was not entirely satisfactory, since it imposed an uncalled-for obligation on the receiving State; the word " reasonable " should be deleted from the joint amendment. The Spanish delegation also supported the Argentine amendment (L.37), which affirmed a generally accepted practice.

44. Mr. MAMELI (Italy) stated that, in a conciliatory spirit and in agreement with the Philippine delegation, he would not press the joint amendment (L.43) to a vote, though he hoped that it would be referred to the drafting committee with a recommendation.

45. Mr. KRISHNA RAO (India) said he was satisfied with the text of article 4, but would not have opposed the amendment submitted by Italy and the Philippines (L.43). He agreed with the United Kingdom representative's interpretation of the word " agrément ". He supported the Argentine amendment (L.37), but suggested that it should be revised to read: " If the receiving State refuses agrément it need not give its reasons."

46. Mr. TAWO MBU (Nigeria) said he would not support any of the amendments proposed for article 4, since he considered it fully satisfactory.

47. Mr. OJEDA (Mexico) supported the Argentine amendment (L.37).

48. Mr. LINARES (Guatemala) did not consider it necessary to impose a time limit for the agrément. It would be better to retain article 4 as it stood.

49. Mr. PINTO de LEMOS (Portugal) was of the same opinion. A time limit could create difficulties more serious than those it was designed to avoid. A time limit would in any case depend on the circumstances, of which the receiving State should be the sole judge.

50. Mr. VALLAT (United Kingdom) said he understood the concern of those delegations which wished to codify the right of the receiving State not to give reasons for its refusal, and to impose a reasonable time limit for the decision concerning the agrément. But was it really wise to write those principles into the convention ? First of all, the provisions of the convention would clearly be applied in a reasonable manner. Furthermore, if the principle of non-obligation of the receiving State in a certain respect were stated in one article, it must also be stated in regard to other cases in other articles. The United Kingdom representative therefore appealed to the Argentine delegation to withdraw its amendment.

51. Mr. BOLLINI SHAW (Argentina) regretted that he could not oblige the United Kingdom representative. An important question was at stake; moreover, the Argentine delegation had the impression that its proposal was supported by a majority.

52. The CHAIRMAN put the Argentine amendment to article 4 (L.37) to the vote.

The amendment was adopted by 31 votes to 9, with 28 abstentions.

53. Mr. PINTO de LEMOS (Portugal) explained that, though supporting the Argentine amendment in principle, he had not voted for it in view of its possible effects on the general structure of the convention.

Article 4, as amended, was adopted.

The meeting rose at 12.55 p.m.

TENTH MEETING

Friday, 10 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (*continued*)

Article 5 (Appointment to more than one State)

1. The CHAIRMAN invited debate on article 5 of the International Law Commission's draft (A/CONF.20/4) and drew attention to the amendments to that article submitted by a number of delegations.[1]

2. Mr. CASTREN (Finland), introducing his delegation's amendment (L.75), said that it conformed to international practice, improved the wording, and made

[1] For a list of the amendments to article 5, see the summary record of the fifth meeting (footnote to para. 1).

it more favourable to the smaller States. Article 5 as it stood would enable a receiving State which had already given its agrément to a head of mission to object to the extension of his territorial competence to a third State, though that was purely a matter between the sending State and its head of mission. The purpose of the amendment was to exclude that possibility and to subject multiple accreditation only to the provisions of article 4 concerning the agrément. The receiving State could thus attach to its agrément the condition that the head of mission should not be accredited also to another State. Moreover, by article 8 it could declare a head of mission persona non grata if it had very serious objections to his accreditation to another State.

3. Mr. SUFFIAN (Federation of Malaya) said that his delegation's amendment (L.44 and Corr. 1) would require for multiple accreditation the consent of all the receiving States. The same idea was contained in the United States amendment (L.19) and the Italian amendment (L.40), and his delegation was willing that all three amendments should be referred to the drafting committee if the principle were approved that the States concerned should be approached before a second accreditation, rather than being obliged to raise objections (if any) afterwards.

4. His delegation could not support the amendment proposed by Ceylon (L.71), because it did not require prior notification; nor could it support the Finnish amendment (L.75), which appeared altogether to prevent the first receiving State from objecting.

5. Mr. YASSEEN (Iraq) said that article 5 expressed an existing practice, but the proviso " Unless objection is offered by any of the receiving States concerned " was unsatisfactory. It would be clearer if it referred to express acceptance by all the States concerned, an idea contained in three amendments (L.19, L.40 and L.44 and Corr.1). Diplomatic relations were extremely delicate, and it was undesirable to place any of the States concerned before a fait accompli. It was therefore better to provide for prior consultation with all the States concerned than for subsequent objections by them.

6. Mr. MENDIS (Ceylon) introduced his delegation's amendment (L.71). For economic reasons and owing to shortage of staff, Ceylon was one of the leading exponents of multiple accreditation. As article 5 stood, if a head of mission was accredited to more than one receiving State, the consent of all would be required for his accreditation to yet another. That procedure was too cumbersome, and there appeared to be no reason why the sending State should take into account the views of all those countries. The purpose of the amendment was to provide that only the State of first accreditation would be entitled to object.

7. Mr. CAMERON (United States of America) said that his delegation agreed with that of Malaya that the receiving State should be consulted before accreditation to another State. That was the purpose of the first of the United States amendments (L.19).

8. The other two United States amendments were intended to recognize the frequent state practice of appointing a member of the diplomatic staff of the mission to one receiving State to perform functions in another. Thus the head of the mission of country A in country B, who was also accredited in country C, might act there through a member of his staff in country B.

9. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic), introducing his delegation's amendment (L.83), said that the proviso " Unless objection . . ." limited the sending State's freedom of accreditation in a manner completely at variance with existing practice. He drew attention to the first paragraph of article 5 of the Havana Convention: " Every State may entrust its representation before one or more Governments to a single diplomatic officer." (A/CONF.20/7)

10. In practice a receiving State hardly ever objected to a second accreditation. It was quite unnecessary to provide for exceptional cases, because they could be dealt with by other means.

11. The amendments of Italy, Malaya and Ceylon were open to the same objections as article 5 itself. The United States amendment went even further than article 5 by imposing the further condition of prior notification.

12. Mr. MAMELI (Italy), introducing his delegation's amendment (L.40), said that its object was to oblige the sending State to inform all other interested States of its intention in order to ascertain whether any of them objected to a multiple accreditation. His delegation agreed with the United States amendments (L.19, points 2 and 3) regarding the other members of the mission.

13. Mr. KRISHNA RAO (India) said that his delegation could not support the amendment submitted by Finland or that submitted by Ceylon, for they would restrict the right of objection of the States concerned; but it found acceptable the idea contained in the amendments by Malaya, the United States and Italy. He suggested that the idea be incorporated into article 5 by using such words as " After proper notification and in the absence of objection, a head of mission to one State, or any of the other members of the diplomatic staff of the mission, may be accredited or assigned to one or more other States with the concurrence of all the receiving States concerned."

14. He could not support the additional sentence proposed by Colombia (L.36). The double representation contemplated in that sentence was undoubtedly possible, but the whole matter of representation to international organizations was still somewhat fluid and should not be dealt with by the Conference.

15. Mr. SIMMONS (Ghana) said that the first of the United States amendments would not improve article 5, which was a brief and clear legal formulation and patently implied the need for notification to the receiving States concerned.

16. The other United States amendments were not altogether clear. In particular, the deletion of the words " as head of mission " would leave it uncertain in what capacity the other member of the diplomatic staff of the mission was being accredited or assigned to a third State.

17. Mr. JEZEK (Czechoslovakia) said that his delegation could not support the United States amendment requiring the consent of all the receiving States to the multiple accreditation, not only of the head of the mission, but also of any other member of its diplomatic staff. That proposal, and also indeed the proviso in article 5 relating to objection by receiving States, were at variance with existing practice. A second accreditation could not be made to depend on the will of the first receiving State. For that reason his delegation supported the Ukrainian proposal that the proviso should be deleted.

18. He introduced his delegation's proposal that a second paragraph should be added to article 5 (L.41) allowing the sending State to establish a diplomatic mission provisionally headed by a chargé d'affaires ad interim in a State where the head of mission did not reside permanently.

19. Mr. BOUZIRI (Tunisia) said that his delegation was in favour of multiple accreditation, but believed that the rules of courtesy and mutual respect forbade a second accreditation without the consent of the first receiving State. Draft article 5 met that requirement by means of a negative proviso. His delegation preferred the principle of consent by the receiving States to be incorporated positively in the article. He therefore supported the three amendments that would do so (L.19, L.40 and L.71), of which the Italian amendment seemed to be the best.

20. His delegation supported the Colombian proposal (L.36), which would incorporate into article 5 a useful provision not in any way contrary to the spirit of the draft articles. It had no objection to the substance of the Czechoslovak amendment (L.41), but did not think it was really necessary.

21. His delegation supported the additional clause proposed by the Netherlands and Spain (L.22) permitting accreditation of the same person as head of mission of two or more States. That provision would probably prove useful in future developments; moreover, since it expressly allowed objection by the receiving State, it was unexceptionable.

22. Mr. AGUDELO (Colombia), introducing his delegation's proposal (L.36), said that its purpose was to embody an existing practice. For example, many ambassadors of American States at Washington were accredited not only to the United States Government but also to the Organization of American States. A similar position existed at Vienna in regard to the International Atomic Energy Agency, thanks to the reasonable attitude of the Austrian Government.

23. The proposal did not specify a form of accreditation to international organizations, but merely enabled a head of mission in a receiving State to act as representative to international organizations. The provision was like that which enabled diplomatic officers to perform consular acts, and served the same purpose of helping countries short of staff and funds. Over half the countries of the world would find it difficult to establish separate missions in all countries and with all international organizations. Only a few large countries could afford adequate separate representation.

24. Mr. RIPHAGEN (Netherlands), introducing the proposal submitted jointly by the Netherlands and Spain (L.22), said that its purpose was to enable countries to economize in foreign-service staff. Several countries having the same interests could perhaps best serve them by having a common representative; subject to the consent of the receiving State concerned, they should be allowed to do so. The Havana Convention of 1928, article 5, second paragraph, contained a similar idea.

25. Mr. WESTRUP (Sweden) expressed strong support for the joint proposal (L.22). Owing to the increase in the number of States the question of joint representation was of great importance. It had been discussed by the Nordic countries, which were linked by close ties, and public opinion in all of them was very favourable to joint representation. Although no practical results had yet been achieved, it was essential to make clear that joint representation in the future would be no innovation.

26. Mr. TUNKIN (Union of Soviet Socialist Republics) said that article 5 could be interpreted to mean that multiple representation required the prior consent of all the receiving States, an interpretation which would be at variance with the existing practice. When the matter had been discussed in the International Law Commission, none of the members had been able to quote a single instance in which the first receiving State had been asked to consent to another accreditation. He added that as a great Power, the Soviet Union very rarely accredited a head of mission to more than one State.

27. It was clearly for the sending State to decide whether it wished to accredit one of its ambassadors to several countries. In doing so, it would of course consider the relations between the two prospective receiving States, and would not accredit the same ambassador to two States between whom relations were not normal. If, however, a situation arose in which a receiving State objected to a concurrent representation, it could make representations to the sending State. In the ultimate resort, it could declare the head of the mission persona non grata under article 8. The draft therefore adequately safeguarded the position of receiving States, and there was no need to include in article 5 a rule requiring the agrément of a State other than that to which the diplomat was to be accredited.

28. To make multiple representation subject to the consent of the receiving States concerned would cause unnecessary delay, for the sending State would have to wait until the first receiving State replied to its communication before it could approach the second receiving State for agrément.

29. He saw no reason why the scope of the Colombian proposal (L.36) should be restricted to international organizations having their headquarters in the receiving State. Moreover, the articles did not need to, and could not, specify all that a State might do. Accordingly, though his delegation had no objection on the substance, it considered the Colombian amendment unnecessary.

30. Of the other amendments adding to article 5, the Czechoslovak amendment (L.41) was useful in setting out the logical consequences of a second accreditation.

The proposal by the Netherlands and Spain (L.22) contained a useful provision but dealt with a matter quite distinct from the substance of article 5, and should be treated as a proposal for adding a separate article.

31. Mr. EL-ERIAN (United Arab Republic) said that every effort should be made to enable the diplomatic agent to perform his mission effectively as a link in harmonious relations between his country and the receiving country. He therefore supported the principle underlying article 5, that the agrément of the receiving State should be secured if a diplomatic agent was accredited to more than one State.

32. The amendments submitted by the United States of America, Italy, Malaya and Finland, as also the amalgamated text suggested by the representative of India, had the common purpose of avoiding surprise. His delegation would support them in the interests of clarity and in the belief that the agrément of the receiving State should be secured. It felt that the advantages would outweigh the difficulties to which the USSR representative had referred.

33. It would also support the second United States amendment extending the requirement to other members of the diplomatic staff of the mission. If the Committee approved that amendment, the Drafting Committee might consider whether the order of articles 5 and 6 should be reversed.

34. Mr. MELO LECAROS (Chile) said that his delegation supported the draft article in principle. Most of the amendments related to detail rather than to substance, and his delegation would support any which would improve the text. The proposal submitted by the Netherlands and Spain (L.22) affected substance. Its sponsors had stated that it corresponded to the second paragraph of article 5 of the 1928 Havana Convention. In his experience that paragraph had never been applied, and the case for which it provided never arose in practice. Accordingly, he did not support the proposal.

35. The additional sentence proposed by Colombia (L.36) was most useful, since it referred to a common practice. He suggested that the words " or another member of the diplomatic staff of the mission " should be added after the words " a head of mission ", since the minister or head of mission often did not act as his country's representative to international organizations.

36. His delegation would also support the amendment proposed by Czechoslovakia (L.41), which referred to a common practice.

37. Mr. DASKALOV (Bulgaria) said that the large number of amendments demonstrated the importance of article 5, which touched the vital interests of many especially of the smaller States. The right to accredit a head of mission to more than one State was accepted by international law. The sovereign right of a State to accredit a head of mission should not be qualified by an absolute requirement of consultation with the receiving State. Some of the amendments would violate that fundamental principle and complicate the procedure of accrediting a diplomatic agent to more than one country. The rights of the receiving State were adequately safeguarded, as had been pointed out by the USSR representative and others. His delegation could therefore not support those amendments which did not improve the draft article.

38. As the USSR representative had implied, the Colombian amendment (L.36) was somewhat beyond the scope of article 5.

39. His delegation would support the amendment of the Ukrainian SSR (L.83) and also the proposal submitted by Czechoslovakia (L.41).

40. Mr. TAWO MBU (Nigeria) said his delegation could not accept any of the amendments, which all contained elements of ambiguity. In the interests of clarity, it preferred the original text of article 5.

41. The joint proposal by the Netherlands and Spain (L.22) might have been appropriate in relation to article 4, which concerned the appointment of the head of the mission.

42. Mr. OJEDA (Mexico) said that his delegation could not support either the amendment submitted by Finland or that submitted by the Ukrainian SSR. And so far as the Colombian proposal was concerned, he said that it dealt with a question that was not under discussion.

43. The Czechoslovak amendment seemed unnecessary, since the situation it was intended to cover was a logical consequence of the establishment of diplomatic relations.

44. His delegation would support the amendments proposed by the United States of America, Italy, the Federation of Malaya and Ceylon, which clarified and expanded the draft without changing its substance; and it had no objection to the additional clause proposed by the Netherlands and Spain.

45. Mr. KIRCHSCHLAEGER (Austria) also supported that additional clause, for the reasons put forward by its sponsors, though he agreed with the USSR representative that it should more suitably form the subject of a separate article.

46. It was necessary to provide that the consent of the receiving State should be required for the appointment of a head of mission to one or more other States. Such consent, or the absence of objection, facilitated the task of the head of mission, particularly if relations between the receiving States concerned were strained. His delegation therefore supported article 5 in principle, and the first of the United States amendments. It would also support the other United States amendments, which took account of the growing number of States and the increasing degree of specialization. He shared the view of the representative of the United Arab Republic that, if a reference to " any other member of the diplomatic staff " were added, the Drafting Committee might consider reversing the order of articles 5 and 6.

47. Mr. MATINE-DAFTARY (Iran) said that the primary task of the International Law Commission had been to codify existing practice. Most of the amendments to article 5 were purely formal, and not always happy, changes of wording. Some, however, would change the entire structure of the draft article and conflict with

current practice. The draft was based on that practice, and there was no reason to change it. It was the product of careful thought. If members of the Committee could bear in mind that the Commission had done all in its power to codify and not to alter existing practice, they might find some amendments unnecessary.

48. Commenting on the amendment submitted by the Federation of Malaya, he said that, if it were adopted, it would change the whole current practice. A State always had the right to object, but it was not necessary to apply to each State for its concurrence.

49. Mr. GLASER (Romania) suggested that, in considering the draft articles, the Committee should consider cases in which difficulties had arisen, and draft clear and concise rules to cover them. The existing practice was that a head of mission might be accredited to one or more other States. No case was known in which a receiving State had opposed such an appointment. The system of agrément existed because a refusal by the receiving State to accept an appointment after it had been published would be a serious matter and would not improve relations between the States. It would be impossible to keep the procedure confidential if several States had to be asked for permission to accredit a head of mission and one State objected after another had already accepted the appointment. That example demonstrated the serious difficulties which arose in trying to formulate new rules beyond the practical needs. No obstacle should be put in the way of the many newly independent States lacking the means to appoint diplomatic missions of equal grade in every country with which they would like to have diplomatic relations.

50. He would support the additional clause proposed by Czechoslovakia, and also the amendments proposed by Finland and the Ukrainian SSR, which were in keeping with current practice.

51. With regard to the additional paragraph proposed by the Netherlands and Spain, he favoured its principle but suggested that it should form the subject of a separate article.

52. The three amendments submitted by the United States should be voted on separately. The second and third amendments were at variance with the purpose of the Conference and would hamper progress.

53. Mr. NGO-DINH-LUYEN (Viet-Nam) said that the existing text of article 5 might be interpreted to mean that the receiving State could reconsider the agrément it had already given. His delegation would therefore support the Ukrainian amendment. The article without the " unless " clause could then be taken as a basis for discussion of the other amendments.

54. In regard to the Czechoslovak proposal, his delegation considered that it would be more appropriate to consider the question of appointing a chargé d'affaires ad interim in connexion with article 17.

55. Mr. de ERICE y O'SHEA (Spain), speaking on behalf of the sponsors of the joint amendment (L.22), agreed to the suggestion that the proposed new paragraph should form the subject of a separate article. The amendment was in accordance with the relevant clause of the Havana Convention of 1928. That convention was still in force and was used as a guide to diplomatic relations by all the countries which had ratified it and by others, including his own. It has been said that the case contemplated in article 5, second paragraph, of the Havana Convention had never arisen. It was true that such cases were rare, but they did occur, and the joint amendment was a logical extension of article 5 of the draft under discussion.

56. His delegation would support the Czechoslovak proposal concerning the appointment of a chargé d'affaires ad interim, although that point was already covered by article 2.

57. It would also support the idea expressed in the very similar amendments submitted by Italy, Ceylon, the Federation of Malaya and Finland, giving its preference to the Finnish amendment replacing the " unless " clause by the words " Subject to the provision of article 4 ". Article 4 did, in fact, already cover the situation but his delegation would not object to a cross-reference to that article being added in article 5.

58. The first of the United States amendments should, he suggested, be referred to the Drafting Committee for consideration, since it differed only slightly from the existing text and seemed to be merely a drafting amendment.

59. If the United States delegation agreed to change the second of its amendments to read " or any other member of the diplomatic staff of that mission ", he would be able to support the amendment, which would broaden the scope of the article, make it clear who could be accredited and supplement the amendment proposed by Czechoslovakia.

60. Mr. BAIG (Pakistan) said he saw no objection to the article as drafted by the International Law Commission. It was unnecessary for the sending State to seek the consent of the first receiving State, but as a matter of courtesy that State should be informed. If an amendment was considered necessary, therefore, he would support only the first of the United States amendments.

61. Mr. DANKWORT (Federal Republic of Germany) said that the consent of all the States concerned was essential for harmonious diplomatic relations if a head of mission was to be accredited to several States. Article 5 provided that the receiving State might raise objections, but it did not expressly stipulate that the sending State must seek its consent. His delegation could not support those amendments which denied the right of the receiving State to object. It would, however, support the amendments proposed by the United States, Italy and the Federation of Malaya, and proposed that a revised text should be drafted on the basis of those amendments.

62. Mr. RUEGGER (Switzerland) said that a codification could never be exhaustive. The articles had to be

read against the background of a custom of long standing, which was sufficiently flexible to meet all new situations. It was inconceivable that a sending State would not ascertain the views of all the receiving States concerned before deciding on a multiple accreditation. In any event, it was always open to any of those States to refuse its agrément.

63. For those reasons, he favoured the amendments proposed by the Ukrainian SSR and Finland, but would also be prepared to accept article 5 as it stood.

64. With regard to the proposed additions, he was unable to support the Czechoslovak amendment. He also wished to place on record his delegation's express reservations regarding the Colombian proposal; the question of the rules governing international organizations and missions to those organizations was a separate one which had yet to be studied by the International Law Commission.

65. Lastly, he said the proposal by the Netherlands and Spain was very interesting, particularly in view of possible future developments. He suggested, however, that since that proposal raised an entirely new problem, it should be dealt with later, in a separate protocol so as to facilitate the adoption of the basic instrument to be drawn up by the Conference.

66. Mr. CAMERON (United States of America) said that the purpose of the second and third of the United States amendments was to permit the accreditation of a head of mission to a second receiving State and the assignment to that State of a member of the staff of the mission; his delegation would have no objection to any drafting changes which might be thought necessary.

67. Mr. TALJAARD (Union of South Africa) said that, as he understood it, article 5 meant that, before establishing a concurrent representation, the sending State would have to consult all the receiving States concerned and obtain their consent. Thereafter, if the head of the mission was changed, the agrément of all the receiving States would have to be obtained in accordance with article 4.

68. The CHAIRMAN confirmed that interpretation.

69. He then invited the Committee to take a decision on the amendments before it and suggested that it start with those tending to weaken article 5 — viz., the amendments submitted by the Ukrainian SSR (L.83), Finland (L.75) and Ceylon (L.71).

70. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) withdrew his delegation's amendment in favour of that proposed by Finland.

The amendment proposed by Finland was rejected by 36 votes to 19, with 12 abstentions.

71. The CHAIRMAN proposed that the Committee should next decide whether it wished to retain article 5 as drafted by the International Law Commission or amend the article as proposed by Italy (L.40), Malaya (L.44 and Corr.1) and the United States of America (L.19).

72. He invited the Committee to vote on the principle of the three amendments in question, all of which tended to strengthen article 5; if the principle was adopted, the amendments could be referred to the Drafting Committee, together with the Indian suggestion for a combined text.

The principle of the three amendments in question was adopted by 39 votes to 14, with 13 abstentions.

73. In reply to a question by Mr. GLASER (Romania), the CHAIRMAN said that in consequence of the acceptance of the principle of the amendments, a vote on article 5 as drafted by the International Law Commission was unnecessary. He drew attention to the fact that the number of votes in favour of amendment had exceeded the total of votes against plus abstentions.

74. In reply to a question by Mr. BARTOŠ (Yugoslavia), the CHAIRMAN said that representatives would have an opportunity of explaining their votes at the next meeting.

75. He invited the Committee to vote on the Czechoslovak proposal (L.41).

The Czechoslovak proposal was adopted by 32 votes to 11, with 26 abstentions.

76. Mr. AGUDELO (Colombia) said that, in the light of the discussion, he would be prepared to accept drafting amendments to his delegation's proposal (L.36).

77. The CHAIRMAN put to the vote the principle contained in the Colombian proposal, subject to drafting changes.

The principle of the proposal was adopted by 30 votes to 13, with 24 abstentions.

78. The CHAIRMAN suggested that the joint proposal of the Netherlands and Spain (L.22) should be dealt with as though it were a proposal for a separate article.

79. Mr. KEVIN (Australia) suggested that the proposal could conveniently be discussed in connexion with article 7.

80. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the Swiss representative's suggestion that discussion of the proposal be deferred.

81. The CHAIRMAN said that, if there were no objections, he would take it that the Committee agreed to defer consideration of the joint proposal.

It was so agreed.[2]

Article 5 was referred to the Drafting Committee for re-drafting in the light of the foregoing decisions.

The meeting rose at 6.45 p.m.

[2] For the resumption of the debate on the Netherlands-Spanish proposal see twelfth meeting, paragraph 67.

ELEVENTH MEETING

Monday, 13 March 1961, at 10.30 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (*continued*)

Article 5 (Appointment to more than one State) (*continued*)

1. The CHAIRMAN said that some delegations wished to explain their voting at the tenth meeting.

2. Mr. BARTOŠ (Yugoslavia) explained that at the tenth meeting his delegation had voted against reference to the Drafting Committee of several amendments because it believed that they related to substance.

3. Mr. WICK KOUN (Cambodia) said that his delegation had abstained in two votes on amendments to article 5, since it had hoped the Committee would be able to vote on the original text, which it supported, and not only on the amendments.

Article 6 (Appointment of the staff of the mission)

4. The CHAIRMAN invited debate on article 6 of the International Law Commission's draft (A/CONF.20/4) and drew attention to the amendments submitted.[1]

5. Mr. CAMERON (United States of America), introducing his delegation's amendment (L.20), said that its object was to state explicitly what was already implicit in the article as drafted by the Commission. Inasmuch as the new paragraph 2 proposed by Mexico (L.32 and Rev.1) would achieve the same purpose, and in order to facilitate debate, his delegation would, however, withdraw its amendment and instead support the Mexican proposal.

6. Mr. SUFFIAN (Federation of Malaya) said that the amendment submitted by his delegation (L.45) was purely a drafting amendment. In giving the receiving State the right to require the names of attachés " to be submitted beforehand, for its approval ", article 6 implied that the receiving State was the superior authority, whereas in reality, diplomatic relations were based on equality between States. The object of the amendment was to remove that implication. His delegation would be content if the amendment was referred to the Drafting Committee without a vote.

7. Mr. BARUNI (Libya) said that his delegation would not press for a vote on its amendment (L.47) if his government's right to refuse to accept any military, naval or air attaché was assured.

8. Mr. de VAUCELLES (France) said that his delegation would agree that its amendment (L.1) should be referred to the Drafting Committee, together with the amendment proposed by Italy (L.48 and Rev.1), and the sub-amendment to the French amendment which had been submitted by Spain and Tunisia (L.92). In spite of variations of detail, the Drafting Committee could base a satisfactory text on those amendments and that proposed by Chile and Ecuador (L.104).

9. He pointed out, however, that the second of his delegation's amendments extended the provision to specialized technical advisers and attachés. The Drafting Committee should not lose sight of the point, which was not mentioned in any of the amendments submitted by other delegations.

10. The CHAIRMAN appreciated the French delegation's endeavour to save time, but pointed out that the amendments proposed by France, Italy, the Congo (Leopoldville) and Chile and Ecuador went into details of the procedure and machinery for the recognition of diplomatic rank and provileges. The draft as it stood mentioned no such details but merely sought to establish principles. The Committee would therefore have to decide whether it wished provisions on machinery and procedure to be introduced into the draft.

11. On the other hand, the sub-amendment to the French amendment proposed by Spain and Tunisia raised a question of principle rather than procedure, in that it sought to determine the status of the diplomat pending the receiving State's decision on his formal recognition. The Committee might consider adopting a provision to the effect that, pending that decision, the new member of the diplomatic staff should enjoy privileges and immunities provisionally. It might, however, be unnecessary to add any such provision in article 6, since article 18, paragraph 1, seemed to cover the point fully.

12. Mr. EL-ERIAN (United Arab Republic) suggested that the point should be discussed in connexion with article 38 on privileges and immunities, and that article 6 should deal only with the appointment of the staff of the mission.

13. Mr. GASIOROWSKI (Poland) supported the Chairman's view that, in so far as the amendment of France and the related amendments, which his delegation opposed, touched on an extremely important principle, they should not be referred to the Drafting Committee without a decision by the Committee of the Whole.

14. Mr. BOUZIRI (Tunisia) said that the point mentioned by the Chairman was covered only incidentally by article 38, which referred to " every person entitled to diplomatic privileges and immunities ". The persons so entitled were not defined in article 38, and the two questions were distinct.

15. The original text of article 6 was simple and flexible and to some extent reflected current practice. It did not, however, cover certain difficulties and details. The sub-amendment presented by his delegation jointly with Spain dealt with procedure, but with procedure very closely linked to principle. Article 6 stressed the freedom

[1] The following amendments had been submitted: France, A/CONF.20/C.1/L.1; United States of America, A/CONF.20/C.1/L.20; Mexico, A/CONF.20/C.1/L.32 and Rev.1; Argentina, A/CONF.20/C.1/L.38; Fed. of Malaya, A/CONF.20/C.1/L.45; Spain, A/CONF.20/C.1/L.46; Libya, A/CONF.20/C.1/L.47; Italy, A/CONF.20/C.1/L.48 and Rev.1; Congo (Leop.), A/CONF.20/C.1/L.74; Spain and Tunisia, A/CONF.20/C.1/L.92; Chile and Ecuador, A/CONF.20/C.1/L.104.

of the sending State to appoint the members of its mission, making no distinction between diplomatic staff and administrative and technical staff. The same confusion arose in the draft in regard to the granting of immunities, and there, too, a distinction should be made. The freedom of the sending State to appoint all the members of its mission was limited only by articles 8 and 10. Accordingly, his delegation could not support the draft article as it stood. A total freedom of appointment might embarrass the receiving State. Although under article 8 the receiving State could declare any member of the staff persona non grata, it would be better to include a preventive measure rather than a remedial measure that might be difficult to apply in practice. The provision in article 6 that the receiving State might require the names of military, naval or air attachés to be submitted beforehand " for its approval " was based on the prior assumption that such appointments were normal. His delegation did not accept that assumption. The special character of such appointments should be stressed and they should require the decision, rather than the approval, of the receiving State. The amendment proposed by Italy, although not entirely satisfactory, was an improvement on the existing text, and his delegation supported the principle embodied in it and in the amendment submitted by Libya.

16. The amendment proposed by France, supplemented by that by Chile and Ecuador, limited the freedom of appointment and provided safeguards for the receiving State. There was no provision in either amendment, however, for a time limit within which entry on the diplomatic list must be made. There should be some guarantee that the period before entry was not long or indefinite. The sub-amendment proposed by Spain and Tunisia therefore provided that a decision concerning entry should be taken " as soon as possible ", and that in the interim the diplomatic agent should be able to perform his functions and enjoy security and the respect due to him as the representative of his country, at least provisionally. The receiving State should accept the good faith of the sending State and presume in favour of the diplomatic agent. His delegation could not support any amendment which did not correspond to those views.

17. Mr. KAHAMBA (Congo: Léopoldville), introducing his delegation's amendment, said that its purpose was to specify the essential requirements: notification of the appointment to the receiving State, and that State's consent, albeit tacit, to the appointment. The general diplomatic usage was that the notification was effected by a note verbale, and the absence of the reply from the receiving State was deemed to constitute acceptance. But the request for a diplomatic visa, and the granting of the visa, would also constitute notification and acceptance.

18. Diplomatic status could not be made to depend on the entry of the diplomatic agent's name on the diplomatic list, which was merely a list of names drawn up mainly for the benefit of the authorities. The entry of a name on that list did not itself confer diplomatic status, nor did the omission of a name *per se* deprive the person concerned of that status.

19. He could not accept the idea expressed in the joint sub-amendment by Spain and Tunisia of diplomatic privileges being granted " by courtesy ". Such privileges were conceded as of right.

20. Mr. MELO LECAROS (Chile) withdrew the joint amendment of his delegation and Ecuador, on the understanding that the reference in it to the diplomatic register rather than the diplomatic list would be referred to the Drafting Committee. The diplomatic register, unlike the diplomatic list, would always be up to date.

21. He could accept the sub-amendment proposed by Spain and Tunisia, in particular its concluding sentence.

22. He drew attention to the passage in the Argentine amendment which provided that the receiving State was not obliged to state reasons for its refusal of a military, naval or air attaché.

23. Mr. YASSEEN (Iraq) said that the articles should be confined to the statement of general principles of diplomatic law and should not deal with the details of the application of those principles. In particular he opposed any reference to the diplomatic list, which would give it undue importance. The establishment of the diplomatic list was purely an administrative measure intended to facilitate the identification of diplomatic agents. The entry of a name on the list did not raise an absolute presumption that the person enjoyed diplomatic status, which was derived from international law, not from entry on the diplomatic list.

24. Mr. REGALA (Philippines) said that it was difficult to distinguish between questions of substance and those of procedure. For example, many authorities regarded entry on the diplomatic register as a matter of procedure, but others regarded it as an essential prerequisite to the enjoyment of diplomatic privileges. Conflicting rulings had also been given on that point by national courts.

25. The Committee should therefore decide as a matter of substance whether it regarded notification and acceptance, or entry on the diplomatic register, as the prerequisite for the enjoyment of diplomatic immunities.

26. Mr. de VAUCELLES (France) said that his delegation was prepared to agree that the question of the provisional status of a diplomatic agent pending recognition should be discussed in connexion with article 38. The French amendment to article 6, however, dealt with other points as well and filled a number of gaps in the article.

27. It was necessary to refer expressly in article 6 to the receiving State's droit de regard. He agreed with the Chilean representative that the receiving State's recognition of the status of a diplomatic agent was effected by entry on the diplomatic register, not the actual publication of the diplomatic list. In all countries where he had served as a diplomat, he had been issued with a card bearing a number, a fact which clearly showed that a register of foreign diplomatic officers existed in all those countries. However, marginal cases arose, which led in practice to negotiation between a head of mission and the receiving State. If it were desired to maintain the maximum privileges deemed essential to diplomatic

agents, it was necessary to do everything possible to limit numbers.

28. For those reasons his delegation would not accept any text which did not contain the idea of an agreement between the sending State and the receiving State, expressed by the entry in the diplomatic register and the issue of a special card.

29. Mr. JEZEK (Czechoslovakia) said that his delegation could accept the Argentine amendment, but considered that the other amendments would not improve article 6 and would only complicate the existing practice.

30. In particular he could not accept the idea, expressed in the sub-amendment proposed by Spain and Tunisia, that diplomatic privileges were enjoyed merely by courtesy pending registration. A considerable time might elapse between a diplomatic agent's arrival and his registration in the receiving State, and it was extremely undesirable, both for the receiving State and for the diplomatic agent, that his status should be uncertain during that period. The provisions of that sub-amendment, and of the French amendment, conflicted with the provisions of article 38, paragraph 1. They were also at variance with the recognized practice, which was that a diplomatic agent enjoyed diplomatic privileges from the moment he crossed the frontier.

31. He opposed the Italian amendment, which would introduce an added complication in requiring the receiving State's written acknowledgement of the communication of the appointment.

32. For those reasons his delegation urged that article 6 should be adopted as drafted by the Commission, subject only to consideration of the Argentine amendment.

33. Mr. MAMELI (Italy), introducing his delegation's amendment, said that it set forth the rule that the consent of the receiving State was essential to the existence of diplomatic status. Several speakers had referred to the right of the receiving State to declare a diplomatic officer persona non grata. That right existed at all times, but its exercise was an extremely delicate matter. It would be unwise to create conditions under which such unpleasant incidents might be multiplied unnecessarily.

34. As for the form in which the receiving State's consent should be given, his delegation still thought that the best form was that State's acknowledgment of the notice of appointment. Whereas the appointment of the head of the mission was subject to the agrément of the receiving State, appointment of the members of the mission's staff was not; and some provision had to be made to safeguard the receiving State's right of decision.

35. With regard to military, naval or air attachés, the Italian amendment strengthened article 6 by providing that " the sending State shall request beforehand this approval ".

36. Mr. VALLAT (United Kingdom) said that the purpose of the articles was to codify existing principles and rules of general application, subject only to those exceptions which were essential to deal with particular cases.

37. Article 6, as drafted by the International Law Commission, provided an excellent example of that method. The first sentence stated the general principle: the sending State had right freely to appoint the members of the staff of the mission. The second sentence set forth an exception for military, naval and air attachés. He did not believe that the Conference should attempt to deal with details of procedure. In particular, it was not advisable to refer to the internal procedure of the establishment of the diplomatic list. The exact purpose of the diplomatic list varied from one State to another, and the Conference could not iron out the differences. Moreover, procedure was dealt with in other articles of the draft, such as article 12 on the commencement of the functions of the head of the mission, article 15 on precedence, and article 38 on the duration of privileges and immunities.

38. For those reasons his delegation urged the rejection of all amendments to article 6.

39. Mr. KRISHNA RAO (India) said that the records of the discussion in the Commission showed that it had not attached to the diplomatic list the same importance as did some of the amendments before the Committee.

40. It had emerged from those discussions that no formal act such as agrément was necessary in the case of diplomatic agents other than the head of mission, but that some means should be provided whereby the receiving State could be advised of their presence in its territory.

41. English courts had held more than once that the entry of a name on the diplomatic list was not an essential prerequisite to the enjoyment of diplomatic privileges.

42. In any event, whatever form was recognized for the acceptance by the receiving State, that State was bound to observe the privileges and immunities of the diplomatic agent from the moment he entered its territory.

43. The Italian amendment and the Mexican amendment seemed to cover the question of consent by the receiving State, and the Indian delegation found them acceptable.

44. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the Commission's draft of article 6, which reflected the existing practice. First, it stated the right of the sending State freely to appoint its diplomatic agents. Secondly, it emphasized the distinction between the head of the mission, for whose appointment the prior agrément of the receiving State was necessary, and the members of the mission, who could be appointed without any prior request for consent. Since article 8 clearly gave the receiving State the right at all times to declare any diplomatic agent persona non grata, no useful purpose would be served by any addition to article 6.

45. If the receiving State refused to grant a diplomatic card or to include a name on the diplomatic register, as suggested in some of the amendments, it would in fact be applying article 8.

46. The attempt made in some of the amendments to regulate points of detail would only lead to complication in the appointment of diplomatic agents. Some, moreover, related to matters dealt with in articles other than article 6. For example, the question of the notification

of appointments, mentioned in the Spanish delegation's amendment, was relevant to article 9. Similarly, the Mexican delegation's proposal for a paragraph 2 related to the subject-matter of article 8.

47. The second sentence of article 6 also stated an accepted practice. Some, but not all, States required the names of military, naval and air attachés to be submitted beforehand for approval, and the purpose of the provision was to enable them to continue to do so.

48. The French proposal that the same treatment should be extended to specialized technical advisers and attachés went far beyond the existing practice. It would empower the receiving State to enquire into the division of work inside the diplomatic mission.

49. Mr. MATINE-DAFTARY (Iran) said that it was a fundamental principle of a debate on amendments that the Chairman had full discretion to decide whether amendments were relevant or not. If the Conference's rules of procedure did not contain that principle, he suggested that a new rule should be added.

50. The French amendment was not relevant to article 6. It introduced the procedure of agrément in relation to all the members of the mission, and the procedure for which it provided was slow and complicated. It would make recognition of any member of a mission depend upon his entry on the diplomatic list. That would delay indefinitely his assumption of diplomatic privileges and immunities, for it was well known that in practice very few States could keep their diplomatic lists constantly up to date. It would therefore be more appropriate to discuss the amendment in connexion with article 38.

51. Mr. GLASER (Romania) said that the French proposal would completely reverse existing practice as reflected in article 6. It could also lead to the extraordinary situation that a diplomat travelling to a new post would enjoy diplomatic privileges and immunities in all the countries of transit, because his status was written on his passport, but not in his country of assignment, because he did not appear on the diplomatic list. States would be unwilling to send diplomats abroad unless they were certain to enjoy diplomatic privileges and immunities. It was true that the sub-amendment of Spain and Tunisia provided a courtesy safeguard; but that was not a proper substitute for protection under international law. The situation for which the French amendment was intended to provide would hardly ever arise, and he could not see that so rare a case justified a radical change in the existing law.

52. Of the other amendments, he would support that submitted by Argentina.

53. Mr. de ERICE y O'SHEA (Spain) said that the two main points stressed in the amendments to article 6 were freedom of appointment for the sending State, and acceptance by the receiving State. He was willing to withdraw his delegation's amendment in favour of the Mexican amendment if the representative of Mexico would accept the following minor amendments: deletion of the reference to military, naval and air attachés in the second sentence of paragraph 1, and the addition to paragraph 2 of words to the effect that a State was not obliged to give reasons for refusing the approval of a member of a mission. He hoped his offer might facilitate withdrawal of the amendments submitted by Chile and Ecuador, Argentina, and possibly those submitted by Libya and the Congo (Leopoldville).

54. Mr. OJEDA (Mexico) accepted the sub-amendments proposed by the Spanish representative. In reply to comments on the Mexican amendment, he said that a State's right to refuse a member of the mission's staff was not the same as its right to declare a member persona non grata (article 8). His delegation's amendment was relevant to article 6, for in both a distinction was made between general and military personnel.

55. Mr. BARTOŠ (Yugoslavia) said that both practically and theoretically the best amendment, and the closest to past and current practice, was that submitted by Italy. It postulated an understanding between the States concerned. The Italian delegation, he was sure, wished to spare a diplomat the unpleasant experience of being sent out by his country wiht a diplomatic visa and later being declared persona non grata by the receiving country; indeed, he saw no reason why anyone should be put in such a position. He would vote for the Italian amendment.

56. Mr. DELFINO (Argentina) said he would withdraw his delegation's amendment on condition that the provision finally adopted provided that a State was not obliged to give reasons for declaring a member of a mission persona non grata. It was an exceedingly important principle, and its omission could cause difficulties between States.

57. Mr. TUNKIN (Union of Soviet Socialist Republics) admitted that the representative of Mexico was right in insisting that the second part of his amendment was not fully covered by article 8. Nevertheless, he still found the amendment difficult to accept, for it appeared wrongly to place sending and receiving States on an equal footing. Adequate safeguards were provided by articles 8 and 10, and he therefore considered that article 6 should not be amended.

The meeting rose at 1.10 p.m.

TWELFTH MEETING

Monday, 13 March 1961, at 3.15 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (*continued*)

Article 6 (Appointment of the staff of the mission) (*continued*)

1. The CHAIRMAN invited the Committee to continue its debate on article 6 of the International Law Com-

mission's draft (A/CONF.20/4) and drew attention to the Mexican delegation's revised amendment (L.32/Rev.1) incorporating the Spanish delegation's sub-amendment (see eleventh meeting, paras. 53 and 54.)

2. Mr. KAHAMBA (Congo: Léopoldville) said his delegation would not press it amendment (L.74) and would support article 6 as drafted by the International Law Commission.

3. Mr. TUNKIN (Union of Soviet Socialist Republics) pointed out that, in specifying that prior notification of the names of attachés could be required only in the case of military, naval or air attachés, the International Law Commission had merely conformed to existing practice. Besides, to require such notification in the case of all attachés when it was not required for diplomatic staff of higher rank would be absurd.

4. Mr. BOLLINI SHAW (Argentina) withdrew his delegation's amendment (L.38) in favour of the revised Mexican amendment (L.32/Rev.1), but wished to be sure that the word " attachés ", as used in that context, referred solely to military, naval or air attachés, and not to ordinary embassy attachés. Secondly, he hoped that the words " so that it may give or refuse its approval ", which appeared in the Argentine amendment, would be added at the end of paragraph 1 of the Mexican amendment.

5. Mr. VALLAT (United Kingdom) endorsed the Soviet Union representative's comment concerning attachés. He could not vote for the Mexican amendment unless it specified that paragraph 1 applied only to military, naval or air attachés. With regard to the second sentence of paragraph 2 of the Mexican amendment, he referred to his earlier remarks on a like point in connexion with article 4 (ninth meeting, paragraph 50). He would vote against paragraph 2 for the reasons then stated.

6. Mr. REGALA (Philippines) agreed with the representative of the Soviet Union and the United Kingdom that it should be specified — as in article 6 of the draft — that prior notification of the names of attachés could be required only in the case of military, naval or air attachés. He would therefore vote for article 6 as drafted by the Commission.

7. Mr. PUPLAMPU (Ghana) considered that the Mexican amendment only complicated matters, and proposed that the Committee should vote first on article 6 of the Commission's draft.

8. Mr. NAFEH ZADE (United Arab Republic) agreed with the representative of the USSR and the United Kingdom on the need to specify, in the provision of article 6 concerning attachés, that the reference was to military, naval or air attachés. On the other hand, he did not agree with the United Kingdom representative's view concerning the second sentence of paragraph 2 of the Mexican amendment.

9. Mr. OJEDA (Mexico) said he would gladly support article 6 of the draft, provided that paragraph 2 of his delegation's revised amendment were added.

10. Mr. CARMONA (Venezuela), speaking on a point of order, pointed out that, under rule 41 of the rules of procedure, when an amendment was moved to a proposal, the amendment had to be voted on first. Hence the Committee should first vote on the Mexican amendment to article 6 and not on the text of the draft article, as proposed by the representative of Ghana.

11. The CHAIRMAN said that the Committee was master of its own procedure and could decide to give priority to any amendment or proposal it wished.

12. Mr. de VAUCELLES (France) challenged the Chairman's interpretation. The rules of procedure had been adopted not by the Committee, but by the Conference, a higher authority, and could not be changed by the Committee.

13. The CHAIRMAN said he was aware of rule 41, but the Committee could decide otherwise by a two-thirds majority.

14. Mr. EL-ERIAN (United Arab Republic) supported the Chairman. The Committee was behindhand in its work and the procedure proposed by the representative of Ghana would speed up the discussion.

15. The CHAIRMAN invited the Committee to vote on the proposal of Ghana that the text of article 6 as drafted by the Commission should be put to the vote first.

The proposal was adopted by 49 votes to 13, with 4 abstentions.

Article 6 as drafted by the International Law Commission was adopted by 54 votes to 10, with 6 abstentions.

16. The CHAIRMAN ruled that, since article 6 had been adopted, there was no need to vote on the amendments proposed to that article.

17. Mr. de ERICE y O'SHEA (Spain) did not challenge the Chairman's ruling, but observed that, while supporting the text of article 6, the Mexican delegation had proposed the addition of a new paragraph 2. That proposal did not constitute an amendment, but rather an addition, to article 6. The Spanish delegation accordingly requested that the Committee vote on that addition.

18. The CHAIRMAN considered that, in voting in favour of the existing text of article 6, the Committee had rejected any change in that article. If that interpretation was challenged, and if the Committee wished to vote on the Mexican delegation's proposed addition to article 6, it could decide to do so by a two-thirds majority. But such a decision would not tend to speed up its work.

19. Mr. BARTOŠ (Yugoslavia) said he had abstained from voting on the proposal by Ghana, because he considered that the rules of procedure adopted by the Conference should be followed to the letter.

20. Mr. RUEGGER (Switzerland) said he had abstained from voting on the proposal by Ghana but was glad that article 6 had been adopted as it stood. However, the Swiss delegation interpreted the article in the sense of the Italian amendment (L.48), which was in conformity with the practice followed by the Federal Government.

21. Mr. de VAUCELLES (France) said he would not have voted against the proposal by Ghana if he had followed his natural inclination. But the procedure adopted had seemed to him too dangerous by reason of the precedent created, which made it possible to rule out all proposed amendments and might therefore have very far-reaching effects and might cause many States to refuse later to ratify the convention.

22. U SOE TIN (Burma) explained that he had voted against article 6, not because he did not approve it, but because he would have preferred the text proposed by Mexico to be added.

23. Mr. TAWO MBU (Nigeria) said he had voted for article 6 as it stood, but, since many of the amendments had failed, he suggested that in future delegations submitting amendments should add an explanatory commentary, as the Netherlands and Spanish delegations had done in their amendment to article 5 (L.22).

24. Mr. MAMELI (Italy) associated himself with the reservations made by several delegations concerning the procedure followed in the voting on article 6.

25. Mr. PUPLAMPU (Ghana) wished to set the fears of the French representative at rest. The delegation of Ghana would have recourse to the procedure followed in voting on article 6 only when it was absolutely necessary.

26. Mr. HORAN (Ireland) said he had abstained from voting on the proposal by Ghana, but unreservedly associated himself with the Swiss representative's statement on the interpretation of article 6.

27. Mr. OJEDA (Mexico) fully agreed with the French representative's remarks on the procedure followed in voting on article 6.

Article 7 (Appointment of nationals of the receiving State)

28. The CHAIRMAN invited debate on article 7 of the International Law Commission's draft and drew attention to the amendments submitted to the article.[1]

29. Mr. HU (China) referred to his government's comments (A/3859, annex) on the corresponding provision of the 1957 draft of the International Law Commission. China itself did not appoint diplomats who were not Chinese nationals, but it recognized that certain newly independent States might need to employ foreigners in their diplomatic service. His delegation would support the joint amendment proposed by Brazil, Chile and Ireland (L.77) subject to its sub-amendment (L.121) to paragraph 2 of that amendment.

30. Mr. BOUZIRI (Tunisia) announced the withdrawal of his delegation's amendment (L.62) since two other amendments (L.77 and L.66) seemed to contain sufficient safeguards. However, he suggested that the joint amendment (L.77) should specify that consent could be withdrawn at any time, and that the Indonesian amendment (L.66) should state expressly that its provision applied to nationals of a third State.

31. Mr. de VAUCELLES (France) said that his delegation withdrew its amendment (L.2) and would support the Korean amendment (L.106), or a provision suitably combining the amendments submitted.

32. Mr. RUEGGER (Switzerland) said he would not press his delegation's amendment (L.84). He said it was a general rule of construction that, in the absence of any express restrictive provision in the Convention, States would retain full liberty. Accordingly, his delegation considered it would be quite wrong that a diplomatic mission should have to seek the approval of the receiving State in respect of non-diplomatic staff.

33. Mr. de SOUZA LEAO (Brazil) said that the object of the sponsors of the joint amendment (L.77) was that the convention should lay down the principle that members of the diplomatic staff of the mission should be nationals of the sending State. He had no objection to the addition of a sentence providing that the receiving State's consent to the employment of its nationals could be withdrawn at any time, as proposed by Indonesia (L.66).

34. Mr. WHANG (Korea) observed that his delegation's amendment (L.106) had the same object as those of France and Indonesia, and that he would be willing to withdraw it if the Committee asked the Drafting Committee to embody its principle in article 7.

35. Mr. VALLAT (United Kingdom) considered that the provisions relating to the appointment of nationals of the receiving and of a third State respectively should from two separate paragraphs. He submitted the amendment drafted by his delegation (L.137).

36. Mr. de ERICE y O'SHEA (Spain) proposed that in paragraph 2 of the United Kingdom amendment the word " express " should be omitted.

37. Mr. SUBARDJO (Indonesia), noting that paragraph 2 of the United Kingdom amendment employed the same wording as the Indonesian amendment (L.66), withdrew his delegation's amendments.

38. Mr. HORAN (Ireland) held that the principle should be that diplomats should be nationals of the sending State. Secondly, however, States which desired to do so should be left free to appoint persons other than their own nationals to be members of their diplomatic staff. The United Kingdom amendment did not allow for cases in which members of diplomatic staff possessed the nationality both of the sending and of the receiving or a third State. The scope of the joint amendment (L.77) was wider, and it should commend itself to a majority of the Committee.

39. Mr. SUCHARITAKUL (Thailand) said that his delegation's amendment (L.50) provided that the nationality of members of the diplomatic staff of a mission should be determined in accordance with the law of the receiving State; he asked for comments on the point.

[1] The following amendments had been submitted: France, A/CONF.20/C.1/L.2; Thailand, A/CONF.20/C.1/L.50; Indonesia, A/CONF.20/C.1/L.66; Mexico, A/CONF.20/C.1/L.54; Tunisia, A/CONF.20/C.1/L.62; Brazil, Chile and Ireland, A/CONF.20/C.1/L.77; Switzerland, A/CONF.20/C.1/L.84; Rep. of Korea, A/CONF.20/C.1/L.106; China, A/CONF.20/C.1/L.121; United Kingdom, A/CONF.20/C.1/L.137.

40. Mr. KRISHNA RAO (India) said it was unnecessary to include in article 7 the provisions of the Thai amendment, since it was implied that the receiving State could withhold its consent.

41. Mr. SUCHARITAKUL (Thailand) pointed out that his delegation's amendment was intended precisely to ensure that the receiving State should not have to take decisions of the kind, which were bound to injure relations between States.

42. Mr. HU (China) pointed out that the words " or who may be claimed as a national of the receiving State " in his delegation's amendment (L.121) had the same effect as the passage " under the law of such State " in Thailand's amendment.

43. Mr. USTOR (Hungary) supported the principle of the Thai amendment.

44. Mr. BARNES (Liberia) also supported that amendment. He added that the International Law Commission had probably not intended the head of the mission to be covered by article 7. Draft article 1 (*e*) defined the head of the mission as a diplomatic agent, and draft article 37 dealt specifically with diplomatic agents who were nationals of the receiving State.

45. Mr. YASSEEN (Iraq) considered that the cases of diplomatic staff chosen respectively from among the nationals of the receiving State and of a third State should be treated separately. His delegation did not think that nationals of the receiving State should be appointed as diplomats. The interests of States were not always identical, and a man should not be placed in an awkward position. Furthermore, the apoointment of diplomatic staff from among the nationals of a third State should not depend on the consent of the receiving State.

46. The Thai amendment stated a very correct principle and a generally accepted rule of international law, for a person could not be a national of a particular State except according to the law of that State. The Conference, however, was not asked to legislate on nationality questions, and hence it would be wrong to amend article 7 in the manner proposed.

47. Mr. BOLLINI SHAW (Argentina) said his delegation would have no difficulty in voting for the Commission's draft of article 7, though it would prefer the provision to be amended to read: " . . . may not be appointed . . . without the consent . . . " He unreservedly approved the principle stated in the Thai amendment, and was quite prepared to accept the United Kingdom amendment if it was construed to mean that the nationality of members of the mission who might be regarded as nationals of the receiving State was determined according to the law of that State.

48. Mr. KRISHNA RAO (India) pointed out, in reply to the representative of Thailand, that the receiving State might well give its consent even where members of the mission had its nationality under its municipal law. Moreover, problems arising from the double nationality of members of the mission were duly covered by paragraphs 2 and 3 of the United Kingdom amendment. On the point raised by the Liberian representative, he said that from paragraph 2 of the Commission's commentary on article 7 (A/3859) it was evident that the head of the mission was one of the persons constituting it.

49. Mr. OJEDA (Mexico) supported the Chinese delegation's amendment, since it covered all cases which might arise out of the nationality of members of the mission. He considered, furthermore, that the amendment submitted by his own delegation (L.54) in no way infringed the sovereignty of the sending State.

50. Mr. SUCHARITAKUL (Thailand) suggested that, as several speakers had approved his delegation's amendment, it should be incorporated in the United Kingdom amendment. It would suffice if in paragraph 2 the words " as determined by the laws of that State " were inserted after the words " having the nationality of the receiving State ".

51. Mr. VALLAT (United Kingdom) agreed to the Spanish representative's proposal that the adjective " express " should be deleted in paragraph 2 of the United Kingdom amendment. He would, however, have some difficulty in agreeing to the proposal that a provision should be added to the effect that nationality would be determined by the law of the receiving State. It was a universally recognized rule that the State was sovereign in matters of nationality, and hence it was unnecessary to state the rule expressly in article 7. Perhaps the question should be referred to the Drafting Committee.

52. Mr. CARMONA (Venezuela) said he would vote for the joint amendment (L.77). He admitted, however, that the United Kingdom amendment was an improvement, and accordingly he would have no difficulty in voting for it. So far as double nationality was concerned the clause might, as suggested by the Argentine representative, provide that the nationality of members of the mission possessing the nationality of the receiving State should be determined by the law of that State. He added, however, that that was a universally accepted principle; it was stated, for instance, in the Convention on certain questions relating to the conflict of nationality laws, adopted by the Codification Conference of The Hague in 1930.

53. Mr. SUCHARITAKUL (Thailand) withdrew his delegation's amendment (L.50), on the assumption that the Conference endorsed the interpretation that, in the circumstances contemplated, the law of the receiving State prevailed for the purpose of determining nationality.

54. The CHAIRMAN confirmed that interpretation.

55. Mr. EL-ERIAN (United Arab Republic) said that the International Law Commission, as was stated in paragraph 9 of its commentary on article 7, " did not think it necessary to provide that the consent of the receiving State is a condition necessary for the appointment as a diplomatic agent of a national of a *third State*." The amendment proposed by the United Kingdom had,

of course, the advantage of dealing separately with nationals of the receiving State and those of a third State. But the advisability of writing the provisions of paragraph 3 of the amendment into article 7 was doubtful. The Commission had very wisely presented a flexible text which should not raise difficulties in practice, and the Committee should not, he thought, introduce excessively detailed provisions.

56. Mr. de SOUZA LEAO (Brazil) said that his delegation and the delegation of Chile would accept the United Kingdom amendment.

57. Mr. HORAN (Ireland) stated that, as one of the sponsors of the joint amendment, he could not associate himself at that stage with the Brazilian representative's proposal.

58. The CHAIRMAN thought the Committee was ready to vote on the United Kingdom amendment (L.137).

59. Mr. EL-ERIAN (United Arab Republic) requested a separate vote on paragraphs 2 and 3.

Paragraph 2, subject to the omission of the adjective " express ", was adopted by 61 votes to 4, with 7 abstentions.

Paragraph 3 was adopted by 62 votes to 3, with 8 abstentions.

The United Kingdom draft of article 7 as a whole (L.137) was adopted by 62 votes to none, with 10 abstentions.

60. Mr. DASKALOV (Bulgaria) said that the majority had approved a text covering rather rare cases. His delegation had voted for it in order not to obstruct the Committee's discussions.

61. Mr. YASSEEN (Iraq) said he had not been able to vote for paragraphs 2 and 3. The appointment as a diplomat of a national of a third State did not require the consent of the receiving State.

62. Mr. BAYONA (Colombia) said he had voted for the United Kingdom proposal, even though under Colombian law Colombian nationals were not allowed to serve in foreign diplomatic missions. Furthermore, under Colombian law only Colombian citizens could be appointed to Colombia's diplomatic missions abroad.

63. Mr. ZLITNI (Libya) said he had voted against paragraph 2 because he did not think that nationals of the receiving State could be appointed to diplomatic missions accredited to that State.

64. Mr. TUNKIN (Union of Soviet Socialist Republics) said that he did not consider that, in adopting the United Kingdom draft of article 7, the Committee had laid down as a principle that nationals of the receiving State could be accredited to that State. That situation could only arise by agreement between the States concerned.

65. Mr. CARMONA (Venezuela) said that under Venezuelan law, Venezuelan citizens could not represent a foreign State.

66. Mr. BARTOŠ (Yugoslavia) said he had voted for the United Kingdom amendment because he approved the rule in paragraph 1 stating that only nationals of the sending State could represent it. Paragraph 2 left the door open to compromise, and that appeared to be a satisfactory solution.

Proposal by the Netherlands and Spain concerning the representation of two or more States by one diplomatic agent (L.22).

67. The CHAIRMAN recalled that at the tenth meeting (paras. 78-81) it had been agreed that the Netherlands-Spanish proposal (L.22) would be considered later, in connexion with article 7. In the absence of objections, he took it that the Committee adopted the proposal, which might take the form of a separate article.

It was so agreed.

68. Mr. BARTOŠ (Yugoslavia) regretted that the speed of the discussion had not allowed him to express his opposition to the proposal, which he regarded as conflicting with the principles of international law and as a dangerous innovation. He stressed the difficult position of a diplomat representing two sending States whose relations with the receiving State were not equally friendly. That would be one of the consequences of the provision, which the Yugoslav delegation firmly opposed.

69. Mr. MELO LECAROS (Chile) likewise opposed the proposal. The case with which it dealt had not arisen since the Havana Convention of 1928. Mr. Carlos Calvo had indeed represented Argentina and Paraguay in France; but that had been long before the Havana Convention.

70. Mr. TUNKIN (Union of Soviet Socialist Republics) said he had raised no objection to the proposal of the Netherlands and Spain; but the Committee had not had an opportunity to study it. His delegation could therefore only support it in principle, on condition that the Drafting Committee improved its wording and made it clearer.

71. Mr. MATINE-DAFTARY (Iran) stressed that in approving the proposal he had not been thinking at all of the case where the head of the mission presented letters of credence from different governments. In his opinion, the only case contemplated was that of defence of the interests of a third State in the receiving State.

72. Mr. NAFEH ZADE (United Arab Republic) said that the proposal would probably be welcomed by newly independent States which suffered from financial or administrative difficulties. Moreover, the trend towards federation or confederation in some regions might lead to interesting applications of the principle. Like the Swiss delegation (tenth meeting, para. 65), he hoped that the provision would form the subject of a protocol to the convention.

73. He did not think the Drafting Committee was competent to change the substance of a text referred to it without a directive from the Committee of the Whole. It could therefore draft a protocol or article in the light of the debate.

74. Mr. RIPHAGEN (Netherlands) said that the second paragraph of the commentary on the proposal established

clearly that one and the same person could be accredited by several States, and left no room for doubt on that point.

Article 8 (Persons declared persona non grata)

75. The CHAIRMAN invited debate on article 8 of the International Law Commission's draft and drew attention to the amendments which had been submitted to that article.[1]

76. Mr. BOLLINI SHAW (Argentina) stated that his delegation withdrew its amendment (L.39) and would support the French delegation's amendment (L.3).

77. Mr. CAMERON (United States of America) withdrew his delegation's amendment (L.21).

The meeting rose at 6 p.m.

[1] The following amendments had been submitted: France, A/CONF.20/C.1/L.3; United States of America, A/CONF.20/C.1/L.21; Argentina, A/CONF.20/C.1/L.39; United Kingdom, A/CONF.20/C.1/L.52; Belgium, A/CONF.20/C.1/L.63; India, A/CONF.20/C.1/L.64; Spain, A/CONF.20/C.1/L.78; Italy, A/CONF.20/C.1/L.85; Indonesia, A/CONF.20/C.1/L.134.

THIRTEENTH MEETING

Tuesday, 14 March 1961, at 10.30 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 8 (Persons declared persona non grata) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 8 and the amendments thereto. In consequence of the withdrawal of two of the amendments (L.21 and L.39), seven remained to be considered (L.3, L.52, L.63, L.64, L.78, L.85 and L.134). In connexion with the French delegation's amendment (L.3) he said that the Committee, when voting on other articles of the draft, had sometimes decided to include and sometimes to omit references to the right of the receiving State not to give reasons for action affecting foreign diplomats; in its vote on the French amendment the Committee would therefore have to consider the implications of including that reference in some articles and excluding it in others.

2. Of the other amendments, that proposed by the United Kingdom (L.52) seemed to relate mainly to drafting. The Belgian amendment (L.63), intended to cover the case in which a diplomat was declared persona non grata before his arrival in the receiving State, seemed to be covered by the first words of article 8, paragraph 1: " The receiving State may at any time . . . " The Indian amendment (L.64) appeared to be already covered by the relevant definition and by the sense of the whole draft. The purpose of the Indonesian amendment (L.134) seemed to be already fulfilled by article 8, which left the receiving State free to determine what constituted a " reasonable period ".

3. Mr. KRISHNA RAO (India) said that, in view of the changes which had been made in article 4, and of the other provisions in article 8, his delegation would withdraw its amendment (L.64).

4. Mr. BOLLINI SHAW (Argentina) said that he had withdrawn his amendment (L.39) in order to support the French amendment (L.3), which covered the same point. If, however, the French amendment were not put to the vote, he would re-introduce his own.

5. Mr. de VAUCELLES (France) insisted on a vote on his delegation's amendment. A reference to the right of the receiving State not to give reasons for its action had been included in article 4; if no such reference were included in article 8 it might be thought that article 4 was an exception and that the right did not exist in the circumstances contemplated by article 8.

6. Mr. GLASSE (United Kingdom) agreed that the United Kingdom amendment related chiefly to drafting, and withdrew it in favour of the Belgian amendment.

7. Mr. MATINE-DAFTARY (Iran) said that none of the amendments departed in any way from the spirit of the draft; they could all therefore be conveniently referred to the Drafting Committee. In particular, he thought that the right of the receiving State not to state reasons, provided for in the French amendment, was a matter of course. However, if the French delegation pressed the amendment he would not oppose it.

8. Mr. de ROMREE (Belgium) said that the Belgian amendment affected substance and should therefore be voted upon. Article 8 dealt mainly with persons already in the receiving State, and his delegation therefore considered that an express provision was needed to cover the case of a person declared persona non grata before his arrival.

9. Mr. CAMERON (United States of America) supported the Belgian amendment. Since, however, article 8, paragraph 1, referred to " any member of the staff of the mission " and therefore covered not only diplomatic staff but also administrative and technical staff (defined in article 1 (*f*)) and service staff (defined in article 1 (*g*)), and since the term " persona non grata " applied technically only to diplomatic staff, he suggested that the words " or not acceptable ", which were the words applicable to the other types of staff, be introduced into the Belgian amendment.

10. Mr. de ROMREE (Belgium) accepted that suggestion.

11. Mr. CARMONA (Venezuela) expressed support for the French amendment, which dealt with substance.

12. Mr. MAMELI (Italy), introducing his delegation's amendment (L.85), said that it was not common for a

diplomat recalled by his sending State to remain in the receiving State. Those cases, however, though infrequent, were extremely unpleasant, and the purpose of the Italian amendment was to set forth clearly the right of the receiving State to expel the diplomat.

13. His delegation supported the Belgian amendment.

14. Mr. TUNKIN (Union of Soviet Socialist Republics) said that none of the amendments altered the substance of article 8, and it already covered all the questions raised in them. Nevertheless, the United Kingdom amendment improved the text and his delegation regretted its withdrawal. It would have filled a small gap in article 8, paragraph 1. The first sentence of that paragraph, by its use of the words " at any time ", covered the case not only of a person already in the receiving State, but also that of a person who had not yet arrived. The second sentence, however, referred to recall or termination of functions, expressions which could apply only to a person already in the receiving State. In order to cover in that sentence also the case of a person who had not yet arrived, it would be useful to introduce, as originally proposed by the United Kingdom delegation, a reference to the termination of that person's appointment.

15. With regard to the Indonesian amendment, he agreed with the Chairman that article 8, paragraph 2, already adequately covered the point. The provisions of that paragraph implied that it was for the receiving State to determine what constituted a reasonable period, but those provisions should also be considered to have an objective meaning. Clearly, the receiving State could not claim that two hours was a reasonable period within which to leave the country.

16. His delegation could not support the Spanish amendment (L.78), which upset the whole structure of article 8 without actually meeting all the points covered by the draft. It was correct in distinguishing between the declaration of persona non grata, which applied to a member of the diplomatic staff, and the declaration that a person was " not acceptable ", which applied to other members of the staff of the mission. The amendment, however, appeared to suggest that the receiving State's right to request the departure of the person applied only to administrative and technical staff and to service staff. In practice the receiving State could also invite a diplomatic officer to leave its territory.

17. The Italian amendment contained a statement which was correct but which, if introduced into article 8, might prove harmful. It was true that the receiving State could ask the person concerned to leave its territory, but equally truly it could take other steps against him. Once a person was no longer recognized as a member of a diplomatic mission, he became an ordinary alien; and it was unnecessary to state that he could be invited to leave the territory of the receiving State, because under the general rules of international law it could treat him as an alien and order him out of the country.

18. Mr. de ERICE y O'SHEA (Spain) emphasized that his delegation wished to maintain article 8, paragraph 2, as it stood. The effect of the Spanish amendment was merely to draw a distinction between diplomatic staff, to whom the procedure of declaration of persona non grata applied, and other member of the staff of the mission, in respect of whom the head of mission could be asked to terminate their services and arrange for their departure from the territory of the receiving State.

19. As it stood, article 8 seemed to suggest that the terms " persona non grata " and " not acceptable " were interchangeable. In fact a declaration of persona non grata, which in some countries required a decision by the full Council of Ministers, was too formal, too solemn and too complicated a procedure to be applied to a member of the administrative or technical staff or of the service staff of the mission. Those persons were often locally recruited; they had resided in the receiving State before their engagement and would continue to do so after it ended. A declaration that such a person was not acceptable might well result from some minor incident which justified the termination of his services — and indeed, if he were a foreigner, his expulsion — but should not be inflated into a diplomatic incident. The purpose of the Spanish amendment was to enable incidents of that type to be settled by the head of mission himself, without spoiling the good relations between the two States.

20. Mr. YASSEEN (Iraq) remarked that a diplomat who was no longer regarded as such was just an ordinary alien. In accordance with international law aliens could be expelled. Also, by the domestic law of most countries, expulsion was an executive act and, even where administrative courts existed, was regarded as an act of sovereignty outside the authority of those courts.

21. He hoped that the Italian amendment would not be put to the vote because a negative vote — on the ground that its provisions were technically superfluous — could be misinterpreted to mean that the Committee questioned the undeniable right of the receiving State to expel a former diplomat under article 8 of the International Law Commission's draft.

22. Mr. KRISHNA RAO (India) regretted the withdrawal of the United Kingdom amendment, which would have clarified the text and covered the point raised in the Belgian amendment.

23. With regard to the French amendment, which his delegation did not support, he recalled that the Committee had not adopted a similar amendment (L.38) to article 6.

24. The Italian amendment would not add anything to article 8. A person who was no longer recognized by the receiving State as a member of a diplomatic mission became a person to whom the whole of the draft articles had ceased to apply. His functions would be terminated, as stated in article 41 (*c*).

25. He could not support the Spanish amendment (L.78), which implied that members of the mission staff other than the diplomatic staff could be expelled otherwise than " within a reasonable period ". The comprehensive wording of article 8 was preferable. In addition, the Spanish amendment seemed to suggest that a member of the staff of the mission who was a national of the receiving State might be expelled from that State.

26. For those reasons he supported the International Law Commission's text, with the drafting change proposed by the United Kingdom.

27. Mr. SUBARDJO (Indonesia) said that, in the light of the Chairman's remarks and of the interpretation by the Soviet Union representative, his delegation withdrew its amendment (L.134).

28. Mr. MAMELI (Italy) said that, in view of the discussion, he would not press for a vote on his delegation's amendment (L.85).

29. Mr. de ERICE y O'SHEA (Spain) said that, since there appeared to be general support for the principle embodied in the Spanish amendment (L.78) that a distinction should be made between the diplomatic staff and the other staff of the mission, he would be content if that principle alone were put to the vote. The form could be left to the Drafting Committee.

30. The CHAIRMAN observed that the Committee had, on other occasions when it had had before it several amendments embodying the same principle, voted only on the principle and left the wording to the Drafting Committee. On the present occasion the two concepts of " persona non grata " and " not acceptable " were already contained in the article, and the Committee had before it only one amendment, proposed by Spain, which raised a new aspect of the matter.

31. Mr. TUNKIN (Union of Soviet Socialist Republics) said that article 8, paragraph 1, might indeed be improved by making a separate reference to diplomatic staff, who could be declared persona non grata, and other staff, who could be declared not acceptable. He would agree to a vote on the principle of such an amendment, on the understanding that the Drafting Committee would be instructed to prepare a draft in accordance with that principle but not with the Spanish amendment (L.78), and would abide by the Commission's text.

32. Mr. de ERICE y O'SHEA (Spain) said he would not insist on the actual wording of his amendment. He was willing that the principle should be adopted on the understanding expressed by the Soviet Union representative.

33. Mr. BOUZIRI (Tunisia) was in favour of the United Kingdom amendment (L.52), and wished to re-introduce it in the name of his own delegation.

34. Mr. KRISHNA RAO (India) commended the action of the representative of Tunisia. With regard to the proposed vote on the principle as opposed to the text of the Spanish amendment, he was uncertain of its implications, for it was not clear how article 8 would be applied once a distinction had been established between diplomatic and non-diplomatic staff.

35. The CHAIRMAN put to the vote the principle of the Spanish delegation's amendment (L.78).

The principle of the amendment was adopted by 35 votes to 15, with 16 abstentions.

36. The CHAIRMAN suggested that the Drafting Committee be instructed to re-draft article 8 in terms which distinguished between the categories of diplomatic and non-diplomatic staff.

It was so agreed.

The French delegation's amendment (L.3) was adopted by 28 votes to 16, with 26 abstentions.

37. The CHAIRMAN put to the vote the Belgian delegation's amendment (L.63) (as amended by the United States delegation by insertion of the words " or not acceptable " after the words " non grata ").

The amendment, as amended, was adopted by 35 votes to 21, with 15 abstentions.

38. Mr. BOUZIRI (Tunisia) withdrew the former United Kingdom amendment, since its purpose was served by the adoption of the Belgian amendment.

Article 8, as amended, was adopted by 65 votes to none, with 6 abstentions.

Article 9 (Notification of arrival and departure)

39. The CHAIRMAN invited debate on article 9 and on the amendments thereto.[1]

40. Mr. SUCHARITAKUL (Thailand) withdrew his amendment (L.51) in favour of the United Kingdom amendment (L.9), but reserved the right to re-submit it if the United Kingdom amendment did not reach the voting stage. He asked that the paragraphs of the United Kingdom amendment should be voted on separately.

41. The purpose of his delegation's amendment was to make article 9 applicable to the head of a mission as well as to the staff: under the definition in article 1 the " members of the staff of the mission " did not include the head of the mission.

42. Mr. VALLAT (United Kingdom), introducing his delegation's amendments, explained that the first would provide for notification of the arrival and departure of the members of the mission, their families and servants. The second was intended to take into account differences of practice: in some countries (his own, for example) notification was not necessarily made to the Ministry of Foreign Affairs. The third amendment was intended to reduce the number of notifications; the receiving State would hardly wish to be notified of the arrival and departure of persons not entitled to diplomatic privileges and immunities.

43. Mr. de VAUCELLES (France) had the impression that his delegation's amendment had been criticized for seeming to involve the internal authorities of the receiving State in questions regarding the status of members of the mission of a sending State. Whereas, however, persons with diplomatic status were dealt with by the Ministry of Foreign Affairs, persons such as

[1] The following amendments had been submitted: France, A/CONF.20/C.1/L.4; United Kingdom, A/CONF.20/C.1/L.9; Czechoslovakia, A/CONF.20/C.1/L.49; Thailand, A/CONF.20/C.1/L.51; Mexico, A/CONF.20/C.1/L.55; Australia, A/CONF.20/C.1/L.60; Ceylon, A/CONF.20/C.1/L.72; Spain, A/CONF.20/C.1/L.79.

private servants were in a different position. In France, they required residence permits from the department responsible, which by courtesy were provided free of charge through the Ministry of Foreign Affairs. Article 9 referred only to notification to the Ministry of Foreign Affairs, and therefore provided no guarantee that the appropriate department would be kept informed of the movements of such persons. His government was concerned at the possibility that, if they left the mission and were no longer entitled to a courtesy permit, they might remain in the country without complying with the regulations governing aliens.

44. Mr. JEZEK (Czechoslovakia) said there was no doubt of the validity of the principle of article 9. It would, however, be desirable to state more clearly whether it referred only to arrivals to take up appointment and to final departures or also, for example, to leave and departure on mission. The amendment submitted by his delegation was intended to clarify that point, and added a provision concerning notification of the arrival and final departure of members of the private staff. It was based *mutatis mutandis* on article 24 of the draft articles on consular intercourse and immunities prepared by the International Law Commission (A/4425).

45. The delegation of Czechoslovakia would accept the proposal by the United Kingdom and Thailand that the words " of the staff " in the first sentence of article 9 should be deleted and was ready to make corresponding changes in its own amendment (L.49).

46. Mr. de ERICE y O'SHEA (Spain) withdrew the first paragraph of his delegation's amendment (L.79) in favour of the corresponding provision proposed by Mexico (L.55). He also withdrew the second paragraph of his delegation's amendment in favour of the third of the United Kingdom amendments (L.9).

47. Mr. MARISCAL (Mexico) agreed to the deletion of the words " of the staff " in paragraph 1 of his delegation's amendment (L.55).

48. Mr. GUNEWARDENE (Ceylon) withdrew his delegation's amendment (L.72) in favour of the Australian amendment (L.60).

49. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the paragraph proposed by France (L.4) would be out of place in the draft articles. It was an internal question which authorities should be notified by the Ministry of Foreign Affairs, and the question should not be mentioned in an international convention. The draft articles dealt with diplomatic representatives, not ordinary citizens. It was normal, therefore, that their arrival and departure should be notified directly to the Ministry of Foreign Affairs. In that respect the difference between members of the diplomatic mission and ordinary citizens was precisely that the former did not, for example, have to apply for police permits.

50. His delegation would accept the proposal by the United Kingdom and Thailand that the requirement for the notification of arrival and departure should be extended to the head of mission. The intention of the third of the United Kingdom amendments was not clear. The receiving State should be informed of the recruitment and dismissal of private servants even if, as nationals of the receiving State, they did not enjoy privileges and immunities. His delegation would therefore oppose that particular amendment.

51. The re-draft of article 9 proposed by Mexico (L.55) contained a number of unacceptable provisions. Paragraph 2, for example, was not in accordance with current practice and seemed unnecessary: the interval distribution of duties was entirely within the competence of the diplomatic mission. The same applied to paragraph 3; it was difficult to see how changes in functions or duties could affect the position of the persons concerned vis-à-vis the receiving State. The inclusion of those provisions, which were superfluous and went beyond existing practice, could lead only to confusion and unnecessary complications.

52. His delegation would support the re-draft proposed by Czechoslovakia (L.49), which was an improvement on the existing draft. As the representative of Czechoslovakia had explained, it was based on a more recent draft prepared by the International Law Commission.

53. Mr. UCHIDA (Japan) supported the view expressed by the representative of Czechoslovakia. His delegation interpreted " arrival " to mean first arrival, and " departure " to mean final departure. The article could hardly cover every arrival and departure in the case of travel or leave. The point might be considered by the Drafting Committee.

54. Mr. TAWO MBU (Nigeria) supported the deletion of the words " of the staff," which seemed superfluous. He would also vote for the other amendments proposed by the United Kingdom, which seemed to cover all the points necessary in article 9. He could not accept, however, the re-draft proposed by Mexico, which was too far-reaching, or the proposal by France (L4.), which introduced a reference to local practice and was not of universal application. His delegation would also vote against the Australian amendment, which did not appear to add anything of substance to the original.

55. Mr. NAFEH ZADE (United Arab Republic) said that the article did not cover the head of the mission. The Commission's commentary to the article mentioned persons recently appointed to a mission and those finally leaving their posts. The article referred to notification of arrival and departure of the members of the mission, without mentioning the head of the mission.

56. If the term " the members of the mission ", and not " the members of the staff of the mission " were used, the word " first " should be inserted before " arrival " and the word " final " before " departure ".

57. Mr. WICK KOUN (Cambodia) did not think it necessary to add the words " who are entitled to privileges and immunities " after " private servants ". In his country, Cambodian citizens locally engaged as servants in a foreign mission did not benefit from privileges and immunities in Cambodian territory.

58. Mr. CAMERON (United States of America) supported amendments proposed by the United Kingdom. Referring to the first sentence of article 37, paragraph 2, he said the United Kingdom amendment would make it unnecessary for the sending State to notify the engagement of any staff for whom it was not requesting diplomatic privileges and immunities.

The meeting rose at 12.55 p.m.

FOURTEENTH MEETING

Tuesday, 14 March 1961, at 3.15 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 9 (Notification of arrival and departure) *(continued)*

1. The CHAIRMAN invited continued debate on article 9 of the International Law Commission's draft (A/CONF.20/4) and on the amendments to the article.[1]

2. Mr. VALLAT (United Kingdom) said that the convention being prepared should be in harmony with the Commission's recent draft on consular intercourse and immunities (A/4425). That would not be the case if the Committee were to approve article 9 as it stood. It would be better, he suggested, to take as a basis the Czechoslovak amendment (L.49), subject to the omission of the words " of the staff ", as proposed by the United Kingdom (L.9) and Thailand (L.51), and to the addition of a provision corresponding to the second sentence of draft article 9.

3. Mr. de VAUCELLES (France) agreed and considered that the second and third of the United Kingdom amendments should be embodied in the re-draft of article 9. For the sake of facilitating debate, the French delegation withdrew its amendment (L.4).

4. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the United Kingdom representative's suggestion.

5. Mr. JEZEK (Czechoslovakia) agreed to the procedure suggested by the United Kingdom and proposed the following additional clause to the Czechoslovak amendment: " (*d*) A similar notification shall be given whenever members of the mission and private servants are locally engaged or discharged from among persons resident in the receiving State."

6. Mr. CAMERON (United States of America) said that the additional clause did not really reflect the intention of the third of the United Kingdom amendments.

7. Mr. TALJAARD (Union of South Africa) said that his country did not grant privileges and immunities to the private servants of members of foreign diplomatic missions. Accordingly he preferred the Czechoslovak text to that drafted by the International Law Commission and could not support the third of the United Kingdom amendments.

8. Mr. BOUZIRI (Tunisia) thought the procedure provided for in sub-paragraph (*c*) of the Czechoslovak amendment too complicated. Moreover, as the United States representative had pointed out, the new paragraph (*d*) did not specify that notification was required only for those private servants who were entitled to privileges and immunities.

9. Mr. CARMONA (Venezuela) said that his country did not grant privileges and immunities to the private servants of foreign missions and, like the representative of Tunisia, he considered the procedure provided for in sub-paragraph (*c*) of the amendment too complicated. He would therefore ask for a separate vote on that paragraph and would oppose it. He would also vote against the Mexican amendment (L.55), which had the serious defect of treating private servants in the same way as members of the families of the mission staff. On the other hand, he would vote in favour of the third of the United Kingdom amendments.

10. Mr. MARISCAL (Mexico) announced that, to simplify proceedings, his delegation would withdraw its amendment and vote for the revised Czechoslovak amendment.

11. Mr. MELO LECAROS (Chile) and Mr. de ERICE y O'SHEA (Spain) supported the revised Czechoslovak amendment and the third of the United Kingdom amendments. They suggested, however, that in that paragraph the words " who are entitled " be replaced by " if they are entitled ".

12. Mr. de VAUCELLES (France) supported that suggestion.

13. The CHAIRMAN put to the vote, sub-paragraph by sub-paragraph, the Czechoslovak amendment (L.49), as revised.

Sub-paragraph (a) was adopted by 63 votes to none, with 3 abstentions.

Sub-paragraph (b) was adopted by 64 votes to none, with 3 abstentions.

Sub-paragraph (c) was adopted by 61 votes to 1, with 7 abstentions.

Sub-paragraph (d) was adopted by 60 votes to 2, with 5 abstentions.

14. The CHAIRMAN put to the vote, successively, the United Kingdom amendments (L.9), pointing out that the first, which had been included in the revised Czechoslovak text, had been adopted with that text.

The second amendment was adopted by 54 votes to 2, with 10 abstentions.

The third amendment was adopted by 40 votes to 4, with 25 abstentions.

[1] For the list of amendments, see thirteenth meeting, para. 39.

15. Mr. VALLAT (United Kingdom) proposed that the Australian amendment should be re-drafted so as to provide for the addition of the following sentence after the clauses just adopted: " Where possible, prior notice of arrival and departure should also be given."

16. Mr. KEVIN (Australia) agreed to that re-draft.

The Australian amendment, as so revised, was adopted by 54 votes to none, with 12 abstentions.

17. The CHAIRMAN put to the vote the revised Czechoslovak amendment as a whole, subject to those further amendments.

The provision as a whole, as so amended, was adopted by 65 votes to 1, with 4 abstentions.

Article 10 (Size of staff)

18. The CHAIRMAN invited debate on article 10 and drew attention to the amendments thereto.[1]

19. Mr. OJEDA (Mexico) observed that, especially since the Second World War, many States had tended to enlarge the staff of diplomatic missions considerably and that the number of attachés, in particular, was continually increasing. As, however, the receiving State should be free not to agree to the sending State's appointing an excessive number of diplomatic staff, Mexico would vote in favour of the Argentine amendment (L.119).

20. Mr. NGO-DINH-LUYEN (Viet-Nam) explained that his delegation's amendment (L.88) stressed two ideas. The first was the " extent " of relations between the sending State and the receiving State, and the second was the need to fix a definite number for the staff of the mission, pending specific agreement between the two governments. It could hardly be left to the sending State alone to judge " circumstances and conditions in the receiving State ". If the idea of the extent of relations were adopted, the two States could assess the situation bilaterally. The second rule his delegation proposed would permit the immediate establishment of diplomatic relations on the basis of equal size of the two missions, without prejudice to subsequent agreement.

21. The receiving State, which might be a newly independent State, should be protected not only against encroachment by the sending State, but also against its own apprehensions: the fear, for instance, of having to accord hospitality to a mission of unspecified size. Article 10 as it stood might provide sufficient safeguards for States with long experience of international intercourse, but not for young States only beginning to make their voice heard in the concert of nations.

22. Mr. de ERICE y O'SHEA (Spain) announced that his delegation was withdrawing paragraph 1 of its amendment (L.80), since the text proposed by Argentina (L.119) was based on the same idea.

23. In paragraph 2 the word " functions " had been substituted for " category "; but that was merely a drafting change. On the other hand, the principle of reciprocity called for some comment. The smaller countries, including his own, were not happy about the large size of foreign diplomatic missions. Spain did not presume to maintain as many diplomatic missions abroad as those it received; accordingly, it supported, not the principle of numerical, but that of functional reciprocity. Reciprocity would then apply to function: a specific field of interest to both States, for which they considered it useful to appoint specially qualified diplomats.

24. While recognizing the merits of the Viet-Namese amendment, his delegation had decided to support the Argentine amendment, which more closely met its views.

25. Mr. MAMELI (Italy) said that article 10 as it stood dealt only with one aspect of the problem. Why should only the circumstances and conditions in the receiving State be decisive ? The criterion should be more objective, and the extent of the relations between the States should be taken into account.

26. Mr. BOUZIRI (Tunisia) announced that, to facilitate the proceedings, his delegation withdrew its amendment. It was dissatisfied with article 6, and he insisted on the need for leaving the final decision on the size of the mission to the receiving State. He supported the Argentine amendment (L.119).

27. Mr. BOLLINI SHAW (Argentina) thanked the Spanish and Tunisian delegations for their support of the Argentine amendment.

28. For paragraph 2, his delegation supported the wording submitted by Spain (L.80).

29. Mr. VALLAT (United Kingdom) thought that article 10, which had been drafted after careful reflection, would maintain a just balance between possibly conflicting interests. The receiving State might not wish to receive too large a diplomatic mission, whereas the sending State might wish to increase its mission's staff. The International Law Commission had not ignored that possible source of dispute, and had carefully considered the comments made by governments. On the other hand, it had — a notable fact — adopted the draft articles without opposition. Hence the United Kingdom delegation somewhat hesitated to amend the draft, and, although it had listened with interest to the arguments, thought it wiser to retain the original text.

30. The Argentina amendment, for instance, would leave the receiving State a discretion unlimited by any legal provision. Article 10, as it stood, however, laid down an objective criterion, and the United Kingdom would vote for it. Some slight drafting changes might be made, as suggested by Ceylon (L.76), but should not affect the substance.

31. Mr. KRISHNA RAO (India) said that the new amendments introduced new criteria. He doubted whether acceptance of the principle of numerical equality of missions would be useful in practice. The Commission's text was the best that had been proposed: it left the receiving State reasonably free to refuse. Hence India supported article 10 as it stood.

[1] The following amendments had been submitted: Tunisia, A/CONF.20/C.1/L.65; Ceylon, L. 76; Spain, L.80; Italy, L.86; Viet-Nam, L.88; Argentina, L.119.

32. Mr. MENDIS (Ceylon) was not entirely satisfied with article 10; and in putting forward its amendment his delegation wished to clarify two points. It deleted the phrase " what is reasonable and normal ", which it considered dangerously vague; and substituted the words " may require " for " may refuse ". The size of the mission should be determined by friendly negotiation, in accordance with the spirit of article 10.

33. Mr. CAMERON (United States of America) said that the object of article 10 was to settle conflicts of interest between the sending and the receiving States. Paragraph 1 entitled the receiving State to decide, but only in the absence of a specific agreement. His delegation did not quarrel with the idea that the receiving State should decide, but felt bound to point out that if a dispute arose, there would be no authority for considering a complaint by the sending State.

34. The United States delegation accepted in principle article 10 as drafted, but considered the Argentine amendment well founded and would vote for it.

35. He would like paragraph 2 to be clarified, and asked for a separate vote on it.

36. Mr. de VAUCELLES (France) shared the United States representative's doubts of the exact meaning of paragraph 2. Perhaps those of the representatives who had been members of the International Law Commission would explain what was meant by " officials of a particular category ", and by " circumstances and conditions in the receiving State ".

37. Mr. CARMONA (Venezuela) said that his delegation agreed entirely with the Argentine delegation.

38. Mr. EL-ERIAN (United Arab Republic) agreed with the representatives of India and the United Kingdom that article 10 maintained a happy balance between the interests of the sending and of the receiving State. The International Law Commission had settled article 10 after carefully considering the comments of governments and making every allowance for the various trends expressed in its discussions. It first recommended a specific agreement, and then mentioned the bounds within which the receiving State could exercise its right of refusal. Some delegations would have preferred a more precise wording, but it should be recognized that greater precision was hardly possible in that matter. His delegation was therefore generally in favour of the Commission's text, but considered that the Argentine proposal, which was very closely in line with it, deserved after all to be adopted.

39. Mr. DANKWORT (Federal Republic of Germany) associated himself with the views of the United Kingdom and India, and said he would vote for article 10 as it stood.

40. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the International Law Commission had carefully considered the governments' comments. It had established objective criteria limiting the right of the receiving State.

41. Certain amendments, such as that of Italy, proposed new criteria. But the situation would then be like that which the first Congress of Vienna had ended: a hierarchy within the diplomatic corps, based on the comparative importance of the various countries. If that proposal were adopted, the door would be opened to arbitrary decision.

42. The Argentine amendment left the receiving State free to determine the limits within which it would exercise its right of refusal, and therefore did not permit any negotiation. Article 10 would thus practically lose its legal character. The right of the sending State to be represented should not be overlooked, and the Soviet delegation, like the United Kingdom delegation, would vote in favour of article 10, while accepting Ceylon's amendment.

43. The Commission had not wished to draft paragraph 2 too rigidly. It had included the expression " on a non-discriminatory basis " because it had wished to avoid abuse of right and had been thinking of the specialized attachés mentioned for the first time.

44. Mr. WESTRUP (Sweden) agreed with the comments of the representatives of the United Kingdom and the USSR. He was nevertheless surprised that no previous speaker had referred to the Commission's illuminating commentaries on article 10 (A/3859). The Commission had not disputed that the interested parties were in the best position to settle differences concerning the size of the staff, and therefore had suggested that such differences should, where possible, be settled by agreement between them. But it had also stated that criteria should be laid down for the guidance of the parties or, where necessary, for application in any necessary arbitral or judicial decisions. Those criteria were necessarily vague, as often happened where a compromise between conflicting interests was necessary. The Swedish delegation would in any case vote for article 10 as drafted by the Commission.

45. Mr. BARTOŠ (Yugoslavia) said that he, too, would vote for the Commission's draft. As the Commission had said, the reason why the provisions of article 10 did not form part of existing international law was that the problem was new. By accepting the principle of limitation of the size of missions, the great majority of governments had made an innovation and taken a step forward. The Conference should endorse that principle.

46. Mr. AGUDELO (Colombia) considered that, by substituting " what it considers reasonable and normal " for " what is reasonable and normal ", the Argentine amendment (L.119) toned down the Commission's article 10, paragraph 1, and made it more flexible and acceptable. Article 10, paragraph 2, did not specify in what circumstances the receiving State could refuse to accept officials of a particular category; and the Colombian delegation preferred the Spanish amendment to that paragraph. Hence the Colombian delegation would vote for article 10, paragraph 1, as amended by Argentina, and for paragraph 2 as it appeared in the Spanish amendment.

47. Mr. PONCE MIRANDA (Ecuador) considered that the interested States should agree upon the size of staff, as provided in the Commission's draft. But, failing such

agreement, who was to define what was reasonable and normal ? Certainly not the sending State. Nor for that matter could the decision be left to the receiving State. Consequently, the receiving State should retain the right to judge whether, in view of circumstances and conditions in the receiving State and to the needs of the mission, the size of the staff was reasonable. That was the object of the Spanish amendment, which the Ecuadorian delegation would support.

48. Mr. ZLITNI (Libya) stressed that the question of the size of the staff raised a conflict of interest. The Argentine amendment to paragraph 1 of article 10 was reasonable and calculated to prevent that conflict. He would therefore vote for that amendment.

49. Mr. GLASER (Romania) said he was more and more convinced that the Conference should adhere to the text which the International Law Commission had drafted with so much wisdom. However, there must be a negotiated agreement between the parties. No dispute was incapable of solution by negotiation. But it was also necessary to create a climate favourable to negotiation, and that could not be done by deciding that one of the parties should have the last word. The Argentine amendment entitling the receiving State to impose its decision conformed neither to modern international law nor to diplomatic law.

50. Mr. BOUZIRI (Tunisia) said that the Argentine amendment did not close the door to negotiation. It was precisely in order to avoid a dispute between the receiving and sending States over reasonable and normal size of a mission staff that the Tunisian delegation had submitted its amendment (L.65) to article 10, paragraph 1. It had eventually associated itself with the Argentine amendment, but on the clear understanding that only the receiving State could determine its own circumstances and conditions. If the sending State challenged that right it would be interfering in the internal affairs of the receiving State.

51. Mr. NGO-DINH-LUYEN (Viet-Nam) pointed out that draft article 10 was open to several interpretations. The delegation of the United Arab Republic had said, in effect, that in principle his delegation favoured the International Law Commission's draft, but felt that the Argentine amendment, couched in very similar terms, should be adopted. On the other hand the United Kingdom representative and others who were members of the Commission had felt that the Argentine amendment gave the receiving State discretion to determine the size of the staff. The point had to be settled. It had also been said that " reasonable " had a clearly defined and accepted legal meaning. That was doubtless true, but particularly in internal civil law where disputes were submitted to a court for final decision. The Asian-African Legal Consultative Committee had decided (A/CONF.20/6) to make no recommendation regarding the method to be adopted for the settlement of disputes between States in the matter of diplomatic immunities, and had not considered it appropriate to adopt the International Law Commission's draft article 45, since the governments held divergent views on the matter. Therefore, if " reasonable " were retained in the draft, it should be expressly defined. For those reasons, his delegation held that article 10 should be amended, and that its own amendment was largely covered by that of Argentina. It was therefore prepared to withdraw it in favour of the Argentine amendment.

52. The CHAIRMAN said that the Committee had before it only two amendments to paragraph 1 of article 10: that of Italy (L.86) and that of Argentina (L.119). The Ceylonese amendment (L.76) would be referred to the Drafting Committee. On paragraph 2 of article 10, the Committee had before it the Spanish amendment (L.80). The Committee should first vote on the Argentine amendment, which in substance was further from the original proposal.

The Argentine amendment (L.119) was adopted by 33 votes to 26 with 7 abstentions.

53. Mr. MAMELI (Italy) said that, since the Argentine amendment had been adopted, he would not press his amendment to a vote.

54. The CHAIRMAN put to the vote the Spanish amendment to paragraph 2 of article 10.

The amendment was rejected by 30 votes to 18, with 18 abstentions.

Paragraph 2 of article 10 was adopted by 38 votes to 17, with 7 abstentions.

Article 10 as a whole, as amended, was adopted by 48 votes to 11, with 8 abstentions.

The meeting rose at 6.10 p.m.

FIFTEENTH MEETING

Wednesday, 15 March 1961, at 10.30 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 11 (Offices away from the seat of the mission)

1. The CHAIRMAN invited debate on article 11 of the International Law Commission's draft and on the amendments to the article.[1]

2. Mr. GLASSE (United Kingdom), introducing his delegation's amendments (L.53), said that the first would mean that branch offices were considered part of a mission: article 11 was not intended to refer to anything

[1] The following amendments had been submitted: United Kingdom, A/CONF.20/C.1/L.53; Mexico, A/CONF.20/C.1/L.56; China, A/CONF.20/C.1/L.67; Spain, A/CONF.20/C.1/L.93; Switzerland, A/CONF.20/C.1/L.107.

but diplomatic offices, and should not otherwise be construed. The second amendment, which might be referred to the Drafting Committee, was proposed because the word " towns " had a somewhat restrictive connotation.

3. He was not in favour of the Mexican amendment (L.56), for it would constrain the sending State to establish its mission at the place where the government of the receiving State was established. It was undesirable to tie the site of the mission to the site of the government headquarters, since to do so could give rise to difficulties in certain circumstances. The Chinese amendment (L.67) could be referred to the Drafting Committee. The amendment of Switzerland (L.107) was open to the same objection as that of Mexico. He agreed that it was customary for diplomatic missions to be established at the seat of government of the receiving State and that the practice had obvious advantages, but it might not be advisable to prescribe it formally in a convention.

4. Mr. HU (China) said that his delegation's amendment (L.67) was based on the principle that prevention was better than cure. It would not be conducive to cordial relations between States concerned if the desired consent were withheld after an office of the mission had been established. He did not object to his amendment being referred to the Drafting Committee, even though it was substantive in nature.

5. Mr. AMAN (Switzerland) said that his delegation's amendment (L.107) simply confirmed not only a universal practice but also a recognized principle of international law. The principle was mentioned in the commentary to the draft article (A/ 3859), but Switzerland considered it so important that it should be included in the article. In addition, the amendment improved the terminology.

6. Mr. DEJANY (Saudi Arabia) pointed out that the amendments of Switzerland and Mexico would have unfortunate political implications of great importance and consequence for certain countries, including his own, because of the situation in Jerusalem.

7. Mr. LINTON (Israel), speaking on a point of order, questioned the propriety of raising specific political issues at a conference called to codify general principles of international law.

8. The CHAIRMAN said it was inevitable that during the Conference questions should arise which, because of historical and existing circumstances, would have political implications involving very strong feelings. He had no wish to suppress thoughts, feelings and ideas that were entirely understandable; he respected the feelings of the representative of Saudi Arabia and was aware that he was merely citing an example, as had been done on other occasions during the discussions. For the good working of the Conference, however, he appealed to delegations to avoid matters not directly concerned with the convention.

9. Mr. DEJANY (Saudi Arabia) said that he had felt impelled to speak because of the introduction of the Mexican and Swiss amendments, which would change the intent of article 11. One of the most important resolutions adopted by the General Assembly on the Palestine problem was the one calling for the internationalization of the city of Jerusalem and the establishment of an international régime to administer it. Despite that resolution of the General Assembly, which was still valid, Israel had established its seat of government in that city. As a result many States having diplomatic relations with Israel in view of that resolution had been unwilling to transfer their missions from Tel-Aviv; some had done so, and others had made protests. Acceptance of the Swiss and Mexican amendments would deny to the States having diplomatic relations with Israel the right to establish their missions anywhere else than in Jerusalem without the consent of Israel. That in effect would encourage violations of the General Assembly resolution, which should be avoided by a conference convened by the same General Assembly of the United Nations. His government (and others not represented at the Conference) would then find it difficult to become parties to the convention.

10. Mr. MATINE-DAFTARY (Iran) said that he could have supported some of the amendments. However, since difficulties might result in certain cases, he thought it preferable to retain the article as drafted by the International Law Commission. In practice missions were usually established in the capital of the receiving State. There were exceptions, however, and the Commission had devised a formula which provided for existing practice but avoided possible difficulties. Though the addition proposed by the United Kingdom seemed at first sight to clarify the text, the question arose, what kind of office could the sending State establish that was not part of a mission ?

11. Mr. ASIROGLU (Turkey) said he had no fundamental objection to article 11 but thought it might be improved by some of the amendments. The United Kingdom amendment would make the article more precise. All offices should be part of, and enjoy the protection afforded to, diplomatic missions. The Spanish amendment (L.93) was also an improvement. The amendments of Switzerland and Mexico, though in essence somewhat similar to those of the United Kingdom and Spain, were less satisfactory and he would not support them. He agreed with the Chinese amendment, and also with the suggestion that it should be referred to the Drafting Committee.

12. Mr. de ERICE y O'SHEA (Spain) said that in general article 11 was satisfactory; but it could be improved. It was often necessary (for example, in Spain and other countries with a similar climate) for a mission to set up a summer residence away from the capital. Such premises should be covered by the convention, and for that reason his delegation proposed its amendment. With regard to the " express or tacit consent ", he would agree to omit the words " or tacit " on the understanding that express consent could be given verbally or by telephone and not necessarily in a formal letter. The amendment was not intended to make any fundamental change in article 11: it was rather an amplification of the article,

and also stated it in a positive rather than a negative form. He believed that it also fulfilled the purpose of the Mexican amendment.

13. Mr. OJEDA (Mexico) withdrew his delegation's amendment (L.56), which did not affect the basic principles of article 11.

14. Mr. NAFEH ZADE (United Arab Republic) said that article 11 recognized two important principles: that diplomatic missions must be established at the site of government of the receiving State; and that a sending State might need to have a commercial attaché or a naval attaché elsewhere — for example, at a port. It did not, however, cover the case where climatic conditions made it desirable for a mission to establish a summer residence away from the capital. He preferred the idea of having sub-offices depending on the mission, and also favoured the right to a summer residence for the head of the mission.

15. Mr. MELO LECAROS (Chile) said that the amendment proposed by Switzerland introduced a new idea irrelevant to the article. His delegation supported the view of the United Kingdom, and could not vote for the Swiss amendment.

16. It would support the amendment proposed by Spain, which expressed the Commission's intention in positive terms and reflected current practice in regard, for example, to the commercial and migration sections of diplomatic missions. He suggested, however, that the representative of Spain might withdraw the amendment to the title of article 11. The titles of articles were merely guides for the reader.

17. Mr. de ERICE y O'SHEA (Spain) accepted that suggestion.

18. Mr. CARMONA (Venezuela) said he preferred the Swiss amendment to article 11 as it stood. The rule laid down in the article, which was affirmed by the Swiss amendment, did not mean that the seat of the mission or its offices could normally be established in towns other than the seat of government; that was possible only in exceptional cases and with the consent of the government. That principle should remain unchanged. To allow some freedom to missions to set up offices in other towns might create some very undesirable situations. It would enable States to camouflage consular or commercial activities as diplomatic missions in ports or towns away from the capital. The Constitution of Venezuela laid down that a diplomatic mission must be established at the seat of government. If the sending State had a valid reason for setting up an office in a port, for example, there was nothing to prevent the receiving State from giving special permission. The principle that the offices of a diplomatic mission should as a general rule be in the seat of government of the receiving State was in fact supported by the reference of the representative of Spain to the practice in his country by which diplomatic missions established summer residences away from Madrid. They were then following the Government of Spain when it changed its seat.

19. Mr. GOLEMANOV (Bulgaria), approving the principle expressed in article 11, said that his delegation would support the amendment proposed by the United Kingdom, which made the text more precise. It could not, however, support the amendments proposed by Switzerland or by Spain. The latter did not improve the text, but rather complicated it.

20. Mr. KERLEY (United States of America) said that since the words " or tacit " in the Spanish delegation's amendment had been deleted, the United States delegation would be able to support that amendment. He noted the view expressed by the representative of Spain that the " express consent " required need not necessarily be very formal. The amendment proposed by China seemed compatible with the spirit of the Spanish amendment. He suggested, therefore, that the representative of Spain might agree to incorporate that amendment in his own.

21. Mr. de ERICE y O'SHEA (Spain) accepted that suggestion. His amendment would therefore read " . . . with the prior express consent of the receiving State . . ."

22. Mr. MAMELI (Italy) and Mr. AGUDELO (Colombia) supported the Spanish proposal, as amended.

23. Mr. NGO-DINH-LUYEN (Viet-Nam) asked whether the scope of article 11 was not restricted by the absence of any reference to the case of multiple accreditation, covered by article 5.

24. Mr. AMAN (Switzerland) said that the amendment proposed by his delegation was based on legal considerations. To facilitate the proceedings, however, he would not press it to a vote, and would vote for article 11 as it stood.

25. Mr. DEJANY (Saudi Arabia), thanking the representative of Switzerland for withdrawing his amendment, assured him that he had at no time doubted the excellent motives of the Swiss delegation.

26. Mr. ROMANOV (Union of Soviet Socialist Republics) said that the amendments remaining after the withdrawal of the Swiss amendment did not alter the substance of the draft article. The amendment proposed by Spain, however, used a term " diplomatic premises " which was not used elsewhere in the draft articles and was not defined in article 1. As the representative of Spain had said, it was intended to refer to the residences of heads of mission and their staff as well as to the offices of the mission. It seemed inadvisable to revise the existing terminology in that way. The delegation of the Soviet Union would support the existing text of article 11, with any drafting improvements.

27. Mr. DADZIE (Ghana) said that his delegation would support the Commission's draft with the amendments proposed by the United Kingdom and China. It could not, however, accept the Spanish amendment, which stated the rights of the sending State in positive terms.

There was an important distinction between that positive statement and the provision in the draft that the sending State could not establish offices away from the seat of the mission without the consent of the receiving State.

28. Mr. REGALA (Philippines) said that the term " diplomatic premises " used in the Spanish amendment was not in current diplomatic usage. He would propose that it should be replaced by the words " offices forming part of the diplomatic mission ", which were used in the United Kingdom amendment.

29. Mr. BOUZIRI (Tunisia) said that his delegation would support the Spanish amendment if its sponsor would agree to the deletion of the word " ordinarily ".

30. Mr. de ERICE y O'SHEA (Spain) agreed to omit the word in question. In reply to the representatives of the Soviet Union and the Philippines, however, he said that his delegation considered it important to retain the term " premises ", which also appeared in article 20.

31. Mr. GLASSE (United Kingdom) said that the Spanish amendment as revised embodied the same principle as the draft. If the amendments proposed by the United Kingdom could be taken into account by the Drafting Committee, his delegation would not press them to a vote.

32. Mr. TUNKIN (Union of Soviet Socialist Republics) pointed out that the amendment proposed by Spain, even as revised, differed in substance from draft article 11. The two texts dealt with completely different points. The intention of the International Law Commission had been to regulate the establishment of offices away from the seat of the mission, which should not be permitted without the consent of the receiving State. The Spanish amendment, however, referred to " premises ". The question whether the living accommodation of the head of mission or his staff was away from the seat of the mission did not require to be regulated or dealt with in the convention.

33. Mr. REGALA (Philippines) supported that view. Article 20, to which the representative of Spain had referred, concerned the inviolability of the mission premises. In article 11 the expression " offices forming part of the diplomatic mission " was the correct one.

34. The CHAIRMAN agreed that a point of substance had been raised which the Committee should settle before proceeding to a vote.

35. Mr. GLASER (Romania) supported the views expressed by the representative of the Union of Soviet Socialist Republics. It was neither essential nor desirable that the convention should refer to the place of residence of the head of mission or members of his staff. They should not be restricted from living, for example, in a village outside a large capital city, if they so preferred. His delegation would support the United Kingdom amendment, which did not change the substance of article 11, and he would ask the United Kingdom delegation to maintain it.

36. Mr. KEVIN (Australia) said that his delegation could not consider itself bound by any definition of " premises " reached before article 20 was considered.

37. Mr. BOUZIRI (Tunisia) said that he had at first considered supporting the Spanish amendment, on the understanding that the expression " diplomatic premises " therein used meant offices and did not include the residence of a diplomatic officer, which might well be situated elsewhere than in the city where the mission was established. In view of the uncertainty over the interpretation of that expression, however, he now had doubts regarding the amendment.

38. Mr. DONATO (Lebanon) suggested that the reference to the establishment of " offices " be expanded to cover " diplomatic offices or premises ".

39. Mr. KAHAMBA (Congo: Léopoldville) pointed out that the Committee had provisionally adopted in article 1 (i) a definition of the " premises of the mission ".

40. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the phrase " diplomatic offices or premises " could be taken to cover a residence as well as an office.

41. Mr. CAMERON (United States of America) said that his delegation supported both the United Kingdom and the Spanish amendments, and suggested the following composite text:

> " The sending State may not, without the prior express consent of the receiving State, establish offices or other diplomatic installations forming part of the diplomatic mission in localities other than those in which the mission itself is established."

42. Mr. de ERICE y O'SHEA (Spain) accepted the suggested text.

43. Mr. REGALA (Philippines) asked the United States representative to explain the meaning of the expression " other diplomatic installations ", which introduced a new complication.

44. Mr. KRISHNA RAO (India) said that " installations " could be variously interpreted and that the introduction of the term would only obscure the meaning without satisfying any of the points of view which had been expressed. After a lengthy debate the Committee had returned to the International Law Commission's text, which he would support, with the United Kingdom's useful drafting amendments.

45. Mr. CAMERON (United States of America) said that his own government would find it no more difficult to interpret the expression " diplomatic installations " than the word " offices ". Subsidiary offices established by the various diplomatic missions accredited at Washington were extremely varied. With regard to article 11, the overriding consideration should be to provide that nothing could be established without the prior express consent of the receiving State.

46. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the doubts expressed by the representatives of the Philippines and India, and the explanation given by the United States representative, suggested that the use of the expression " diplomatic installations " would be very dangerous. If the adoption of the amendment meant that " nothing " could be established without the prior express consent of the receiving State, diplomatic agents would not be able to reside outside the limits of the capital city.

47. He supported the United Kingdom amendment which clarified the text by specifying that the offices referred to formed part of the diplomatic mission.

48. Mr. TAWO MBU (Nigeria) said that article 11 was quite clear as it stood and that the Committee, by discussing points of drafting, was in danger of confusing the situation.

49. Mr. SUCHARITAKUL (Thailand) likewise considered that the expression " diplomatic installations " would obscure the meaning of the article. He supported the Commission's text, with the amendments by China and the United Kingdom.

50. Mr. GLASER (Romania) supported the United Kingdom amendment, which clarified the original text by specifying that what required the consent of the receiving State was the establishment of subsidiary offices of the diplomatic mission. It was the task of the Conference to render the existing rules broader and more flexible, rather than to create new sources of conflict by establishing new and rigid provisions, like those of the Spanish amendment and the text suggested by the United States.

51. Mr. de VAUCELLES (France) said that he had originally intended to support the Spanish amendment, believing it to be more flexible than the wording of draft article 11. However, because of the various changes, the Spanish text now appeared more rigid than the draft. He would therefore support the Commission's text with the United Kingdom amendments.

52. Mr. VALLAT (United Kingdom) noted that there appeared to be substantial support for the formula suggested by the United States of America, but that some representatives had doubts about the words " or other diplomatic installations ". He suggested that a separate vote should be taken on those words.

53. Mr. de ERICE y O'SHEA (Spain) withdrew the words " or other diplomatic installations ".

54. Mr. BESADA RAMOS (Cuba) supported article 11 as drafted by the International Law Commission.

55. The United Kingdom amendment complicated the text and rendered it unacceptable to the Cuban delegation, by applying the provision to " offices forming part of the diplomatic mission ". All offices established by a foreign diplomatic mission, whether they formed part of the mission or not, required for their establishment the consent of the receiving State.

56. The CHAIRMAN said that the Committee had before it only one text, which incorporated all the amendments still standing:

> " The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the diplomatic mission in localities other than those in which the mission itself is established."

57. He put to the vote the text of article 11 as thus amended.

Article 11, as amended, was adopted by 63 votes to 2, with 7 abstentions.

Article 12 (Commencement of the functions of the head of the mission)

58. The CHAIRMAN invited comments on article 12 and the amendments thereto.[1]

59. Mr. PECHOTA (Czechoslovakia), introducing his delegation's amendment (L.117), said that, in accordance with the practice of the majority of States, the head of the mission was deemed to have taken up his functions in the receiving State when he had presented his letters of credence. The adoption of that majority practice as a standard formula would clarify the status of diplomatic representatives.

60. In their comments on article 12 a number of governments, including that of Czechoslovakia, had urged that a uniform rule should be established concerning the commencement of functions of the head of the mission, in the form of the second of the two alternatives in article 12 (A/4164). Nevertheless, if the idea contained in his delegation's proposal did not prove generally acceptable, he would not press for a vote upon it.

61. Mr. VALLAT (United Kingdom), introducing his delegation's amendment (L.10), said that it was a consequential amendment to the adoption (fourteenth meeting, para. 14) of an amendment to article 9 (L.9, paragraph 2) which allowed notification to be made to an agreed ministry other than the Ministry of Foreign Affairs.

62. The CHAIRMAN said that, since the Committee had adopted article 9 in that form, the United Kingdom amendment seemed consequential and necessary.

63. Mr. HU (China), introducing his delegation's amendment (L.68), said that its purpose was to simplify formalities and to enable the head of mission to assume his duties as soon as possible. Should the amendment, however, not be acceptable to the majority of the Committee, his delegation would not insist on a vote.

The meeting rose at 1 p.m.

---

[1] The following amendments had been submitted: United Kingdom, A/CONF.20/C.1/L.10; China, A/CONF.20/C.1/L.68; Italy, Brazil and Venezuela, A/CONF.20/C.1/L.87 and Add.1; Czechoslovakia, A/CONF.20/C.1/L.117.

SIXTEENTH MEETING

Wednesday, 15 March 1961, at 3.10 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 12 (Commencement of the functions of the head of the mission) *(continued)*

1. The CHAIRMAN invited the Committee to continue the debate on article 12 and the amendments thereto.[1] The delegations of Czechoslovakia and China had indicated (fifteenth meeting, paras. 60 and 63) that they would not press their respective amendments to a vote. With a reference to the amendment submitted jointly by Italy, Brazil and Venezuela (L.87 and Add.1), he said that paragraph 1 merely reproduced the terms of the original text in a different order and that paragraph 2, which dealt with precedence, could possibly be considered in connexion with article 15. The United Kingdom amendment (L.10) was consequential on the terms of article 9 as adopted (fourteenth meeting, para. 14).

2. Mr. KRISHNA RAO (India) said he was willing to vote for paragraph 1 of the joint amendment provided that paragraph 2 was considered with article 15.

3. Mr. BOUZIRI (Tunisia) considered that the words " when he has notified his arrival " were unnecessary in article 12, since they were supplemented by the words " and a true copy of his credentials have been presented ". The provision would be understandable only if it read " or a true copy ", for article 12 would then provide for three possible ways of determining the date on which the head of the mission was deemed to have taken up his functions in the receiving State.

4. Mr. REGALA (Philippines) said that some countries attached great importance to the date of arrival of the head of the mission and decided questions of precedence according to that date. Articles 12 and 15 were therefore closely connected and should perhaps be amalgamated.

5. Mr. MAMELI (Italy) explained that the reason for paragraph 2 of the joint amendment was that Italy attached great importance to the date of arrival of the head of the mission. He thought the paragraph should be studied in connexion with article 12, but — subject to the consent of his co-sponsors — he would not press for a vote on it if it were agreed that it would be discussed with article 15.

6. Mr. ROMANOV (Union of Soviet Socialist Republics) said he could not quite understand the object of the United Kingdom amendment. In his opinion, the arrival of the head of the mission must necessarily be notified to the Ministry of Foreign Affairs, for otherwise the Ministry might be unaware of his arrival. Besides, the main object of article 12 was not to specify the ministry to which the notification should be given, but to make it possible to determine when the functions of the head of the mission began. Furthermore, if the sponsors of the joint amendment agreed to delete the words " he has notified his arrival and " in paragraph 1, the United Kingdom amendment might no longer be necessary. Finally, it seemed that article 9, as adopted by the Committee, made the United Kingdom amendment quite pointless. In submitting its amendment, the United Kingdom delegation had probably been thinking of the Commonwealth countries, but he would like more information on the subject.

7. Mr. VALLAT (United Kingdom) explained that in the United Kingdom a special ministry was responsible for relations with Commonwealth countries, and the heads of missions of those countries would hardly present their credentials to the Foreign Office. The sole purpose of the United Kingdom amendment was to sanction a well-established practice. Furthermore, in the case of representatives of Commonwealth countries, letters of introduction were used instead of credentials, but the term " credentials " used in article 12 was sufficiently broad and the United Kingdom would not submit an amendment on that point.

8. Mr. RIPHAGEN (Netherlands) thought that " or other appropriate ministry " in the United Kingdom amendment might possibly be interpreted too broadly; he suggested that the drafting committee should be asked to prepare a more suitable text.

9. Mr. NGO-DINH-LUYEN (Viet-Nam) said that the procedure for presentation of credentials comprised three stages. The head of the mission first notified his arrival to the Ministry of Foreign Affairs, then presented a true copy of his credentials and finally presented the credentials themselves. In practice, those stages might be separated by fairly long periods, and it would be well to specify that those periods should be reasonable and normal. Paragraph 2 of the joint amendment seemed to meet that need and it should therefore be considered in connexion with article 12. In order to avoid any possible confusion with article 15 the word " precedence " might possibly be replaced by another word. In any case, if the Committee wished to enable the head of the mission to take up his functions as quickly as possible, it should adopt the Chinese amendment.

10. Mr. BREWER (Liberia) noted that article 12 as it stood and paragraph 1 of the joint amendment both made allowance for differences in procedure; he was therefore willing to support them. In Liberia, the head of the mission was considered to have taken up his functions when he had presented his credentials to the head of the State.

11. Mr. GLASER (Romania) said that it might be difficult to persuade the various States to agree to a uniform procedure. His delegation therefore favoured the International Law Commission's draft of article 12. However,

[1] For the list of amendments, see fifteenth meeting, footnote to para. 58.

if the Committee should decide to adopt only one formula, it should approve the Czechoslovak amendment (L.117).

12. With regard to the United Kingdom amendment, he stressed that the Conference was expected to adopt a text of general application, and was therefore not concerned with the special procedure applicable in the United Kingdom to diplomats of the Commonwealth countries.

13. Mr. CARCANI (Albania) said that article 12 as it stood offered two alternatives, which in fact corresponded to the two main systems adopted in the various countries. In practice, however, that compromise formula would inevitably be misunderstood, and some States might take advantage of its ambivalence to discriminate against other States, particularly small Powers. His delegation therefore preferred the formula proposed by Czechoslovakia in L.117.

14. Mr. CAMERON (United States of America) said he had intended to vote for article 12 as it stood but, on reflection, he would vote for the United Kingdom amendment, since in the United States credentials were presented to the President, and not to the State Department.

15. Mr. MAMELI (Italy) said that, subject to the approval of the co-sponsors of the joint amendment, he was willing to replace the word " precedence " in paragraph 2 by " order ".

16. Mr. RUEGGER (Switzerland) approved the United Kingdom amendment in principle. Unlike the Romanian representative, he considered that the Conference could not overlook the case of the Commonwealth countries — which occupied an important position in the family of nations — since its task was to codify, flexibly and boldly, the practices current in the modern world. Perhaps the object of the United Kingdom amendment could be achieved if the expression " Ministry for Foreign Affairs " in article 12 were replaced by " appropriate ministry ".

17. Mr. BOLLINI SHAW (Argentina) said he would have no difficulty in voting for the draft, and also approved the joint amendment. Although in Argentina the head of the mission was deemed to commence his functions on the date of the presentation of his credentials, the Argentine delegation had no objection to both possibilities being offered to the States.

18. Mr. de SOUZA LEAO (Brazil) considered that paragraph 2 of the joint amendment should not be dissociated from paragraph 1, because the article concerned the taking up of his functions by the head of the mission, whereas article 15 dealt solely with precedence. However, in order to avoid all possibility of confusion with article 15, he agreed to the suggestion, accepted by the Italian representative, that the word " precedence " be replaced by " order ".

19. Mr. de VAUCELLES (France) had nothing against the draft, which had the merit of offering States the choice of two formulas. With due respect to the Viet-Namese representative, he did not agree that the choice would lead some States to practise discrimination, since they would be adopting one of the two forms once and for all.

20. His delegation was fully prepared to vote for paragraph 1 of the joint amendment, but was not completely satisfied with paragraph 2. The wording was too rigid, and it would hardly be courteous to request the receiving State to note the exact hour of arrival of the head of the mission. Moreover, allowance should be made for exceptions to the general rule. If relations between two States were so strained as to make an armed conflict possible, one of them might wish to replace as quickly as possible the diplomat no longer enjoying the confidence of the receiving State by one more influential or more esteemed. Then the new diplomat ought to be able to assume his functions very promptly, and it would be regrettable if rigid rules concerning the presentation of credentials prevented him from doing so. France therefore found it hard to support paragraph 2, and would request a separate vote on it.

21. Mr. PECHOTA (Czechoslovakia) said he would prefer the article to lay down a uniform rule. If, however, the Committee should decide to make provision for alternative procedures, his delegation would support paragraph 1 of the joint amendment (L.87).

22. It would be unwise to adopt the United Kingdom amendment, which would burden the convention with details and customs varying from one country to another.

23. Mr. HORAN (Ireland) said it would be undesirable to lay down an excessively strict rule.

At the request of the representative of the United Kingdom, a vote was taken by roll-call on the United Kingdom amendment (L.10).

Chad, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Chile, China, Colombia, Denmark, Dominican Republic, Ecuador, Federation of Malaya, Finland, France, Federal Republic of Germany, Ghana, Guatemala, Haiti, Holy See, Honduras, India, Ireland, Israel, Liberia, Liechtenstein, Luxembourg, Netherlands, Nigeria, Norway, Pakistan, Panama, Peru, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Viet-Nam, Argentina, Australia, Austria, Belgium, Brazil, Burma, Cambodia, Canada, Ceylon.

Against: Cuba, Czechoslovakia, Ethiopia, Hungary, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania, Bulgaria, Byelorussian Soviet Socialist Republic.

Abstaining: Congo (Leopoldville), Indonesia, Iran, Iraq, Italy, Japan, Korea, Libya, Mali, Mexico, Morocco, Saudi Arabia, Tunisia, United Arab Republic, Yugoslavia.

The United Kingdom amendment was adopted by 47 votes to 11, with 15 abstentions.

Paragraph 1 of the joint amendment (L.87), as amended by the United Kingdom amendment just adopted, was adopted by 64 votes to none, with 10 abstentions.

Paragraph 2 of the joint amendment, as amended by its sponsors, was adopted by 40 votes to 11, with 21 abstentions.

Article 12, as amended, was adopted by 66 votes to none, with 9 abstentions.

Article 13 (Classes of heads of mission)

24. The CHAIRMAN drew attention to the amendments to article 13.[2]

25. He asked if any delegations were prepared to withdraw their amendments.

26. After consulting other Commonwealth delegations, Mr. VALLAT (United Kingdom) thought it possible to withdraw the second part of his delegation's amendment (L.11). He considered it necessary, however, to retain the first part, for it was right to mention the High Commissioners in paragraph 1 (*a*) of the article, since they performed the same functions as ambassadors. It would be invidious to exclude them, for their role and importance were considerable. Ten members of the Commonwealth had sent delegations to the Conference, and there were at least 74 High Commissioners. Article 13 as drafted did not mention High Commissioners, and if it were adopted a large number of High Commissioners would not benefit by its provisions. Again, six members of the Commonwealth had the same head of State; hence their representatives could not be accredited to a head of State for the purposes of article 13. If Queen Elizabeth had to accredit a High Commissioner to herself, the position would be absurd.

27. He announced that his delegation would support the French amendment (L.98), though possibly it raised no more than a question of interpretation.

28. Mr. OJEDA (Mexico), introducing the amendment submitted jointly by Mexico and Sweden (L.57 and Add.1), said that sub-paragraph (*b*) merely reproduced article 1 of the regulation of Vienna, 1815. The distinction it drew between ambassadors and envoys did not fit the growing practice. The International Law Commission itself had said in paragraph 5 of its commentary on article 13 that differences in class between heads of mission were not material except for purposes of precedence and etiquette (A/3859). Mexico, during the previous two years, had abolished its legations in application of the principle of the legal equality of States.

29. Mr. WESTRUP (Sweden) said that in 1815 seven States, including Sweden, had thought to establish rules of universal scope and validity. World conditions had changed very considerably since then, and the changes should be reflected in the codification of modern diplomatic law. It had been said that it was unnecessary to abolish a distinction which was disappearing in any case; but it was a fact that the trend to appoint only ambassadors had gained considerable momentum. It would be no more than realistic to abolish the intermediate class.

30. Mr. de ERICE y O'SHEA (Spain) announced that his delegation withdrew paragraphs 1, 3 and 4 of its amendment (L.94), the substance of which was covered elsewhere.

31. Mr. YASSEEN (Iraq) pointed out that certain groups of States gave "special titles" to heads of missions they exchanged among themselves. Accordingly, the amendments were no more than drafting changes. The Committee should consider two points. First, before taking a decision it should remember that other groups of States might also in the future give special titles to the diplomatic agents they exchanged among themselves; hence it would be prudent not to adopt a restrictive wording. Secondly, it would be preferable not to mention new titles. The Committee was drawing up an instrument of general law, and it should not spend too much time on more particular problems. It should adopt a form of words sufficiently flexible to cover particular situations that might arise in the future.

32. Mr. RUEGGER (Switzerland) said that his delegation had submitted its amendment (L.108) on the instructions of the federal government, and in the conviction that the Conference would wish to take into account the changes made in the practice established by the Vienna Conference of 1815 and the protocol of Aix-la-Chapelle, 1818. The object of the Conference was to codify the rules for as far ahead as possible. Hence, practices which were likely to disappear, and were disappearing, should not persist in written law. An irreversible movement had set in for the elimination of the distinctions between the two classes of heads of mission.

33. The Swiss amendment was very close to that submitted jointly by Mexico and Sweden. Switzerland was the last country that could be suspected of any other aim than the clarification of the law. It had long resisted the movement for the elimination of the third class of diplomatic agents established in the protocol of Aix-la-Chapelle, and had kept strictly to the traditional rules. There was admittedly one exception: a French Embassy at Berne without reciprocity. Other powers had desired the same privilege; but not until 1957 had Switzerland accepted reciprocity and decided to accredit ambassadors. In consequence of the attainment of independence by numerous States — a development welcomed by Switzerland — it had sent embassies to their governments.

34. In earlier times, the raising of a legation to the rank of an embassy had been considered a very special event. Hence there had been substance on the view that a legation denoted disrespect and discrimination. The League of Nations Committee of Experts for the codification of international law had studied the question. The Swiss amendment expressed only an idea, and it might perhaps be amplified with advantage: the first category of heads of mission might include the High Commissioners of the British Commonwealth, internuncios as well as nuncios, and the high representatives of the French Community.

[2] The following amendments had been submitted: United Kingdom, A/CONF.20/C.1/L.11; Mexico and Sweden, A/CONF.20/C.1/L.57 and Add.1; China, A/CONF.20/C.1/L.69; Spain, A/CONF.20/C.1/L.94; France, A/CONF.20/C.1/L.98; Switzerland, A/CONF.20/C.1/L.108; Guatemala, A/CONF.20/C.1/L.155.

35. Mr. RIPHAGEN (Netherlands) said he appreciated the considerations underlying the French and United Kingdom amendments to article 13. Nevertheless, he did not think it advisable to name States in the convention. Article 14 should meet the points raised by France and the United Kingdom, since it provided for agreement between States on the class to which the heads of their missions should belong. Probably only a drafting question was involved, which could be referred to the drafting committee.

36. Mr. USTOR (Hungary) said he would not comment on the amendments to article 13, which was generally acceptable to his delegation. The titles of heads of mission were a matter of secondary importance. Some baroque titles, such as " minister plenipotentiary " and " envoy extraordinary ", had become archaic, and it would be in keeping with the modern trend to democratize diplomacy to drop them. The Hungarian delegation had not presented an amendment to that effect, but would gladly support any such proposal.

37. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the question of the High Commissioners had been raised in the International Law Commission by some comments of the Pakistan Government (A/3859, annex). During the discussion, Sir Gerald Fitzmaurice had said that in his opinion the Commission should not mention the matter in the draft articles, since only a few countries exchanged diplomats in that category. He had added that High Commissioners could probably not be placed on the same footing as heads of mission, owing to the peculiar nature of their credentials (453rd meeting of the ILC, para. 38). In the eyes of the Soviet delegation, the French and United Kingdom amendments had a major defect: they generalized a special situation, whereas the convention which the Conference was trying to prepare was intended to become part of general international law and hence should not deal with special cases, for otherwise it would be unacceptable to many countries. That would not prevent the States concerned from agreeing *inter se* that the High Commissioners of the countries of the British Commonwealth, and the High Representatives in the States of the French Community, should rank as ambassadors. Article 14 offered them the means of making such agreements. Accordingly, he would ask the French and United Kingdom representatives not to press their amendments.

38. The Soviet delegation approved in principle the elimination of the second class — envoys and ministers. The class was vanishing, and the distinction between the class of ambassadors and that of envoys and ministers, which had reflected inequality in the standing of countries, had practically disappeared. The Soviet State had abolished in 1918 the different classes of heads of mission, and its diplomatic representatives all belonged to the same category, that of plenipotentiary representatives. The International Law Commission had taken note of that trend, and its reasons for not endorsing it were entirely practical. It had, however, pointed out (commentary, para. 2) that, in view of the increasing tendency of States to appoint ambassadors instead of ministers as their representatives, the class of minister was bound to disappear of its own accord. Still, a convention which abolished the class of ministers and envoys might not be acceptable to some countries.

39. The Soviet delegation did not consider adoption of the Spanish amendment desirable. Moreover, its paragraph 2 was not in accordance with current practice.

The meeting rose at 5.40 p.m.

SEVENTEENTH MEETING

Thursday, 16 March 1961, at 10.30 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 13 (Classes of heads of mission) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 13 and the amendments thereto.[1] He announced that the Spanish delegation had withdrawn paragraph 2 of its amendment (L.94). The other paragraphs having been previously withdrawn (16th meeting, para. 30), the Spanish amendment was no longer before the Committee.

2. Mr. DADZIE (Ghana) said that the United Kingdom representative had explained at the previous meeting (para. 26) the role of the High Commissioners of the Commonwealth countries and the reasons for the United Kingdom amendment (L.11).[2] The practice of the Commonwealth countries was well known and generally accepted; its recognition in the instrument to be prepared by the Conference would leave a valuable legacy to posterity.

3. In view of the discussion on that amendment, he proposed that it should be revised to read: " High Commissioners of the Commonwealth countries, or other heads of mission of equivalent rank."

4. The CHAIRMAN said that the United Kingdom delegation had signified acceptance of the amendment proposed by Ghana as a substitute for its own amendment.

5. Mr. ASIROGLU (Turkey) said that in its commentary on the article the International Law Commission had noted the growing tendency of States to appoint ambassadors rather than ministers, but had nevertheless decided to include a reference to ministers in article 13. His delegation agreed with the Commission that it would be premature to delete all reference to a category of diplomats which still existed. That would create difficulties for

[1] For list of amendments to article 13, see 16th meeting, footnote to para. 24.

[2] The second part of the United Kingdom amendment had been withdrawn at the 16th meeting.

many countries and delay ratification of the convention. Accordingly, he opposed the amendments submitted by Mexico and Sweden (L.57 and Add.1) and by Switzerland (L.108).

6. He supported the proposals that references to the High Commissioners of the Commonwealth countries and to the High Representatives in the States of the Community (L.98) should be added.

7. Since article 14 also dealt with the classes of heads of mission, he suggested that it should be merged with article 13.

8. Mr. HU (China) said that in his government's view all heads of mission should have the same rank, although they might hold different official titles for historical and other reasons. That would mean the end of the division into three distinct classes. However, some States still maintained the class of ministers in their domestic law, and would find it difficult to sign a text from which paragraph 1 (*b*) had been deleted, since they would have to amend their own law in consequence. For those reasons his delegation proposed the more modest change (L.69) of deleting only paragraph 1 (*c*). In recent years there had been very few, if any, appointments of chargés d'affaires en pied, and that category of heads of mission could be regarded as obsolescent, if not obsolete. Its elimination should therefore not give rise to any difficulties. If, however, the deletion of paragraph 1 (*c*) raised any difficulties for other delegations, he would not press for a vote on his amendment. His delegation preferred an imperfect text likely to receive a large number of ratifications to a less important text which attracted less support.

9. Mr. NAFEH ZADE (United Arab Republic) said that the amendment proposed by Ghana, like the United Kingdom amendment which it replaced, and the French amendment (L.98), dealt with special cases outside the scope of the Conference. The purpose of the Conference was to prepare an instrument of universal application dealing with diplomatic relations in general. Its principles should be acceptable to the greatest possible number of countries. Moreover, if special cases were to be considered, the representation of all groups or associations of States would have to be examined. For those reasons his delegation supported the article as it stood.

10. Mr. de VAUCELLES (France) said that his delegation's amendment was the logical consequence of the agreements entered into by France with each of the States of the Community: Central African Republic, Chad, the Congo (Brazzaville), Gabon, Malagasy Republic and Senegal. Those agreements provided that the diplomatic representatives accredited by the parties to each other should be entitled " High Representatives ", would be accredited to heads of State and would hold the rank and have the prerogatives of ambassadors.

11. He had been impressed by the doubts expressed by some representatives about the inclusion of references to specific cases. The Regulation of Vienna recognized the special case of nuncios and internuncios. A similar recognition was called for in the present instance. It should take the form either of a specific reference to each class, or of some general expression covering both. He would not be opposed to some general formula along the lines suggested by the representative of Iraq at the previous meeting. The Committee should, however, adopt some general principle before the drafting committee could prepare a general formula.

12. It had been suggested that article 14 met the point raised by the French amendment in that it enabled the States concerned to agree on the class to which their heads of mission were to be assigned. In fact, however, States outside the Community might well claim that the agreement to treat High Representatives as ambassadors constituted *res inter alios acta* which they could ignore. There should therefore be some recognition in the article of the rank of the High Representatives and High Commissioners.

13. The amendment proposed by Ghana was unacceptable to him because it maintained the reference to the High Commissioners of the Commonwealth, but omitted any reference to the High Representatives of the Community. Unless a satisfactory general formula were found which met the point raised in the French amendment, he would press it to a vote.

14. Mr. BOLLINI SHAW (Argentina) said that the class of ministers was indeed disappearing but had not yet disappeared. Argentina, and a number of other countries, still maintained some heads of mission of that class. Paragraph 1 (*b*) should therefore be retained to meet the case of countries which, for political, financial or other reasons, wished to set up a legation instead of an embassy. The protocol of Aix-la-Chapelle, 1818, mentioned ministers resident, a class at the time already falling into disuse. It has since disappeared, but the reference to it in the 1818 protocol had not embarrassed anyone.

15. His delegation supported the inclusion of a reference to the High Commissioners and High Representatives because it would not affect the interests of other countries and would encourage the interested countries to ratify the final instrument. He stressed, however, that there should be no discrimination and that both classes of representative should be mentioned.

16. Mr. LINARES (Guatemala), introducing his delegation's amendment (L.155), recalled that, when the Committee had provisionally adopted the definition of diplomatic agent in article 1 (*e*), his delegation had reserved the right to resubmit its amendment (L.8) to that definition (seventh meeting, para. 13).

17. In accordance with the terminology uniformly accepted by learned writers on diplomatic law and international law, the term " diplomatic agent " applied only to heads of mission and not to other members of the diplomatic staff of the mission. That had been the terminology used in the Regulation of Vienna, and there was no reason to change it.

18. Mr. BARTOŠ (Yugoslavia) said that his country favoured a system which would recognize one single class of permanent diplomatic representatives and which would thus be in keeping with the principle of the sovereign equality of States. He would therefore support

any amendment which eliminated all differences between the two classes of heads of mission mentioned in paragraphs 1 (*a*) and (*b*). The class of chargé d'affaires en pied, referred to in paragraph 1 (*c*) should, however, be retained, because States occasionally needed to appoint a titular head of mission who was not an ambassador.

19. With regard to the proposal for the inclusion of a reference to High Commissioners of the Commonwealth countries, he recalled that he had raised that question in the International Law Commission (453rd meeting of the ILC, para. 34) in connexion with the comments by Pakistan (A/3859, annex). Sir Gerald Fitzmaurice — speaking, of course, as a member of the Commission and not as legal adviser to the Foreign Office — had said that the High Commissioners of the Commonwealth countries were not accredited by one head of State to another (453rd meeting of the ILC, para. 38), and had shown a diplomatic list on which they were enumerated separately from foreign heads of mission.

20. He noted with satisfaction the position taken by the United Kingdom delegation, because his government believed that all independent nations should have the same rights and was glad to see the High Commissioners recognized as belonging to the same class as ambassadors.

21. There remained the technical legal problem that High Commissioners of the Commonwealth countries were not accredited by one head of State to another, since the symbolic head of State was the same for several of them. Possibly, the problem could be solved by inserting in article 13 a separate paragraph stating that High Commissioners of the Commonwealth countries, High Representatives of the States of the Community, and other representatives having the rank of ambassador would be included in the class mentioned in paragraph 1 (*a*).

22. Mr. de ERICE y O'SHEA (Spain) proposed the adjournment of the debate in order to enable the delegations concerned to reach agreement on the proposals to include references to High Commissioners and High Representatives.

23. Mr. TUNKIN (Union of Soviet Socialist Republics) supported that proposal in principle, but suggested that speakers who had already intimated their intention to speak might be heard.

24. The CHAIRMAN said that, if there were no objections, he would take it that the Committee agreed to that course.

It was so agreed.[3]

25. Mr. MATINE-DAFTARY (Iran) said that he was somewhat surprised by the Swiss proposal to abolish the class of ministers, particularly since the Swiss delegation had advocated the retention of article 7 on the appointment of nationals of the receiving State. The appointment of a national of the receiving State as a member of the diplomatic staff of a foreign mission was even more out of date than the appointment of ministers.

26. The conception prevalent in 1815 had been that an ambassador, unlike a minister, represented the person of his sovereign. In modern times all heads of mission were regarded as representatives of their States; it would therefore seem more appropriate to abolish the class of ambassadors rather than that of ministers. The actual tendency, however, had been to appoint more ambassadors and fewer ministers; but the class of ministers had not disappeared altogether and, among other officers, it was common for an embassy to have on its staff a minister counsellor. In addition, the Holy See maintained internuncios, who belonged to the class of ministers.

27. There had been a lengthy discussion in the International Law Commission of proposals to delete all reference to the class of ministers, and the majority had preferred the existing system. He saw no reason why the Conference should take it upon itself to abolish a class of heads of mission which still existed. That would create obstacles to signature and the ratification of the final instrument. All participants in the Conference agreed that States were equal; but for reasons of economy a country sometimes wished to set up a legation instead of an embassy. In addition, some countries had closer ties *inter se* than with others, and it was appropriate to leave the interested parties to decide whether they wished to exchange embassies or legations.

28. With regard to the proposals for the inclusion of references to High Commissioners of the Commonwealth countries and High Representatives of the Community, he had no instructions from his government; but his personal opinion was that, since those types of representatives existed, the Conference could not ignore them and should make some provision to cover them. Like many another British institution, that of the High Commissioners of the Commonwealth had a remarkable flexibility which enabled it to adapt itself to changing circumstances. He entertained some doubts, however, about the form of the proposal of Ghana. High Commissioners of the Commonwealth countries could not be completely equated in law with ambassadors accredited by one head of State to another. Moreover, since they did not submit credentials from one head of State to another, it was difficult to see how article 12 on the commencement of the functions of the head of mission could be applied to them.

29. The problem before the Committee was not whether to include a reference to High Commissioners and High Representatives but how such a reference could be included without raising any difficulties of interpretation. Perhaps the problem might be solved by adding, at the end of article 14, a proviso which would make the words " shall be agreed between States " applicable also to the titles which certain States, by reason of their community of interest, gave to their heads of mission, such as High Commissioners and High Representatives.

30. Mr. NGO-DINH-LUYEN (Viet-Nam) proposed a change in the Swiss amendment (L.108): replacement of paragraph 1 (*a*) by the words " that of titular heads of missions ". That wording would have several advantages. It would automatically include the High Commissioners of Commonwealth countries and the High Representatives in the States of the Community, and so remove the objection to including particular cases in a general

[3] For the resumption of the debate on article 13, see 23rd meeting.

regulation; it would allow sending States to maintain the practice of having different categories of representatives; and it would permit the shortening of article 13 by deletion of paragraph 2.

31. Mgr. CASAROLI (Holy See) said that as his delegation interpreted article 13 in the same way as the representatives of Iraq and the Netherlands — that it established classes of heads of mission without giving an exhaustive and restrictive list of their titles — he had refrained from submitting a formal amendment concerning " legates ". The International Law Commission had dropped the term, used in the Regulation of Vienna, because there were no longer any heads of mission with that title; but the Holy See had not expressly relinquished it and indeed the head of a special mission was often sent as legate. He was in favour of the addition, in paragraph 1 (*a*), of the words " and other heads of mission of equivalent rank " proposed by Ghana.

32. With regard to paragraph 1 (*b*), he said the representatives of Sweden and Switzerland had alluded directly or indirectly to possible difficulties for the Holy See if the second class were deleted. He was not for the moment in a position to decide his attitude to the Swiss proposal, and would reserve his vote on the point.

33. Mr. BOUZIRI (Tunisia) said that the Swiss amendment was, in effect, a summary of several other amendments intended principally to delete paragraph 1 (*b*) because, as the representative of Switzerland had explained, it referred to a category that was dying out. One had only to look at the list of delegations to the Conference, however, to realize that it was, on the contrary, a very flourishing category. To eliminate that class would be premature and might make it difficult for some States to become parties to the convention. It would be better to leave events to follow their natural course. The amendments of Guatemala and China would also raise difficulties.

34. The most important amendments were those of the United Kingdom, since amended by Ghana, and of France. Both proposed to introduce a new term which, to however many States it might apply, would have a limited application and hence would conflict with the universality of the convention. Moreover, the introduction of such terms would prejudice the future and exclude other kinds of commonwealth or community which might come into being; for it was impossible to foresee future developments. Any addition to article 13 should therefore be in somewhat more general terms.

35. Mr. de SOUZA LEAO (Brasil) said it was true that the amendments of Mexico and Sweden and Switzerland recognized an existing tendency; but as long as some States continued to appoint ministers, it would be unwise to take such drastic action as to eliminate that class.

36. With regard to the United Kingdom amendment, as amended by Ghana, he suggested that paragraph 1 (*a*) would be more precise if it included the words " whatever the mode of accreditation ".

37. Mr. CASTREN (Finland) suggested that many of the practical and technical difficulties mentioned in the discussion might be solved if the classes of heads of mission were divided into two instead of three, by deleting paragraph 1 (*b*) and replacing paragraph 1 (*a*) by the following: " that of ambassadors or nuncios or other permanent representatives of States accredited to Heads of State or High Commissioners of Commonwealth countries." That wording would place all representatives on a footing of complete equality and would leave room for future new denominations of diplomatic rank.

38. Mr. GASIOROWSKI (Poland) said that the discussion had only increased his high opinion of the International Law Commission's draft. In many instances during the Conference long debates had ended with the conclusion that the Commission's text was best; and in his opinion that was true of article 13. He therefore strongly supported the draft article and opposed all amendments.

39. As to the principal amendments, those of France and the United Kingdom, he said that according to a well-established legal principle all laws and multilateral conventions falling within the category of traités-loi — and that was precisely the case of the convention under discussion — had one essential characteristic: their generality. Contrary to that principle, the two amendments tended to make rules for specific cases within the context of a general convention. That was, from the legal standpoint, unacceptable.

40. Usually, a specific situation developed more rapidly than a general situation. The French amendment would have been pointless barely three years earlier, before the French Constitution of 1958. The structure of the French Community was based on that constitution, which determined relations between its members. An equally rapid evolution could not be ruled out for the future, and it might well be that when the convention came into force the provision which the amendment sought to introduce would be already out-dated.

41. If relations between the members of a community were based on the constitution — a domestic law inherently capable of amendment — then the problem was necessarily outside the scope of strictly international provisions.

42. Mr. MAMELI (Italy) agreed in principle with the French and United Kingdom amendments. He was opposed, however, to the deletion of the class of minister plenipotentiary, on the grounds that it would be unnecessarily precipitate action and would infringe the rights of sending States.

43. Mr. KIRCHSCHLAEGER (Austria) was opposed to the removal of envoys and ministers from article 13. That, though they might in fact be disappearing, would be too abrupt a change in diplomatic life.

44. Mr. MELO LECAROS (Chile) said there were four main points.

45. The first concerned the expression " heads of mission ", which Guatemala proposed should be replaced by " diplomatic agents ". Though he preferred the existing terminology, he would support the Guatemalan

proposal, because it was desirable to retain the language used in the Regulation of Vienna and no valid arguments had been advanced to justify a change which, moreover, would cause difficulty to future students of international law.

46. The second concerned the French and United Kingdom proposals. He was not really in favour of them, because they dealt with particular situations. He realized, however, that they were designed to meet practical difficulties, and he would therefore not object to their consideration if a better form of words could be found.

47. Third, there were the proposals of Mexico and Sweden and Switzerland. He was in favour of deleting the class mentioned in paragraph 1 (*b*), which Chile had already abolished. Nevertheless, for the benefit of those countries which still maintained the category, he would have no objection to its retention.

48. Fourth, the term " chargés d'affaires en pied " was no longer used in Chilean practice, and he was strongly opposed to the qualification " en pied ". It did not imply any difference in rank and was entirely unnecessary; indeed all such appointments were to some extent temporary. If necessary, he would ask for a separate vote on " en pied ", " ad interim ", or any similar term, in connexion with article 13 or atricle 17.

49. Mr. NAFEH ZADE (United Arab Republic) stressed that the convention should be based on principles of general application and should not contain provisions applying only to one power or to one group of powers. The case of the representative of the Holy See rested on ancient tradition. He therefore saw no exact parallel between it and the case of the High Representatives in the States of the French Community.

50. Mr. DADZIE (Ghana) said that, in proposing its sub-amendment to the United Kingdom amendment, his delegation had been aware of the existence of the other amendments submitted to article 13. For that reason it had not mentioned the High Representatives in the States of the French Community, concerning which another amendment had been submitted by the delegation of France. The discussions of the Conference were a direct consequence of General Assembly resolution 685 (VII) of 5 December 1952, by which the Assembly had requested the International Law Commission to undertake the codification of diplomatic intercourse and immunities. His delegation therefore considered any mention of existing practice justified as codification of progressing international law. However, in keeping with the spirit of co-operation and compromise manifest in the Conference, it would be prepared to modify its sub-amendment by deleting the words " High Commissioners of the Commonwealth countries ".[4]

51. Mr. VALLAT (United Kingdom) thanked the delegation of Ghana for its spirit of compromise, and hoped that the revised sub-amendment would be widely acceptable. The United Kingdom had consulted the other Commonwealth countries concerning the inclusion of a reference to the High Commissioners and the matter was not one which it took lightly. It would not, however, insist on an express mention of the High Commissioners in the draft article, and would accept Ghana's proposal.

52. Mr. de VAUCELLES (France) withdrew his delegation's amendment in favour of the amendment proposed by Ghana.

The meeting rose at 1.15 p.m.

[4] The amendment of Ghana as so revised was circulated after the meeting as document A/CONF/20/C.1/L.177.

EIGHTEENTH MEETING

Thursday, 16 March 1961, at 3.20 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 14

1. The CHAIRMAN invited the Committee to continue its debate on the International Law Commission's draft.

2. He suggested that, as no amendments had been submitted to article 14, the article should be regarded as adopted in the form drafted by the Commission.

It was so agreed.

Article 15 (Precedence)

3. The CHAIRMAN drew attention to the amendments to article 15.[1]

4. Mr. PECHOTA (Czechoslovakia) said that his delegation's amendment to article 15 was consequential on its earlier amendment to article 12 which he had in effect withdrawn (15th meeting, para. 60). Accordingly, his delegation would likewise withdraw its amendment to article 15.

5. Mr. SUFFIAN (Federation of Malaya) introducing his delegation's amendment (L.111), said that perhaps the words " and time " should be added after " dates ".

6. Mgr. CASAROLI (Holy See) said that article 15, paragraph 3, showed great understanding on the part of the International Law Commission. Nevertheless the words " any existing practice in the receiving State " might mean that the exception in favour of representatives of the Pope would be restricted to the States applying it at the time of ratification or acceptance of the proposed convention. His delegation thought that some States which had not yet recognized that practice might wish to adopt it in the future. He had a few observations

[1] The following amendments had been submitted: Spain, A/CONF.20/C.1/L.95; Brazil, A/CONF.20/C.1/L.97; Italy, A/CONF.20/C.1/L.99; Federation of Malaya, A/CONF.20/C.1/L.111; Czechoslovakia, A/CONF.20/C.1/L.118; Holy See, A/CONF.20/C.1/L.120.

to make: first, his delegation had noted that the Commission itself, in the report to the General Assembly of the United Nations on the Commission's ninth session in 1957 (A/3623) had said [1] that it " intended to incorporate in the draft the gist of the Vienna regulation concerning the rank of diplomats." The only exception made in the Vienna regulation to the general rules of precedence, the exception in favour of the Papal representatives, was also general and unrestricted. Secondly, he felt that, as had so often been stressed, the Conference should codify current practices and rules rather than introduce new ones. His delegation's amendment (L.120) did not in any way restrict or impose upon States, which would remain entirely free to follow or reject the very long-standing custom followed in so many other States. Lastly, the proposed amendment met the criterion of equality between the older States, which had already been able to choose, and the new or future States. He could mention further arguments in support of the amendment, but thought that what he had said was sufficient to secure a favourable vote in the Committee.

7. Mr. de ERICE y O'SHEA (Spain) said that he would support the amendment of the Holy See. So far as his own delegation's amendment was concerned (L.95), he said he would withdraw the first part. The second part, however, reflected a uniform practice. Spain regarded its diplomatic staff as a homogeneous body and did not differentiate among its members on the basis of their rank.

8. The CHAIRMAN announced that the Italian and Brazilian delegations had become co-sponsors of the amendment submitted by the Federation of Malaya (L.111), subject to the addition of the words " and time " after " dates ", which the Federation of Malaya accepted. Those delegations had accordingly withdrawn their own amendments (L.97 and L.99).

9. Mr. HUCKE (Federal Republic of Germany) said that, after listening to the statement of the representative of the Holy See, his delegation would support the amendment of the Holy See. The Vienna regulation had left each State entirely free to give special recognition to the representative of the Holy See. That ancient custom should not be disturbed.

10. Mr. MAMELI (Italy) said that the Holy See's proposal reflected an historical practice. The status of the representatives of the Holy See had been recognized by the Congress of Vienna, and the Papal Nuncios had done splendid work amid the ravages of two world wars. His delegation would therefore support the Holy See's amendment.

11. Mr. AGUDELO (Colombia), supporting previous speakers, said that the only State in the world community to survive twenty centuries of history was the Holy See. Another argument should not be overlooked: if the Papal Nuncio did not have precedence, rivalry between States would cause trouble. No objection could be raised to a provision which accorded precedence to the representative of the Holy See, for he represented a wholly spiritual and not a temporal power.

12. Mr. CARMONA (Venezuela) said that on the instructions of its government his delegation supported the amendment of the Holy See. The Holy See's mission was one of peace and concord throughout the world. In the darkest hours of its history Venezuela had had cause to be grateful for good work of the Papal Nuncios.

13. Mr. DONATO (Lebanon) joined previous speakers in supporting the Holy See's amendment. Half the inhabitants of his country were Moslems, the other half Christians. Lebanon gave the Papal Nuncio precedence over other heads of mission, and everyone in the country, irrespective of religion, paid the Holy See the respect which oriental countries gave a spiritual authority.

14. Mr. TUNKIN (Union of Soviet Socialist Republics) said that article 15, paragraph 3, of the Commission's draft was taken from the regulation of Vienna. An old rule of international law could be considered from two points of view: it was of long standing and conformed to a venerable tradition; or it was out of date and obsolete. The Conference had met because the regulation adopted at Vienna in 1815 had become out-dated. In 150 years the situation had changed considerably. The law conceived at Vienna had been European law; the present aim was to draft universal law. Furthermore, of the eight countries taking part in the Congress of Vienna, four had been Catholic, and at that time religious freedom had not been at all secure. The document which the Committee was instructed to prepare should be acceptable to all countries, whatever their political or religious convictions.

15. Article 15, paragraph 3, meant that some receiving State might itself establish the order of precedence. That contradicted the principle of the equality of States. Hence he would ask for a separate vote on paragraph 3 and abstain.

16. The Spanish amendment (L.95) usefully clarified the position, and his delegation would vote for it, and also for the amendment submitted by the Federation of Malaya, which simplified the draft.

17. Mr. PONCE MIRANDA (Ecuador) was pleased that numerous delegations supported the Holy See's amendment, and said that his delegation also would vote for it.

18. Mr. de ROMREE (Belgium) said he had received instructions from his government to support the Holy See's amendment, which left the receiving State entirely free to decide for itself the order of predecence of heads of diplomatic missions.

19. Mr. BOLLINI SHAW (Argentina) expressed support for the amendments of the Federation of Malaya and of Spain and also for that submitted by the Holy See. His country gave precedence to the Apostolic Nuncio, but the wording left other countries entirely free to act differently.

20. Mr. LINARES (Guatemala), Mr. KIRCH-SCHLAEGER (Austria), Mr. FIGUEROA (Chile), Mr. de VAUCELLES (France), Mr. de SOUZA LEAO

(Brazil), Mr. MARS (Haiti), Mr. BARNES (Liberia), Mr. STUCHLY-LUCHS (Dominican Republic), Prince of LIECHTENSTEIN (Liechtenstein), Mr. LEFEVRE (Panama), Mr. RETTEL (Luxembourg), and Mr. VALLAT (United Kingdom) supported the amendment to article 15 proposed by the Holy See.

21. Mr. PINTO de LEMOS (Portugal) welcomed the Holy See's amendment, which was not only reasonable, but also left all States entire freedom of action and would thus facilitate the accession of new States to the convention.

22. Mr. BOUZIRI (Tunisia) supported the Federation of Malaya's amendment as amended verbally. The Spanish amendment, of which only the second part remained, he approved in principle but not in form. The order of precedence of the members of a mission's diplomatic staff was actually determined by the Minister for Foreign Affairs, admittedly on the recommendation of the head of the mission. The drafting committee might perhaps revise the amendment to take account of that point. While unwilling to commit itself to support the Holy See's amendment, the Tunisian delegation suggested that the word " Pope " should be replaced by " Holy See ", in conformity with the official nomenclature.

23. Mgr. CASAROLI (Holy See) accepted the Tunisian representative's suggestion. His delegation's amendment had used the expression " representative of the Pope " because it appeared in the International Law Commission's text, which was itself taken from the regulation of Vienna.

24. Mr. WALDRON (Ireland) thanked the delegations of Brazil and Italy for the co-operative spirit in which they supported the Federation of Malaya's amendment, which the Irish delegation also supported. It also accepted the new paragraph, which the Spanish delegation proposed to add to article 15. On the instruction of its government, the Irish delegation joined the delegations that had spoken in favour of the Holy See's amendment, which merely reworded paragraph 3 of the draft in accordance with the intentions of the International Law Commission, and did not impose any obligation on States. To the remark of one delegation that the practice of granting precedence to the Pope's representative was out-dated and obsolete, he replied that, apart from the States which in 1815 had recognized the precedence of the Pope's representative, at least twenty additional States did so in modern times, including his own.

25. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that the Congress of Vienna recognized the principle that the Pope's representative should take precedence because of the preponderant influence of the four Catholic countries participating in that congress. The diplomatic function had expanded considerably since then, and more than a hundred countries, including many which were non-Catholic or atheist, were to be invited to sign or accede to the new convention. Therefore, to make the convention acceptable to all States, all provisions relating to special situations should be omitted.

26. Mr. SOSA PARDO de ZELA (Peru) supported the Holy See's amendment, which did not place any obligation on non-Catholic States.

27. Mr. GLASER (Romania) supported the Federation of Malaya's amendment as revised. His delegation would also support the new paragraph to article 15 proposed by Spain. It could not, however, vote for the Holy See's amendment, and would abstain from the vote on article 15, paragraph 3. The draft laid down a perfectly logical order of precedence for heads of mission based on seniority, and no exception should be made.

28. Mr. GOLEMANOV (Bulgaria) said he had no objection to paragraphs 1 and 2 of draft article 15. However, the wording of paragraph 1 would be improved by the amendment of the Federation of Malaya, for which his delegation would vote. With regard to article 15, paragraph 3, the principle giving precedence to the Pope's representative conflicted with the fundamental rules of international law and was an anachronism. His delegation could therefore not vote either for paragraph 3 of the draft or for the Holy See's amendment.

29. Mr. USTOR (Hungary) associated himself with the delegations which had criticized article 15, paragraph 3. The Conference was endeavouring to draft an international convention, which as such should not contain any provision affecting only a minority of States and contradicting the principles of equality and non-discrimination among States. Hungary granted religious freedom and respected the heads of all churches, but could not accept a principle tantamount to discrimination in favour of the head of one church. His delegation would therefore abstain from voting on article 15, paragraph 3.

30. Mr. LINTON (Israel) said he would vote for the amendments of the Holy See and of the Federation of Malaya to article 15. He also supported in principle the Spanish amendment although he suggested that the proposed new paragraph should be revised in order to make it clear that it referred not to precedence within a mission but within the diplomatic corps, which was determinable by the Ministry for Foreign Affairs.

31. Mr. WESTRUP (Sweden) said that his delegation, out of respect for tradition, would vote for the Holy See's amendment.

32. Mr. MECHECHA HAILE (Ethiopia) supported the Holy See's amendment, which gave the receiving State full latitude in the matter of precedence. He would also vote for the amendments of Spain and of the Federation of Malaya.

33. Mr. ANTONOPOULOS (Greece) unreservedly supported the Holy See's amendment, although his was not a Catholic country. Greece attached great importance to the principle of freedom of States, which was respected by the amendment.

34. Mr. REINA (Honduras) contested the statement that the principle of giving precedence to the Pope's representatives was obsolete. The principle was observed in all Latin American States and acknowledged the supre-

macy of the world's highest spiritual authority. His delegation warmly supported the Holy See's amendment.

35. Mr. ASIROGLU (Turkey) associated himself with the observations of the Tunisian representative on the Spanish amendment, which would be improved by the proposed rewording. His delegation would vote for the amendments of the Holy See and of the Federation of Malaya.

36. Mr. TAWO MBU (Nigeria) supported the Holy See's amendment. It had been said that the principle of the precedence of the Pope's representative was an echo of the past. But was not international law itself an expression of the past ? There was no reason at all against acceptance of the Holy See's amendment, which left the receiving State full liberty to recognize or deny the precedence of the Pope's representative. His delegation would also accept the amendment of the Federation of Malaya, which was reasonable; and it supported in principle the Spanish amendment.

37. Mr. CARCANI (Albania) said he could not support the Holy See's amendment, for the reasons set forth by the representatives of the Union of Soviet Socialist Republics and other States.

38. Mr. REGALA (Philippines) supported the amendments of the Holy See and of the Federation of Malaya.

39. U SOE TIN (Burma) said he would vote for the Holy See's amendment, although its underlying principle was not observed in his country. He would also support the amendment of the Federation of Malaya, as revised, and, in principle, the Spanish amendment.

40. Mr. PECHOTA (Czechoslovakia) supported the Spanish amendment, which seemed to him reasonable. He would also vote for the amendment of the Federation of Malaya, which simplified article 15. On the other hand, his delegation could not support the Holy See's amendment, since it was not desirable to write into the Convention a provision concerning a special case.

41. The CHAIRMAN noted that the amendment sponsored by the Federation of Malaya, Brazil and Italy, as revised, had been unanimously approved. He suggested that it should therefore be considered as adopted.

It was so agreed.

42. The CHAIRMAN suggested that, as no amendment had been submitted to article 15, paragraph 2, it should likewise be considered as adopted.

It was so agreed.

43. The CHAIRMAN put to the vote the amendment proposed by the Holy See to paragraph 3 of article 15 (L.120).

The amendment was adopted by 59 votes to 1, with 17 abstentions.

44. The CHAIRMAN invited the Committee to vote on the second part of the Spanish amendment, adding a new paragraph to article 15.

45. Mr. VALLAT (United Kingdom) suggested that the drafting committee should be asked to re-draft the Spanish amendment to embody the principle stated in the United Kingdom amendment (L.10) to article 12 and adopted by the Committee.

46. The CHAIRMAN said that would be done. The Committee would therefore vote only on the principle stated in the Spanish amendment.

The principle was adopted by 61 votes to none, with 2 abstentions.

47. Mr. BARTOŠ (Yugoslavia) said that, in accordance with the principles of the United Nations Charter, the Yugoslav delegation had voted against draft article 15, paragraph 3, because the provision was contrary to the principle of non-discrimination in the matter of religion and granted a privilege to a certain State whose head was also the head of a religious community. Moreover, it was wrong to believe that the application of such a rule would only affect relations between the State in question and the receiving State because the latter's acceptance was optional, for the precedence thus established would affect all States represented in the State recognizing or observing that precedence.

Proposed new article concerning the diplomatic corps

48. The CHAIRMAN drew attention to the Italian delegation's proposal (L.102) that a new article concerning the diplomatic corps should be inserted between articles 15 and 16.

49. Mr. MAMELI (Italy) said that his delegation's proposal was intended to fill a gap in the draft articles. He hoped that it would be accepted by the Committee.

50. Mr. MATINE-DAFTARY (Iran) recalled that the International Law Commission had considered the possibility of inserting a provision concerning the diplomatic corps in the draft and had declined to do so.[2] His delegation had no objection to paragraph 1 of the Italian proposal, but would vote against paragraph 2 if it was put to the vote. In his delegation's view the diplomatic corps did not, strictly speaking, perform any functions, but merely engaged in activities of an internal character.

51. Mr. MENDIS (Ceylon) said that, although not opposed to the Italian proposal in principle, he thought that the application of paragraph 2 might cause practical difficulties if, as in Ceylon, the doyen of the diplomatic corps represented a country that was not recognized by all States. He suggested that the provision might be revised so that it would not stipulate the absolute rule that the diplomatic corps was represented by its doyen.

52. Mr. TUNKIN (Union of Soviet Socialist Republics) endorsed the comments of the Iranian representative. Italy had submitted a similar proposal in its comments on the 1957 draft (A/3859, annex), and the proposal had received little support in the Commission. The proposal under discussion was unrealistic, for the diplomatic corps did not perform any functions and did not

[2] For discussion of the provision, see ILC, 454th meeting, paras. 44 to 75, 466th meeting, paras. 45 to 67, and 467th meeting, paras. 1 to 4.

constitute a body having capacity to act as such. If it was to have corporate capacity, it would be necessary to lay down the powers of the doyen, establish the procedure for taking decisions, and specify whether a simple majority of votes or a two-thirds majority was required, etc., and it could be seen at once what difficulties would arise. The International Law Commission had therefore very wisely decided that it would be better not to mention the diplomatic corps in the draft articles. Moreover, the proposed amendment gave the expression " diplomatic corps " its narrowest sense and many States would doubtless prefer the diplomatic corps to be defined as including all persons on the diplomatic list.

53. Mr. MAMELI (Italy) said he could not understand why the Soviet representative, even though recognizing the existence of the diplomatic corps, opposed the addition of a provision concerning the corps.

54. Mr. TUNKIN (Union of Soviet Socialist Republics) explained that his delegation might possibly be able to support a provision relating to the diplomatic corps, but that it could not vote for the Italian proposal.

55. Mr. DONATO (Lebanon) said that the definition given in paragraph 1 of the Italian proposal was unconvincing to his delegation, which considered the diplomatic corps to include all members of the diplomatic staff and their families.

56. After an exchange of views, the CHAIRMAN proposed that a special working party consisting of the representatives of Brazil, Czechoslovakia, the Federation of Malaya, Iran and Italy should be appointed to draft a clause concerning the diplomatic corps.

It was so agreed.

Article 16 (Mode of reception)

57. The CHAIRMAN, noting that no amendment had been submitted to article 16, proposed that it should be regarded as adopted.

It was so agreed.

Article 17 (Chargé d'affaires ad interim)

58. The CHAIRMAN drew attention to the amendments proposed to article 17.[3] He said that the Spanish delegation had informed him of the withdrawal of the first of its amendments (L.96).

59. Mr. VALLAT (United Kingdom) said that, having consulted the Commonwealth representatives, he withdrew the first of the United Kingdom amendments. The second should not present any particular difficulty, since similar amendments had been adopted during the consideration of articles 9, 12 and 15.

60. Mr. AMAN (Switzerland) said his delegation was prepared to withdraw its amendment in favour of the Italian amendment, if the Italian representative would agree to replace the words " Minister for Foreign Affairs of the sending State " by the words " Ministry for Foreign Affairs of the sending State ".

61. Mr. MARESCA (Italy) said that the addition proposed by Italy was necessary, because the chargé d'affaires ad interim, holding powers delegated by the head of the mission, could not notify his own name to the Minister for Foreign Affairs of the receiving State. Since the Minister appointed chargés d'affaires, he should likewise notify the name of the chargé d'affaires ad interim if the head of the mission was incapacitated. It was therefore impossible to replace " Minister " by " Ministry ".

62. Mr. AMAN (Switzerland) agreed.

63. Mr. MARISCAL (Mexico) withdrew his delegation's amendment in favour of that of Spain.

64. Mr. KEVIN (Australia) withdrew his delegation's amendment in favour of the Italian amendment. He suggested that the words " in case of his inability " in that amendment be replaced by " when he is unable to do so ".

65. Mr. MAMELI (Italy) agreed.

66. Mr. BARTOŠ (Yugoslavia) said that the article had its origins in a provision which he had first proposed in the International Law Commission (392nd meeting of the ILC, para. 80). He thanked the Italian delegation for drafting a better text than the original, and would vote for the amendment.

67. Mr. TUNKIN (Union of Soviet Socialist Republics) said he could accept the principle stated in the Spanish amendment, but thought that the text could be improved. There was perhaps some room for improvement in the Italian amendment, since it could mean that notice must be given to the Ministry for Foreign Affairs only by a personal letter from a head of mission, whereas in practice it was generally the diplomatic mission, not its head, which carried out that formality. The Committee should not complicate a practice which had caused no trouble in the past. The amendment submitted by the Federation of Malaya had become pointless, since the Committee had adopted the Czechoslovak amendment (L.41) to article 5 (10th meeting, para. 75).

68. Mr. SUFFIAN (Federation of Malaya) agreed and withdrew his delegation's amendment.

69. Mr. de ERICE y O'SHEA (Spain) said he would agree that the Committee should decide only on the principle stated in the Spanish amendment, and refer the text to the drafting committee. The amendment's sole object was to state expressly that a chargé d'affaires ad interim was also a head of mission. A chargé d'affaires ad interim was often the first head of mission when diplomatic relations were established between two States, and the last when they were broken off.

70. The Spanish delegation would vote for the Italian amendment.

[3] The following amendments had been submitted: United Kingdom, A/CONF.20/C.1/L.12; Mexico, A/CONF.20/C.1/L.58; China, A/CONF.20/C.1/L.70; Spain, A/CONF.20/C.1/L.96 and L.172; Italy, A/CONF.20/C.1/L.100; Switzerland, A/CONF.20/C.1/L.109; Australia, A/CONF.20/C.1/L.110; Federation of Malaya, A/CONF.20/C.1/L.112; Denmark, A/CONF.20/C.1/L.170.

71. Mr. SCHROEDER (Denmark) said that the rule laid down in article 17 was very inflexible; countries with a relatively small diplomatic staff should be permitted to appoint as chargés des affaires staff members not of diplomatic rank. The object of Denmark's amendment was to allow for that practice.

72. Mr. TUNKIN (Union of Soviet Socialist Republics) said that in its comments (A/3859, annex) Denmark had made a proposal similar to that under discussion, but the International Law Commission had not adopted it (453rd meeting of the ILC, paras. 51 to 82). The phrase " a member of the staff not of diplomatic rank " was too broad. The practice in such cases was to request a diplomat of another State to take charge of the affairs of a mission when its head could not act. The Soviet delegation was ready to accept the " chargé des affaires " system if that deputy were appointed by the head of the mission with the consent of the receiving State.

The meeting rose at 6.10 p.m.

NINETEENTH MEETING

Friday, 17 March 1961, at 10.30 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 17 (Chargé d'affaires ad interim) (*continued*)

1. The CHAIRMAN invited the Committee to continue its debate on article 17 and the amendments thereto.[1]

2. He announced that two of the amendments to article 17 had been re-drafted to take into account suggestions made during the discussion. The Italian amendment, as revised, would replace the passage " to the Ministry for Foreign Affairs of the receiving State " by: " either by the head of the mission or, in case he is unable to do so, by the Minister for Foreign Affairs of the sending State to the Minister for Foreign Affairs of the receiving State or any other ministry designated for this purpose." In that form the Italian amendment incorporated the substance of the second part of the United Kingdom amendment (L.12) and also the change proposed by Australia (18th meeting, para. 64).

3. The additional paragraph proposed by Denmark (L.170) had been revised to read: " In cases where no diplomatic member of a mission is present in the receiving State, a member of the chancery staff not of diplomatic rank may, with the consent of the receiving State, be designated by the sending State to be in charge of the current affairs of the mission in the capacity of chargé des affaires."

4. Mr. MATINE-DAFTARY (Iran) said that the amendments still before the Committee seemed to relate mostly to drafting, and could conveniently be referred to the drafting committee. The objection put forward by the Soviet Union representative to the Danish amendment at the eighteenth meeting could perhaps be met by specifying that the person designated to be in charge of the current affairs of the mission would be a member of the administrative staff.

5. Mr. CARMONA (Venezuela) supported the Italian amendment, which improved draft article 17 considerably, and also seemed to cover the point raised in the amendment submitted by China (L.70).

6. He also supported the Spanish amendment (L.172), which dealt with a point which could otherwise give rise to difficulties.

7. He opposed the Danish amendment, because his government could not accept the suggestion that a subordinate official of the administrative and technical staff of a mission could be placed officially in charge of the mission. In Venezuela, as in many other countries, even a diplomatic officer of the rank of attaché or third secretary could not be left in charge of a mission, and, by reason of reciprocity, a diplomatic officer of that rank was not accepted as a chargé d'affaires ad interim. In the circumstances, it was even less permissible to leave in charge of a mission a person who was not even a diplomatic officer.

8. The current practice was that when no diplomatic officer was present to act as head of the mission, a subordinate official was designated to take care of the office and archives. That official, however, had no representative character and could not maintain any official contacts. His position was one of fact, not of law. It was his duty to act as caretaker of the premises and archives, and to inform his government of any developments, until a diplomatic officer arrived to act as head of mission.

9. The Soviet Union representative had said that, in a case where no diplomatic officer was present, the representative of a friendly country could be designated as chargé d'affaires ad interim (18th meeting, para. 72). In Venezuela, in a similar case, the sending State had designated as chargé d'affaires ad interim one of its diplomatic officers accredited to a neighbouring country. The subordinate official who looked after the mission concerned would advise him when his presence was needed and, in a matter of hours, he would arrive by plane.

10. Mr. YASSEEN (Iraq) said that the intention of the Danish amendment was the commendable one of ensuring the continuity of the diplomatic service; but the machinery it suggested was unsatisfactory. The diplomatic function was an extremely delicate one, too serious to be performed by members of the administrative and technical staff. They were not infrequently nationals of the receiving State, sometimes appointed even without

[1] For list of amendments to article 17, see 18th meeting, footnote to para. 58. At that meeting, the United Kingdom withdrew the first part of its amendments (L.12), Spain withdrew the first of its amendments (L.96), and Mexico, Switzerland, Australia and Federation of Malaya withdrew their respective amendments (L.58, L.109, L.110, L.112).

its consent, and the qualifications required of them were less exacting than those of the diplomatic staff.

11. The Danish amendment dealt with an exceptional case, for which it was unnecessary to provide in the convention, and which should be left to States to settle by agreement.

12. Mr. WESTRUP (Sweden) was surprised at the unfavourable reaction to the Danish proposal, which did not introduce a novel or bizarre concept. Its purpose was simply to ensure continuity in the management of the current affairs of the mission and to avoid any interruption due to absence of the diplomatic staff. The system of leaving a member of the chancery staff in charge was perhaps not sufficiently well known in the larger States with numerous diplomatic staffs. Likewise, most of the foreign diplomatic missions accredited in the larger capitals had sufficient diplomatic staff. In reply to the Soviet Union representative he stressed that, in the vast majority of cases, the person left in charge would be the chancelier; it would be unimaginable for the head of a diplomatic mission to leave it in charge of a member of the service staff.

13. It had been suggested that the possibility of leaving a member of the chancery staff in charge of the mission by agreement between the two States was obvious. He believed in making that possibility perfectly clear by an express provision. The position of those countries which did not wish to accept the system was amply safeguarded by the proviso that a member of the chancery staff could only be left in charge of the current affairs of the mission " with the consent of the receiving State ".

14. Mr. PONCE MIRANDA (Ecuador) supported the Spanish amendment, which embodied a generally accepted practice. A chargé d'affaires ad interim, though his position was provisional, was none the less the head of the diplomatic mission and should enjoy all the appropriate prerogatives. The Spanish amendment would make that position clear in article 17. Since the chargé d'affaires ad interim was a head of mission, he should be included in the list of heads of mission given in article 13, paragraph 1. That result could be achieved by amending sub-paragraph (*c*) to cover not only permanent chargés d'affaires but also chargés d'affaires ad interim. In its commentary 1 to article 17 (A/3859), the International Law Commission had indicated that the permanent chargé d'affaires or chargé d'affaires en pied " is appointed on a more or less permanent footing." It would have been more appropriate to say that all chargés d'affaires, whether permanent or ad interim, were more or less temporary. Accordingly the most appropriate course was to drop all qualifications and to refer in article 13, paragraph 1 (*c*), to chargés d'affaires generally, so as to cover both the new extremely rare cases where a chargé d'affaires en pied was duly accredited by lettres de cabinet, and the frequent case of the designation of a chargé d'affaires ad interim.

15. Mr. MELO LECAROS (Chile) said that, as far as his country was concerned, there existed only one category of chargé d'affaires. That was true not only of Chilean chargés d'affaires abroad but also of foreign chargés d'affaires accredited to Chile. He understood that a great many countries had arrived at the same conclusion as Chile. The adoption everywhere in the articles of the simple term " chargé d'affaires " would make it possible to drop all the anachronistic distinctions to which reference had been made in the discussion.

16. He supported the Spanish amendment, the purpose of which was to recognize the chargé d'affaires as head of mission; he therefore considered it essential that not only in article 17, but also in article 13, paragraph 1 (*c*), the reference should be purely and simply to chargé d'affaires. Since a chargé d'affaires temporarily in charge of a mission was recognized as the head of that mission, his status should not be diminished in any way. That was all the more true since there had been general recognition, during the discussion on article 13, that all heads of mission should rank equally.

17. His delegation had supported provisions which met requirements of other delegations, but were not only of no interest, but possibly somewhat unattractive to Chile. It had done so in order to contribute to the drafting of an instrument which would receive the widest possible measure of acceptance. In the present instance, if the qualifications " accredited to Ministers for Foreign Affairs ", " en pied " and " ad interim " were everywhere dropped from the term " chargé d'affaires ", the position of all delegations would be safeguarded. The delegations representing countries which did not draw any distinction between two classes of chargé d'affaires would be satisfied, and the position of the countries which still practised that distinction would not be affected in any way. Drafted in that manner, the text could attract general support. If, however, any reference were made to the permanent or other character of the appointment of a chargé d'affaires, the text would be unacceptable to those countries which, like his own, did not recognize two types of chargés d'affaires.

18. Mr. KAHAMBA (Congo: Léopoldville) supported article 17 as it stood. It said all that was necessary to say: that in the absence of the head of the mission the affairs of the mission would be conducted by a chargé d'affaires and that the name of that chargé d'affaires should be notified to the Ministry for Foreign Affairs of the receiving State. There was no need to specify, as suggested in the Italian amendment, the procedure for that notification: its details differed from State to State. To enter into those details in the draft articles would be an interference in domestic affairs. A statute of 8 February 1961 on the organization of the diplomatic corps of the Congo laid down that the chargé d'affaires ad interim should be designated by the head of the mission, who should advise the Ministry for Foreign Affairs at Léopoldville and notify the receiving State. If the head of the mission could not perform his functions, the diplomatic officer next in rank took over his duties, and the mission advised the Ministry for Foreign Affairs of the receiving State.

19. As an example of the difficulties that would be created if an attempt were made to regulate the procedure, he mentioned the recent death of the Ambassador of the Federal Republic of Germany at Léopoldville. The

embassy had immediately notified the Ministry for Foreign Affairs of the Congo that the diplomatic officer next in rank would act as chargé d'affaires ad interim. If, as suggested in the Italian amendment, it has been necessary for the Minister for Foreign Affairs of the Federal Republic of Germany to notify the Minister for Foreign Affairs of the Congo, there could have been considerable delay in making the designation.

20. For those reasons, his delegation felt it sufficient to specify in article 17 that the name of the chargé d'affaires ad interim must be notified to the Ministry for Foreign Affairs of the receiving State. His delegation supported article 17 without amendment.

21. Mr. HU (China), introducing his delegation's amendment (L.70), said that it was not covered by the Italian amendment, which dealt with procedure, whereas his amendment deal with the causes of vacancy. It filled a gap in article 17 by providing for the absence of the head of the mission from the receiving State. If it were agreed that the expression " unable to perform those functions " was also intended to cover absence, the question could be left to the drafting committee.

22. Mr. NAFEH ZADE (United Arab Republic) said that his delegation could not support the Danish amendment unless it was brought into line with practice by the deletion of the words " be designated by the sending State." In practice, a head of mission could notify the Ministry of Foreign Affairs of the receiving State that, having no diplomatic colleague to take his place, he had entrusted current administrative affairs to a chargé des affaires who was not a diplomatic officer. A notification from the sending State might otherwise give the receiving State the impression that a chargé d'affaires was being appointed.

23. Mr. BOUZIRI (Tunisia) supported the Danish amendment in principle. Many smaller States might find themselves in the position of wishing to establish diplomatic relations with a number of other States but not having adequate diplomatic personnel to do so. The Danish amendment would help those States to solve that minor but not infrequent problem, which would become even more frequent in the future.

24. It was difficult to define the extent of " current affairs ". Although the Danish text already safeguarded the rights of the receiving State to some extent, by providing that the designation would need its consent, his delegation would suggest that a further safeguard be added by providing that in certain cases the scope of " current affairs " might be determined by agreement between the sending State and the receiving State.

25. Mr. CAMERON (United States of America) thought that the word " affairs " in the Danish amendment was the cause of considerable difficulty. It has been established that a chargé des affaires could not act for his government in a diplomatic capacity either for representation or negotiation. His delegation would therefore suggest that the expression " current affairs " should be replaced by " current administrative affairs ", which probably corresponded to the original intention of the Danish delegation.

26. Mr. KRISHNA RAO (India) said that there were two substantive amendments before the Committee: the Italian amendment and the revised Danish amendment. A strict interpretation of draft article 17 would not exclude the appointment of a member of the chancery staff as chargé d'affaires ad interim. The term " chancery staff " was new to the draft articles, and it might be preferable to refer to " administrative and technical staff ", as elsewhere in the draft. The term " current affairs " was also new to the text and could be variously interpreted. It might be construed to mean " day-to-day affairs ". If the principle of the Danish amendment were adopted, the exact drafting might perhaps be left to the drafting committee.

27. Mr. TUNKIN (Union of Soviet Socialist Republics) doubted whether the revised version of the Italian amendment really added much to the draft. The International Law Commission had not felt it necessary to include details of procedure. If the Italian amendment were to be accepted, however, it should more faithfully reflect current practice, under which notification was sometimes sent by the mission rather than by its head. That practice had not given rise to complications in the past. He suggested, therefore, that the Italian amendment should be amended to read: ". . . either by the mission or, in case it is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State." If the mission itself was unable to notify the designation, the Ministry for Foreign Affairs might have to communicate directly with the Ministry for Foreign Affairs of the receiving State.

28. His delegation would support the United States suggestion that in the Danish amendment " current affairs " should be replaced by " current administrative affairs ". It would, however, suggest that the phrase " in the capacity of chargé des affaires " at the end of the revised Danish text should be deleted, since it would lead only to confusion. The intention of the Danish amendment would be adequately expressed without those words, since the official would not of course be in charge of diplomatic affairs.

29. Mr. de ERICE y O'SHEA (Spain) agreed that the use of the term " chargé des affaires " might lead to confusion, and suggested that the drafting committee should keep that risk in mind.

30. Mr. SCHROEDER (Denmark) said that the intention of the amendment submitted by this delegation was exactly as described by the representative of the United States of America. Since, however, there seemed to be certain objections to the drafting, it would not press the amendment to a vote but would be satisfied if the principle were accepted and the final drafting left to the drafting committee.

31. Mr. de ROMREE (Belgium) supported the view expressed by the representative of the United States of America. The case of a chargé des affaires was rare but did occur. If accepted by the receiving State, he had no right of representation or negotiation. It should be made clear that he was in charge of the current administrative affairs of the mission.

32. Mr. KEVIN (Australia) said that, like the representative of India, he also had had some doubts about the meaning of the term " current affairs ", as well as about the definition of " chancery staff ".

33. The CHAIRMAN proposed that the Committee should vote on the principle of the Danish amendment as revised. If the principle was approved, the drafting committee would be asked to re-draft the provision in the light of the debate.

The principle of the Danish amendment was adopted by 61 votes to 2, with 9 abstentions.

34. Mr. TUNKIN (Union of Soviet Socialist Republics), referring to the Italian amendment as revised, suggested that the words " the head of " before the word " mission " should be omitted. The provision as it stood did not correspond to practice.

35. Mr. MAMELI (Italy) agreed that the suggestion should be referred to the drafting committee.

36. Mr. TALJAARD (Union of South Africa) objected that the substitution of " mission " for " head of the mission " would materially change the amendment, and might give rise to difficulties within the mission about who should be appointed. It might even be possible for a member of the staff to appoint himself.

37. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his suggested amendment was really a drafting change. He would therefore agree that the principle of the Italian amendment should be adopted and referred to the drafting committee.

38. The CHAIRMAN proposed that the Committee should adopt the principle of the amendment proposed by Italy, as revised, subject to the comments made in the course of the debate.

The principle of the Italian amendment as revised was adopted by 69 votes to 1, with 3 abstentions.

The amendment proposed by China (L.70) was rejected by 10 votes to 24, with 36 abstentions.

The amendment proposed by Spain (L.172) was adopted by 36 votes to 1, with 33 abstentions.

Article 17 as a whole, as amended, was adopted by 68 votes to none, with 2 abstentions.

39. Mr. MELO LECAROS (Chile) said that although his delegation, wishing to be co-operative, had voted in favour of the article, it had reservations concerning the words " ad interim " and would raise the matter in the plenary conference.[2]

40. Mr. BARTOŠ (Yugoslavia) said that his delegation had gladly voted for article 17 as amended since for the first time an international regulation had been adopted concerning the position of chargés d'affaires ad interim.

Article 18 (Use of flag and emblem)

41. The CHAIRMAN drew attention to the amendments submitted to article 18 by Mexico (L.59), Italy (L.101), and the Philippines (L.136), the last two having the same intent.

42. Mr. REGALA (Philippines), introducing his delegation's amendment, said that it concerned the first of the three groups of privileges and immunities mentioned in paragraph 4 of the International Law Commission's introductory commentary to section II of its draft (A/3859) — viz., those relating to the mission's premises and archives. The object of the amendment was to ensure the observance of local laws and regulations; their non-observance would be a breach of general practice and out of keeping with the spirit of the remainder of the instrument being drafted.

43. Mr. OJEDA (Mexico), introducing his delegation's amendment (L.59), said that its object was to bring the article more into line with existing practice. It was, however, of minor importance, and if the Committee wished to retain the article as it stood he would not press the amendment.

44. Mr. MAMELI (Italy) said that the display of the flag on diplomatic premises was a matter of great importance for all States. The flag should, however, only be shown on special occasions: the constant and indiscriminate use of the flag would deprive it of its meaning and would make receiving States reluctant to grant permission for the use of the flag or ensure its constant protection. Those were the considerations underlying his delegation's amendment.

45. Mr. LINTON (Israel) considered that the draft gave adequate expression to the practice followed generally and accepted in his own country. The Conference should promote uniformity and not divergence of practice, and he therefore preferred article 18 to remain unchanged.

46. Mr. MATINE-DAFTARY (Iran) agreed. With regard to the Mexican amendment, he saw no reason to abolish an established custom. The amendments of Italy and the Philippines seemed to him superfluous, for article 40 stated expressly that it was the duty of all persons enjoying privileges and immunities to respect the laws and regulations of the receiving State.

47. Mr. GOLEMANOV (Bulgaria) said that article 18 reflected what he regarded as the general practice. It also took into account the fact that in some countries (as was mentioned in the Commission's commentary on the article) there were restrictions on the use of the flags and emblems of foreign States. He therefore supported the article as drafted, and considered that all three amendments were unnecessary.

48. Mr. KRISHNA RAO (India) referring to the Philippine amendment, said that the meaning of the phrase " existing laws and regulations " was not clear; perhaps the word " existing " should be omitted. Secondly, did the amendment apply only to the residence and means of transport, or to the premises as well ? If all were included, he would have objections.

49. Mr. TUNKIN (Union of Soviet Socialist Republics) said he was satisfied with article 18 as drafted. It

[2] See fourth plenary meeting.

merely noted a general and universally recognized practice, for it was only normal that the receiving State should respect the flag and emblem of the sending State. The amendments did not seem to affect substance, and the doubts expressed by some delegates were unfounded. It was hardly conceivable that a receiving State would not allow the flag to fly on the mission's premises on its national day, for example; and it was surely unnecessary to legislate against the misuse by a mission of its own national flag. He would therefore prefer article 18 to remain unchanged.

50. Mr. de VAUCELLES (France) likewise supported article 18 as drafted. The reference in two amendments to the laws and regulations of receiving States caused him some concern, for the Commission's commentary mentioned regulations in some countries restricting the use of the flags and emblems of foreign States. Indeed, the Commission had drafted article 18 as a safeguard against such laws, and had (as pointed out by the representative of Iran) provided in article 40 against any abuse of privileges and immunities, although a diplomat arriving in his country of assignment would naturally comply with its laws and customs.

51. With regard to the Mexican amendment, he said that the head of a mission might find it useful to display the flag on his motor-car, for it would enable him to reach an important destination through heavy traffic without delay.

52. Mr. BARTOŠ (Yugoslavia) expressed approval of article 18, and also of the amendments proposed by Italy and the Philippines. He asked, however, that the drafting committee should be instructed to take into account the wording used in article 29 of the Commission's recent draft on consular intercourse and immunities (A/4425). His government considered that it would be wise to make clear that the head of a mission could use the flag only for his own means of transport, and not on public transport: heads of missions had been known to use the flag in trains and boats. He could not approve the Mexican amendment, for the use of the flag on the means of transport of a head of mission would assist the authorities of the receiving country to give him the protection and honours to which he was entitled.

53. Mr. BREWER (Liberia) supported the existing text of article 18. In view of the comments of the representative of Yugoslavia, however, he suggested the addition of the word " official " before " means of transport ".

54. Mr. TAWO MBU (Nigeria) supported article 18 as drafted because it confirmed a reasonable and long-standing practice. He saw no justification for the three amendments proposed, but supported the proposal of the representative of Liberia that the word " official " should be added.

55. Mr. CAMERON (United States of America) supported article 18 as it stood.

56. Mr. BOUZIRI (Tunisia) said he was strongly opposed to the article as drafted, for it would allow the flag of a mission to be flown for 24 hours a day the whole year round. He agreed with the representative of Italy that the flag was a precious symbol and should be reserved for special occasions; and it could not be denied that there had been abuses of the privilege. He did not agree with the remark of the representative of Iran, for article 40 should be read in the context of the section in which it was placed; he did not think it could be applied to article 18, which concerned the rights of diplomats. He shared the views expressed on transport, and considered the Mexican amendment too drastic. He would support the proposal that the word " official " should be added before " means of transport ".

57. Mr. JEZEK (Czechoslovakia) supported article 18 as drafted, because it corresponded with international practice. He saw no reason for amending it.

58. Mr. REGALA (Philippines) said he appreciated the comments on his delegation's amendment, in particular those of the representatives of India, Yugoslavia and Tunisia. With regard to the comments of the representative of Iran, he pointed out that article 40 was in a different section and therefore could not apply to article 18. His delegation's amendment was fully justified and appropriate; it also conformed with other articles approved earlier. He was, however, prepared to revise it to read: " according to the prevailing practice in the receiving State "; and if it were adopted in principle he would agree that it should be referred to the drafting committee.

59. Mr. SINACEUR BENLARBI (Morocco) said he was in favour of the Italian amendment for the reasons expressed during the discussion, in particular the consideration that the receiving State was expected to ensure continuous protection for the flag. There was no objection to the use of the flag on the means of transport, provided that it was limited to specific occasions. With regard to the reference to article 40, he said that that article appeared in another section of the draft.

60. Mgr. CASAROLI (Holy See) said he saw no objection to the revised version of the amendment proposed by the Philippines.

61. Mr. NAFEH ZADE (United Arab Republic) said that, while he was in favour of article 18 as drafted, he had no objection to the Italian amendment or to the revised version of the Philippine amendment. He was, however, opposed to the Mexican amendment, since it abolished a right that was universally recognized and enjoyed.

62. Mr. PUPLAMPU (Ghana) said he could see no need for amending article 18, and was prepared to vote for it in its present form.

63. Mr. VALLAT (United Kingdom) supported article 18 as drafted. Once again the International Law Commission had produced a very careful balance: article 18 defined certain rights, and article 40, paragraph 1, defined the obligations of the persons enjoying those rights. The balance should not be disturbed by amendments.

64. Mr. GLASER (Romania) also thought it wise to leave the text unchanged. He agreed with the arguments advanced against any alteration, especially those of the representatives of Iran, the USSR, and the United Kingdom. The object of the codification on which the Conference was engaged was to try to make existing rules a little more flexible, in order that the presence of diplomatic representatives would help to improve relations between States. The use of the flags contributed to that end, for it distinguished the premises and vehicles of the mission, and so gave the inhabitants of the receiving country an opportunity to show respect for foreign diplomatic representatives. With regard to the concern that some representatives felt over possible abuse of privilege by excessive use of a flag, he suggested that it was unwise to spoil a good rule for fear of a remote risk. The Philippine amendment, even as revised, still suffered from the ambiguity referred to by the representative of India, and in any case was a move towards rigidity rather than towards the desired flexibility. He agreed with the representatives who considered that article 40 contained sufficient safeguards. He was in favour of article 18 and would vote against the amendments.

The meeting rose at 1.10 p.m.

TWENTIETH MEETING

Friday, 17 March 1961, at 3.25 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 18 (Use of flag and emblem) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 18 and the amendments thereto.[1]

2. Mr. SUBARDJO (Indonesia) supported the comments made by the Iranian and Soviet Union representatives at the previous meeting. The mission of the sending State should have the right to use its national flag and emblem at will. However, that right should not be abused, and he hoped that the Philippine amendment would be adopted. His delegation would therefore vote for the text of article 18 as amended by the Philippines.

3. Mr. ZLITNI (Libya) considered that the use of the flag, a sacred symbol to every country, was very important. Nevertheless, it must be subject to the laws and regulations of the receiving State. His delegation would therefore support the Philippine amendment and the Italian amendment, but suggested that in the latter the words " according to " should be replaced by " subject to ".

[1] See 19th meeting, para. 41, and also, for revised Philippine amendment, para. 58.

4. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) said that article 18 as drafted was perfectly acceptable. The amendments tended to restrict the mission's unquestionable right to use the flag and emblem of the sending State. His delegation could not approve that point of view. Moreover, draft article 40 laid down that all persons enjoying diplomatic privileges and immunities owed the duty to respect the laws and regulations of the receiving State. The Italian and Philippine amendments were therefore superfluous. There had been talk of possible abuses by the sending State, but they were really inconceivable. The International Law Commission, which had studied the matter thoroughly, had therefore not thought fit to restrict the mission's right to display the flag and emblem of the sending State. That right would be seriously impaired if restricted by the laws of the receiving State. His delegation believed that it should remain an absolute right, and therefore could not support the amendments to article 18.

5. Mr. MELO LECAROS (Chile) said that article 18 stated a right, not a duty. The right should be qualified, and that was the object of the amendments of Italy and the Philippines, which his delegation supported. However, the limitations should be defined not only by the laws and regulations, but also by the practice and customs of the receiving State. He hoped that the sponsors of the amendments would agree to insert that rule.

6. Mr. de ERICE y O'SHEA (Spain) said that there was really very little difference of opinion. The Committee might note the view expressed by the United Kingdom representative (19th meeting, para. 63) that article 40 applied to all the privileges declared in the convention, including that in article 18. The amendments to article 18 would then be unnecessary, and the Committee could adopt the article as it stood.

7. Mr. REGALA (Philippines) said that, having regard to the Spanish representative's suggestion and in order to facilitate the Committee's work, he would withdraw his delegation's amendment.

8. Mr. BOUZIRI (Tunisia) agreed with the Byelorussian representative that the abuses in question were inconceivable, but they nevertheless occurred in real life. It was precisely to prevent such abuses that article 18 should be amended in the manner proposed by Italy and the Philippines.

9. Mr. MARISCAL (Mexico) withdrew his delegation's amendment.

10. Mr. MAMELI (Italy) said his delegation attached importance to its amendment to article 18. However, having regard to the debate he would be willing to accept a more flexible wording, such as that suggested by the representative of Chile. If that were impossible, he would support the Spanish representative's suggestion.

11. The CHAIRMAN thought that the Committee should adopt the Spanish suggestion and that, in view of the terms of article 40, article 18 might stand as drafted by the International Law Commission.

It was so agreed.

New article proposed by Mexico concerning the basis of diplomatic privileges and immunities

12. The CHAIRMAN drew attention to the new article proposed by Mexico (L.127).

13. Mr. de ROSENZWEIG DIAZ (Mexico), explaining the object of his delegation's proposal, said that according to the International Law Commission's introductory commentary to section II of its draft, the modern theory justifying diplomatic privileges and immunities was that of " functional necessity ". His delegation considered that that theory should be embodied in an article of the convention, and so had put forward its proposal, which was based on section 20 of the Convention on the Privileges and Immunities of the United Nations, approved by the General Assembly on 13 February 1946.

14. Mr. BALLINI SHAW (Argentina) unreservedly supported the Mexican proposal. Diplomatic privileges and immunities were not conferred on persons, but on the States they represented; and it was important that the principle should be embodied in the convention. Moreover, the new article would facilitate the interpretation of the convention's provisions, especially those of article 30.

15. Mr. CARMONA (Venezuela) said the Committee had reached one of the most difficult and controversial questions of diplomatic law: the privileges and immunities enjoyed by diplomats. The opinions of learned writers were not uniform but, as the Commission had said, the modern trend was towards the new theory that diplomatic privileges and immunities were accorded to diplomatic agents by reason of their functions, the true beneficiary being therefore the State they represented. The Convention on Privileges and Immunities of the United Nations, adopted by the General Assembly in 1946, and the Convention on the Privileges and Immunities of the Specialized Agencies adopted in 1949, confirmed that principle. It could not be ignored in the convention which the Conference was drafting. His delegation would therefore wholeheartedly support the Mexican proposal.

16. Mr. CAMERON (United States of America) said he appreciated the Mexican delegation's reasons for submitting its proposal, and entirely agreed with the representatives of Argentina and Venezuela concerning the nature of diplomatic privileges and immunities. Nevertheless, as the object of the Conference was to codify diplomatic usage, his delegation would prefer that the preamble should state the principle underlying the Mexican proposal, so that it might govern the whole convention.

17. Mr. BARTOŠ (Yugoslavia) approved the idea which underlay the Mexican proposal and which had in fact guided the Commission in preparing section II of its draft. His delegation was prepared to support the Mexican proposal, but felt bound to point out that the insertion of the proposed clause implied recognition, not only of the principle accepted by the Commission, but also of an obligation to waive diplomatic privileges and immunities in cases where laws or regulations had been infringed. The Yugoslav delegation considered, therefore, that a passage corresponding to the article proposed by Mexico, which was based on the " functional necessity " theory, should be included in the preamble, not in the operative part, of the convention.

18. Mr. TUNKIN (Union of Soviet Socialist Republics) pointed out that the Mexican proposal referred to the " functional theory ". But the International Law Commission stated in paragraph 3 of its introductory comments to section II that it had been guided by that theory " while also bearing in mind the representative character of the head of mission and of the mission itself ". It was, moreover, advisable not to embark on problems of theory. The Conference was to lay down the standards to which States should conform. Admittedly, the " functional necessity " theory had been accepted in the Conventions on the Privileges and Immunities of the United Nations and of the specialized agencies; but the Committee should not be guided by instruments applicable to international organizations, which differed essentially from the States to which the draft articles applied.

19. In any case, the adoption of the proposal would inevitably harm the whole text, for it would be dangerous to lay down that the instrument was to be interpreted according to a principle that had not been the only one taken into account in the drafting of the various articles. Besides, it was not customary to introduce theoretical declarations into legal documents. Hence, the Soviet delegation considered that the principle should be incorporated neither in the operative part nor in the preamble.

20. Mr. de ROSENZWEIG DIAZ (Mexico) said that, contrary to what the Soviet Union representative had implied, it was not unusual for legal documents to contain statements of principle intended to facilitate their application. The Commission's commentaries were not going to be submitted to the States for ratification, and the principles which had governed the preparation of the articles should therefore be mentioned in the text itself.

21. In reply to the Yugoslav representative, he said that the rule derived from the principle embodied in the proposal would be applied by the appropriate administrative authorities, or by the conciliation or arbitration body which would adjudicate disputes arising out of the application of the convention. It was to be hoped that the International Court of Justice would never have occasion to rule on such disputes, but if the contingency should arise it should be able in its ruling to rely on principles clearly stated in the convention. Furthermore, the adoption of provisions laying down principles would certainly help to prevent disputes, and hence to improve relations between States.

22. Mr. de ERICE y O'SHEA (Spain) supported the proposal, for it reflected the evolution of the theories justifying the grant of diplomatic privileges and immunities. The modern theory was no longer that of exterritoriality, but that of functional necessity.

23. Mr. LEFEVRE (Panama) also supported the proposal and thought the provision should be included in the operative part rather than in the preamble.

24. Mr. GASIOROWSKI (Poland) said it was not desirable to introduce the principle stated in the proposal into the draft. Firstly, the argument that it appeared in the Convention on the Privileges and Immunities of the United Nations was not very convincing, for the legal status of representatives of States was not at all the same as that of staff members of international organizations. Secondly, the principle was implicit in the draft, for instance in article 30, paragraph 1; hence there was no need to mention it explicitly, in a form which reflected only one aspect of the views expressed by the International Law Commission. Poland would therefore vote against the Mexican proposal.

25. Mr. EL-ERIAN (United Arab Republic) said he fully appreciated the reasons for the Mexican proposal. He had himself, when a member of the International Law Commission in 1957, defended the view that its draft should contain a statement of the theoretical basis of diplomatic privileges and immunities (ILC, 383rd meeting, para. 31). Nevertheless, he thought that the Mexican proposal might give rise to difficulties of interpretation. Besides, as the Polish representative had said, the principle stated in the proposal was already implicit in the draft; and if it was to be mentioned explicitly it should probably appear in the preamble. The best course would perhaps be to ask the drafting committee to prepare a suitable passage, based on the Commission's commentary, for insertion in the preamble.

26. Mr. BINDSCHEDLER (Switzerland) said his delegation supported the Mexican proposal for three reasons. First, owing to the steady increase in the number and size of diplomatic missions, it was essential to state specifically that privileges and immunities were accorded in the interest of the mission's functions and that the privileges and immunities should not be more extensive than those functions necessitated. Secondly, since the theory of exterritoriality perhaps still had its adherents, an explicit reference to the " functional necessity " theory would not be superfluous. Lastly, the statement of the principle contained in the proposal would facilitate the settlement of any disputes submitted to conciliation or arbitration bodies.

27. Unlike the United States representative, he took the view that the proposed provision should be incorporated in an article and not in the preamble, for it stated a legal rule which should be mandatory. Since, however, the members of a diplomat's family, who performed no diplomatic functions, also enjoyed privileges and immunities, the provisions should perhaps be revised to read " Diplomatic privileges . . . in order that the mission and its members may . . ."

28. Mr. HUCKE (Federal Republic of Germany) said that, although the principle stated in the proposal appeared in modern multilateral conventions, it might not be wise to mention it explicitly in an article or in the preamble, since articles 29 and 30, and also article 40, paragraph 1, applied to the provisions of the convention as a whole and concerned more particularly privileges and immunities. Furthermore, the proposed provision tended to weaken the position of diplomats and to diminish the esteem for their functions. For those reasons his delegation was unable to support the proposal.

29. Mr. TUNKIN (Union of Soviet Socialist Republics) considered that the adoption of the proposal would not in any way facilitate interpretation of the convention. Such unequivocal provisions as, for instance, those of article 29, paragraph 1, should not raise any difficulty of interpretation. If, however, they had to be interpreted according to the principle set forth in the proposal, the difficulties that would arise were obvious.

30. Mr. BOUZIRI (Tunisia) supported the principle stated in the proposal but considered that it should be supplemented by a reference to the " representative character " theory and included in the preamble to give it wider authority. Moreover, as the Swiss representative had said, the proposed provision did not take account of the fact that diplomats' families were entitled to privileges and immunities, and the Mexican delegation should explain the intention of its proposal in that respect.

31. Mr. GLASER (Romania) said that diplomatic privileges and immunities were manifestly not intended to cover abuses and offences committed by diplomats or their families. On the other hand, it was essential — *ne impediatur legatio* — that diplomatic agents should be able to fulfil their functions under immunity without risk of being accused of an offence, particularly on some trumped-up charge. The effect of the provision proposed by Mexico, however, would be that, in any investigation to determine whether or not an offence had been committed in the exercise of diplomatic functions, the receiving State alone would decide — a situation that might lead to dangerous disputes. The proposal was fraught with such risks that it should appear neither in the operative part nor in the preamble. His delegation would vote against it.

32. Mr. VALLAT (United Kingdom) said that, while he understood the purpose of the proposal, he did not think that the principle was stated in any article of the draft. Was the amendment a statement of fact, or the affirmation of a principle, and if so, should each dispute be decided according to the principle ? Clearly a difficult situation would thus arise. When preparing the draft, the International Law Commission had had the choice of three theories and selected that of " functional necessity ". As the Committee progressed in its discussion of the draft, it would see to what extent the articles took account of that basic principle. It would then no longer consider it necessary to embody that principle in an article but only in the preamble. Accordingly, the drafting committee should be asked to draft a suitable provision, corresponding to the sense of the Mexican proposal, for insertion in the preamble.

33. Mr. DADZIE (Ghana) said that, after studying the Mexican proposal, his delegation had reached the conclusion that its adoption could give rise to divergent

interpretations and to disputes. Although his delegation supported the principle, it did not think it should appear in the convention. The proposal was concerned with a point of legal theory which should not be discussed in the Conference.

34. Mr. PECHOTA (Czechoslovakia) also considered that the Mexican proposal related to theory. Admittedly, rules were based on theories, but the Conference's task was to lay down standards of conduct. It had been said that the proposed provision would offer guidance for purposes of interpretation. His delegation did not agree. The Conference should not propose theories, but adopt practical rules. His delegation did not deny that the Mexican proposal was of interest, but would nevertheless vote against it.

35. Mr. MARISCAL (Mexico) said he had listened very attentively to the Swiss representative and entirely approved his suggestion. The representatives of the United Kingdom and Ghana had also expressed interesting views, and his delegation would be prepared to agree to the insertion of a provision corresponding to its proposal in the preamble.

36. The CHAIRMAN said that, during the discussion on the preamble, the Committee should decide whether a provision corresponding to the Mexican proposal should be inserted in the preamble.[2]

37. Mr. TUNKIN (Union of Soviet Socialist Republics) hoped that one important point, which the United Kingdom representative had omitted to mention, would not be overlooked in the drafting of the preamble: the International Law Commission had expressly mentioned the " representative character " theory.

Article 19 (Accommodation)

38. The CHAIRMAN invited debate on article 19 and the amendments thereto.[3]

39. Mr. CARMONA (Venezuela) said that his delegation had studied with interest the International Law Commission's commentary on article 19, which had established an excellent basis for the drafting of the article but did not take sufficient account of the law of the various States, some of which were very jealous of their rights. Other States were more liberal but nevertheless imposed some statutory or constitutional restrictions. Venezuela did not object to the acquisition by a diplomatic mission of necessary residences or premises; but, like most Latin American countries and pursuant to article 18 of its 1861 constitution, it was determined to maintain its sovereign rights over all parts of its territory. Some American countries did not allow aliens to acquire any part of the national territory.

40. His delegation could not accept article 19, for its government could not submit to an obligation to permit the acquisition of real property by aliens except on certain conditions — which, it should be added, would be as liberal as possible. The alternative offered in article 19 was still too imperative. Why should a government in any way " ensure " adequate accommodation for a mission ? By virtue of international courtesy and comity the Protocol Office of the Ministry for Foreign Affairs might facilitate the installation of a diplomatic mission; but the receiving State was under no obligation whatsoever to do so.

41. For those reasons his delegation had submitted a less categorical provision which was close to the Indian and Mexican amendments and which laid greater stress on the rights of the receiving State.

42. Mr. MARISCAL (Mexico), like the Venezuelan representative, found article 19 little to his taste. It did not mention the laws of the receiving State, and imposed obligations which his government was not inclined to accept. The International Law Commission, however, observed in its commentary that the laws and regulations of the receiving State might prevent the sending State from acquiring real property. Article 19 did not seem to take account of that commentary, for it imposed a strict obligation.

43. Moreover, " the premises necessary " was a vague phrase. Did it mean the official residence of the head of the mission, the chancery, the various services, the cultural offices, or the private residences of the members of the mission ? The Mexican proposal referred to the laws and regulations of the receiving State and was more in keeping with modern trends. However, his delegation would accept a different formula, so long as it mentioned the laws and regulations of the receiving State.

44. Mr. SUFFIAN (Federation of Malaya) said that his delegation's amendment involved a drafting change only. The word " must " was unusual in such a document, and a milder term would therefore be better. Article 19 as a whole seemed satisfactory to his delegation. The various amendments were meant to lighten the receiving State's responsibilities. His delegation was prepared to support them if they were generally acceptable.

45. Mr. de ERICE y O'SHEA (Spain) suggested that in the Indian amendment, after the words " premises necessary for its mission ", the words " and for its members " should be added.

46. Mr. HAASTRUP (Nigeria) said it was reasonable that a State should be free to instal its diplomatic mission in the receiving State. Nigeria had not enacted any laws restricting that freedom. His delegation was in favour of the second alternative in article 19, and would support the Indian amendment.

47. Mr. WESTRUP (Sweden) said that his delegation could not assess the exact legal importance which the commentaries in the report of the International Law Commission (A/3859) would have after the signature of a convention. He supposed that question could not be answered at the moment. In order to be able, if neces-

[2] See 39th meeting.

[3] The following amendments had been submitted: Federation of Malaya, A/CONF.20/C.1/L.113; China, A/CONF.20/C.1/L.122; Mexico, A/CONF.20/C.1/L.128; Venezuela, A/CONF.20/C.1/L.142; Switzerland, A/CONF.20/C.1/L.157; India, A/CONF.20/C.1/L.160; Viet-Nam, A/CONF.20/C.1/L.169.

sary, to refer to the summary record, his delegation wished to state that the Swedish Government, in relation to any obligation it might incur under article 19, would rely on those commentaries, according to which the obligation to " ensure " accommodation would operate only if the receiving State could not remove the legal obstacles to the acquisition of the premises necessary for a given mission. Where there were practical difficulties, such as a housing shortage, it was only proper that the authorities of the receiving State should do their utmost to help missions in their search for premises; but they would not be under a conventional obligation to " ensure " the acquisition of premises.

48. Mr. WALDRON (Ireland) said that article 19 was too mandatory. The Chinese amendment seemed to tone it down suitably. He had nothing against the Swiss and Venezuelan amendments, but could not accept the Indian proposal.

49. Mr. BESADA RAMOS (Cuba) supported the Venezuelan amendment. Allowance should be made for the situation in different countries. Under Cuban law aliens could not acquire real property in Cuba. However, he considered that the words " facilitate acquisition by the sending State of the premises " in the Venezuelan amendment should be replaced by " help the sending State to obtain premises ".

The meeting rose at 6.15 p.m.

TWENTY-FIRST MEETING

Monday, 20 March 1961, at 10.45 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 19 (Accommodation)

1. The CHAIRMAN invited the Committee to continue its debate on article 19 and on the amendments thereto.[1]

2. Mr. HU (China) supported the International Law Commission's draft in principle, but thought the word " ensure " should be replaced by some less imperative verb such as " facilitate " and, further, that the article should expressly mention accommodation for the head of the mission. That was the object of his delegation's amendment (L.122). The Committee could hardly take a decision on article 19, however, so long as the definition of mission premises was not finally settled.

3. Mr. GASIOROWSKI (Poland) thought that the Mexican amendment (L.128) had the serious defect of entirely reversing the provisions of article 19 and of making a matter of principle out of what the International Law Commission had considered an exception to the general rule. According to the Commission, it was the receiving State's duty to ensure adequate accommodation for the mission only in the exceptional case in which it had not permitted the sending State to acquire such accommodation. The words " without its assistance ", in the amendment in question, were particularly dangerous, for they would unfairly impose a heavy burden on countries which, like Poland, had had to set up a housing service to meet the shortage caused by war-time destruction. The Polish Government helped diplomatic missions to obtain a site, and left it to them to build the premises they needed. That equitable procedure might no longer be possible if the Mexican amendment were adopted. The Polish delegation would therefore vote against it. On the other hand, it would vote for the Venezuelan amendment (L.142).

4. Mr. TRAN VAN MINH (Viet-Nam) said that the purpose of his delegation's amendment (L.169) was to reconcile the two diametrically opposed views which had been expressed in the Committee. It took account both of circumstances and conditions in the receiving State, and of the needs of the diplomatic mission of the sending State. While maintaining the obligation imposed by the article as it stood, the amendment made it less absolute. True, the formula used was one which his delegation had criticized during the discussion of article 10 (14th meeting, paras. 20 and 21), but in the case of article 19 it would be difficult to adopt a more precise wording, which would almost certainly be difficult to apply in practice.

5. Mr. KRISHNA RAO (India) said there could be no question of imposing the obligation contained in the article as drafted by the International Law Commission in cases where it conflicted with the legislation of the receiving State or where there was an acute shortage of housing. As several speakers had said, it was therefore desirable to leave greater latitude to the receiving State, and that was the object of his delegation's revised amendment. It took into due account the amendments submitted by the Federation of Malaya, Venezuela and Switzerland, as well as the comments of the representative of Ireland (20th meeting, para. 48) and the sense of the amendments of China and Mexico. The principle expressed in the amendment submitted by Viet-Nam had been accepted during the discussion of article 10.

6. Mr. CARMONA (Venezuela) said he would be prepared to withdraw the first paragraph of his delegation's amendment in favour of the revised Indian amendment if the words " in accordance with its laws " were inserted after the words " on its territory ".

7. Mr. KRISHNA RAO (India) accepted that addition.

8. Mr. TUNKIN (Union of Soviet Socialist Republics) said he had no objection to the article as drafted by the International Law Commission. He had, however, intended to vote for the first paragraph of the Venezuelan amendment, but as that had been withdrawn he would vote for the Indian amendment as revised. Nevertheless,

[1] For the list of amendments to the article, see 20th meeting, footnote to para. 38. A revised version of the Indian amendment had been circulated (A/CONF.20/C.1/L.160/Rev.1).

as the second paragraph of the Venezuelan amendment confirmed an existing practice, it would perhaps be advisable to incorporate it in the revised Indian amendment.

9. Mr. de SOUZA LEAO (Brazil) said that the provisions of article 19 did not in any way compel the receiving State to allow the sending State to acquire the premises necessary for its mission; it was open to the receiving State to ensure adequate accommodation for the mission " in some other way ". His delegation thought it would be wise to preserve that latter obligation, though the Venezuelan amendment was an improvement on the original in that it called on the receiving State to " assist " diplomatic missions to obtain suitable accommodation, including, where necessary, accommodation for the members of the mission.

10. Mr. TRAN VAN MINH (Viet-Nam), Mr. HU (China), Mr. MARISCAL (Mexico), Mr. AMAN (Switzerland) and Mr. SUFFIAN (Federation of Malaya) withdrew the amendments submitted by their respective delegations in favour of the revised Indian amendment.

11. Mr. CAMERON (United States of America) asked for further information on the exact meaning to be attached to the word " facilitate ", which he found rather disturbing. The International Law Commission's text seemed to him best, and his delegation did not think it would be able to support the Indian amendment.

12. Mr. de VAUCELLES (France) hoped that the Indian delegation would agree to the addition of a clause on the lines of the second paragraph of the Venezuelan amendment, as the USSR representative had suggested.

13. Mr. de ROMREE (Belgium) also supported the USSR suggestion.

14. Mr. YASSEEN (Iraq) suggested that the useful word " adequate ", which appeared in the original draft, might with advantage be added in the Indian amendment.

15. Mr. CARMONA (Venezuela) and Mr. de SOUZA LEAO (Brazil) agreed with the views expressed by the preceding speakers.

16. Mr. KEVIN (Australia) said he assumed that the word " acquisition " also covered the leasing of premises.

17. Mr. KRISHNA RAO (India), in reply to some of the remarks made, said that in his opinion the word " necessary " was sufficiently precise and that it would not be advisable to add the word " adequate ". He would have no objection to the addition of a clause on the lines of the second paragraph of the Venezuelan amendment.

18. Mr. AMLIE (Norway) said he was prepared to vote for the Indian amendment as revised. He was rather doubtful as to the advisability of adding the second paragraph of the Venezuelan amendment, and asked that a separate vote be taken on that clause. The Norwegian delegation would vote against the clause.

19. Mr. CAMERON (United States of America) thought it would suffice to substitute the word " allow " for " facilitate "; if that were done his delegation would vote in favour of the Indian amendment.

20. Mr. TRAN VAN MINH (Viet-Nam), Mr. PINTO de LEMOS (Portugal) and Mr. TAKAHASHI (Japan) agreed with the Norwegian representative's view.

21. Mr. DASKALOV (Bulgaria) drew the Norwegian delegation's attention to the fact that the second paragraph of the Venezuelan amendment did not impose any binding obligation, since it included the phrase " where necessary ". He was prepared to vote for the Indian amendment, as revised, and for the addition of the second paragraph of the Venezuelan amendment.

22. Mr. KRISHNA RAO (India) said it was impossible to substitute " allow " for " facilitate ", since the revised amendment submitted by his delegation was an agreed text worked out with the sponsors of other amendments.

The revised Indian amendment (L.160/Rev.1), as amended by the addition of the words " in accordance with its laws ", was adopted by 64 votes to 1, with 4 abstentions.

The second paragraph of the Venezuelan amendment (L.142) was adopted by 36 votes to 14, with 21 abstentions.

Article 19 as a whole, as so amended, was adopted by 63 votes to 1, with 6 abstentions.

Article 20 (Inviolability of the mission premises)

23. The CHAIRMAN invited debate on article 20 and the amendments thereto.[2]

24. Mr. WALDRON (Ireland) said that the additional paragraph proposed jointly by his delegation and that of Japan, in referring to exceptional circumstances of emergency, was not too sweeping in scope. He drew attention to the difficulties that might arise should the head of mission be absent from his post and therefore not in a position to give his consent to measures " essential for the protection of life and property ", as for instance in the case of a fire in a building near the mission's premises.

25. Mr. HU (China) said that the article dealt with a difficult and delicate problem. The second sentence of paragraph 1 would appear to be at once too general and too stringent and might not be acceptable to national parliaments. Accordingly, the Chinese delegation proposed its deletion. The first sentence, which correctly stated a recognized principle, should be supplemented by a reference to furnishings, in which event, as was proposed in his delegation's amendment, paragraph 3 could be omitted.

26. His delegation was not in principle opposed to the Mexican and Irish-Japanese amendments, but in the last resort it would support the International Law Com-

[2] The following amendments had been submitted: Federation of Malaya, A/CONF.20/C.1/L.114; China, A/CONF.20/C.1/L.123; Mexico, A/CONF.20/C.1/L.129; Ukrainian SSR, A/CONF.20/C.1/L.132; Japan, A/CONF.20/C.1/L.146; India, A/CONF.20/C.1/L.161; Ireland and Japan, A/CONF.20/C.1/L.163; Spain, A/CONF.20/C.1/L.168.

mission's draft, which was the outcome of years of thought and on which the Conference could not hope to improve in the space of a few weeks.

27. Mr. MERON (Israel) said that meticulous observance of the principle of inviolability was a necessary condition for the performance of diplomatic functions. However, the interests of the receiving State should also be given adequate attention. The Mexican, Irish-Japanese and Spanish amendments concerned the rights of the receiving State in the event of public danger on the premises of the mission — danger not only to the mission but to the lives or property of nationals of the receiving State — and also when, for urgent public work plans, the receiving State needed the land on which the premises of the mission were situated. In the first case the receiving State should be allowed to remove the danger; and in the second the sending State should co-operate in every way in the implementation of the public works plan. His delegation thought it would be well to mention those principles which, though self-evident, would constitute a desirable guide to relations between the sending State and the receiving State. That was of particular importance when the receiving State was small and the sending State a great Power. The Mexican amendment stressed the positive element of agreement and co-operation, which was preferable to providing for any exception to the principle of inviolability — an exception which could be abused. He supported the principle in the first part of the Mexican amendment, but suggested that it should mention not only the head of the mission but also all its members, and should state that the co-operation was to be directed towards the elimination of the danger.

28. Regarding the second part of the Mexican amendment, that relating to public works, his delegation would have liked the element of agreement, referred to in relation to the period for the vacation of the premises, to be extended also to the actual principle of vacating the premises. The matters raised by the proposed amendments could also be dealt with, not by amending article 20, but by appropriately recording the understanding of the Committee that article 20 was subject to the special duty of the sending State to co-operate with the receiving State in such cases.

29. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) considered that article 20, paragraph 3, did not fully specify what was covered by the inviolability. The intention was, apparently, to provide an exhaustive list. In order to avoid interpretations prejudicial to the general principle of inviolability, it would be preferable to adopt the wording of the amendment submitted by his delegation.

30. For the sake of the uniformity of terminology, the terms used in articles 28 and 43 should also be used in article 20.

31. The changes proposed by the Spanish delegation in its amendment were similar to those proposed by the Ukrainian SSR, but the Spanish text was perhaps narrower in scope, and he hoped that Spain would support his delegation's amendment.

32. Mr. de ERICE y O'SHEA (Spain) agreed that the Ukrainian amendment enlarged the scope of article 20, paragraph 3, more than did the Spanish amendment, and withdrew paragraph 3 (*a*) of his delegation's amendment in favour of the Ukrainian amendment — though, from the drafting point of view, it might be better if that amendment related to paragraph 1. The Spanish delegation also withdrew paragraphs 1 and 2 of its amendment, the latter in favour of the new paragraph 4 proposed by the Mexican delegation, but maintained paragraph 3 (*b*).

33. Mr. TAKAHASHI (Japan), introducing his delegation's amendment (L.146), explained that its object was to include, in article 20, the principle stated by the International Law Commission in paragraph 5 of its commentary (A/3859) concerning the service of a writ through the post. The purpose of the joint Irish-Japanese amendment (L.163) was the same as that of the Mexican and Spanish amendments. The Japanese Government had stated the principle in its comments on the Commission's 1957 draft (A/3859, annex). He hoped that the Committee would adopt the principle leaving the form to be settled by the Drafting Committee.

34. Mr. DASKALOV (Bulgaria) said that the inviolability of the mission premises was one of the most important principles of international law. It was based on the principle of the sovereign equality of States. The International Law Commission had therefore been right in not providing for any exceptions, which would be contrary to international law, open the door to abuses and be fraught with serious consequences. Accordingly, his delegation supported article 20 as it stood and could not accept any amendments other than those designed to make the text clearer, such as those proposed by the Federation of Malaya and by the Ukrainian SSR.

35. Mr. WESTRUP (Sweden) said that respect of the principle of the inviolability of the mission premises laid down in article 20 was a *sine qua non* for the establishment of good diplomatic relations among States. The Commission had stated in its commentaries that, to fulfil its special obligation of protecting the premises of the mission, the receiving State had to take special measures over and above those it took to discharge its general duty of ensuring order. The apparent tendency to whittle down, in certain circumstances, the scope of the principle of the inviolability of mission premises was a matter of concern to his delegation, since it attached the greatest importance to that principle. His government flatly refused to recognize that tendency as compatible with international law. He recalled that, in general, the inviolability of the premises of foreign missions had in the past been respected to a remarkable degree, even in the most difficult circumstances. If the government of the receiving State could not quieten popular demonstrations and keep under control the propaganda which inspired them, it should be fully answerable for any damage.

36. Mr. MARISCAL (Mexico) agreed that his delegation's amendment should be modified as indicated by the representatives of Israel, Spain and Japan. The

main point was that the principle behind the new paragraph 4 proposed by Mexico should be observed.

37. Mr. TUNKIN (Union of Soviet Socialist Republics) stressed the importance of the inviolability of mission premises for the cause of peace and the maintenance of good relations among States. The International Law Commission had studied that question at length and had wisely decided not to provide for any exceptions to the principle. That decision was, moreover, based on established practice and on the existing state of international law. It was also in line with existing international conventions, particularly with the Havana Convention of 1928, the laws of many countries and the 1959 resolution of the Institute of International Law. Some amendments submitted to article 20 — for example, the joint Irish-Japanese amendment and the Mexican amendment — reintroduced proposals that had been rejected by the Commission. The practical course of international relations showed the potential danger of the proposed exceptions to the principle of the inviolability of the mission premises.

38. The Indian amendment, dealing with the right of the owner to enter the premises leased to the mission, seemed unnecessary, for such cases could easily be settled by agreement between the mission and the owner. The same applied to the Japanese amendment; the Soviet Union was not opposed to that amendment, but article 20, paragraph 1, as it stood should meet the case.

39. To justify their views, the sponsors of the amendments limiting the scope of the principle of inviolability stated that, if exceptions were not laid down, abuses would arise. Abuses in the exercise of a right were, of course, always possible. But the danger of allowing the receiving State to judge whether exceptional circumstances permitted it to enter the mission premises without the consent of the head of the mission was still more serious, for it could affect the international relations. The Soviet delegation therefore supported article 20 as it stood, though its wording might be improved by the adoption of the amendments submitted by the Ukrainian SSR and the Federation of Malaya, and would vote against all other amendments to article 20.

40. Mr. AMLIE (Norway) said that the inviolability of the mission premises was a fundamental principle of international law and was essential for the maintenance of normal relations among States. The receiving State should take all measures necessary for ensuring respect for that principle and, if it failed in that obligation, it was responsible for the consequences. His delegation therefore unreservedly approved the principle stated in article 20 and hoped that all States would respect it. Its wording might perhaps be improved by the Ukrainian amendment, which was perfectly reasonable. On the other hand, in the light of the commentary of the International Law Commission, his delegation considered it preferable not to introduce into the convention a provision such as that proposed by Japan, in view of the difficulty of finding a satisfactory formula. The new paragraph proposed in the joint Irish-Japanese amendment conflicted with the principle of inviolability, and his delegation would be unable to support it. It would therefore vote in favour of article 20 as it stood, subject to possible drafting improvements.

41. Mr. BOLLINI SHAW (Argentina) said his delegation was opposed to any exceptions to the principle of the inviolability of mission premises and believed it would be dangerous to introduce them into the convention. The joint Irish-Japanese amendment was at variance with that principle and was all the more dangerous in that it left it entirely to the receiving State to decide what circumstances were exceptional and therefore justified its intervention. It was precisely in cases of public danger that it was most necessary to ensure the inviolability of the mission premises. The Argentine delegation would therefore vote against that amendment, but would support what remained of the Spanish amendment, as well as the Ukrainian amendment, both of which widened the scope of article 20. His delegation approved the idea behind the Japanese amendment but, if it were to be interpreted as permitting the service of a writ through the post, it would vote against the amendment.

The meeting rose at 1.10 p.m.

TWENTY-SECOND MEETING

Monday, 20 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 20 and the amendments thereto.[1]

2. Mr. KIRCHSCHLAEGER (Austria) stressed the importance of article 20, which embodied a basic principle of the convention and an essential condition for the functioning of the mission. Although the classic concept of exterritoriality belonged to the past, the premises of the mission must be regarded as sacrosanct and protected by the receiving State by every means within its power. His government was most anxious that the principle of inviolability of the mission premises should be clearly formulated in the convention; it would therefore support the article as drafted by the International Law Commission, which represented a satisfactory balance of interests.

3. Mr. de ERICE y O'SHEA (Spain), recalling that his delegation had withdrawn all but paragraph 3 (*b*) of its amendment (L.168), said that it could not support any amendment to the draft which might be construed as infringing the principle of inviolability. The draft might be clarified, but not restricted. On that ground his delega-

[1] For the list of the amendments submitted to article 20, see twenty-first meeting, footnote to para. 23.

tion would vote against the joint amendment submitted by Ireland and Japan (L.163), for the additional paragraph which it proposed would in effect nullify article 20.

4. As he had indicated (21st meeting, para. 32) the delegation of Spain would support the new paragraph 4 proposed by Mexico (L.129), which expanded the provisions of article 20. It would, however, prefer the wording of the new paragraph to be that originally proposed by Mexico, without the change agreed to by the Mexican representative (21st meeting, para. 36); he suggested that the delegation of Mexico might consider reverting to its original proposal.

5. Although supporting the principle of the amendment proposed by Japan (L.146), he thought it might be more appropriately dealt with in connexion with article 40, paragraph 2.

6. His delegation had withdrawn paragraph 3 (*a*) of its amendment in favour of the Ukrainian amendment (L.132). It would suggest, further, that a like amendment should also be made to article 20, paragraph 1. If that suggestion were accepted by the sponsor of the amendment, it would cover the point in the amendment proposed by China (L.123), which was in fact already covered by the general meaning of the draft article and by the Ukrainian amendment.

7. The amendment proposed by the Federation of Malaya (L.114) affected drafting only, and his delegation would support it. It could not, however, support the amendment proposed by India (L.161), which dealt with a matter that should be settled directly between landlord and tenant.

8. The proposal by Spain in paragraph 3 (*b*) of its amendment was intended to strengthen the principle of inviolability as formulated in the Ukrainian amendment.

9. Mr. WALDRON (Ireland) said that his delegation and that of Japan withdrew their joint proposal and would instead support the first part of the Mexican amendment, which they thought did not in any way infringe the principle of inviolability.

10. Mr. BOUZIRI (Tunisia) regretted the withdrawal of the Irish-Japanese amendment, which his delegation would have supported. The principle of inviolability should be clearly expressed in the convention, and it was essential that the receiving State should give the fullest protection to the mission. However, even some of the staunchest defenders of the principle had admitted that its unlimited application might lead to abuse. Article 20 as drafted made no adequate provision for limiting the possibility of abuse. Reference had been made to the regrettable situation which might arise, for example, if a fire broke out on diplomatic premises in the absence of the head of mission, and it was impossible to reach any responsible member of the mission. It would surely be contrary to the principle of inviolability that the mission premises should be left to destruction. The receiving State should be empowered to try to protect the mission premises, even in the absence of its head. The Committee should try to find a more balanced solution, and his delegation would support any amendment strengthening the principle of inviolability and reducing the danger of abuse. It would therefore vote for the first part of the Mexican amendment, which obliged the head of the mission to co-operate with the local authorities in certain specified cases. The amendment was, however, more restrictive than that proposed, and since withdrawn, by Ireland and Japan, which his delegation would have preferred.

11. His delegation would also support the second part of the Mexican amendment, which dealt with a matter of considerable importance, both for countries with old capitals for which they had reconstruction plans, and for young countries wishing to improve their capitals after gaining their independence.

12. Mr. BARTOŠ (Yugoslavia) said that the principle of the inviolability of mission premises was one of the most ancient in international law, and his government and his delegation supported it both in practice and in theory. The two sentences of paragraph 1 were indissolubly linked, and his delegation could not vote for any amendment which attempted to dissociate the principles embodied in them. The International Law Commission had realized the existence of the special cases which had given rise to considerable discussion both in the past and during the current conference. It had recognized the possiblity of abuse, but had felt that, if a guarantee had to be given, it should be given to the party to be protected. The Commission had taken the view that heads of mission were reasonable people who, if worthy of the trust given them, would naturally in the event of danger or emergency ask for the co-operation of the receiving State. The first part of the Mexican amendment was not at variance with that view, and his delegation would therefore support the proposed new paragraph 4. Although exceptional circumstances should not be neglected, the principle of inviolability must not be infringed. The consent of the head of mission was essential, and he should be allowed to determine the extent of his co-operation with the local authorities.

13. The drafting change proposed by the Federation of Malaya was not contrary to the very exact provisions of paragraph 2, which his delegation fully supported.

14. The meaning of the words " and other property " in the Ukrainian amendment was not clear. In its narrower sense it was already covered by the draft. If, however, it was meant in its wider sense, his delegation could not agree that all the property of the mission should be immune when outside the premises. That point was covered under another heading, and the issue should not be confused in connexion with article 20.

15. In regard to the new paragraph 5 proposed by Mexico, he said the International Law Commission had considered the question of inviolability in relation to the carrying out of public works by the receiving State. (A/3859, paragraph 7 of the commentary on article 20.) It had not wished to write a provision on that subject into the draft. His delegation would, however, be inclined to vote for the principle of the proposed new paragraph 5, in the hope that the Drafting Committee would be able to find an alternative way to express it in a separate article, to avoid casting doubt on the inviolability of the mission premises.

16. The provision proposed by India for periodic inspection of property should appear in the lease and not in an instrument codifying international law, for the principle of inviolability should be qualified in the least possible way.

17. Mr. MACDONALD (Canada) said that, although there seemed to be general agreement on the principle of the inviolability of mission premises, there had been considerable discussion on whether an attempt should be made to define the exact limits of its application. Exceptional circumstances might arise in which the receiving State, with overriding responsibility for the protection of life and property, light be forced to take unusual measures: for example, a sudden fire in mission premises on one or two floors of a block in the centre of a city, threatening appalling destruction of life and property if unchecked. Various attempts had been made, both inside and outside the International Law Commission, to propose a suitable wording which would define the application of the principle of article 20 in a public emergency. It had been suggested that the convention should not attempt to define the exact measures to be taken in an emergency which was by its very nature difficult or even impossible to foresee precisely in a legal document. His delegation had considered introducing an amendment for that purpose, but had recognized the danger of a provision that might go too far. The new paragraph 4 proposed by Mexico offered a procedure which seemed to follow from the general principle enunciated in paragraph 1 of article 20. As an effort to formulate a general rule to cover exceptional circumstances, however, the Mexican amendment might not fully solve the problem confronting the Committee. There should be agreement that, in an unusual public emergency, the receiving State should not be unduly obstructed in appropriate and necessary action.

18. The consensus of opinion in the Committee might be that a formal amendment along those lines was unnecessary. The understanding of his delegation was, however, that the principle of article 20, paragraph 1, should be construed by the sending State in such a way that its mission would not unduly prevent legitimate remedial measures in a genuine public emergency. If it was evident from the summary record that the Committee accepted that view, it might be preferable not to adopt any amendment which would limit precisely the application of the paragraph in an emergency.

19. His delegation would support paragraphs 2 and 3 as they stood, which should not be weakened by amendment.

20. Mr. DADZIE (Ghana) said that the point raised in the Indian amendment (L.161) was a matter between the lessor and the lessee to be covered in the lease. Admittedly, if a provision for periodic inspection was inadvertently omitted from a lease, difficulties might arise. The convention was not, however, an appropriate instrument for such a provision, and his delegation suggested that the amendment should be withdrawn.

21. His delegation considered draft article 20 very suitable and would vote for it, subject only to the Ukrainian amendment. It would also support the amendment of Japan if pressed to a vote, and the amendment of the Federation of Malaya, which should be referred to the Drafting Committee.

22. His delegation would, however, support only in principle the amendments submitted by Mexico and Spain. Emergencies, which were exceptional, were covered by the second sentence of paragraph 1, and there was no need to elaborate on the circumstances in which the consent of the head of mission should be sought.

23. Mr. KRISHNA RAO (India) said that the amendment submitted by his delegation was intended to deal with a practical problem which had arisen in his country. If a house were leased and the mission made a number of structural changes, then, if the lease made no provision for periodic inspection, the lessor would have no redress, since the mission had immunity and could not be used. In view, however, of the general recognition of the principle that the owner should be able to safeguard his property, his delegation would withdraw its amendment.

24. It would support the article as drafted, subject to the amendments proposed by the Ukrainian SSR and the Federation of Malaya, and would fully support the Canadian representative's interpretation of the article as a whole.

25. Mr. de VAUCELLES (France) fully supported the principle of the absolute inviolability of the premises of the mission and was opposed to the admission into article 20 of any exception to the rule. He had hesitated over the first part of the Mexican amendment, since there was some justification for it; but his considered opinion was that it would serve no useful purpose. It was inconceivable that the head of a mission would refuse to take preventive measures in case of an epidemic — even if he insisted that the measures should be carried out by members of his own staff. Similarly, it should be possible to deal with an outbreak of fire without raising the problem of the violation of the premises.

26. The second part of the Mexican amendment had some value but was not strong enough. He would be prepared to support it if the representative of Mexico would agree to the introduction of two important ideas: first, that if the premises had to be vacated, the receiving State should negotiate with the sending State on the principle as well as on the time to be allowed; and secondly that the receiving State should compensate the sending State as well as provide suitable alternative premises.

27. He was in favour of the Malayan amendment, which clarified without fundamentally changing the provision. For the same reason he supported the amendment of the Ukrainian SSR. With regard to the Japanese amendment, he suggested that it would be more appropriate to deal with the question of service of writs during the discussion of article 40. He saw no objection to the addition proposed in paragraph 3 (*b*) of the Spanish amendment.

28. He supported the statement of the representative of Sweden concerning the receiving State's responsibility

for protecting the mission premises against damage (21st meeting, para. 35). Respect for the premises of a foreign Power was essential to good relations between States.

29. Mr. AGUDELO (Colombia) said that the principle of the inviolability of the premises of a mission was respected as historic and sacred in his country. In his opinion it would be dangerous to incorporate in article 20 any exceptions to the principle, since they could only weaken it. Most of the amendments submitted to article 20 seemed to be concerned with exceptional circumstances which could be dealt with by the governments concerned and should not form the subject of an express provision in a convention. Accordingly, he supported article 20 as it stood and only wished to support the minor changes proposed in paragraphs 1 and 3 of the Spanish amendment.

30. The International Law Commission had been instructed by General Assembly resolution 1400 (XIV) to study the codification of the principles and rules of international law relating to the right of asylum. He considered the matter extremely important and might speak on it later.

31. Mr. ASIROGLU (Turkey) said that the immunity and inviolability of the premises of the mission formed the very basis of the convention which the Conference was drafting. The principle was essential in international relations and must be carefully guarded. The consequences of an infringement were not limited to the two States concerned, for it would spread insecurity among other missions in the receiving State and so affect the diplomatic relations of other countries. The Committee therefore had a very important task; and in his opinion it should first answer the fundamental question: should the rule of inviolability be applied unconditionally or not ? The Turkish delegation was opposed to inclusion of exceptions in article 20, in spite of the arguments advanced during the discussion. He could not support the first of the Mexican amendments because he considered that, even in an emergency, the authorities of the receiving State should not enter the mission's premises without permission. He was, however, prepared to support the second part of the Mexican amendment, as it concerned local legislation and did not constitute an exception to the rule of inviolability, but he suggested that it should include a provision that the receiving State should pay a reasonable indemnity to the sending State. His delegation had some doubts of the value of the Japanese amendment, since a writ could well be transmitted through the Ministry for Foreign Affairs or even by post. He could not support the proposal of China for the deletion of paragraph 3 of article 20 because, as explained in paragraph 6 of the International Law Commission's commentary on the article, that paragraph served the useful purpose of emphasizing that even a judicial order would not justify entry of the premises of the mission for the purpose of any search, requisition, attachment or execution. His delegation would vote for paragraph 3 (*b*) of the Spanish amendment, which had some value, and for the drafting amendments proposed by the Ukrainian SSR and by the Federation of Malaya.

32. Mr. de ROMREE (Belgium) said that the International Law Commission had prepared an excellent draft of one of the most important articles in the convention. The article conformed with international practice and had the full support of the Belgian Government. Consequently, he could not accept any amendment that tended to weaken the article. He shared the views of the many representatives who had spoken in that sense. He had listened with particular interest to the statements of the representatives of Norway and Sweden concerning the special obligation under paragraph 2 of the article, and stressed that it was an obligation relating not only to means but also to results: an obligation of the receiving State to guarantee the effective protection of the mission — and it was precisely in the case of disorders that protection should be effective. In his own country the practice was automatic: first an apology was presented to the mission; secondly, compensation was offered; and lastly, effective protection was guaranteed against any repetition of the incidents. His government was bound to approve an article that it intended to respect.

33. Mr. LINARES ARANDA (Guatemala) said that the inviolability of diplomatic premises was an absolute and not a relative principle. Consequently, he supported article 20 as drafted, and opposed all the amendments.

34. Mr. MARESCA (Italy) supported article 20 as it stood and considered as dangerous any amendments that would undermine its principle, but would not oppose any amendments that spelt out the principle in more specific terms. The Spanish amendment, for example, contained a new and interesting idea, though it might be more appropriate to another article.

35. Mr. GLASER (Romania) said that, while he understood and sympathized with the considerations underlying some of the amendments, he also agreed with other representatives in assuming that the head of a mission was a reasonable person, who would not prevent action to cope with outbreaks of fire or epidemics. Minor mishaps might sometimes be used as a pretext to enter diplomatic premises. But the temptation to provide for exceptions in the article should be resisted, for they could only be detrimental to the principle. He could therefore only accept the amendments proposed by the Federation of Malaya and the Ukrainian SSR, and would vote for article 20 as amended by them.

36. Mr. PECHOTA (Czechoslovakia) supported article 20 as amended by the Malayan and Ukrainian proposals. The principle of the inviolability of the premises of a mission had long been sacrosanct, but the discussions at the Conference had raised the important problem whether the principle permitted exceptions. Attempts had been made to introduce exceptions into the draft; but the International Law Commission has opposed them. The same was happening at the Conference. The Commission had been opposed to exceptions because they would weaken the basic principle; and it had been argued

that the formulation of basic principles would not prevent co-operation between the mission and the local authorities on particular issues. Similar arguments had been advanced at the Conference, and it had also been pointed out that some of the exceptions could impair international relations.

37. Some of the amendments had already been withdrawn, but there still remained the Mexican proposal providing that the head of the mission " shall " co-operate with the local authorities in case of fire, epidemic or other extreme emergency. He was opposed to the amendment because there could be no such legal obligations, and a codification of rules of law could not be concerned with a moral duty. He would support only amendments containing clarifications or drafting changes, such as those submitted by the Fedetation of Malaya and the Ukrainian SSR.

38. Mr. VALLAT (United Kingdom) supported the article as it stood, subject to the drafting amendment proposed by the Federation of Malaya, which he suggested should be referred to the Drafting Committee. He was also prepared to support the amendment of the Ukrainian SSR if he could be assured that it applied to property on the mission's premises and not elsewhere. He could not support paragraph 3 (*b*) of the Spanish amendment because, although he was not opposed to its idea, he doubted whether it came within the scope of article 20. He hoped that the sponsors of that and other amendments would withdraw them rather than allow them to be out-voted. The second paragraph of the Mexican amendment raised a problem that seemed to him entirely beyond the scope of the Conference.

39. Mr. BOISSIER-PALUN (Senegal) considered article 20 the most important article of the convention. He had listened to the discussion on the amendments, but was convinced that every effort to achieve precision and provide against abuse of diplomatic immunity was bound to lead to complications that would ultimately make it difficult for States to ratify the convention. His government was ready to guarantee the inviolability of diplomatic premises within the widest possible limits. The draft article was entirely consonant with his government's ideas, and he would therefore vote for it without addition or change.

40. Mr. PINTO de LEMOS (Portugal) said that any modification of article 20 would tend to deprive it of its full meaning. He was convinced that the problems raised in the amendments could be settled by the governments concerned, for that was part of the work of diplomats and he had complete confidence in them. In any case, exceptional situations were rare, and it was not worth trying to provide for them if to do so meant that a universally accepted principle would suffer. He was entirely satisfied with the article as it stood.

41. The CHAIRMAN announced that the representative of China would not press his amendment (L.123) to a vote.

42. Mr. SUBARDJO (Indonesia) said that, in the light of the comments of the USSR and the Ukrainian representatives on article 20, his delegation would not support the first part of the Mexican amendment, which went counter to the principle expressed in article 20.

43. It would, however, support the second part of the Mexican amendment, which was not in any way inconsistent with the principle of the inviolability of mission premises set forth in article 20.

44. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) thanked the Spanish representative for withdrawing part of his amendment in favour of the Ukrainian amendment. With regard to the remaining Spanish amendment (L.168, paragraph 3 (*b*)), he shared the doubts expressed by the representatives of Yugoslavia and the United Kingdom. The point it raised seemed to be outside the scope of article 20, and he urged the Spanish representative to withdraw it, particularly as the customs treatment of the property of a diplomatic mission, and the obligations of third States, were dealt with in other articles.

45. Mr. de ERICE y O'SHEA (Spain) withdrew his delegation's remaining amendment for the sake of achieving unanimity on article 20.

46. Mr. TAKAHASHI (Japan) said that the purpose of the Japanese amendment was to establish a uniform rate concerning the service of judicial documents. He was prepared to withdraw the amendment, on the understanding that it was the unanimous interpretation of the Committee that no writ could be served, even by post, within the premises of a diplomatic mission.

47. Mr. MATINE-DAFTARY (Iran) said that draft article 20 expressed adequately the important principle of the inviolability of the mission premises, and should not be amended; any amendment might weaken the statement of the principle. In particular, such matters as co-operation with the local authorities in case of fire or epidemic could conveniently be left to the good sense of the head of mission and the local authorities. Any attempt to cover those situations by establishing exceptions to the principle of inviolability could open the door to abuse.

48. The Indian amendment related to a matter affecting the legal relationship between an ambassador as lessor and his landlord, and not to a question of public international law.

49. The question of expropriation in the public interest, which was the subject of the second part of the Mexican amendment, had been discussed at length in the International Law Commission, which had in the end decided that such matters should be settled by agreement between the two States concerned.

50. The draft articles already contained an adequate safeguard against abuse of the inviolability of the premises by the head of mission. He referred to article 40, paragraph 3; the " special agreements " mentioned in that provision would cover, *inter alia*, the question of the right of asylum, which was the subject of a convention in force between a number of Latin American States.

51. Mr. ZLITNI (Libya) supported the principle of the inviolability of the mission premises and expressed the hope that the Mexican delegation would withdraw the first part of its amendment.

52. On the other hand, the second part of the Mexican amendment did not in any way weaken the principle of the inviolability of the mission premises; it merely took into account the facts of the situation with which the receiving State might be confronted in carrying out its town-planning schemes.

53. Mr. de ROSENZWEIG DIAZ (Mexico) said that his delegation attached as much importance as any other to the principle of the inviolability of mission premises and that it had never been the intention of its amendment to establish any exceptions to that principle. Nothing in the terms of the Mexican amendment authorized entry into the mission premises or the performance of any acts therein without the full consent of the head of mission or of the sending State. All that was said in the proposed new paragraph 4 was that the head of the mission should co-operate with the local authorities in case of fire, epidemic or other extreme emergency. And the proposed new paragraph 5 expressly referred to an agreement between the receiving State and the sending State.

54. He noted that some delegations took the view that the articles should set forth only the rights of the sending State and not its duties. Apparently, they thought that the receiving State might abuse its powers but that the sending State would never do so. For his part, he assumed that both States would apply the provisions of the draft articles in good faith. Even so, he would have considered it appropriate, in order to avoid misunderstandings, that some of the duties of the mission should be set forth in article 20. There could be no doubt, for example, that if the offices of a mission were situated in an apartment building, it was the duty of the head of the mission in case of fire to co-operate with the local authorities in order to avoid loss of life and property. However, on the understanding that the duties of the head of the mission and the mission staff were not placed in doubt, he was prepared not to press for a vote on the first part of his delegation's amendment.

55. With regard to the second part of the amendment, he accepted the suggestion of the Yugoslav representative (para. 15 above) that it should form the subject of a separate article so as not to appear to qualify the principle of inviolability of the mission premises. Moreover, in deference to the wishes of the French representative (see para. 26 above) he was prepared to include in the proposed new provision a reference to the right to compensation.

56. Mr. BOLLINI SHAW (Argentina) said it was his understanding that the Committee was not taking any decision or expressing any opinion regarding the validity or otherwise of the right of asylum in mission premises, a question which would be discussed and decided at the appropriate time by the competent bodies. It was on that understanding that his delegation had refrained from any comment on the right of asylum.

57. Mr. EL-ERIAN (United Arab Republic) supported the new provision proposed by the Mexican delegation and the suggestion that it should constitute a separate article. In that way the principle of inviolability would remain intact. He drew attention in that connexion to paragraph 7 of the International Law Commission's commentary to article 20. The Commission had not considered it advisable to insert in the article itself a provision on the subject, because such a provision would convey the erroneous impression that it constituted an exception to the principle of inviolability, when there was only a " moral duty of the sending State to co-operate ".

58. Mr. SUFFIAN (Federation of Malaya), introducing the Malayan amendment (L.114), said that it went beyond a mere question of drafting. Its purpose was to set forth the special duty of the receiving State and its obligation to take appropriate steps to protect the premises of the mission. The duty of the receiving State related to the results and not merely to the means. It was that State's duty to ensure that the mission was effectively protected against any intrusion or damage, and to prevent any disturbance of the peace of the mission and any impairment of its dignity.

59. Mr. USTOR (Hungary) expressed support for article 20 as it stood, with the Malayan and Ukrainian amendments.

60. Mr. KERLEY (United States of America) asked whether the intention of the Ukrainian amendment was to refer to other property within the premises of the mission.

61. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic), replying to the United Kingdom and United States representatives, said that the " other property " referred to in his delegation's amendment was property on the mission premises and not property outside those premises.

62. Mr. MECHECHA HAILE (Ethiopia) supported the text of article 20 as it stood, subject only to the Ukrainian amendment. The attempt to introduce more details into the text would, if accepted, only render it more obscure.

63. Mr. TUNKIN (Union of Soviet Socialist Republics) suggested that the Malayan amendment should be referred to the Drafting Committee to see if the wording it used could be introduced into article 20 without affecting the clarity of the article.

64. Mr. SUFFIAN (Federation of Malaya) accepted that suggestion and withdrew his amendment on the understanding that it would be considered by the Drafting Committee.

65. The CHAIRMAN said that, as the Mexican delegation had agreed that the clause it had proposed as a new paragraph 5 should become a separate article, the only outstanding amendment to article 20 was the Ukrainian amendment.

The Ukrainian amendment (L.132) was adopted by 60 votes to none, with 10 abstentions.

66. The CHAIRMAN put to the vote article 20, as so amended, on the understanding that the Drafting Committee would consider the possibility of using the wording of the Malayan amendment (L.114).

Article 20, as amended, was adopted on that understanding by 68 votes to none, with 2 abstentions.

67. Mr. MERON (Israel), speaking on a point of order, said that before a decision was taken on the new provision proposed by the Mexican delegation he wished to know whether that delegation accepted the French representative's suggestion that the necessity of agreement between the sending State and the receiving State should be specified in general terms, with regard to the whole process, not solely, as in the Mexican amendment, with regard to the question of the period of vacating the premises.

68. Mr. de ROSENZWEIG DIAZ (Mexico) said that in deference to the French representative's wish, he had already agreed to include in the provision a reference to the sending State's right to compensation. The point raised by the representative of Israel went much further, and he was not in a position to comment on it without time for reflection.[1]

The meeting rose at 6.25 p.m.

[1] See statement by the Mexican delegation at the 23rd meeting, para. 2.

TWENTY-THIRD MEETING

Tuesday, 21 March 1961, at 10.40 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 20 (Inviolability of the mission premises) *(continued)*

1. The CHAIRMAN said that the Mexican delegation wished to make a statement concerning the new provision which it had originally proposed as paragraph 5 of article 20 (L.129).

2. Mr. MARISCAL (Mexico), referring to the debate at the previous meeting, thanked the delegations which had expressed support for the proposed new provision. After consideration his delegation had decided to withdraw the provision. At the same time, however, he wished to state for the record that in his delegation's opinion the principle of the inviolability of mission premises could not be pleaded in cases of expropriation in the public interest by the receiving State; that rule was subject to an exception so far as the mode of execution of an expropriation order was concerned, for naturally no coercive measures could be applied. He added that real property was governed by the legislative provisions applicable to the place where it was situated, and diplomatic missions should observe those provisions.

Article 13 (Classes of heads of mission) *(resumed from the 17th meeting)*

3. The CHAIRMAN, recalling that the debate on article 13 had been adjourned at the seventeenth meeting, wished the Committee to resume its debate on the article and on the amendments thereto.[1]

4. Mr. WESTRUP (Sweden) suggested that a vote should be taken to establish how far the concept of two classes of heads of mission was current in modern times. The Swedish-Mexican and the Swiss amendments proposed a reduction in the number of classes, which would involve the abolition of some titles of heads of mission to which a number of States were still attached. On the other hand, the United Kingdom and France had proposed in their amendments (L.11 and L.98) the introduction of titles which, in the view of other delegations, had no place in a general convention. To avoid an express reference to titles which would be out of context in the convention, the delegation of Ghana had proposed its amendment (L.177).

5. Like the representative of Viet-Nam, he thought it would be better, without eliminating any title in current use and without introducing titles that were out of keeping with the context, to use an expression that would cover not only the representatives of class (*a*) but also those of class (*b*). The expression " titular heads of mission " suggested by the representative of Viet-Nam (17th meeting, para. 31) seemed attractive. The first question was whether the sending State could give the heads of its own missions titles differing according to the States to which they were accredited. Secondly, was it desirable that the receiving State should place all titular heads of mission in a single class irrespective of their titles ?

6. His delegation was sorry that the proposed reduction in the number of classes had given rise to objections other than those concerning drafting. It would like the question of principle itself — namely, the reduction to two classes, to be voted upon without reference to any specific forms of words.

7. Mr. REGALA (Philippines) said that the Committee had been considering, in connexion with article 13, the division of heads of mission into classes as well as the rules governing the precedence of heads of mission and other members of the diplomatic staff. He drew attention to a related problem raised by the existence of international organizations, the headquarters of which were located in different countries, and by the grant of diplomatic status to the heads of those organizations.

[1] For the list of the amendments originally submitted to the article see 16th meeting, footnote to para. 24. In consequence of the withdrawal of the amendments submitted by the United Kingdom (L.11), China (L.69), Spain (L.94) and France (L.98), the following amendments remained before the Committee: Mexico and Sweden (L.57 and Add.1), Switzerland (L.108), Guatemala (L.155) and Ghana (L.177).

8. He recalled that by resolution 1289 (XIII) the General Assembly of the United Nations had asked the International Law Commission to study relations between States and intergovernmental organizations. The Commission's report on its twelfth session, 1960, contained a passage (A/4425, chapter III, para. 32) from which it could be concluded that a separate study of those relations would be undertaken in due course.

9. However, he wished to point out that several of the matters dealt with in the existing conventions on relations between States and intergovernmental organizations (such as the convention on the privileges and immunities of the United Nations and the convention on the privileges and immunities of the specialized agencies), as well as bilateral agreements concerning the headquarters of the organizations, were closely related to the problems under discussion in the Committee. Examples were the status of the headquarters; the inviolability of premises; communications; immunity from jurisdiction, requisition and taxation; inviolability of archives; privileges and immunities granted to the staff, etc.

10. Whilst not quite identical, those questions were similar in some respects to those under discussion. Furthermore, the provisions relating to intergovernmental organizations had, in some cases, repercussions on those being drafted on the subject of diplomatic relations, and vice versa.

11. An illustration was provided by the amendment to article 5 which had been adopted at the tenth meeting and under which the head of a mission could be accredited as representative to an international organization having its headquarters in the receiving State (L.36). As the sponsors of the amendment had explained, it confirmed a current practice. That was an example of the way in which the existence of international organizations and the rules by which they were governed could affect the substance of the convention being prepared.

12. In that connexion he drew attention to another question directly related to one of the matters dealt with in articles 13, 14 and 15: the diplomatic status of the heads of some of the international organizations in the host country. Whether by usage or under specific agreement, a number of them had diplomatic status in the host country. What was the position of the heads of these organizations vis-à-vis the diplomatic agents accredited to the host country ? Surely, the action of the host country in recognizing the diplomatic status of the head of an international organization would have little or no significance if it was not intended to apply to the diplomatic corps in the host country, especially in the matter of precedence.

13. He realized that it was arguable that the position of the head of an international organization differed from that of members of the diplomatic corps, since the former was not accredited to the host government. On the other hand, however, he represented an organization which, while not necessarily constituting a community of States, possessed an international juridical personality, and might have as many as 80 or even 100 member States. Furthermore, some of the agreements between host governments and international organizations included provisions on the status of permanent or resident representatives accredited to those organizations which granted them diplomatic privileges and immunities and specifically recognized that they might have the rank of ambassador or minister plenipotentiary and might establish missions within the host country. The appointment of such permanent or resident representatives to international organizations was in effect equivalent to their accreditation to the head of the international organization.

14. The foregoing illustrated the various aspects of the problem of the diplomatic status of the head of an international organization in the host country, as well as the relationship between that problem and those dealt with in articles 13, 14 and 15 of the draft under consideration. That problem could not be dealt with in isolation.

15. He also realized that it might be argued that the question was one for settlement by bilateral agreements between the host governments and the organizations concerned. That approach did not, however, appear to him entirely logical, for two reasons. First, if the matter were to be settled by bilateral agreements, the system adopted would doubtless differ from one agreement to another, whereas uniformity was manifestly most desirable. Secondly, the various States whose representatives constituted the diplomatic corps in a given host country would not be parties to such bilateral agreements. Those agreements might well, however, affect the rules of precedence applicable to the diplomatic corps.

16. Hence a number of problems were raised for the host government and the international organizations, and it was, in his opinion, desirable, in the interests both of uniformity and of ensuring as wide acceptance as possible, that such a matter be regulated not by a bilateral, but by a multilateral instrument.

17. One possible solution to the problem had been proposed by Ghana (L.177): the addition of the words " and other heads of mission of equivalent rank " in article 13, paragraph 1 (*a*). That broadened definition might be considered sufficiently flexible to include the heads of certain international organizations, though he realized that that interpretation would not be entirely satisfactory, inasmuch as the heads of international organizations were not accredited to the head of the host State.

18. Another solution would be to add a paragraph 3 to article 13, in which reference would be made to the diplomatic status which the head of an international organization with its headquarters in a given State enjoyed in that State, whether by established practice or by express agreement.

19. In mentioning the problem, he did not necessarily imply that it should be solved at the Conference, nor that it necessarily fell within its terms of reference; nor did he intend to make any formal proposal for its solution, at least at that stage. Nevertheless, it was a very real problem which should be recognized. He had raised it in the hope that other representatives might be induced

to express their views as to where and how the problem should be approached, since it was directly related to a subject which was being considered by the Conference.

20. Mr. PONCE MIRANDA (Ecuador) supported the amendment submitted by Ghana which had already received the approval of the United Kingdom and France. It provided a satisfactory solution to the problem of Commonwealth High Commissioners and High Representatives of the French Community, and the addition of the words " and other heads of mission of equivalent rank " would cover other similar cases. At the same time, the amendment had the merit of not referring to special cases, which should be avoided in a convention of universal scope.

21. Referring to the amendments submitted by Mexico and Sweden (L.57 and Add.1) and by Switzerland (L.108), he said that, under the Regulation of Vienna of 1815, only ambassadors, legates and papal nuncios had been accorded representative status, and that originally they alone had been entitled to negotiate with the head of the receiving State. That distinction no longer existed, since all heads of mission, whatever their class, could negotiate with the Minister for Foreign Affairs of the receiving State. Was it reasonable to retain the rule established in 1815 ? The second class was disappearing, and only the class of ambassador and chargé d'affaires remained, the former being accredited to heads of States and the latter to Ministers for Foreign Affairs. But both had the same representative function. The Havana Convention of 1928 had disregarded the Regulation of Vienna and divided diplomatic officers into two classes: ordinary and extraordinary (E/CONF.20/7, article 2). The former were permanent representatives of their governments, whereas the latter were entrusted with special missions. Under that Convention (article 3), diplomatic agents enjoyed the same rights, privileges and immunities, whatever their category, except so far as precedence and etiquette were concerned.

22. For those reasons, the Ecuadorian delegation considered the amendments eliminating the second class of diplomatic agents to be well founded, but it could not vote for them, since agents of that class still existed in the Ecuadorian diplomatic service.

23. The Guatemalan amendment was acceptable to his delegation. The expression " diplomatic agent " should apply exclusively to heads of mission, and not to the whole of the diplomatic staff of such missions.

24. With regard to the Spanish amendment to article 17 (L.172) which recognized the capacity of chargés d'affaires ad interim to act as heads of mission, he considered it illogical not to include that provision in article 13, paragraph 1 (*c*), which spoke of permanent chargés d'affaires. The post of permanent chargé d'affaires did not give its holder higher rank than that of a chargé d'affaires ad interim.

25. The Ecuadorian delegation would vote for article 13, paragraph 1 (*c*) on the understanding that that provision applied equally to permanent chargé d'affaires and to chargés d'affaires ad interim.

26. Mr. LINARES (Guatemala) announced that his delegation had decided to withdraw its amendment (L.155).

27. Mr. CAMERON (United States of America) supported the Philippine representative's suggestion. The problem mentioned by that representative was one of the widest import, though it did not perhaps fall within the terms of reference of the Conference. He suggested that the matter should be referred to the Secretary-General of the United Nations, for submission to the International Law Commission or to some other appropriate body.

28. Mr. WICK KOUN (Cambodia) said he had no objection to the amendment submitted by Ghana nor was he fundamentally opposed to the elimination of one class of diplomatic agents. In his opinion, however, it would be premature to adopt a proposal that might have unfortunate consequences for small countries. Hence, his delegation would vote against the amendment submitted by Switzerland.

29. Mr. AGUDELO (Colombia) supported the amendment submitted by Ghana.

30. He considered that the word " envoys " could be eliminated and only the term " ministers " retained. He shared Ecuador's views on the elimination of the phrase " ad interim ". All chargés d'affaires were ad interim by definition.

31. The CHAIRMAN called on the Committee to vote on the amendment submitted by Ghana to paragraph 1 (*a*).

Paragraph 1 (a), with the amendment submitted by Ghana (L.177), was adopted by 71 votes to none, with 5 abstentions.

32. The CHAIRMAN put to the vote the principle of the Mexican-Swedish and Swiss amendments (L.57 and L.108).

The principle was rejected by 45 votes to 12, with 15 abstentions.

33. U SOE TIN (Burma) explained that he had voted against the elimination of sub-paragraph (*b*) even though he was in favour of such elimination, the reason being that he considered that as matters stood it might lead to complications.

34. The CHAIRMAN called on the Committee to vote on article 13 as a whole, as amended.

35. Mr. de ERICE y O'SHEA (Spain) pointed out that the Committee still had to deal with the Colombian proposal for the deletion of the word " envoy " in article 13, paragraph 1 (*b*).

36. Mr. TUNKIN (Union of Soviet Socialist Republics) said that that was merely a matter of drafting, which had already been discussed by the International Law Commission. Different titles were in use in different countries, and the Commission had rightly preferred to keep both titles, " envoys " and " ministers ".

37. The CHAIRMAN pointed out that the Colombian proposal had been submitted orally, and that it was not customary to put oral amendments to the vote. Should any delegation wish to submit the Colombian proposal as a formal amendment, it could do so at a plenary meeting of the Conference.

Article 13, as amended, was adopted by 68 votes to none, with 5 abstentions.

Article 21 (Exemption of mission premises from tax)

38. The CHAIRMAN invited debate on article 21 and on the amendments thereto.[1]

39. Mr. de ERICE y O'SHEA (Spain) withdrew the amendment (L.166) to article 21 submitted jointly by his delegation and that of Austria. The two delegations became co-sponsors of the Mexican amendment (L.130), which was drafted on similar lines.

40. U SOE TIN (Burma) introduced the amendment submitted jointly by his delegation and that of Ceylon (L.159). The practice of exempting from dues and taxes premises leased to foreign missions was not observed by all countries. Hence it was desirable to standardize the practice to be followed, and to embody it in a rule of international law acceptable to all countries. Usually dues and taxes on leased premises were payable by the owner, but, in the case of premises leased to a mission, there was nothing to prevent the head of mission from assuming responsibility for such dues and taxes, and then asking the receiving State for exemption. It was true that in paragraph 2 of its commentary on article 21 (A/3859) the International Law Commission stated that the provisions of the article did not apply in such a case since the mission's liability then became part of the consideration given for the use of the premises and usually involved in effect not the payment of taxes as such, but an increase in the rental payable. Since, however, those comments would not appear in the final text of the convention, complications were bound to arise in the interpretation of the provisions of article 21. The amendment was based on the principle that minimum acceptable rules should be adopted concerning the exemption from dues and taxes on premises owned by the sending State, while leaving the door open for any other exemptions of which that State might wish to avail itself.

41. Mr. de ROMREE (Belgium) said that his delegation's amendment (L.164) was not, as might appear, a purely drafting amendment. It was in fact concerned with a point of substance. For the head of the mission to be exempt from all dues and taxes on the mission's premises, he must be acting in that capacity, and that should be explicitly stated. The Belgian delegation did not, however, insist on a vote on its amendment and would be satisfied if it were referred to the Drafting Committee.

42. Mr. de ROSENZWEIG DIAZ (Mexico) said his delegation accepted the principle laid down in article 21 as it stood. But the application of the principle might raise difficulties, and it was in order to avoid them that his delegation had submitted its amendment (L.130), of which Austria and Spain had become co-sponsors. On occasion, the lease given to a mission by the owner of the premises contained the condition that taxes were payable by the mission. In such cases, as was noted in the International Law Commission's commentary, the provisions of article 21 were not applicable.

43. Mr. VALLAT (United Kingdom) said his delegation approved the principle stated in article 21. However, that article lent itself to various interpretations, and the United Kingdom delegation did not agree with that given by the Commission in paragraph 2 of its commentary on the Commission's draft provisional articles on consular intercourse and immunities (A/4425, article 32) interpreted the rule differently. The aim of article 21 should be to exempt the sending State from all dues and taxes on the mission's premises but not to exempt the owner who leased the premises to the mission. The United Kingdom delegation supported the joint amendment of Mexico, Austria and Spain, though the drafting might be improved.

44. Mr. HAASTRUP (Nigeria) supported the text of article 21, as modified by the amendment of Mexico, Austria and Spain.

45. Mr. GIMENEZ (Venezuela) said that his delegation's amendment (L.143) was based on Venezuelan law; since, however, the amendment of Mexico, Austria and Spain covered the same points, his delegation would withdraw its amendment and support the joint amendment.

46. Mr. de VAUCELLES (France) agreed with the United Kingdom representative. His delegation would vote for the joint amendment of Mexico, Austria and Spain; it also supported the Belgian amendment, which could be referred to the Drafting Committee.

47. Mr. MATINE-DAFTARY (Iran) considered that article 21 as drafted needed no amplification. According to the principle stated in it, the premises of the mission, if owned by the sending State, were exempt from all dues and taxes. If, however, they belonged to a private person who leased them to the mission, that person was liable for the dues and taxes.

48. Mr. MONACO (Italy) agreed in principle with the United Kingdom representative. If the Committee wished to clarify the position of a private person leasing premises to a mission, his delegation was willing to accept the joint amendment of Mexico, Austria and Spain, subject to drafting improvements.

49. Mr. CAMERON (United States of America) agreed with the United Kingdom representative and supported in principle the joint amendment of Mexico, Austria and Spain, which clarified the text of article 21 and relieved his delegation's apprehensions regarding the words " whether owned or leased ". He added that the expression " premises of the mission " used in article 21 and other articles had not been defined; that was a gap

[1] The following amendments had been submitted: Mexico, A/CONF.20/C.1/L.130; Venezuela, A/CONF.20/C.1/L.143/ Burma and Ceylon, A/CONF.20/C.1/L.159; Belgium, A/CONF.20/C.1/L.164; Austria and Spain, A/CONF.20/C.1/L.166.

which should be filled. In his delegation's opinion, the expression should comprise the land and all the buildings of the mission, even if scattered.

50. Mr. TUNKIN (Union of Soviet Socialist Republics) considered that article 21 conformed to established practice and that no amendments were necessary. The joint amendment of Mexico, Spain and Austria contained a legal redundancy but his delegation would not oppose it, although it added nothing to article 21. His delegation did not accept the joint amendment of Burma and Ceylon, since it did not correspond to established practice or to international law.

51. Mr. BARNES (Liberia) approved the principle of the Mexican amendment, which conformed with existing Liberian law.

52. Mr. DADZIE (Ghana) considered that the sending State might quite well assume responsibility for dues and taxes under a contract with the landlord of the leased premises. The sending State was always free to waive the privileges granted by the receiving State, and his delegation could not support amendments depriving the sending State of that right.

53. Mr. KRISHNA RAO (India) considered that the exemption provided for in article 21 was granted — as was expressly stated in the corresponding clause of the Special Rapporteur's draft (A/CN.4/116/Add.1 and 2) submitted to the International Law Commission in 1958 [1] — if the head or another member of the mission acquired or rented premises on behalf of the sending State. " Premises " should therefore comprise the land, buildings and annexes used by the embassy and the chancery, as well as the private residences of the members of the mission.

54. Mr. JEZEK (Czechoslovakia) considered that the tax exemption provided for in article 21 applied not only to buildings used by the mission but also to premises rented or acquired by the sending State for the needs of the head of the mission, as was evident from article 32 (*f*). His delegation did not ask that that interpretation should be embodied in a formal declaration, but requested that the Committee take note of it.

55. Mr. de SOUZA LEAO (Brazil) said he would vote for the Mexican amendment.

56. Mr. FERNANDES (Portugal), agreeing with the United Kingdom representative, said that article 21 was based on the principle that one State could not impose a fiscal obligation on another. In order to avoid any difficulty of interpretation, it might be better to delete the reference to the head of the mission, but if the majority decided otherwise, the Belgian amendment would make the text clearer. In any case, article 32 (*b*) said specifically that the head of a mission was exempt from all dues and taxes on private immovable property held by him on behalf of his government.

57. Mr. YASSEEN (Iraq) said that article 21 in no way provided for the fiscal exemption of the private persons who owned the premises rented by the mission. Such owners were therefore subject to the law of the receiving State and it was quite unnecessary to add any provision on that question in the draft.

58. Mr. MENDIS (Ceylon), disagreeing with some speakers, said that article 21 was not clear. To remove any ambiguity, his delegation had co-sponsored an amendment (L.159) enabling the countries concerned to agree on the terms of the lease of the mission premises. However, the two sponsors of the amendment had decided to withdraw their amendment in favour of that of Mexico, which contained a similar provision.

59. Mr. SUFFIAN (Federation of Malaya) said he would vote for the Mexican amendment for the same reasons as the United Kingdom representative.

60. Mr. SINACEUR BENLARBI (Morocco) agreed with the Iraqi representative, but said he would vote for the Mexican amendment, the principle of which was in conformity with Moroccan law.

61. Mr. MELO LECAROS (Chile) fully approved the principle stated in article 21 but considered that it was not clear enough so far as it concerned premises rented by the mission. He would therefore vote for the Mexican amendment.

62. Mr. KEVIN (Australia) said he assumed that article 21 would bind only those States which accepted it.

63. Mr. RETTEL (Luxembourg) supported the International Law Commission's text but agreed with the United Kingdom representative. The title of the article might be revised to read " Exemption from tax on mission premises ", for it was not the premises themselves which were exempt from tax. He also asked for some explanation concerning the treatment of registration charges, for instance, which were fiscal in character but could also be considered as payment for services rendered. He supported the Belgian amendment.

64. Mr. BOISSIER-PALUN (Senegal) agreed with the Soviet and Iranian representatives and said he would not be able to vote for the Mexican amendment which would only unnecessarily lengthen the original text. Especially if the words " acting as such " were added after the words " the head of the mission ", article 21 was perfectly unambiguous. In Senegal, registration charges were borne by the purchaser, but if the latter was a State, it was exempt from such charges.

65. Mr. BARTOŠ (Yugoslavia) said he would vote for the article as it stood. He explained that the International Law Commission had not intended the expression " dues . . . for specific services rendered " to cover such administrative charges as registration fees or transfer duties.

66. Mr. BOUZIRI (Tunisia), agreeing with the Soviet and Iranian representatives, said it was unnecessary to amend the article in the manner proposed by the Mexican delegation. Nor was he convinced that the Belgian amendment was necessary, but that question

[1] The Special Rapporteur's draft is reprinted in *Yearbook of the International Law Commission*, 1958, vol. II, United Nations publication, Sales No. 58.V.1, vol. II.

would probably be decided by the Drafting Committee. In any case, his delegation would vote for the article as it stood.

67. Mr. USTOR (Hungary) said that in the case of a lease, dues and taxes were payable by the landlord, who could, however, recover them by including them in the rent. If the tenant was a State, it should be exempt also from dues and taxes charged indirectly in so far as the landlord was liable for them. That interpretation would be particularly satisfactory for a State which was unable to buy buildings and which had no choice but to rent the premises necessary for its mission. His delegation would be willing to support any amendment in that sense but did not consider the Mexican amendment suitable.

68. The CHAIRMAN put to the vote the Mexican amendment (L.130), which was co-sponsored by Austria and Spain.

The amendment was adopted by 44 votes to 2, with 27 abstentions.

69. The CHAIRMAN proposed that the Belgian amendment (L.164) should be referred to the Drafting Committee.

It was so agreed.

Article 21, as amended, was adopted by 72 votes to none, with 1 abstention.

Appointment of sub-committee to consider item 11 of the agenda (Special missions)

70. The CHAIRMAN recalled that, under item 11 of the agenda, the Conference was to study certain draft articles on special missions. He proposed that a sub-committee should be appointed for that purpose composed of the following countries: Ecuador, Iraq, Italy, Japan, Senegal, Union of Soviet Socialist Republics, United Kingdom, United States of America and Yugoslavia.

It was so agreed.

The meeting rose at 1 p.m.

TWENTY-FOURTH MEETING

Tuesday, 21 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 22 (Inviolability of the archives)

1. The CHAIRMAN invited debate on article 22 and drew attention to the amendments submitted by Bulgaria (L.126), France and Italy (L.149) and the United States of America (L.153).

2. Mr. de VAUCELLES (France), introducing the joint French-Italian amendment, said that its object was to establish clearly the absolute inviolability of the mission's archives and documents as such, and not merely as part of the furniture of the mission. As in the case of the official correspondence of the mission (article 25, paragraph 2) their inviolability should be absolute, wherever they happened to be, even outside the premises of the mission — for what were archives but old correspondence ? It was therefore essential that they should be immediately identifiable: otherwise a sending State would have no justification in complaining if documents found outside the mission were read.

3. With regard to the United States amendment, he asked for an explanation of the meaning of the words " reference collections ".

4. Mr. CAMERON (United States of America) said that his delegation had submitted its amendment because it did not think that article 22 could be properly applied without some definition or limitation of the meaning of " archives and documents ". He would accept any drafting changes that would make the amendment more acceptable to the Committee, provided that the final wording made it clear that the government of the receiving State should be able to recognize the material whose inviolability it undertook to respect. He would oppose any definition that included documents outside the mission's premises unless they were identified as proposed by the French-Italian amendment.

5. Mr. BAIG (Pakistan) said that his government was somewhat concerned over article 22. It did not question the complete inviolability of the archives and documents of diplomatic missions when in proper custody or transit — for instance, while they were on the mission premises or in the physical possession or custody of a member of the mission, or when carried in a diplomatic bag. Cases did occur, however, and had occurred in his country, in which documents purporting to belong to a mission had been found in entirely unauthorized hands — deposited with nationals of the receiving State, for example; and such documents sometimes related to actionable matters.

6. Even though article 40, paragraph 1, contained an express exhortation, his government hoped that article 22 would be re-drafted in terms prohibiting such abuse. His delegation was not proposing a specific amendment because of the difficulty of devising language which would not impair the inherent inviolability of diplomatic archives and documents which, as all agreed, must be upheld. He considered it necessary to state, however, that if a diplomatic document was found in unauthorized hands in his country, and there was good reason to believe that it was in those hands with the positive, or even negative, connivance of the mission concerned, the Government of Pakistan would regard its inviolability as void; for the document, whether or not it still bore visible external signs of its origin, would then have ceased to retain its true diplomatic character.

7. Hence, his delegation could not support the Bulgarian amendment which sought to extend inviolability beyond

limits which his government already considered too wide. The amendment submitted by France and Italy, despite its qualifying second sentence, seemed to have a similar effect. The amendment proposed by the United States was the closest approach to what his government had in mind, and his delegation would support it.

8. Mr. GOLEMANOV (Bulgaria), introducing his delegation's amendment (L.126), said that it would not affect the principle of inviolability so clearly stated in draft article 22, but would place more emphasis on the importance of the principle and on the duty of the receiving State to ensure that it was respected. It also conformed with the opinion expressed by the International Law Commission in its commentary (A/3859), which he shared, that the documents of a mission were inviolable even when separated from the archives or carried by a member of the mission. He recognized that the joint French-Italian amendment had, in part, the same object as the Bulgarian amendment, though he regarded the words " at any time " as unnecessary and considered that the second sentence of the French-Italian amendment was concerned with detail rather than with principle.

9. Mr. BARTOŠ (Yugoslavia) said he was entirely satisfied with the article as it stood. The point raised by Bulgaria and by France and Italy had been discussed on more than one occasion in the Commission and had given rise to the question whether archives and documents outside the mission's premises should be given absolute protection or protection only by reason of the principe of the inviolability of the premises. It was difficult to lay down that a State had the duty to protect archives and documents that were not properly protected by the mission; the Yugoslav Government did not feel able to guarantee that the police and the courts would safeguard archives and documents that fell into unauthorized hands. It was no use expecting protection for material bearing visible identification marks, if the other conditions were not fulfilled. He would therefore support the United States amendment, but oppose those submitted by France and Italy and by Bulgaria.

10. Mr. YASSEEN (Iraq) said that the principle of the inviolability of archives and documents was absolute and did not derive from the inviolability of the mission's premises. The archives and documents of the mission were accordingly inviolable at all times and in all places. In his opinion, the article as it stood was perfectly adequate, since it contained no condition as to time or place. Nevertheless, it might be useful to make the text still clearer, and he would therefore support the Bulgarian amendment and the first sentence of the French-Italian amendment. The second sentence of the French-Italian amendment, however, appeared to make the identification of documents and archives outside the Commission's premises a condition of their inviolability, and if that were so he would vote against it.

11. Mr. JEZEK (Czechoslovakia) considered that the amendment proposed by Bulgaria, and similar drafting in the final part of the amendment proposed jointly by France and Italy, would make article 22 more explicit and should therefore be adopted. It would also be useful to include the definition proposed by the United States of America.

12. Mr. DADZIE (Ghana) thought that the definition proposed by the United States would only complicate article 22; it would be preferable to include it in article 1 (Definitions). With regard to the amendment proposed by France and Italy, he considered that the second sentence was unnecessary and added nothing to the existing text. The amendment proposed by Bulgaria was an improvement. He would prefer the article to remain unchanged, but would support the Bulgarian amendment if it was put to the vote.

13. Mr. GASIOROWSKI (Poland) fully agreed with the representative of Iraq that the inviolability of archives and documents was entirely independent of the inviolability of the mission premises. That was recognized in the amendments submitted by Bulgaria and by France and Italy. The additional words " at any time " went a little too far, however, and he could not support the second sentence of the French-Italian amendment since it was really a statement of the obvious.

14. The representative of the United States of America, in introducing his amendment, had referred to limitation. He was against any limitation of diplomatic privileges and immunities and could therefore not support that amendment.

15. Mr. de VAUCELLES (France) said that he had been somewhat surprised at some of the comments on the second sentence of the French-Italian amendment. Its intention was precisely to prevent the kind of abuses referred to by the representative of Pakistan, for it was obvious that there would be no justification for a complaint alleging violation of diplomatic immunity unless proper precautions had been taken. With regard to the comments on the words " at any time ", he said their object was to cover the case of the severance of diplomatic relations where there might be an interim period during which archives and documents were without proper supervision.

16. Mr. CAMERON (United States of America) said he had no intention of limiting inviolability; the only intention of his delegation's amendment was to define archives and documents so that the receiving State would be able to carry out its obligations and fully to respect their absolute inviolability. That would prevent possible difficulties between receiving and sending States over what constituted the archives and documents of the mission. In view of the comments that had been made, however, he withdrew his amendment.

17. Mr. GLASER (Romania) said he had no objection to the first sentence of the French-Italian amendment, though he agreed with the representative of Iraq that its intention was in any case implicit in the draft of article 22. He had doubts about the second sentence, however, in spite of the explanation given by its sponsor, for it would complicate rather than simplify the application of the article. The identification mark was not an integral part of the archives or documents; hence it

had nothing to do with the principle of their inviolability and should not be mentioned in the convention. The fact that violation might occur through failure to recognize a diplomat, his car or his documents was irrelevant to the principle. He hoped that the representatives of France and Italy would reconsider the second sentence of their amendment.

18. Mr. SUCHARITAKUL (Thailand) strongly supported the principle that the archives and documents of a mission, being confidential, should be protected from violation. He would therefore vote for article 22 as drafted, but would oppose the amendment by France and Italy because it sought to extend the limits of inviolability and might be interpreted to give protection to prohibited documents in unauthorized hands.

19. Mr. SOLHEIM (Norway) expressed support for the Bulgarian amendment. He also supported the first sentence of the French-Italian amendment, but opposed the second sentence.

20. At the request of Mr. YASSEEN (Iraq), the CHAIRMAN put to the vote separately the second sentence of the amendment submitted by France and Italy (L.149).

The second sentence of the amendment was rejected by 26 votes to 15, with 27 abstentions.

21. At the request of Mr. TUNKIN (Union of Soviet Socilaist Republics) the CHAIRMAN put to the vote separately the words " at any time " in the first sentence of the amendment submitted by France and Italy (L.149).

The words " at any time " were adopted by 24 votes to 19, with 26 abstentions.

22. The CHAIRMAN put to the vote the first sentence of the amendment by France and Italy (L.149).

The first sentence of the amendment was adopted by 45 votes to 5, with 18 abstentions.

23. The CHAIRMAN said that, as the Bulgarian amendment (L.126) was covered by the amendment just adopted, it was unnecessary to put it to the vote. The amendment adopted replaced the text of article 22, so that the article as a whole had been adopted.

Article 23 (Facilities)

24. The CHAIRMAN said that no amendments had been submitted to article 23.

Article 23 was adopted without comment.

Proposed additional article (Concerning deeds executed on mission premises)

25. Mr. de ERICE y O'SHEA (Spain) said that his delegation's proposal (L.192) was intended to ensure that documents officially issued or executed in a diplomatic mission obtained in the receiving State the same measure of recognition which that State gave to documents issued or executed in the sending State itself. The Spanish proposal merely stated the existing practice in the matter and was, in a sense, consequential on the Committee's acceptance of the principle that diplomatic missions could perform consular functions (9th meeting, para. 16).

26. Mr. BARTOŠ (Yugoslavia), speaking on a point of order, asked the Chairman to rule on whether the Spanish proposal was within the Conference's terms of reference. In his opinion it was not. He had full powers from his government to deal with the question of diplomatic intercourse and immunities, but not with the intricate question of the territorial effects of legal instruments.

27. The CHAIRMAN said that the Spanish proposal related to the acceptability of a document under the laws of the receiving State and did not seem to raise any question of diplomatic intercourse or immunities. He appreciated the spirit in which the amendment had been proposed but, since its subject was outside the scope of the Conference, he must, with regret, rule it out of order. If there was no objection, he would take it that the Committee accepted his ruling.

It was so agreed.

Article 24 (Free movement)

28. The CHAIRMAN invited debate on article 24, to which amendments had been submitted by the Philippines (L.141), Venezuela (L.144) and Italy (L.150/Rev.1).

29. Mr. REGALA (Philippines), introducing his delegation's amendment (L.141), said that its purpose was to spell out in the body of article 24 the important principle recognized in the International Law Commission's commentary on the article: " The establishment of prohibited zones must not, on the other hand, be so extensive as to render freedom of movement and travel illusory."

30. If the restrictions imposed by the receiving State on grounds of national security on the free movement of diplomats were so extensive as to render freedom of movement illusory or nugatory, diplomatic agents would be unable to perform the function of " ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the government of the sending State ", which the Committee had approved in article 3 (*d*).

31. It might be objected that the amendment was, in a sense, an interpretation of article 24; but he would point out that at its previous meeting the Committee had adopted a Mexican amendment to article 21 (L.130) which was likewise in the nature of interpretation.

32. There was a marked tendency on the part of many States to restrict the movement of diplomats — a tendency which his delegation viewed with concern. He had read with great interest the records of the discussions in the International Law Commission on the subject at its ninth session, in 1957, and, in particular, the remark of Sir Gerald Fitzmaurice, then a member of the Commission and since elected a judge of the International Court of Justice, that a provision on freedom of movement would not have been necessary thirty years previously; it would then have been considered axio-

matic that a diplomat had full freedom of movement in the receiving State, subject only to minor exceptions relating to fortified zones (ILC, 400th meeting, para. 35). What had once been the exception, however, was in danger of becoming the rule; the restrictions that were being increasingly imposed were nullifying freedom of movement, in disregard of the duty of the receiving State to accord full facilities for the performance of the mission's functions, as laid down in article 23, which the Committee had adopted without opposition.

33. Mr. KAHAMBA (Congo: Léopoldville) said that his delegation supported article 24 as drafted by the International Law Commission. It interpreted the article as applying to the use of such common means of transport as motor-cars. So far as movement by aircraft was concerned, which constituted the only practical form of travel between the various parts of the Congo, he said the whole territory might be regarded as a prohibited zone. His government reserved the right to control and limit the movement of aircraft, including those belonging to foreign diplomatic missions. In particular, it reserved the right to fix air routes, to regulate the use of airports and to charge dues for their use. It was not opposed to the use of aircraft by diplomatic missions, but reserved its right to regulate that use.

34. Mr. TUNKIN (Union of Soviet Socialist Republics) said that article 24 was the outcome of thorough and difficult discussions in the Commission. The question with which it was concerned affected the security of many States and consequently it had not been easy to find a satisfactory compromise acceptable to all members of the Commission. A compromise had been reached, however, and it was reflected in the text. His delegation therefore supported the article as it stood and considered that the amendments submitted were unnecessary or even harmful.

35. The Philippine amendment (L.141), which gave a reasonable interpretation of article 24, had no place in the article itself. It belonged in the commentary and was, indeed, based on the Commission's commentary. The statement contained in it was unobjectionable, but it would not be wise to include it in the article, because it did not lay down a rule of conduct under international law.

36. The Venezuelan amendment (L.144) introduced new elements into the article which would complicate its interpretation.

37. Lastly, the Italian amendment (L.150/Rev.1) introduced a reference to article 44, on non-discrimination. Article 44, however, related to all the articles and if a reference to it was introduced in article 24 and not elsewhere, the whole structure of the draft would be affected. He urged the Italian representative not to press for a vote on his amendment.

38. Mr. MONACO (Italy) withdrew his delegation's amendment on the understanding that a reference to article 44 was unnecessary because, in view of its generality, that article should in any event be construed as applying to article 24.

39. Mr. NGUYEN-QUOC DINH (Viet-Nam) expressed concern at the terms in which article 24 was drafted. It stated the principle of freedom of movement, which his delegation supported wholeheartedly, but unfortunately it also stated the contrary principle that the receiving State could, for reasons of national security — of which it was the sole judge — restrict that freedom.

40. In view of the unsatisfactory nature of the draft, his delegation had at first considered proposing the deletion of the initial proviso relating to prohibited zones; but it had refrained from submitting such an amendment bacause it was unlikely to receive the support of the majority.

41. As he understood it, one of the basic principles accepted by the International Law Commission was that international law prevailed over municipal law but did not override the recognized competence and powers of the receiving State. In the matter of freedom of movement and travel, it was advisable to draw a distinction between the normal exercise of the powers of the receiving State and an abnormal exercise of those powers. His delegation would therefore support the Philippine amendment (L.141) although its terms were not perhaps sufficiently explicit. For, although the amendment provided that restrictions must not be so extensive as to render the freedom of movement illusory or nugatory, nothing was said about the consequences of violation of that rule.

42. In that connexion the withdrawn Italian amendment would have been useful, since an explicit reference to the terms of article 44, paragraph 2 (*a*) might perhaps have deterred a receiving State which intended to introduce unwarranted restrictions.

43. Mr. VALLAT (United Kingdom) said that article 24 had a long history. It had been considered with great care by the Commission and represented a delicate compromise. Even in a technical conference it was not possible to ignore altogether the political factors involved in certain questions, and for that reason, it would be very unwise to reopen the discussion on article 24.

44. The interpretation in the Philippine amendment would be accepted by most of those present; indeed, it was precisely the interpretation which the Commission itself, in its commentary, had placed on article 24. Reading the article in its context, he saw nothing in its terms which allowed the receiving State to deny freedom of movement. The condition expressed in the initial proviso was carefully circumscribed within specified limits. Moreover, the provisions of article 24 should be read in conjunction with article 23. The freedom of movement provided for in article 24 was one of the facilities which, under article 23, the receiving State was under a duty to accord for the performance of the mission's functions. If, therefore, the right granted in the proviso relating to prohibited zones were to be exercised in such a manner as to render freedom of movement and travel illusory or nugatory, the receiving State would be violating not only article 24 but also article 23.

45. He therefore urged the sponsors of amendments not to press for a vote on them and to believe that the

terms of article 24 adequately safeguarded the principle of freedom of movement.

46. Mr. DEJANY (Saudi Arabia) said that his delegation agreed with the principle stated in article 24 and would support the article as it stood. In view of the existence from time immemorial of historical restrictions on two zones in his country, however, he felt it necessary to explain his government's position in regard to the application of article 24. The cities of Mecca and Medina, the birthplaces of Islam, were holy cities, and for over 1300 years they and their environs had been the centre of certain practices and traditions which had not changed with the passage of time. One of those traditions was that the environs of the two cities were accessible only to members of the Moslem faith. That restriction had not been imposed by the Government of Saudi Arabia, but had been strictly enforced for over 1,300 years by all the governments, without exception, which had administered that part of the Arabian peninsula. It was thus an historical fact, a living tradition, much older than the subject which the Conference had been convened to discuss.

47. When that historical restriction was considered in connexion with the spirit of article 24 — that the diplomatic mission should be free to perform its functions — it was evident that its effect was unimportant, since the two areas were not sealed against any one mission and were ordinarily accessible at least to some members of the staff of a mission. Furthermore, there was nothing in the two zones, apart from the shrines, which might not be found in any other city in the country, and hence no diplomatic report of any mission could be considered incomplete for lack of information obtained from them.

48. The restriction should also be considered in the light of article 40, paragraph 1, and in that connexion the members of all diplomatic missions had shown understanding and respect and no objection had ever been raised. Since the restriction on the two zones was an historical fact well known both to governments and to individuals, his delegation would interpret its acceptance by all governments which exchanged diplomatic missions with the Government of Saudi Arabia as indicating their tacit consent and as meaning that they did not regard the restriction as a hindrance to the freedom of movement and travel of members of their missions within the meaning of article 24. His delegation accordingly considered that the restriction in question was not one of the degree or nature referred to in article 24, but one that came within the meaning of article 40, paragraph 1.

49. Mr. REGALA (Philippines) said he had noted the comments made by various representatives, including those of the Soviet Union, Viet-Nam and the United Kingdom, to the effect that the intention of article 24 was to establish freedom of movement as a general rule and that restrictions imposed on the free movement of members of the mission under that article should not be so extensive as to render the freedom of movement illusory or nugatory. If that interpretation was expressly noted by the Committee, his delegation would not press its amendment (L.141).

50. Mr. GIMENEZ (Venezuela) said that in a spirit of co-operation his delegation would withdraw its amendment (L.144).

51. The CHAIRMAN said that in consequence of withdrawals, there remained no amendments to article 24.

Article 24 was adopted unanimously without change.

Article 25 (Freedom of communication)

52. The CHAIRMAN invited debate on article 25 and the amendments thereto.[1] The large number of amendments originally submitted had been reduced by the withdrawal of those of Argentina, the United Arab Republic (L.140 only), Indonesia and India; instead, the delegations in question sponsored a joint amendment (L.264).

53. Mr. OJEDA (Mexico) withdrew the first part of his delegation's amendment (L.131) and said that, after consultation with the sponsors of the joint amendment, his delegation had agreed to become a co-sponsor of that amendment. He wished, however, to propose a subamendment replacing the words " making proper arrangements " by the words " obtaining authorization ".

54. Mr. MITRA (India), Mr. NAFEH ZADE (United Arab Republic), Mr. BOLLINI SHAW (Argentina) and Miss SASTRODIREDJO (Indonesia) accepted the subamendment proposed by Mexico.

55. Mr. de VAUCELLES (France) proposed that in view of the complexity of the amendments to article 25 and the need for some delegations to await further instructions, the discussion of the article should be deferred until the next meeting.

It was so agreed.

Article 26

56. The CHAIRMAN said that no amendments had been submitted to article 26.

Article 26 was adopted unanimously, without change.

The meeting rose at 5.35 p.m.

---

[1] The following amendments had been submitted: China, A/CONF.20/C.1/L.124; France, A/CONF.20/C.1/L.125; Mexico, A/CONF.20/C.1/L.131; Chile, A/CONF.20/C.1/L.133; Liberia, A/CONF.20/C.1/L.135; Argentina, A/CONF.20/C.1/L.138; United Arab Republic, A/CONF.20/C.1/L.140 and L.151; Switzerland, A/CONF.20/C.1/L.158 — Add.1; Venezuela, A/CONF.20/C.1/L.145; Indonesia, A/CONF.20/C.1/L.147; Federation of Malaya, A/CONF.20/C.1/L.152; United States of America, A/CONF.20/C.1/L.154; Czechoslovakia, A/CONF.20/C.1/L.162; India, A/CONF.20/C.1/L.165; Spain, A/CONF.20/C.1/L.167; Argentina and India, Indonesia, United Arab Republic, A/CONF.20/C.1/L.264 (see Chairman's remark above).

TWENTY-FIFTH MEETING

Wednesday, 22 March 1961, at 3 p.m.

Chairman: Mr. LALL

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 31 (Exemption from social security legislation)

1. The CHAIRMAN invited Mr. Jenks, Assistant Director-General of the International Labour Office, to address the Committee on article 31, which dealt with the exemption of diplomatic missions from social security legislation.

2. Mr. JENKS, Assistant Director-General of the International Labour Office, thanked the Chairman for the opportunity given to him to express the views of the International Labour Organisation as the specialized agency with primary responsibility within the United Nations family for matters relating to social security.

3. Article 31 embodied two principles which qualified each other but which were essentially complementary. First, that members of diplomatic missions and members of their families who formed part of their households, if they were not nationals of the receiving State, were exempt from the social security legislation in force in that State. Secondly, that the exemption was not applicable to servants and employees who were themselves subject to the social security legislation of the receiving State. He hoped that, subject to any questions of drafting which might require consideration, the Committee would approve those two principles, which appeared consistent both with the principles of international law relating to diplomatic immunities and with the general tendencies influencing its contemporary development.

4. Both principles were implicit in the general concept of social security which the 97 States members of the ILO — including 72 of the 77 States represented at the Conference — had accepted a solemn obligation to promote. While the second principle had as yet been less widely accepted than the first, both had been recognized in certain international agreements and were increasingly supported by a significant body of national law and practice.

5. The purpose of social security legislation was to provide for the individual a measure of protection in certain contingencies, such as accident, sickness, invalidity, death and retirement. In all those cases, continuity of protection was the primary condition of the effectiveness of social security. The importance of that continuity had been so widely recognized that a network of international agreements relating to the position of migrants under social security schemes had been concluded: regional arrangements on the subject had been adopted in Europe, the American Regional Conference of the ILO would be considering a proposed inter-American agreement on the matter at Buenos Aires in April 1961, and the whole question was to be further considered by the International Labour Conference in June 1961, with a view to the adoption of a new and comprehensive international labour convention on the subject.

6. For members of diplomatic missions and their families continuity of protection could only be secured by the sending State; in general, it was secured by applying to them the social security arrangements applicable to the public service of the sending State. The servants and employees of diplomatic missions, on the other hand, generally spent their whole working lives in one country, but not necessarily in the service of a particular diplomatic mission. Unless, therefore, they were covered by the social security system of the receiving State, they were liable to be without adequate social security protection in the event of invalidity, bereavement or old age.

7. A survey of the contemporary development of social security legislation, based on reports from the governments of 89 States and 87 non-metropolitan territories, by the ILO Committee of Experts on the Application of Conventions and Recommendations, showed that one of the most marked trends in the contemporary development of social security was towards comprehensiveness in the persons covered. It was therefore inconceivable that governments which were committed to the general concept of comprehensiveness of coverage by the principles underlying their own social security systems would hesitate to provide adequate protection for the local staff of their own diplomatic missions in the only manner in which that protection could be satisfactorily provided, namely, by co-operating in the arrangements necessary to secure continued participation by such staff in the social security scheme of the country where they were employed. Any such hesitation would involve a departure from the principle enunciated in the Universal Declaration of Human Rights that " everyone, as a member of society, has the right to social security ".

8. The concluding sentence of article 31 specified that immunity did not exclude voluntary participation in the social security scheme of the receiving State; and it would be equally appropriate to permit exemption from the social security legislation of the receiving State for servants or employees who were nationals of the sending State and continued to be covered by its legislation.

9. There remained the question how the practical details of participation in the local scheme could most conveniently be arranged in respect of those subject to it and he hoped, in view of the practical importance of that question, that the Conference would give consideration to it. There were two possible methods of dealing with the matter: One was to treat the staff of diplomatic missions as self-employed persons and make them personally responsible for payment of the equivalent of the employer's contribution. That system, apart from being administratively cumbersome, involved a danger of default in the payment of contributions which could impair the contributions record of the insured person and defeat the whole purpose of social security arrangements. The other method was for the diplomatic

mission to accept responsibility for the payment of social security contributions on the basis of agreed arrangements which reconciled the immunity of the mission from legal process and fiscal charges with its acceptance of the social responsibilities which all good employers were expected to assume in the modern State. He mentioned, as an illustration, the practice of international organizations in Switzerland and elsewhere in regard to local staff not adequately protected by the special arrangements of those organizations: such staff was subject to the national scheme and the contributions were paid by virtue of agreed arrangements.

10. The desired result could probably be achieved by simply adding to the proposed article 31 a provision to the effect that social security contributions due in respect of employees or servants of a diplomatic mission who were subject to the social security legislation of the receiving State would be paid by the mission in accordance with arrangements to be agreed between it and the receiving State. The necessary arrangements could consist of provision for periodical payments in an agreed manner with no procedural incidents inconsistent with diplomatic status. Such arrangements would not involve regulation of the relationship between employer and employee in a manner inconsistent with the diplomatic status of the employer; their essential purpose would be to ensure that the diplomatic status of the employer did not deprive the employee and his family, after he left diplomatic employment, of the protection enjoyed by the other members of the community.

11. The CHAIRMAN thanked Mr. Jenks for his valuable statement.

Article 25 (Freedom of communication) *(resumed from the 24th meeting)*

12. The CHAIRMAN invited the Committee to resume its debate on article 25 and the amendments thereto.[1] In addition to the amendments the withdrawal of which had been announced at the previous meeting, the Liberian amendment (L.135) had been withdrawn; Liberia had become a co-sponsor of the Chilean amendment (L.133).

13. Mr. de VAUCELLES (France), introducing his delegation's amendment (L.125), pointed out that the third sentence of its first paragraph granted the right to open the diplomatic bag in the presence of a representative of the mission. It was specified, however, that that right could only be exercised with the authorization of the Ministry for Foreign Affairs of the receiving State. Opening the diplomatic bag was a most serious and exceptional measure and he considered that the right to do so should not be exercised otherwise than with the authorization of that Ministry. Hence he could not support the amendment by the United Arab Republic (L.151) which did not prescribe such authorization. In any event, his delegation withdraw the sentence in question.

14. In the first sentence of his delegation's amendment the reference to " articles intended for official use " was replaced by a reference to " official articles ", the object being to cover such items as medals and decorations which were usually sent by the diplomatic bag; those items were of an official nature, but were not intended for official use by the mission receiving them.

15. The proposed new single paragraph 3, to replace the existing paragraphs 3 and 4, had the advantage that it gave the definition of the diplomatic bag before stipulating that the bag must not be opened or detained. That method had been adopted by the International Law Commission for the draft as a whole: article 1 defined the terms used in the subsequent articles.

16. With regard to the second French amendment, concerning the diplomatic courier, he said it was, of course, essential that the courier should be able to prove his status. Normally, as was noted by the International Law Commission in paragraph 6 of its commentary on article 25 (A/3859), he was furnished with a courier's passport; in addition, he should be furnished with an official document specifying the number of packages which constituted the diplomatic bag, in order to avoid disputes and possible abuses. In that respect the French amendment reflected the existing practice of a large number of countries.

17. Commenting on the United States amendment (L.154), he said he could accept paragraph 3 if the first two lines were replaced by the two sentences proposed in the corresponding French amendment. He had no objection to paragraphs 2 and 5 of the United States amendment.

18. With regard to the proposals on the subject of radio transmitters (L.264 and L.145), he agreed that in principle the consent of the receiving State was needed for a mission to install and use such a transmitter. However, he thought that the introduction of a reference to that principle would only complicate matters and impair the harmony of international relations. In practice, the receiving State could only present the installation of such a transmitter by opening the diplomatic bag in which it was introduced into the country, and it could only find out whether the transmitter was being used in contravention of local regulations and the provisions of international conventions, by inspecting the mission premises — an inspection which would infringe the inviolability of the mission premises.

19. Abuses could, of course, occur, but the only remedy was for the receiving State to make representations to the head of the mission concerned under article 40, which regulated the conduct of the mission and of its members towards the receiving State. If the head of mission should continue to make use of a radio transmitter in a manner considered harmful by the receiving State, that State could declare him persona non grata under article 8.

20. The French practice in the matter of radio transmitters belonging to foreign missions was extremely liberal. Such transmitters were tolerated in France subject only to reciprocity.

[1] For the list of the amendments, see 24th meeting, footnote to para. 52.

21. Mr. CAMERON (United States of America) introduced the United States amendments to article 25 (L.154). He amended orally paragraph 1 (*a*) to read: " subject, however, to the provisions of applicable International Postal and Telecommunication Conventions."

22. That amendment was not intended to impose any restrictions on the use of radio transmitters by diplomatic missions. There was nothing in the applicable International Postal and Telecommunication Conventions which affected freedom of communication. Those conventions, however, contained provisions on radio transmitters, and it was essential to specify that freedom of communication by means of transmitters was subject to the provisions of those conventions.

23. Paragraph 1 (*b*) of his delegation's amendment was intended to broaden the scope of the second sentence of article 25, paragraph 1, so as to cover communications with officials of the sending State in the receiving State and in third States. All governments had officials abroad with whom their diplomatic missions needed to communicate directly. Such direct communication made for economy and should therefore be facilitated. In that connexion, he opposed the Swiss proposal (L.158, para. 1) for the deletion of the words " and consulates ". It would be inconsistent with freedom of communication to restrict in any way the freedom of the diplomatic mission to communicate with the consulates of the sending State.

24. The object of paragraph 1 (*c*) of his delegation's amendment was to cover the application of national regulations enacted in pursuance of International Postal and Telecommunication Conventions, and such reasonable restrictions as the requirement that the border should be crossed at a particular place where facilities existed for the adequate treatment of diplomatic couriers and diplomatic bags. On the other hand, it would not be reasonable to impose limitations on the size of the diplomatic bag or on the number of couriers.

25. He withdrew paragraph 2 of his delegation's amendment in favour of paragraph 3 of the Swiss amendment (L.158) which expressed the same idea that the diplomatic bag should contain only articles essential to the performance of the functions of the mission.

26. With reference to paragraph 3 of his delegation's amendment he agreed that the first two lines should be replaced by the two sentences proposed by the French representative. The remainder of the United States text was intended to give the receiving State some latitude to open the diplomatic bag with the consent of the mission concerned, or have the bag rejected if such consent were not given. Such a provision would safeguard the inviolability of the diplomatic bag and at the same time enable the receiving State to prevent unauthorized material from being included in the bag.

27. Paragraph 4 of his delegation's amendment deleted words which would become unnecessary if they were included in the immediately preceding clause; probably only a drafting amendment was involved.

28. He would be prepared to withdraw paragraph 5 of his delegation's amendment, concerning the rejection of a diplomatic bag containing radioactive materials, if the Swiss amendment to article 25, paragraph 4 (L.158, paragraph 3), was adopted. He believed that such materials would be excluded by the Swiss formula, which restricted the use of the diplomatic bag to articles essential to the performance of the mission's functions.

29. Lastly, paragraph 6 of his delegation's amendment was intended to make it clear that a diplomatic courier enjoyed the same measure of inviolability as a member of the administrative and technical staff of the diplomatic mission. A provision of that kind was necessary to define the status of diplomatic couriers.

30. Mr. de VAUCELLES (France) thanked the United States representative for accepting his suggestion (para. 17 above) and said that the withdrawal of the third sentence in the first French amendment (L.125) was conditional on the adoption of the United States amendment to paragraph 3 (L.154, paragraph 3). If the latter amendment were not adopted, he reserved the right to reintroduce the French amendment.

31. Mr. KRISHNA RAO (India) introduced the amendment proposed jointly by Argentina, India, Indonesia, Mexico and the United Arab Republic (L.264). It had been argued that freedom of communication under article 25 included the right of a mission to install within its premises a wireless transmitter for exchanging messages between the mission itself and other posts of the sending State. It was therefore necessary to make it clear that such was not the case. The joint amendment was based on a number of well-recognized principles of international law and was completely justified by the principle on which the convention was based. It was also necessitated by the inherent conditions and hazards involved in the use of a wireless transmitter.

32. No one would dispute that the International Law Commission had based its text on the " functional necessity " theory, which justified privileges and immunities as being necessary to enable the mission to perform its functions. The theory of exterritoriality had been completely discarded; if the draft were based on that theory, it might perhaps have been contended that a mission could set up a wireless transmitter irrespective of international or internal regulations. But article 40 expressly stipulated that, without prejudice to their diplomatic privileges and immunities, it was the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. In the event of abuse, the receiving State was entitled to notify the sending State that the person concerned was persona non grata or not acceptable. It was further provided that the premises of a diplomatic mission should not be used in any manner incompatible with its functions. The purpose of the joint amendment was to provide that the mission should respect not only the internal laws of the receiving State but also international regulations, such as the International Telecommunication Conventions. In that sense, the amendment was fully in conformity with the theory of functional necessity and with the provisions of article 40.

33. There were, he noted in passing, no restrictions whatsoever on communication by any other means — post, telegraph, telephone, diplomatic bag or diplomatic courier. It could not be argued, therefore, that a provision making the installation of a wireless transmitter subject to the consent of the receiving State in any way interfered with the mission's freedom of communication. The sending State could use freely the customary public facilities. The sponsors of the amendment were not saying that missions could not use wireless transmitters, but only that the consent of the receiving State should be obtained and that international rules and regulations should be observed.

34. Most States were parties to the International Telecommunication Convention. Under article 33 of the 1947 Convention,[1] the Contracting Parties were obliged to take the necessary steps to ensure the establishment of the channels and installations necessary to carry on the rapid and uninterrupted exchange of international telecommunications. They were obliged to safeguard the channels and installations within their jurisdiction, and to ensure the maintenance of the sections of international communications circuits within their control. Under article 42 of the same Convention, the Contracting Parties recognized the desirability of limiting the number of frequencies and the spectrum space used to the minimum essential to provide in a satisfactory manner the necessary services; and under article 44 they undertook to require the private operating agencies which they recognized, and the other operating agencies duly authorized for that purpose, to observe the rule that there should be no harmful interference with the radio services of others. International law therefore made it necessary for each State to frame regulations under its own laws to control the installation of wireless transmitters. The responsibilities undertaken under an international convention could not be thrown away in order to provide for an unlimited right which was not absolutely essential.

35. The international telecommunications regulations allotted frequencies to countries. A transmitter had to work on the frequency allotted to the country in which it was installed, irrespective of its ownership. It was possible that in certain cases, particularly in capitals, there would be an overcrowding of the frequencies for transmission. The Governments of Belgium and Japan had pointed out in their comments (A/3859, annex) that in view of the situation of the frequency assignment and the saturation of the wavelengths suitable for medium and long-distance communication, some of the receiving States, from a purely technical point of view, would be unable to grant an operating licence to every case. The system of radio communication could not possibly function if some forty or fifty embassies in the same capital broadcast over any channels they wished. If the regular licensing laws of the receiving State were not observed there might be interference, and even dangerous interference, with normal radio, television and radiotelephone services.

36. It should also be borne in mind that certain explosive charges could be detonated by the accidental use of high-power transmitters in the vicinity.

37. In practice, all countries save one required the consent of the authorities for the installation of a wireless transmitter in diplomatic missions. Moreover, permission was granted only on the basis of reciprocity. Public opinion was suspicious of private wireless stations operated by diplomatic missions and would not agree to such missions being given entire freedom to install and use them as they pleased.

38. It could not therefore be said that the right to install a transmitter without permission was recognized. The joint amendment was consequently based on existing practice, and its sponsors hoped that those delegations which did not fully support it would at least not vote against the amendment.

39. Mr. JEZEK (Czechoslovakia), introducing his delegation's amendment (L.162), said that diplomatic couriers performed an essential function in the exercise of the freedom of communication of diplomatic missions. The diplomatic bag contained the major part of the correspondence of those missions and it was through that bag that the mission received instructions from the sending State. It was therefore of paramount importance to ensure the normal and prompt delivery of the diplomatic bag carried by the diplomatic courier.

40. As it stood, article 25, paragraph 5, merely stated that the diplomatic courier was not liable to arrest or detention. Paragraph 3 specified that the diplomatic bag should not be opened or detained. Those provisions imposed negative obligations on the receiving State; but surely it was necessary in addition to stipulate that both the diplomatic bag and the diplomatic courier should be protected from interference by persons other than the authorities of the receiving State. The Czechoslovak amendment would impose on the receiving State a positive duty to co-operate with the diplomatic courier and hence to protect him from interference by third parties.

41. Mr. CARMONA (Venezuela) said his delegation withdraw his amendment (L.145) and would become a co-sponsor of the joint amendment (L.264).

42. He was not convinced by the argument that the only way in which the receiving State could prevent a diplomatic mission from installing or using a radio transmitter was by violating the diplomatic bag or inspecting the mission's premises. The articles should lay down the principle applicable in the matter, in order to give the receiving State the right to protest against any abuse and to take the necessary steps to avoid the continuance of such abuse.

43. The law of many countries, including that of Venezuela, did not permit the unrestricted use of a radio transmitter, because, among other things, those transmitters could interfere with radio, telegraph and telephone communications.

44. It was for those reasons that the joint amendment (L.264) subordinated the installation and use of a radio transmitter by a mission to the consent of the receiving State, as was the current practice.

[1] United Nations *Treaty Series*, vol. 193, p. 188.

45. Mr. MELO LECAROS (Chile) introducing his delegation's amendment (L.133), of which Liberia had become a co-sponsor, said that the proposed additional provision reflected a practice which was well-established in his country and which had caused no difficulty. It was particularly useful in cases of emergency. It might happen, for example, that as a consequence of unrest in a certain capital a mission might be completely cut off from its Ministry of Foreign Affairs. It could then entrust the diplomatic bag to a person who enjoyed its confidence. The proposed provision was, however, a restriction rather than an extension of the right to appoint diplomatic couriers. In stating that *ad hoc* diplomatic couriers should enjoy inviolability only until they had delivered the diplomatic bag or correspondence, it would limit the possibility at the moment available to any State of appointing anyone it pleased. His delegation could not accept the Swiss amendment (L.158/Add.1) since it could not be applied in emergency situations.

46. Mr. BINDSCHEDLER (Switzerland) explained that the object of the first of his delegation's amendments (L.158) was to render the second sentence of article 25, paragraph 1, applicable only to diplomatic couriers. There should be no need for a diplomatic mission to use diplomatic couriers for the purpose of communicating with consulates, a practice which was not allowed by international law. An extension of the existing practice, as would be permissible under article 25 as it stood, might lead to intolerable abuses. In that connexion he said his delegation could not support paragraph 1 (*b*) of the United States amendment extending the provisions of article 25 to " officials of the sending State in the receiving State, and in third States ". The number of such officials and experts was so great that their inclusion in the network of diplomatic communications would involve an excessive extension.

47. With reference to the second Swiss amendment, he said his delegation recognized that a mission had a right to use its own radio transmitting station, but thought that some administrative procedure should be prescribed which avoided the technical difficulties that might arise in the allocation of frequencies and the resulting possibility of interference. The additional paragraph proposed by his delegation was based on paragraph 2 of the commentary of the International Law Commission on article 25 and represented a compromise between two extremes, viz., that no permission should be required from the receiving State, and that it was essential to have the prior authorization of the receiving State, which would be free to grant or withhold permission.

48. His delegation's third amendment would define more strictly the articles which could be conveyed by the diplomatic bag. Publicity material, travel brochures and films, for example, should be imported in accordance with the normal regulations of the receiving State, for a diplomatic mission was not a publicity, film or travel agency.

49. The next Swiss amendment had a similar purpose. It tightened up the provisions of paragraph 5 in stipulating that the diplomatic courier should be protected by the receiving State only " in the performance of his functions ".

50. Lastly, he drew attention to the additional paragraph proposed by his delegation (L.158/Add.1) concerning the carriage of the diplomatic bag by the captain of a commercial aircraft.

51. Mr. KAHAMBA (Congo: Léopoldville) said that article 25 was acceptable as it stood, but should be supplemented by a provision concerning the use of wireless transmitters by missions. The express consent of the authorities of the receiving State should be required for the mission's installation and use of wireless transmitters; his delegation would therefore vote for the joint amendment (L.264) and would oppose any amendment which did not require that consent. It would also oppose the United States amendment to the second sentence of paragraph 1.

52. Mr. VALLAT (United Kingdom) said that his government attached great importance to the maintenance of the principle that a diplomatic mission had the right to use a wireless transmitter in exactly the same way as the other means of communication mentioned in paragraph 1. The convention was intended not to hamper or impede but to facilitate the performance of a mission's diplomatic functions. Article 23, which had been approved by the Committee, provided that the receiving State should accord full facilities for the performance of the mission's function. It was quite inconsistent with that principle that a sending State should be required to ask the consent of the receiving State before its mission could use its own wireless transmitter. It was not a matter of communication in general or of broadcasting, but of telecommunication by direct wireless link between a mission and its government and other missions and consulates. Paragraph 1 provided that " all appropriate means " might be employed. Surely wireless telegraphy was one of the most appropriate means available. As the International Law Commission said in paragraph 2 of its commentary on article 25, freedom of communication was generally recognized and was essential to the performance of the mission's functions. That freedom must include communication by wireless, both for sending and receiving. It was a most efficient, and for many States a normal, means of communication. It should not be the object of discrimination simply because it was a modern method of communication. No one would think, for example, of stipulating that a diplomatic courier might not travel by air and had to continue to travel by an outmoded means of transport. The United Kingdom Government did not require a diplomatic mission to seek authorization before operating a wireless transmitter, nor did it insist on licences. In its experience, the diplomatic missions in London recognized their moral obligation to co-operate with the authorities in order to avoid any possibility of harmful interference, just as United Kingdom missions abroad co-operated with the authorities of the receiving States. In neither case had there been any difficulty. If the freedom to use wireless transmitters were abused, the matter should be dealt with as provided by the Convention, for example, by declaring the head of mission persona non grata or

by breaking off diplomatic relations if the abuse were sufficiently serious. It was not a normal method of preventing abuse, however, to provide that the authorization of the receiving State should be required.

53. The representative of India had suggested that the consent of the receiving State was required under the regulations of the International Telecommunication Convention. But the relevant regulation patently applied only to private persons or to undertakings, and it would be difficult to argue that governments came under that heading. If the matter fell within the scope of the International Telecommunication Convention, it should be dealt with by the parties to that convention in accordance with the provisions it contained for dealing with difficulties of interpretation, and not by the convention on diplomatic intercourse and immunities. The United Kingdom delegation would support article 25, paragraph 1, as it stood. If there was to be any amendment, it should be progressive and not retrograde, and should confirm the right to use wireless telegraphy. His delegation therefore suggested that the words " wireless telegraphy " might be inserted after " diplomatic couriers " in paragraph 1.

54. Mr. de SOUZA LEAO (Brazil) considered that the use of wireless transmitters by a diplomatic mission should be subject to the prior authorization of the receiving State. His delegation would therefore support the joint amendment (L.264) which was in general very satisfactory and, with some drafting changes, might command the support of the Committee. The final text of article 25 should, however, make it clear that the use of wireless transmitters by a diplomatic mission was an exception and not the general rule, and that in consequence the receiving State must ensure that such transmitters were operated in accordance with the international conventions and regulations.

55. Mr. LINTON (Israel) said that the International Law Commission had rightly stressed in paragraph 2 of its commentary on article 25 that the article dealt with a generally recognized freedom which was essential to the performance of the mission's functions. The article itself provided that the mission might employ " all appropriate means ", an expression which his delegation interpreted as including the mission's right to use a wireless transmitter. It was difficult to see why more restriction should be placed on the use of wireless transmitters than, for example, on that of diplomatic couriers. Wireless had become an almost universal and essential means of communication, the need for which would continue to increase as diplomatic representation become more and more widespread. For small countries the extensive use of commercial telegraph and radio services was a heavy expense and likely to increase. The use of their own wireless transmitters would cut the cost and add greatly to the efficiency of small missions in particular. Moreover, commercial channels were not always immediately available — for example, during holidays, labour disputes or states of emergency in the receiving country. The receiving State should therefore not interfere with the use of that safe, economic and quick means of communication. That did not mean that the frequency on which a wireless trasnmitter was operated by a diplomatic mission should not be determined in good faith by the receiving State.

56. Mr. HAASTRUP (Nigeria) agreed that the principle adopted in article 23 and the provisions of article 25, paragraph 1, covered permission for using every appropriate means of communication. The possibility of harmful wireless interference could not, however, be altogether ruled out and the receiving State should be informed of the number of transmitters in use by diplomatic missions and the mode of their operation. His delegation would support the joint amendment, which covered that point. A provision might be added, however, that the receiving government's consent should not be unreasonably withheld.

57. Mr. BOLLINI SHAW (Argentina) said that the purpose of the joint amendment had been very clearly explained by the representatives of India and Venezuela, and he had little to add. As far as Argentina was concerned, there were no grounds for the fear expressed by some representatives that the amendment would place a restriction on freedom of communication. It was clear from his government's comments on the 1957 draft (A/3859, annex) that Argentina had no such intention. The International Law Commission, however, had stated in its commentary that if a mission wished to use its own radio transmitter, it would be obliged, in accordance with international conventions on telecommunications, to ask for the receiving State's permission; the amendment simply introduced that stipulation into the article. Several representatives had expressed the view that the amendment conflicted with article 23, and that it was unnecessary because the receiving State could always deal with improper use of a transmitter by declaring the person responsible *non grata*, for example. It was, however, precisely to avoid such a situation that he believed that suitable provisions should be made in the convention.

58. On the subject of diplomatic couriers, he would support the amendment proposed by Chile and Liberia (L.133).

59. Mr. de ERICE y O'SHEA (Spain) said that as his delegation's amendment (L.167) was concerned largely with drafting, he would withdraw it.

60. Mr. NGUYEN-QUOC DINH (Viet-Nam) said that he would support any amendment that made the installation of radio transmitting apparatus subject to a permit from the receiving State and to compliance with the laws of that State.

61. On the question of the diplomatic bag, he would oppose any amendment that would permit it to be opened by the receiving State. It would be better to define clearly what a diplomatic bag could contain, as the International Law Commission had done in article 23, paragraph 4. He would, however, support the amendment proposed by Switzerland (L.158/Add.1), which provided a useful addition to the definition.

62. Mr. ZLITNI (Libya) said that a diplomatic mission wishing to install a radio transmitter should seek per-

mission from the receiving State. It would, of course, be eminently satisfactory if missions could use the public communications facilities of the receiving State, and such a reciprocal practice would be particularly welcome to the smaller States whose budgets did not permit them to install their own apparatus. But it was obvious that a mission wishing to use its own apparatus should appreciate the technical implications in the receiving State, which had been described by the representative of India. The use of wireless transmitters should be free from intervention, subject to the laws and to the formal authorization of the receiving State. He would therefore vote for the joint amendment.

63. On the question of the diplomatic bag, he recognized the principle of its inviolability, but considered that the receiving State should be allowed some latitude. That was provided by the kindred amendments of the United States of America (L.154, paragraph 3) and the United Arab Republic (L.151), both of which he could support in substance.

64. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the points raised in the many amendments before the Committee were not new. They had been considered carefully and at length by the International Law Commission. In general, he was in favour of the text produced by the Commission: it was reasonable and should be acceptable, subject perhaps to some clarification and explanation.

65. A specific question was that of radio communication which, as had been pointed out, was a comparatively new, though rapidly advancing, development and should be included in a convention designed to remain in force for many years (one might hope as long as the Regulation of Vienna). The International Law Commission had not mentioned radio transmitters in its draft of article 25, and had referred to them with caution in its commentary. The commentary implied, however, that, provided that the sending State conformed with the relevant international conventions, the receiving State should not have the right to refuse permission for the use of a radio transmitter by the mission.

66. In his opinion (which was confirmed by the arguments advanced in the discussion) the real issue was the practical one of how to avoid the overburdening of frequencies. A solution based on real requirements, the true interests of States, and the avoidance of needless complications in the relations between States, was bound to recognize a mission's right to use a radio transmitter. There was no reason for preventing the use of the most modern means of communication. For practical reasons too, it was obvious that the receiving State should be notified if a mission installed a radio transmitter. If agreement could be reached on the principle, he was sure it would be possible to find a formula that did not go beyond the bounds of actual requirements — as did many of the amendments, including that contained in document L.264.

67. Regarding the inviolability of the diplomatic bag, he said he would not comment on the amendments at that juncture. In his opinion, the diplomatic bag was as inviolable as diplomatic premises. To waive that principle in exceptional cases was to invite rather than prevent difficulties, for who would decide what was an exceptional case justifying the opening of the bag. It was better to accept the possibility of occasional misuse than open the door to serious misunderstandings between States.

68. On the question of the diplomatic courier, he said that, although the article was satisfactory as it stood, it might be improved by the Czechoslovak amendment (L.162), which gave more emphasis to the responsibilities of the receiving State.

69. Mr. CAMERON (United States of America) said that his delegation's amendment to paragraph 3 had apparently been misconstrued as implying that the receiving State could open the diplomatic bag, which would be a departure from the long-established principle of the bag's absolute inviolability. The effect of his amendment, on the contrary, was not to authorize the opening of the bag, but to provide that the receiving State could question the way in which the diplomatic bag was being used and, if the sending State did not wish to submit it to examination, could reject the bag. There was nothing in the amendment to imply that the diplomatic bag could be opened against the sending State's wishes.

70. With regard to the joint amendment (L.264), he said that in his delegation's opinion the use of a radio transmitter by a mission did not require the receiving State's consent. In so far as United States law subordinated the mission's use of a radio transmitter to the consent of the federal authorities, he could give the assurance that, if the convention being drafted permitted a diplomatic mission freely to use radio for the purpose of communication and if the United States ratified the convention, legislative action would be taken to bring United States law into line with the convention.

71. Mr. SUFFIAN (Federation of Malaya), introducing his delegation's amendments (L.152), said that two principles were paramount; the official correspondence of a mission should be inviolable; and the diplomatic bag should not be opened or delayed. Paragraph 4 of article 25 laid down certain conditions regarding the diplomatic bag, but seemed to place more emphasis on the visible indication of its character than on the stipulation regarding its contents. His delegation's amendments gave the two points equal importance.

72. On the question of radio transmitters, he said he would vote for the joint amendment for the reasons given by those who had spoken in its favour.

73. Miss SASTRODIREDJO (Indonesia), speaking as one of the sponsors of the joint amendment, said that she had nothing to add to the statements of her co-sponsors, in particular the representative of India.

74. Mr. EL-ERIAN (United Arab Republic), introducing his delegation's amendment (L.151), said it related specifically to the matter of inspection and was not meant to weaken the principle of the inviolability of the diplomatic bag. He fully supported paragraph 3 of article 25. He was, however, in favour of the idea con-

tained in paragraph 3 of the United States amendment (L.154) that the sending State should have the right to refuse consent to the opening of the diplomatic bag, in which case the diplomatic bag could be rejected, and would agree to his delegation's proposal being amended in that sense. He wished to associate himself with the assurance given by the representative of the United States that such a provision would in no way affect the principle of the inviolability of the diplomatic bag.

75. Mr. PONCE MIRANDA (Ecuador) said he would vote for article 25 as drafted, subject to two changes. First, it was essential to state explicitly the right of a mission to use a radio transmitter for the purpose of communication; the United Kingdom representative had put the case very convincingly. Secondly, he supported the qualification of the inviolability of diplomatic couriers contained in the amendment sponsored by Chile and Liberia (L.133).

76. He was opposed to the introduction of any limitation to the provision in paragraph 3: it was essential that the diplomatic bag should be protected under the Convention.

77. The CHAIRMAN suggested that the discussion on article 25 should be continued at the next meeting.

It was so agreed.

Article 27 (Personal inviolability)

78. The CHAIRMAN, inviting debate on article 27, drew attention to the amendments submitted by China (L.209) and Belgium (L.214).

79. Mr. CHEN (China) said that his delegation's amendment (L.209) reproduced in effect a passage from the commentary of the International Law Commission which was in turn based on the observations of the Government of China (A/3859), annex) on the corresponding provision of the 1957 draft. The principle stated in the amendment was universally accepted in international law and should form part of the convention.

80. Mr. de ROMREE (Belgium), introducing his delegation's amendment (L.214), said that in so far as the word " reasonable " meant reasonable in the opinion of the receiving State, it had little sense, and in so far as it qualified protective action it could be dangerous because it would have a restrictive effect. If an adjective were necessary, he would prefer the word " appropriate " which was used in article 20.

The amendment submitted by China (L.209) was rejected by 27 votes to 6, with 34 abstentions.

The amendment submitted by Belgium (L.214) was adopted by 22 votes to 21, with 23 abstentions.

81. Mr. VALLAT (United Kingdom) explained that he had voted against the Belgian amendment because the removal of the word " reasonable " would give the article unlimited scope, and impose an impossible task on receiving States.

82. Mr. WALDRON (Ireland) and Mr. HAASTRUP (Nigeria) said that they had voted against the Belgian amendment for the same reasons as the United Kingdom representative.

83. Mr. de ROMREE (Belgium) appreciated the views of the three preceding speakers and said he would be agreeable if his amendment were referred to the Drafting Committee with a direction to replace the word " reasonable " by the word " appropriate ".

84. Mr. VALLAT (United Kingdom) moved that the Committee should reconsider its decision on the Belgian amendment on the terms just suggested by the Belgian representative (substitution of " appropriate " for " reasonable " in article 27).

85. Mr. GASIOROWSKI (Poland) requested that, under rule 33 of the rules of procedure, a vote be taken on the motion for reconsideration.

The motion was carried by 69 votes to none, with 1 abstention.

By 69 votes to none, with 1 abstention, the Committee decided that the word " reasonable " in article 27 should be replaced by " appropriate ".

Article 27, as amended, was adopted unanimously.

The meeting rose at 6.20 p.m.

TWENTY-SIXTH MEETING

Thursday, 23 March 1961, at 10.45 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 25 (Freedom of communication) *(resumed from the 25th meeting)*

1. The CHAIRMAN invited the Committee to continue its debate on article 25 and on the amendments thereto.[1]

2. Mr. BREWER (Liberia) recalled that his delegation had withdrawn its amendment (L.135) to become co-sponsor of the Chilean amendment (L.133). The purpose of the amendment was to cover the case where the diplomatic bag was entrusted to a person who was not a regular diplomatic courier. Such a person then enjoyed the same inviolability as a regular courier, and the convention should confirm that practice, which was followed in many States.

3. Mr. HU (China) said that his delegation's amendment (L.124) was very simple. Of the external marks

[1] For the list of the amendments originally submitted, see 24th meeting, footnote to para. 52. Since then the following amendments were withdrawn; L.124, L.125 [Third sentence of first amendment only], L.131 [first amendment only], L.135, L.138, L.140, L.145, L.147, L.154 [para. 2 only], L.165, L.167. In addition, L.151 was superseded by L.151/Rev.1 and Rev.2.

identifying the diplomatic bag, the official seal was the easiest to recognize, was not open to any misunderstanding and hence was preferable to any other mark. The amendment might be treated as only a drafting amendment which could be referred to the Drafting Committee. Otherwise, his delegation supported the text of article 25 as it stood. The codification of all the diplomatic rules observed was a laudable aim, but if carried too far it might hinder the development of international law.

4. Commenting on some of the amendments submitted, he said his delegation opposed the deletion of the words " and consulates " in paragraph 1 of the article, as was proposed by Switzerland (L.158). In paragraph 3 of its commentary on article 25 (A/3859) the International Law Commission explained why it had not changed the rule laid down in paragraph 1 of the article concerning the mission's communications with consulates in other countries, and the reasons given were convincing. His delegation would support the joint amendment (L.264) which endorsed the opinion expressed by the Commission in paragraph 2 of its commentary, concerning the use of radio transmitters by diplomatic missions. It would also support the amendments submitted by the United States (L.154, para. 3) and by France (L.125, para. 1) which endorsed the principle that the diplomatic bag could not be opened or detained, for China was firmly attached to that principle.

5. Mr. WESTRUP (Sweden) said he had been impressed by the United Kingdom representative's appeal to members of the Committee to approach the matters before it in a liberal spirit and to trust in the good sense of the international community. The flood of amendments before the Committee was like a forbidding wall of restrictions, precautions and defences against all kinds of imaginary abuses. What sort of convention could result from such an attitude ? The Swedish delegation had not yet made up its mind about which of the amendments to article 25 it could support; but already it felt that the International Law Commission's draft should be tampered with as little as possible for it was the result of long and careful work by jurists who had not failed to weigh scrupulously all the considerations put forward by the delegations to the Conference.

6. Mr. GASIOROWSKI (Poland) said he supported the wise words of the Swedish representative. The general trend of the many amendments before the Committee was to restrict the freedom of missions and their diplomatic privileges and immunities. Hence, they were contrary to the spirit of the convention being drawn up. In particular, the effect of some amendments would be to qualify the inviolability of the diplomatic bag, and so were inconsistent with the recognized principles of international law as confirmed by the International Law Commission. Admittedly, the diplomatic bag could be misused, but such cases were less dangerous than the possible abuse by the receiving State of the right to search the bag. Consequently, the amendments which recognized that right were unacceptable. Nor could the Polish delegation support amendments which restricted the freedom of missions to use radio transmitters, for they restricted the freedom of communication of missions with their governments. He did not mean that a mission did not have the duty to co-operate with the authorities of the receiving State in that matter; in fact it was in its own interest to do so in order to avoid jamming of its transmissions. The joint amendment (L.264), stipulating that the radio transmitters of diplomatic missions must be used in accordance with the laws of the receiving State was superfluous, inasmuch as article 40 provided in any case that it was the duty of all persons enjoying privileges and immunities to respect the laws and regulations of the receiving State. Furthermore, the inclusion of a provision requiring missions to comply with the international regulations in using radio transmitters raised a difficult question of law: that of precedence among international conventions. It was surely arguable that a convention on diplomatic intercourse and immunities should prevail over the international conventions on telecommunication. In any event, the Polish delegation would vote against any proposal that tended to restrict the mission's freedom of communication.

7. Mr. DADZIE (Ghana) said that the mission's freedom of communication was sacrosanct. At the same time, however, the limits of the freedom should be laid down, for otherwise it would be impossible to determine whether the freedom had been abused.

8. With regard to the proposed deletion of the words " and consulates " in paragraph 1, he pointed out that where consular functions were performed side by side with diplomatic functions, consulates were, in fact, sections of diplomatic missions. A convention on consular intercourse and immunities was in preparation, and its provisions should not be anticipated. Accordingly, his delegation was in favour of the proposed deletion of the words in question.

9. Turning to the other amendments to paragraph 1, he said he was not opposed to paragraph 1 (*a*) of the United States amendment (L.154), which referred to international postal and telecommunication conventions. With regard to paragraph 1 (*b*) of that amendment, he said it should be specified who was meant by " officials of the sending State ". In the context, the reference could only be to diplomatic staff.

10. His delegation would support the joint amendment (L.264), since it considered the prior consent of the receiving State to be one essential condition for the use of a radio transmitter by the mission, the two other conditions being the obtaining of a permit and compliance with the laws of the receiving State.

11. With regard to international regulations, he was not in agreement with the United Kingdom representative's interpretation of the relevant provision of the International Telecommunication Convention (25th meeting, para. 53). The despatch of a mission was an undertaking like any other, and in his opinion the provision in question applied to diplomatic missions. He agreed in principle with the United States amendment to paragraph 3 (L.154, paragraph 3). As worded, however, the amendment was liable to raise serious difficulties, and accordingly, in the liberal spirit advocated by the United King-

dom delegation, his delegation would propose its own amendment to article 25, paragraph 3 (L.294).

12. The delegation of Ghana would support the Chilean amendment (L.133), which extended to diplomatic couriers *ad hoc* the inviolability provided for in article 25, paragraph 5. It also supported in principle, the Swiss amendment (L.158 and Add.1), which endorsed existing practice, as well as the Czechoslovak amendment (L.162), which supplemented paragraph 5 very satisfactorily.

13. Mr. MARESCA (Italy) said that article 25 was extremely important. Since a diplomatic mission could not function normally unless it was constantly in touch with the sending State, it had to be authorized to use all appropriate means of communication; at the same time, however, it should never disregard local regulations.

14. He agreed with the Polish representative that the future Convention should prevail over other more general international instruments, such as the Telecommunication Convention. So far as the inviolability of the diplomatic bag was concerned, he said that any weakening of the principle was bound to harm diplomatic privileges and immunities as a whole. In any case where the inviolability was used improperly, it would be better to deny admission to the diplomatic bag than to declare persona non grata a diplomat who might not be responsible for the violation committed by the sending State.

15. The Italian delegation approved of the French amendment (L.125, paragraph 2) concerning diplomatic couriers. It also considered that the Chilean amendment (L.133) would facilitate the work of diplomatic missions, but that the functions of diplomatic couriers *ad hoc* should be more strictly regulated than those of other diplomatic couriers.

16. Mr. EL-ERIAN (United Arab Republic) said that the difficulties encountered by the Committee arose from the fact that — like articles 10 and 24 — article 25 tried to strike a just balance between the need to ensure the proper functioning of the mission and the need to safeguard the interests of the receiving State. As was stated by the General Assembly in its resolution 685 (VII), the codification of the rules of diplomatic intercourse and immunities should contribute " to the improvement of relations between States ", and it was with that consideration in mind that the United Arab Republic had submitted or co-sponsored two amendments aiming to make fair allowance for the interests involved (L.151/Rev.1 and L.264).

17. At the previous meeting, the Indian representative had very well explained the grounds for regulating the use of radio transmitters by diplomatic missions. Moreover, since usage varied from one State to another, and the use of radio transmitters by missions had given rise to various difficulties in practice, it seemed reasonable to lay down in the convention — as was proposed in the joint amendment (L.264) — that the consent of the receiving State was required.

18. Although the principle of the inviolability of the diplomatic bag was universally recognized, some governments had at times demanded its opening; that was a practical problem which the Committee could not ignore. The amendment proposed by the United Arab Republic (L.151/Rev.1) should be acceptable to most delegations, as it allowed a diplomatic mission which refused inspection to send the diplomatic bag back to the sending State.

19. Mr. de ERICE y O'SHEA (Spain) agreed with the representatives of Sweden and Poland that mutual trust was the very basis of diplomatic representation, and that in the absence of that trust the convention would be meaningless. For the purpose of the normal discharge of his functions as representative of the sending State, the head of the mission had to keep in constant touch with the home government. Consequently, it was essential that the diplomatic bag should be neither opened nor detained. That being so, the amendment proposed by the United Arab Republic would not solve the problem, since the bag might be rejected several times, and the head of mission would then be unable to maintain contact with his government. The Spanish delegation could not therefore vote for amendments which would impair the principle of inviolability of the diplomatic bag.

20. With regard to radio transmitters, he recognized that the mission should be allowed all possible means of communication, but he also considered that the rights of the receiving State should be safeguarded. Unlike the Polish representative, he did not think that the adoption of the convention on diplomatic intercourse and immunities would relieve States of the duty to respect any other general conventions to which they were parties, such as the Telecommunication Convention. However, the Spanish delegation would have no difficulty in voting for the joint amendment (L.264), which safeguarded the rights of the receiving State and should also enable all States to make better use of means of communication.

21. Mr. BOUZIRI (Tunisia) said that, although he approved of article 25 as it stood, he did not consider it perfect, and thought that various improvements could be made. He supported paragraph 3 of the United States amendment (L.154), and the amendments submitted by Chile (L.133), Switzerland (L.158/Add.1) and the United Arab Republic (L.151/Rev.1).

22. His delegation would also support the joint amendment (L.264), which was intended to safeguard the rights of the receiving State; for unlike some delegations, it did not consider that diplomatic intercourse was based on absolute trust. Indeed, arguing that possible abuses by the mission were less serious than abuses by the receiving State, a number of delegations were apparently anxious to draft rules restricting the latter's rights. Actually, however, small countries and young States might have to defend themselves against abuses by the diplomatic missions of more powerful States, and the convention should take account of the fact that abuses occurred on both sides.

23. To answer that argument, some speakers had referred to the principle of reciprocity; but in reality that principle was often illusory. The French representative had said

that the joint amendment would not prevent a mission from using the diplomatic bag to bring a radio transmitter into the receiving State (25th meeting, para. 18). Even if that were possible in fact, the argument was hardly tenable, and the French delegation itself had submitted an amendment (L.125) limiting the objects which could be brought in by means of the diplomatic bag.

24. It had also been said (25th meeting, para. 52) that the joint amendment was incompatible with the principle laid down in article 23, but it should be noted that article 23 had not been cited during the discussion of article 24, under which the freedom of movement could be restricted. Lastly, it had been argued that radio transmitters were a modern means of communication and that the Committee would be showing a retrograde attitude if it refused to take account of technical advances (*loc. cit.*). That argument was hardly convincing, however, since technical advances were not always satisfactory from the human point of view; they had to be judged in their own particular context.

25. The Indian representative had, at the previous meeting, very thoroughly explained the technical reasons justifying the regulation of the use of radio transmitters by diplomatic mission; besides, a diplomatic mission might use a transmitter improperly and in a manner detrimental to law and order, and in such a case, if the receiving State was unable to exercise effective control over transmissions, it was perfectly natural that it should not allow the mission to introduce radio transmitters into its territory.

26. Mr. AMLIE (Norway) said he wished to comment on three specific points. First, he was perfectly willing to agree to a provision granting protection to diplomatic couriers *ad hoc*. The Chilean amendment seemed to him acceptable in principle, and only needed a few drafting changes. Secondly, his delegation was not entirely convinced that free use of a radio transmitter by the sending State in the territory of the receiving State followed naturally from the principles of international law. It was not necessary to express an opinion on the principle, however, for as the Soviet representative had rightly said (25th meeting, para. 66), the difficulties encountered were difficulties in application — practical difficulties. Perhaps it would be possible to work out a provision enabling the diplomatic mission to use a transmitter subject to notifying the receiving State, which could present technical comments. Thirdly, with regard to the diplomatic bag, his delegation sympathized with the efforts made by the United States and the United Arab Republic in their amendments. It seemed, however, that if a principle was enunciated only to be restricted afterwards, that meant that it was not considered to have absolute validity. The inviolability of the diplomatic bag was a rule that had been recognized for centuries, and he believed that it should be maintained. His delegation would consequently not support the amendments in question.

27. Mr. MATINE-DAFTARY (Iran) also believed that the inviolability of the diplomatic bag was sacrosanct. Abuses had occurred and others might occur in future, and they might be committed either by the diplomat or by the sending State. The diplomat might, of course, use the bag for personal purposes, such as sending gifts, but those minor irregularities were not really serious. The diplomat might go even further and carry narcotics or other forbidden products in the bag; in any such case, the receiving State could then declare him persona non grata. If the sending State took advantage of the facilities offered, for example, to send propaganda or subversive material, the best solution would be for the receiving State to enter into negotiations on the matter with the sending State. His delegation supported the article as it stood, but also took a favourable view of the amendments which left the sending State free to choose between withdrawing the bag or submitting to a check. After all, susceptibilities were involved, and an inspection of the diplomatic bag might have unpleasant repercussions and even create a scandal.

28. He had followed with interest the statements on the question of the use of radio transmitters by diplomatic missions. The world was in a period of transition and was witnessing the birth of new States, some of which had been impoverished by centuries of colonial rule. The United Kingdom delegation had been surprised that some representatives opposed the use of modern techniques. He thought that the probable reason for their opposition was that those States feared the uses to which those inventions might be put. It was easy for highly industrialized States to install radio transmitters as and when they pleased, and consequently they naturally upheld the principle of the free use of transmitters; but less favoured States were in a very different position. At the Conference on the Law of the Sea, the great Powers had defended Grotius's principle of the freedom of the seas, while the smaller States had argued for an extension of territorial waters. The attitude of the great Powers was perfectly understandable, for they had large fleets for which the freedom of the seas had obvious advantages. In his opinion, the use of a radio transmitter by a diplomatic mission should not depend solely on the receiving State's consent; if, however, the sending State abused its privilege, then the receiving State should be able to suspend the use of the transmitter. If there were amendments conforming to his delegation's views, it would be prepared to support them; otherwise, it would itself submit an amendment.

29. Miss SASTRODIREDJO (Indonesia), speaking as one of the sponsors of the joint amendment (L.264), recalled that, according to the draft, the establishment of diplomatic relations took place by mutual consent (article 2); that the receiving State had to accord full facilities for the performance of the mission's functions (article 23); and that all members of the mission enjoyed freedom of movement and travel in the territory of the receiving State (article 24). Those rights had their counterpart in the obligations deriving from article 40. If the laws of the receiving State stipulated that a permit was necessary for the installation of a radio transmitter on the premises of a diplomatic mission, the sending State should, of course, apply for that permit, but the receiving State should not refuse it on unreasonable grounds. The receiving State's consent should also be required

for the installation of as yet unknown means of communication.

30. So far as the diplomatic bag was concerned she said her delegation would support the amendment of the United Arab Republic (L.151/Rev.1) and considered that, as provided in the United States amendment (L.154, paragraph 3), the bag should not be opened except with the permission of the Ministry for Foreign Affairs of the receiving State and that of the mission concerned, which, if it so desired, could have a representative of the mission present at the opening.

31. Mr. SINACEUR BENLARBI (Morocco) said he agreed with the view that the freedom of communication of a diplomatic mission was essential. At the same time, however, he supported the amendments which tended to curb possible abuses and to safeguard the interests of the receiving State. With regard to radio transmitters, his delegation would vote for the joint amendment and would also support the amendment of the United Arab Republic on the diplomatic bag.

32. In the modern world, the reality of the law should correspond to political reality. Technical advances made the relatively less developed countries somewhat apprehensive of the uses to which modern techniques might be put in their territories. Some countries which had shown an inclination to restrict the freedom of movement provided for in article 24, were paradoxically in favour of an extension of the rights provided for in article 25. His delegation considered that it was being logical in voting for article 25 (as amended by L.151/Rev.1 and L.264), as it had voted for article 24.

33. Mr. de ERICE y O'SHEA (Spain), speaking on a point of order, moved the adjournment of the debate under rule 25 of the rules of procedure, in order that delegations should have an opportunity of conferring with a view to working out a smaller number of agreed amendments.

34. Mr. BOUZIRI (Tunisia), opposing the motion, said that the different views could hardly be reconciled; the Committee should vote on the amendments.

35. Mr. CARMONA (Venezuela), agreeing with the Tunisian representative, likewise opposed the motion. If the debate were adjourned, the joint amendment (L.264), which had received the support of many delegations, might not reach the voting stage.

36. The CHAIRMAN said that under rule 25 of the rules of procedure, in addition to the proposer of the motion, two representatives could speak in favour of the adjournment and two against.

37. Mr. TUNKIN (Union of Soviet Socialist Republics) said he hoped his intentions would not be misunderstood by the Venezuelan representative. The Soviet Union had always taken the view that decisions should be reached by persuasion. There were two schools of thought in the Committee, and his delegation supported the motion for the adjournment in the hope that during the adjournment it would be possible to work out a generally acceptable compromise formula.

38. Mr. VALLAT (United Kingdom) also supported the motion. A generally acceptable solution must be found. The delegations had only had a short time in which to consult together and to ask their governments for instructions on so important a provision as article 25.

39. Mr. de ERICE y O'SHEA (Spain) said that his delegation did not wish to block the adoption of the joint amendment, which it in fact supported. But thirteen amendments had been submitted and, under rule 39 of the rules of procedure, they would all have to be voted on without interruption.

The motion for the adjournment was carried by 46 votes to 18, with 6 abstentions.[1]

The meeting rose at 1.5 p.m.

[1] For the continuance of the debate on article 25, see 29th meeting, para. 43.

TWENTY-SEVENTH MEETING

Thursday, 23 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Proposed new article concerning the diplomatic corps *(resumed from the 18th meeting)*

1. The CHAIRMAN said it would be recalled that at the 18th meeting (para. 48) the Italian representative had introduced a proposal for the addition of an article concerning the diplomatic corps (L.102). The working party then appointed to draft a suitable provision (18th meeting, para. 55) had considered the matter and proposed a provision (L.281) on which he invited debate.

2. Mr. MARESCA (Italy), rapporteur of the working party, said that it would be noticed that the proposed provision omitted the reference to the " functions " of the diplomatic corps which had appeared in the Italian proposal. The new provision was consequently more elastic. In addition, the doyen was no longer described as " representing " the corps but as its presiding officer; and the new provision defined the corps as consisting of all the members of the diplomatic staff, and not merely of the heads of mission.

3. Mr. PECHOTA (Czechoslovakia) said that he had explained in the working party his delegation's view concerning the proposed new article. It maintained its view, which corresponded to that of the International Law Commission, that an article concerning the diplomatic corps would be inappropriate in the proposed convention. In modern practice the function of the diplomatic corps and of its doyen was restricted almost entirely to questions of protocol. Its existence was not

denied, but the rules governing its composition and functions often varied widely from country to country. The proposed new article differed from the other articles of the convention in that it had no legal character. Its inclusion in the convention might give rise to misinterpretation.

4. Mr. KEVIN (Australia) said he thought that the proposed new article was not necessary.

5. Mr. TUNKIN (Union of Soviet Socialist Republics) supported that view. There was no necessity to include the article, which might be appropriate in a manual of international law but was out of place in the convention.

The proposed new article (L.281) was rejected by 23 votes to 15, with 27 abstentions.

Article 28 (Inviolability of residence and property)

6. The CHAIRMAN, inviting debate on article 28, drew attention to the amendments submitted by Spain (L.220) and the United States of America (L.259). With reference to the Spanish amendment, he expressed the opinion that the term " property " covered means of transport.

7. Mr. de ERICE y O'SHEA (Spain) said that in view of the Chairman's opinion, he would withdraw the amendment.

8. Mr. CAMERON (United States of America), introducing his delegation's amendment, said that article 28, paragraph 2, as drafted correctly provided that the inviolability of the residence and property was limited by the provisions of article 29, paragraph 3. The purpose of the United States amendment, which was consequential on the amendments which his delegation would be submitting to article 29 (L.260) and to article 30 (L.261), was to spell out the " except " clause in more specific terms. His delegation's reasoning was that, if a diplomatic agent was liable to an action under article 29, or to counter-claims under article 30, or to an action after immunity had been waived, then, in such cases, the relevant papers and correspondence should be made available to the courts. The maintenance of inviolability in that connexion might frustrate the purpose of provisions allowing the diplomatic agent to be sued.

9. Mr. GLASER (Romania) opposed the United States amendment. Actions to obtain disclosure of certain documents were recognized in law, but were not in accordance with the juridical status of the diplomatic agent, who should not be constrained to produce such documents. If the diplomatic mission was authorized by its government to produce documents and wished to do so, there was nothing to prevent it, but it should not be compelled to produce any papers in its possession.

10. Mr. BAIG (Pakistan) said he assumed that article 28, paragraph 2, related exclusively to papers, correspondence and property in the diplomatic agent's private residence. If his assumption should not be correct, he would have to make a reservation similar to that made by his delegation in regard to article 22 (24th meeting, para. 6) — viz., that any correspondence of a diplomatic agent found in unauthorized hands should be regarded as having forfeited its diplomatic immunity.

11. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his doubts concerning the wisdom of accepting the amendment had not been dispelled by the United States representative's explanation. He had always held the view, during the International Law Commission's debates, that the exceptions under sub-paragraph 1 (*a*), (*b*) and (*c*) were sufficiently comprehensive. There was no question of the inviolability of papers or correspondence in regard to a real action relating to private immovable property (paragraph 1 (*a*)); an action relating to a succession (paragraph 1 (*b*)); or an action relating to a professional or commercial activity exercised by the diplomatic agent in the receiving State and outside his official functions (paragraph 1 (*c*)). If the diplomatic agent was compelled, as he might be in accordance with article 29, paragraph 1 (*a*), (*b*) or (*c*), to be a party to a civil action, he had to submit the relevant papers if he was interested in winning his case. The addition in article 28 of a reference to article 30 would appear liable to give rise to misinterpretation.

12. Mr. CAMERON (United States of America) said his delegation had considered that its amendment would be acceptable as a logical improvement. If the diplomatic agent became involved as executor or administrator in an action relating to a succession, for example, he would be a defendant, and not a plaintiff, in an action under article 29, paragraph 1 (*b*). In such cases it should not be permissible to suppress any documents which would be helpful as evidence to the court in resolving the issue. Having placed that view on record, however, his delegation would not press its amendment to article 28 (L.259) and would in consequence also withdraw its amendments to articles 29 (L.260) and 30 (L.261).

Article 28 was adopted unanimously without change.

Article 29 (Immunity from jurisdiction)

13. The CHAIRMAN invited debate on article 29 and the amendments thereto.[1] He announced that the delegations of Mexico and China had withdrawn their amendments (L.178 and L.210 respectively); and as the Committee had just heard, the United States amendment (L.260) had also been withdrawn.

14. Mr. LINARES (Guatemala) withdrew his delegation's amendment (L.156) in favour of that submitted by Colombia (L.173) proposing the deletion of article 29, paragraph 1 (*c*). It considered that a diplomatic agent should devote himself exclusively to his diplomatic functions. Paragraph 1 (*c*) as it stood might be interpreted as an implicit authorization for the diplomatic agent to engage in a professional or commercial activity in the receiving State.

[1] The following amendments had been submitted: Guatemala, A/CONF.20/C.1/L.156; Colombia, A/CONF.20/C.1/L.173; USSR, A/CONF.20/C.1/L.176; Mexico, A/CONF.20/C.1/L.178; Switzerland, A/CONF.20/C.1/L.215; Spain, A/CONF.20/C.1/L.221; Venezuela, A/CONF.20/C.1/L.229; United States, A/CONF.20/C.1/L.260; Australia, A/CONF.20/C.1/L.288; Netherlands, A/CONF.20/C.1/L.186; Italy, A/CONF.20/C.1/L.195; Libya, Morocco and Tunisia, A/CONF.20/C.1/L.208; China, A/CONF.20/C.1/L.210.

15. Mr. AGUDELO (Colombia), thanking the delegation of Guatemala, explained that his delegation's amendment to article 29 (L.173) was a corollary of a further amendment (L.174) proposing the insertion of a new article between articles 40 and 41 to provide that the staff of a diplomatic mission might not practice any liberal profession or commercial activity otherwise than in the performance of their official duties. In his delegation's opinion, the two amendments should be considered together.

16. The CHAIRMAN suggested that the discussion of the Colombian amendment to article 29 should be deferred on the understanding that it would be discussed later in connexion with the proposed new article (L.174).

It was so agreed.[2]

17. Mr. BOUZIRI (Tunisia), introducing the amendment proposed jointly by Libya, Morocco and Tunisia (L.208), said it was a purely drafting amendment. In some countries a distinction was drawn between criminal jurisdiction and penal jurisdiction. The intention was that the words " the jurisdiction of the criminal courts " should cover both types of jurisdiction. However, the sponsors would not press the amendment to a vote, but suggested that it should be referred to the Drafting Committee.

It was so agreed. [2]

18. Mr. CARMONA (Venezuela), introducing his delegation's amendment (L.229), said it was not only a right but an obligation for the sending State to prosecute any of its diplomatic agents accused of an offence which was punishable under the laws of both States. Such an obligation would, of course, not exist if the sending State did not consider the offence punishable under its own laws.

19. Mr. RIPHAGEN (Netherlands), introducing the amendment submitted by his delegation (L.186), pointed out that there was no substantive connexion between its two parts.

20. The first was concerned with immunity from civil jurisdiction and not with immunity from criminal jurisdiction, liability to give evidence or measures of execution. It was prompted by practical considerations and also by the belief that, however necessary privileges and immunities might be for the smooth working of international relations, they should not cause injustice to private citizens. Read in conjunction with article 36 (Persons entitled to privileges and immunities), it was clear that article 29 covered a large group of people, for it applied not only to diplomatic agents and administrative and technical staff, but also to the families of those two categories and to the service staff of the mission. Many of those people used cars in their daily life, and in the event of a traffic accident they could not be sued by the victim in the courts of the receiving State. They could only be sued in the sending State and, as was pointed out in paragraph 12 of the International Law Commission's commentary on article 29 (A/3859), there was no certainty of finding a competent court there. In any case, litigation in a foreign country involved many difficulties. For example, the determination of the facts and the assessment of damages required a wide knowledge of local conditions and habits; and in many countries an alien could not obtain free legal assistance and would therefore have to face heavy costs. It was true that some diplomats and their families were insured against accidents, but that would not help a victim where (as was the case in some countries) there was no provision for direct action against the insurance company. Even if the Minister for Foreign Affairs in the receiving State were willing to take the matter up with the sending State, there was still the problem of establishing responsibility, which might be denied by the diplomat and his insurance company. The impartial determination of the facts was vital, and in many cases could only be effected through the courts. One possibility, which he had alluded to, was that of direct action against the insurance companies. Another was the waiver of diplomatic immunity, but that was a course which, for political and other considerations, States were reluctant to take.

21. The Netherlands Government therefore considered that provision should be made in article 29 for the possibility that courts in the receiving State should ascertain the facts regarding civil liability in an accident. That was the purpose of his delegation's amendment. His government attached the greatest importance to the question, and would find it difficult to accept the idea that the regulation of diplomatic intercourse and immunities could result in injustice to the inhabitants of the receiving State.

22. Mr. MONACO (Italy), introducing his delegation's amendment (L.195), said that paragraph 2 as it stood was too sweeping and too absolute. As the International Law Commission had pointed out in paragraph 9 of its commentary, the fact that there was no obligation on a diplomatic agent to give evidence as a witness did not mean that he should necessarily refuse to co-operate with the authorities of the receiving State. The interests of justice should prevail over all others. The proposed re-draft of paragraph 2 limited the scope of the provision. Although it stated that a diplomatic agent did not have to give evidence about a matter connected in any way with his functions, and that in other cases he could not be compelled to appear before a judicial authority, the re-draft provided that a court of law desiring a statement from him should submit to him a written list of questions. The diplomatic agent would therefore have prior knowledge of the basis on which he was expected to co-operate with the authorities.

23. The amendment was in conformity with the principle of the International Law Commission's draft, but was more specific and restrictive.

24. Mr. YASSEEN (Iraq) said that immunity from criminal jurisdiction did not inevitably mean complete impunity. In many countries, nationals were prosecuted for serious offences committed abroad, and it might be desirable to include an article making such a practice obligatory. A parallel could be drawn with the parliamentary immunity which existed in some countries and

[2] See 36th meeting.

which normally lasted only as long as the term of office. He did not dispute the value of the principle of such immunity: on the contrary he recognized it within logical and reasonable limits. Furthermore, considerations of justice demanded that every criminal and every criminal act should be punished.

25. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation's amendment (L.176) in no way changed th meaning of the text. It was intended to make a distinction between the giving of evidence and appearance in court for the purpose. It would facilitate the waiving of diplomatic immunities in that particular circumstance, for the need to appear in court might prevent a diplomat from consenting to give evidence.

26. Otherwise, he was entirely satisfied with the article as drafted by the International Law Commission. The Netherlands had proposed that a diplomatic agent should not be protected by immunity in the case of an action for damages relating to a traffic accident in the receiving State. The Netherlands proposal ran counter to the principle underlying article 29. He did not believe that a diplomatic agent should be immune from the consequences of an accident, but he considered that the matter was one that was covered by normal practice and should not be provided for in a convention. While he had no objection to the second part of the Netherlands amendment, he did not consider it to be in keeping with the views of the International Law Commission, and he would abstain from voting on it. He could not approve the amendment proposed by Italy for it seemed to state something that was already covered by article 29. He also had doubts on the Swiss amendment for it restricted diplomatic immunity. It was obviously the duty of diplomats to observe traffic regulations, but it did not follow that they should be subject to the jurisdiction of the receiving State in that respect.

27. With regard to the Spanish amendment, he considered the first to be useful but the other four unnecessary. The fourth in particular was potentially dangerous.

28. He was opposed to the re-draft of paragraph 4 submitted by Venezuela (L.229) as being too far-reaching.

29. Mr. KEVIN (Australia) said that his delegation's amendment (L.288) proposed that article 29 should be extended to provide for actions to recover tax on private income derived in the receiving State.

30. Mr. BINDSCHEDLER (Switzerland) said that his delegation's amendment (L.215) had been prompted by the serious increase in traffic accidents in his country, mostly caused by drivers, some of them diplomats whose diplomatic immunity was apparently not conducive to care on the roads. It was essential that someting should be done to remedy the situation before it became too serious. It would, in fact, be in the interests of diplomats to do so, for public opinion was tending to become rather hostile to the diplomatic corps. He did not see that his amendment constituted a serious exception to immunity, for article 40 provided that diplomats should respect the laws and regulations of the receiving State.

31. Commenting on the other amendments, he expressed support for the USSR amendment because diplomats would be more ready to give evidence if they were not obliged to appear in court. He suggested, however, that some other means of overcoming the difficulty might be found, for written evidence was not always admitted by codes of procedure.

32. While supporting the Netherlands amendment, which had the same basis as his own, he thought that it might be too far-reaching. In his opinion, a solution should be sought on the lines of the system followed in Switzerland, whereby all drivers were obliged to take out insurance policies providing for direct action against insurance companies by victims of accidents.

33. With regard to the Spanish amendments, he could not agree to the first amendment as it would provide immunity for a State inheriting property and wishing to take possession of it. He had difficulty in understanding the fifth of the Spanish amendments, and asked for clarification.

34. Mr. de ERICE y O'SHEA (Spain) that the object of the first of his delegation's amendments (L.221) was to exclude from the jurisdiction of the courts of the receiving States actions relating to a succession in which the diplomatic agent acted on behalf of his government. In that case, it was the sending State which was the heir, and not the diplomatic agent. It was not uncommon for a person resident abroad to bequeath property to his home country; the property was usually intended to serve purposes connected with the furtherance of good relations between the two countries concerned.

35. He withdrew the second amendment in favour of the Colombian amendments (L.173 and L.174).

36. The third of his delegation's amendments was based on the principle that a diplomat could refuse to appear in court as a witness, but should not refuse to give evidence. It was therefore proposed that he should give his evidence through the government of the sending State.

37. Explaining his delegation's fourth amendment, he said that, if measures of execution could be taken, those measures would of necessity be inconsistent with inviolability; they would in fact constitute exceptions to the rule of inviolability.

38. Lastly, the fifth amendment was based on the principle that immunity did not mean impunity. It proposed that, where a person in the receiving State had a claim against a diplomat, the action brought by that person in the courts of the receiving State should be referred by means of letters rogatory to the courts of the sending State; those courts would, of course, apply the laws of the receiving State in whose territory the events on which the claim was based had taken place.

39. Mr. BARTOŠ (Yugoslavia) said that article 29 was a compromise, achieved in an effort to reconcile two contradictory ideas: the idea, expressed in article 40, that it was the duty of persons enjoying diplomatic privileges to respect the laws and regulations of the receiving State, and the idea that those persons should, in the interests of the performance of the diplomatic function, be absolutely immune from prosecution.

40. Immunity from prosecution was, however, subject to two general exceptions. One was set forth in article 29, paragraph 4, which specified that a diplomatic agent was not exempt from the jurisdiction of the sending State. The other was set forth in article 30, which dealt with the waiver of immunity by the sending State; that State could remedy an abuse by allowing proceedings to be brought against its diplomatic agent in the courts of the receiving State.

41. In addition, the International Law Commission had laid down three specific exceptions in the cases described in paragraph 1 (*a*), (*b*) and (*c*). The effect of the Netherlands amendment would be to add another exception, relating to civil actions arising out of traffic accidents. He supported that amendment, because the system of compulsory insurance referred to by the Swiss representative was not completely watertight: most insurance policies contained provisions on exemptions and on the limitation of the insurance company's liability. There would always be cases in which the victim of a traffic accident would be left with no redress if he could not institute court proceedings. In the same connexion, he supported the Swiss amendment; such measures as the withdrawal of a driving licence were necessary to safeguard life and property on the road.

42. He would have been inclined to admit other exceptions as well, particularly in the case of actions arising out of an employment agreement relating to a locally employed servant of a foreign diplomatic mission. As legal adviser to the Yugoslav Ministry of Foreign Affairs, he was placed in a difficult position when he had to explain to such a servant that his only means of redress was to retain the services of a lawyer in the foreign sending State concerned. He would have also favoured an exception for cases arising out of a lease, but the desired result could perhaps be achieved if the authorities of the receiving State warned prospective lessors of premises to be used by diplomats to insist on the inclusion in the lease of a clause providing for the waiver of immunity.

43. With regard to the question of a diplomatic agent giving evidence as a witness, he supported the Soviet Union amendment (L.176), which would facilitate the solution of the problem by stating that the attendance of the diplomat for that purpose was not required; it would thus be possible for the evidence to be given in writing, where that form of evidence was admitted. Unfortunately, in many countries, a statement made outside the court and not in the presence of all the parties to the case was not deemed to constitute judicial evidence. The Soviet Union amendment therefore did not fully meet the case but, since it constituted a step in the right direction, his delegation would support it.

44. In connexion with the Spanish representative's remarks regarding the proviso in paragraph 3, he observed that in certain cases it was possible to levy execution without infringing the inviolability of a diplomatic agent or of his residence. Execution could be limited to such steps as the attachment of a bank account, which did not affect either the person or the residence of the diplomatic agent.

45. Paragraph 4 and the amendments thereto raised an extremely complex question. Broadly, there were two systems with regard to criminal jurisdiction. In English and American law, that jurisdiction was strictly territorial: the competence of the criminal courts was limited to the trial of offences commited in the territory of the country. Under the legislation of most continental countries, on the other hand, there could be a concurrent jurisdiction on the part of the courts of the country where an offence was committed and those of the country of which the offender was a national.

46. Apart from the question of jurisdiction, there also arose the problem of whether the act constituted an offence punishable under the laws of the two countries concerned. Lastly, there would be the question whether the alleged offence constituted a political crime or an ordinary offence in the eyes of the law to be applied.

47. In view of the complex questions involved, he thought that, as far as criminal jurisdiction was concerned, the only practicable course was to include the provision contained in paragraph 4, which simply stated that a diplomatic agent was not exempt from the jurisdiction of his sending State. That statement would make it possible for the courts of the sending State, if that State's legislation empowered them to deal with the alleged offence committed in the receiving State, to try the diplomatic agent in accordance with the criminal law of the sending State.

48. With regard to civil jurisdiction, he recalled that the 1957 draft of the International Law Commission (A/3623) had contained a provision along the lines proposed in the second Netherlands amendment (L.186). The provision had been dropped on the ground that civil litigation against the diplomatic officer was always possible in the sending State. Nevertheless, he favoured the inclusion of the proposed provision and would support the Netherlands amendment.

49. He was opposed to all the other amendments to article 29.

50. Mr. EL-ERIAN (United Arab Republic) supported in principle article 29, paragraphs 1, 2 and 3, as drafted. His delegation favoured the full immunity of diplomatic agents from criminal jurisdiction, and their immunity from civil jurisdiction, subject to the exceptions set forth in paragraph 1 (*a*), (*b*) and (*c*).

51. He supported the exemption of the diplomatic agent from the duty to give evidence as a witness, which was a well-established rule of international law and a very necessary one in the interests of the proper functioning of diplomatic missions.

52. As was stated clearly in the article, diplomatic agents enjoyed immunity only from the jurisdiction of the receiving State. They were subject to that State's laws, and they remained amenable to the jurisdiction of the sending State. In the matter of civil jurisdiction the Netherlands amendment to paragraph 4 would fill a gap in that it would help to solve difficulties regarding the proper forum. Under the general rules of civil procedure, a suit or claim normally had to be brought in the court of the locality where the defendent resided.

In the case of a diplomatic agent, who resided outside his country, the sending State should designate a competent court to deal with the case.

53. He also supported the Venezuelan amendment (L.229). A diplomatic agent who committed a crime could not be tried in the receiving State, where he enjoyed absolute immunity from criminal jurisdiction. However, under the law of many countries the courts had competence to try a national for an offence committed abroad if the offence were punishable under the laws both of his home country and of the country where the offence was committed. In some countries, however, the law contained no such provision, and if the legislation of the sending State was of that type, immunity from jurisdiction could result in impunity for a diplomatic agent for offences committed in the receiving State. The Venezuelan amendment would fill that gap by imposing on the sending State the obligation to prosecute the offender. The proviso that the act of which the diplomatic agent was accused must constitute an offence punishable under the laws of both States had been inspired by the provisions of extradition treaties, and provided ample safeguards against any unwarranted prosecution.

54. Mr. WESTRUP (Sweden) said that the explanations given by the Swiss representative regarding compulsory insurance also applied to the Swedish law in the matter. In Sweden, registration plates for motorcars were not delivered unless the owner had taken out an insurance which fully covered his civil liability towards third parties. Insurance was required to be fully effective, which meant that the victim of an accident should be able to obtain compensation without need for litigation. Those provisions were applied to members of the diplomatic corps in the same manner as to other owners of motor vehicles.

55. Mr. ROMANOV (Union of Soviet Socialist Republics) said that it was true that written evidence was not admitted by the courts of some countries; but where a diplomatic officer was the only witness in a case, his statement in the preliminary inquiry could generally be invoked. In addition, there was the possibility of reading in court the written statement. Counsel for the defence could also take cognizance of a written statement included among the document of the case. The Soviet Union amendment (L.176) was an attempt to reconcile the needs of the administration of justice with the immunity of diplomatic officers.

56. Mr. HUCKE (Federal Republic of Germany) drew attention to paragraph 2 of the commentary to article 29, from which it was clear that the International Law Commission had intended to set forth in paragraph 1 the immunity of diplomatic agents from the jurisdiction of all courts, including commercial courts, courts set up to apply social legislation and all administrative authorities exercising judicial functions.

57. In the light of that commentary, he suggested that paragraph 1 should be re-drafted to read:

" The diplomatic agent shall enjoy immunity from the jurisdiction of the receiving State. Nevertheless, he shall not enjoy immunity from its civil and administrative jurisdiction in the case of:

(*a*) . . . (remainder unchanged) "

58. The CHAIRMAN said that, if there were no objections, he would take it that the Committee agreed to refer that suggestion to the Drafting Committee.

It was so agreed.

59. Mr. PECHOTA (Czechoslovakia) supported article 29, with the useful Soviet Union amendment (L.176). He drew attention in that connexion to the corresponding provision in the International Law Commission's draft on consular intercourse and immunities (A/4425). Article 42, paragraph 2, of that draft stated that the authority requiring the evidence of a consular official " shall take all reasonable steps to avoid interference with the performance of his official duties and shall, where possible and permissible, arrange for the taking of such testimony at his residence or office ".

60. His delegation would vote in favour of article 29, paragraph 1, on the understanding that any premises used as the residence of the head of the mission were deemed to constitute property held on behalf of the sending State for the purposes of the mission, and that therefore actions relating to such property were excluded from the jurisdiction of the courts of the receiving State. He pointed out that, under article 28, paragraph 1, as adopted earlier in the meeting, the private residence of a diplomatic agent enjoyed the same inviolability and protection as the mission's premises.

61. The Netherlands amendment adding a further exception to those already set forth was unacceptable. If an exception were to be allowed in regard to actions for damages relating to traffic accidents, there was no reason why further exceptions should not be allowed in respect of claims for damages relating to other types of accident. There were other remedies available to the claimant in a cause of that sort. The accepted doctrine, as stated by Sir Cecil Hurst, was that the first step of a claimant against a diplomatic agent should be to apply to the agent concerned or, if need be, to the head of the foreign diplomatic mission to which he belonged. If those steps were unsuccessful, the claimant should apply to the Ministry for Foreign Affairs of the receiving State, which would communicate with the head of the mission. That ministry could, if necessary, pursue the matter further by bringing it before the government of the sending State itself, and even ask for the removal of the diplomatic agent concerned.

62. Sir Cecil Hurst concluded that " If satisfaction cannot be obtained by other means, it is open to the claimant to institute proceedings in the courts of the diplomatic agent's own country." [1]

63. Mr. USTOR (Hungary) said that in his delegation's opinion the diplomatic agent should have complete immunity from criminal jurisdiction, and immunity from civil jurisdiction subject only to the exceptions

[1] *The Collected Papers of Sir Cecil Hurst*, 1950, pp. 264-5; originally published in *Recueil des Cours*, Académie de Droit international de la Haye, 1926, II. p. 210.

set forth in article 29, paragraph 1 (*a*), (*b*) and (*c*). He opposed all attempts to restrict those immunitues, and therefore could not support the Italian amendment or the first Netherlands amendment. The difficulties mentioned by the Netherlands representative could be overcome by means of a system of compulsory insurance. In Hungary, a person could not obtain a driving licene without taking out a third-party-risk insurance with a company which accepted the jurisdiction of the Hungarian courts. Such a system would cover practically all cases, and there was no need to provide an exception to the immunity rule in order to meet the extremely rare cases which were not so covered.

64. He supported the Soviet Union amendment which would make it easier to obtain evidence from a diplomatic agent. He also supported the first Spanish amendment and found great merit in the second Netherlands amendment.

65. Mr. MONACO (Italy) said that as he had explained before, his delegation's amendment was based on the idea expressed by the International Law Commission in paragraph 9 of its commentary on article 29. It was clear that the Commission had not intended that the diplomatic agent should be completely exempt from the duty to give evidence. Provided that the idea expressed in the commentary were embodied in article 29 in some form, his delegation would not insist on the form of its amendment.

The meeting rose at 6.25 p.m.

TWENTY-EIGHTH MEETING

Friday, 24 March 1961, at 10.45 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 29 (Immunity from jurisdiction) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 29 and the amendments thereto.[1]

2. Mr. RIPHAGEN (Netherlands) introduced his delegation's revised amendment (L.186/Rev.1) and replied to comments on the original amendment.

3. As the Yugoslav representative had rightly said (27th meeting, para. 29), it was very difficult to strike a balance between opposing interests, and accordingly the International Law Commission had provided for various exceptions to the rule of immunity from jurisdiction. The Soviet Union representative had said that the diplomat was not relieved of civil liability for his actions, and that the victim of an accident could seek redress through the normal channels (27th meeting, para. 26). The Czechoslovak representative had said (27th meeting, para. 61) that it was open to the victim to apply to the diplomat or to the head of mission direct, and also to the Ministry for Foreign Affairs, which could declare the diplomat concerned persona non grata. It was, however, questionable whether those forms of redress were of any real benefit to the victim, and, besides, the suggested procedure might create an incident beween the two States concerned. Moreover, the circumstances attending a road traffic accident were often in dispute and should be established by an impartial judge. Under the fifth of the Spanish amendments (L.221) any action brought in the courts of the receiving State against a diplomat accredited to that State should be referred to the courts of the sending State. In order to be able to deal with the case, however, the courts of the receiving State would first have to establish jurisdiction, and the courts of the sending State for their part could do no more than refer the case back to the competent authorities of the receiving State.

4. The representatives of Switzerland and Sweden had mentioned compulsory insurance to cover traffic accidents (27th meeting, paras. 32 and 54). But surely an insurance company would hardly be prepared to cover the risk of a claim against its client without having the right to dispute the facts. In some cases, however, the victim could probably sue the insurance company itself in the courts of the receiving State, and those courts would then be responsible for determining the circumstances of the accident. In such a case there would be no necessity to bring an action against the diplomat himself.

5. That was the solution offered by the revised Netherlands amendment, which took account of the criticisms expressed concerning the original amendment. While conceding that the drafting would be improved, his delegation attached great importance to the principle of the revised amendment. In many countries, public opinion strongly resented immunity in the case of road traffic accidents, and it was hardly admissible that a person injured by the act of a diplomat or of a member of his family should have no effective redress. Nor was it easy to see how a judicial determination of the circumstances of the accident and of the amount of the damages could hamper the diplomatic mission's work. Moreover, the Netherlands amendment did not in any way infringe the principle of the diplomatic agent's immunity from measures of execution. The scope of the principle of diplomatic inviolability had been greatly exaggerated, particularly in the case of persons who did not themselves exercise diplomatic functions (administrative and technical staff, or members of the diplomat's family), and the Committee would be well advised not to extend the fiction of exterritoriality too far.

6. Mr. CAMERON (United States of America) approved the principle contained in the revised Netherlands amendment. In the United States it was often difficult

[1] For the list of the amendments originally submitted to article 29, see 27th meeting, footnote to para. 13. Since then the following amendments had been withdrawn: L.156, L.178, L.210 and L.260, as well as the record of the Spanish delegation's amendments (L.221); and the first of the Netherlands amendments (L.186) had been superseded by L.186/Rev.1.

to obtain a settlement from insurance companies if the sending State did not agree to waive the immunity of a diplomat involved in an accident. It did not, however, seem desirable to add further exceptions to those already mentioned in article 29 and it would be preferable to state in the convention that the Conference had been of the opinion that the sending State should waive the diplomatic agent's immunity in such cases.

7. While the USSR amendment (L.176) had the merit of respecting diplomatic dignity, he would have to vote against it since, under the United States Constitution, the defence had the right to require the appearance of witnesses in court. He would vote for article 29 as it stood.

8. Mr. VALLAT (United Kingdom) supported article 29 as drafted. The USSR amendment (L.176) was open to fewer objections than that of Italy (L.195), but would undoubtedly give rise to difficulties of application in common-law countries, for in those countries witnesses were required to appear in court. Besides, the amendment was not very clear. If it meant that the diplomat was under an obligation not to appear, his delegation would be unable to accept it since it would be incompatible with United Kingdom law. If on the other hand it meant simply that the diplomat had the option of submitting his evidence in some manner other than that laid down in the receiving State — and he considered that was the situation — the receiving State would none the less be entitled to interpret the diplomat's objections as a refusal to testify. Hence the United Kingdom delegation would abstain if the amendment was put to the vote.

9. He appreciated the motives behind the revised Netherlands amendment (L.186/Rev.1), since the application of the principle of immunity from jurisdiction in the case of diplomats involved in traffic accidents had very serious repercussions on public opinion. The exceptions provided for in article 29, paragraph 1 (*a*), (*b*) and (*c*), were not, however, of a similar nature to that proposed in the amendment, since a diplomat could very well be involved in a motor-car accident in the performance of his official duties. Hence the United Kingdom delegation considered the Committee might perhaps adopt a resolution inviting the sending State to waive the diplomatic agent's immunity in such cases. That course would meet the ends of justice, and could do no harm to the sending State. He hoped that his suggestion might be found acceptable, since, as things stood, he would be obliged to vote against the amendment.

10. Mr. CASTREN (Finland) said that article 29 was satisfactory as it stood. The various amendments proposed only weakened it, as, for example, the new Netherlands amendment, which did not sufficiently respect the principle of the diplomatic agent's immunity. As the United Kingdom representative had pointed out, the exceptions contained in article 29 were not the same as that suggested by the Netherlands. Moreover, an action for damages in connexion with a traffic accident was often based on a criminal act. If an exception were made to the principle of immunity in such a case, there would be no reason for not doing the same in the case of other offences which might be committed by diplomats. Other means, just as effective, were therefore to be preferred. For example, the sending State could waive the diplomatic agent's immunity pursuant to article 30. Another solution would be to declare persona non grata a diplomat who refused to pay damages. Thirdly, an action could be brought in the sending State, and the Netherlands delegation had itself very rightly proposed in the second of its amendments (L.186) a clause requiring the sending State to designate a competent court. Lastly, the matter could be settled through a system of compulsory insurance.

11. He could not support the amendments of Switzerland (L.215), Italy (L.195) and Venezuela (L.229), for they did not sufficiently respect the principle of immunity. Nor could he support the Spanish amendments (L.221). The Colombian amendment (L.173) was also unacceptable. The USSR amendment (L.176) and the Australian amendment (L.288) were acceptable in principle but hardly necessary.

12. Mr. CARMONA (Venezuela) withdrew his delegation's amendment (L.229), for its adoption would necessitate a change in the criminal law of some countries if they became parties to the convention. He hoped, however, that the Drafting Committee would take into account the principle of the amendment, as well as paragraph 12 of the International Law Commission's commentary on article 29 (A/3859).

13. Mr. TUNKIN (Union of Soviet Socialist Republics) said that, as he had stated before, his delegation was fully prepared to vote for article 29 as it stood. His delegation's amendment (L.176) had only been intended to clarify article 29, paragraph 2, but, since some reservations had been expressed, he would withdraw the amendment.

14. Mr. GLASER (Romania) appreciated the arguments put forward by the Netherlands representative and recognized that the application of the immunity principle to diplomats involved in traffic accidents might be very unpopular. He considered, however, that the principle should be maintained both in civil and in criminal cases, and found it difficult to understand why the Netherlands amendment (L.186/Rev.1) limited immunity in civil matters only. The consequences would be that, whereas in the receiving State a diplomat who had committed a criminally negligent act would not be prosecuted, he could be sued for damages in the case of a traffic accident. That was tantamount to saying that diplomats could commit as many offences as they liked, provided that they paid damages. He was reminded of the story of the rich Roman patrician who used to slap the faces of passers-by and make his servant pay them the fine immediately.

15. The Netherlands delegation had, of course, submitted its amendment in a completely different spirit, but he would be obliged to vote against it. In any case, the amendment had drawn the Committee's attention to a particularly important question which could certainly be settled within the framework of article 30.

16. Mr. MARESCA (Italy) stressed the true basis of the principle of diplomatic immunity. It should be made clear that the immunity was not final and absolute. Outside his official duties, a diplomat was subject to the civil and criminal law of the receiving State.

17. The original Netherlands amendment had seemed very pertinent. Traffic accidents were becoming more and more frequent, and when diplomats were involved, the protocol offices of receiving States were in a very difficult position. Insurance companies were ready to fulfil their obligations but insisted that their liabilities should be determined by a competent court. Exceptions to the principle of immunity from jurisdiction were intimately bound up with the need to respect the law of the receiving State.

18. The Colombian amendment (L.173) deleting paragraph 1 (*c*) of the article was sound, since that provision could only create confusion. The Swiss amendment (L.215) was likewise sensible. The Australian amendment (L.288) on the other hand was too categorical.

19. In conclusion, he emphasized that it was the diplomatic agent's moral duty to assist the course of justice in the receiving State in all matters not connected with the exercise of his official functions.

20. Mr. BARTOŠ (Yugoslavia) said that he would have been prepared to accept the original Netherlands amendment. The revised amendment, however, conflicted with the rules of procedure in force in most European countries, and his delegation regretted that it would be unable to support it.

21. Mr. GOLEMANOV (Bulgaria) supported article 29 as it stood and said he would be unable to support any of the amendments submitted.

22. Mgr. CASAROLI (Holy See) suggested that, without weakening the principle of immunity from jurisdiction, a provision might be added in article 30, paragraph 1, concerning the sending State's duty to compensate for damage caused by its diplomatic agents.[1]

23. Mr. EL-ERIAN (United Arab Republic) said he had some misgivings about the revised Netherlands amendment. He suggested that the Conference should adopt resolutions which would not have binding force but would constitute recommendations to governments.

24. Mr. AGUDELO (Colombia) explained that his delegation's amendment deleting paragraph 1 (*c*) (L.173) should be read together with its other amendment (L.174) proposing a new article. It could hardly be supposed that his delegation's intention in proposing the deletion of paragraph 1 (*c*) was that a diplomat should be allowed to exercise a liberal or commercial profession; indeed, its other amendment expressly ruled out that possibility.

25. Mr. REINA (Honduras) said that, if a diplomat were able to exercise a liberal or commercial profession, he would be competing with citizens of the receiving State, and his position did not allow him to do that. A person enjoying privileges and immunities could legitimately be expected to confine himself to his diplomatic activities.

[1] See L.292.

26. Mr. DANKWORT (Federal Republic of Germany) supported article 29 as it stood.

27. The CHAIRMAN called on the Committee to vote on the various amendments to article 29, paragraph 1, beginning with the first of the Spanish amendments (L.221).

The amendment was adopted by 31 votes to 13, with 26 abstentions.

At the request of the representative of Belgium, a vote was taken by roll-call on the revised Netherlands amendment (L.186/Rev.1).

Nigeria, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Switzerland, Tunisia, Belgium, Ireland, Italy, Libya, Mexico, Morocco, the Netherlands.

Against: Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Senegal, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Argentina, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Congo (Leopoldville), Czechoslovakia, Denmark, El Salvador, Federation of Malaya, Finland, France, Ghana, Honduras, Hungary, India, Iraq, Japan, Korea, Liberia.

Abstaining: Saudi Arabia, Thailand, Turkey, Union of South Africa, United Arab Republic, Venezuela, Viet-Nam, Yugoslavia, Australia, Austria, Brazil, Burma, Cambodia, Chile, China, Colombia, Ecuador, Ethiopia, Federal Republic of Germany, Guatemala, Holy See, Indonesia, Iran, Israel, Liechtenstein.

The amendment was rejected by 37 votes to 9, with 25 abstentions.

The Swiss amendment (L.215) was rejected by 38 votes to 4, with 28 abstentions.

The Australian amendment (L.288) was adopted by 17 votes to 11, with 39 abstentions.

28. Mr. MARESCA (Italy) stated that his delegation would not press for a vote on its amendment (L.195), as long as its spirit was respected and as long as the diplomat's moral duty to assist the course of justice in the receiving State was recognized.

29. The CHAIRMAN called on the Committee to vote on paragraph 2 of article 29. The second, fourth and fifth of the Spanish delegation's amendments (L.221) having been withdrawn, he put to the vote the third of that delegation's amendments.

The amendment was rejected by 40 votes to 5, with 12 abstentions.

Article 29 as a whole, as amended, was adopted by 60 votes to none, with 9 abstentions.[2]

30. Mr. VALLAT (United Kingdom) explained that he had had to vote against the Australian amendment, because he had not had time to weigh its implications.

[2] At its 27th meeting (paras. 15 and 16), it had been agreed that the Colombian amendment to article 24 (L.173) would be discussed later, together with the Colombian proposal for a new article (L.174).

For the same reason he had abstained in the vote on article 29 as a whole.

31. Mr. MATINE-DAFTARY (Iran) said he had voted against the Netherlands amendment because the exception it envisaged was not justified.

32. Mr. DONOWAKI (Japan) said that while not objecting to the principle contained in the Australian amendment, he had voted against it because he believed that the principle was either self-evident from the text of the article alone, or that it should also be reflected in article 29, paragraph 1 (*a*) and (*b*). His delegation hoped that the Drafting Committee would consider the latter possibility.

33. Mr. BARNES (Liberia) said he had abstained in the vote on article 29 as a whole because he had not been able to obtain, before the vote, the necessary explanations on the voting procedure.

34. Mr. CAMERON (United States of America) said he had had to vote against the Netherlands amendment because, in his country, the application of its provisions would raise a delicate problem in the relations between the States and the federal government.

Article 30 (Waiver of immunity)

35. The CHAIRMAN invited debate on article 30 and the amendments thereto.[1] He recalled that the United States delegation had withdrawn its amendment (L.261) at the 27th meeting (para. 12).

36. Mr. de VAUCELLES (France), introducing his delegation's amendment (L.217) to article 30, paragraph 1, said his delegation was in complete agreement with the principle stated in paragraph 1 of the commentary that the diplomatic agent's immunity from jurisdiction was accorded by reason of his function, which meant in the interest of the sending State. Consequently, the decision to waive his immunity should be taken by that State. Article 30, paragraph 3, provided, however, that in civil or administrative proceedings, the waiver could be implied, particularly if the diplomatic agent appeared as defendant without claiming immunity. He would not, of course, appear before the courts of the receiving State unless he had been authorized to do so by his government; yet the act constituting a waiver would be the agent's act and not the State's. Similarly, in the case of an express waiver it sometimes happened that the actual waiver was the act of the agent himself. The provision proposed by the French delegation for article 30, paragraph 1, reflected the actual situation more closely than did the International Law Commission's draft. However, as some delegations had expressed the fear that the French proposal might be interpreted as an infringement of the well-established principle of international law which was laid down in paragraph 1 and with which France was of course in complete agreement, his delegation would not press its amendment to the vote.

37. The French delegation wished to make a further comment on article 30. The purpose of the article was to give maximum protection to the diplomatic staff. That was why it did not specify that the sending State was under a duty to waive diplomatic immunity in certain circumstances. Actually, however, the multilateral conventions which governed relations between international organizations and the host State provided that the head of the organization should in certain circumstances waive the immunity of its officials. Admittedly, diplomatic agents and international officials wete not exactly comparable, and therefore his delegation had not submitted a proposal on that point; but it drew the Committee's attention to the contradictions which might arise if the Conference adopted provisions on immunities which differed too widely from those of the headquarters agreements of the international organizations.

38. The French delegation supported the amendment submitted by the Holy See (L.292). Having voted against the Netherlands amendment to article 29 (L.186/Rev.1), it would be happy if the provision proposed by the Holy See could be inserted in article 30.

39. Mr. MELO LECAROS (Chile), introducing the amendment submitted jointly by Belgium, Brazil, Chile, Colombia and Spain (L.283), said that, in addition to diplomatic agents, other persons, who were enumerated in article 36, were entitled to the benefit of diplomatic privileges and immunities. Article 30, paragraph 1, should be amended accordingly.

40. Mr. de ERICE y O'SHEA (Spain) withdrew the first of his delegation's amendments (L.267) in order to co-sponsor the amendment submitted by Mexico and Chile (L.179 and Add.1), which had the same purpose. He likewise withdrew the second amendment in order to co-sponsor that submitted by Ecuador and three other delegations (L.290 and Add.1).

41. Mr. MARISCAL (Mexico) said that the purpose of article 30 was to soften the rule on immunity from jurisdiction. However, in both criminal and civil proceedings, the waiving of that immunity would be meaningless unless it automatically denoted the waiver of immunity in respect of the execution of the judgment, for otherwise the parties would not be on an equal footing. The Mexican and Chilean delegations consequently proposed (L.179) the deletion of article 30, paragraph 4, which provided for a separate waiver in respect of the execution of the judgment.

42. The Mexican delegation would vote for the amendment (L.283) submitted by Chile and other delegations.

43. Mr. SINACEUR BENLARBI (Morocco), introducing the amendments (L.200 and Rev.1 and 2) which his delegation had submitted jointly with those of Libya and Tunisia, said that the first was self-explanatory. The second was a purely drafting amendment. The third of the amendments, however, related to substance. The difficulties raised by article 30, paragraph 4, could, of course, be removed by deleting that paragraph, but his dele-

[1] The following amendments had been submitted: Poland, A/CONF.20/C.1/L.171; Mexico, A/CONF.20/C.1/L.179 and Add. 1; Libya, Morocco and Tunisia, A/CONF.20/C.1/L.200 and Rev.1 and 2; France, A/CONF.20/C.1/L.217; Venezuela, A/CONF.20/C.1/L.230 and Add.1; United States of America, A/CONF.20/C.1/L.261 (withdrawn); Spain, A/CONF.20/C.1/L.267 and Add.1; Belgium, Brazil, Chile, Colombia and Spain, A/CONF.20/C.1/L.283; Ecuador, A/CONF.20/C.1/L.290 and Add.1; Holy See, A/CONF.20/C.1/L.292.

gation preferred to supplement it in the way proposed in the amendment. The paragraph as drafted by the International Law Commission provided that a separate waiver must be made in respect of the execution of the judgment. If the judgment was favourable to the diplomatic agent, the waiver obviously caused no difficulty; but if the diplomatic agent lost the case, it was conceivable that he might not waive his immunity a second time. In that event the other party might proceed against the receiving State. That was why the sponsors of the amendment had thought it necessary to provide that, if there was no waiver of immunity in respect of the execution of the judgment, the sending State should be obliged to consult with the receiving State on suitable means of enforcing the judgment.

44. Mr. GASIOROWSKI (Poland), introducing his delegation's amendments (L.171), said they were the logical consequence of the fundamental principle on which the draft was based, namely that diplomatic immunities were established not for the diplomatic agent's benefit but by reason of the function which he exercised, and hence for the sending State's benefit. The International Law Commission had been illogical in laying down in article 30, paragraph 2, that in criminal proceedings there must always be an express waiver, and then stipulating in paragraph 3 that in civil proceedings an agent could waive his immunity from jurisdiction by implication. In the Polish view, the waiver of immunity should in all cases be express.

45. Mr. PONCE MIRANDA (Ecuador), introducing his delegation's amendment (L.290) submitted jointly with other delegations, said that its purpose was to lay down the procedure to be followed with regard to the waiving of diplomatic immunity. It was desirable that the Ministry of Foreign Affairs of the receiving State should inform the court whether or not there had been a waiver of immunity. Besides, the intervention of the Ministry of Foreign Affairs would check possible abuses and avoid impunity in certain cases. That procedure did not affect the system of diplomatic immunities as such in any way.

The meeting rose at 1.5 p.m.

TWENTY-NINTH MEETING

Friday, 24 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 30 (Waiver of immunity) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 30 and the amendments thereto.[1]

2. Mr. MERON (Israel) said that he shared the concern that had been universally voiced lest the claiming of diplomatic immunity should have the effect of preventing an injured party from obtaining the compensation to which he was entitled by law. He thought it desirable that the immunity should be waived in such cases and that the Conference should express the wish that States should waive immunity wherever possible. The idea might perhaps be incorporated in the preamble to the future convention in the spirit in which it was stated in the preamble to the Havana Convention of 1928 concerning diplomatic officers " . . . acknowledging also that it would seem desirable that either the officer himself or the State represented by him renounce diplomatic immunity whenever touching upon a civil action entirely alien to the fulfilment of his mission." If such a waiver were impossible, the sending State had an obligation to co-operate with the receiving State in ensuring reparation of the damage. It was the practice of the Government of Israel to espouse, through the diplomatic channel, the claims of persons injured through the action of persons enjoying diplomatic immunity. A useful proposal had been made by the Government of the United Kingdom in its comments of 1959 on article 40 of the draft: " . . . it would be beneficial if it were to be accepted that States should use their utmost endeavours to secure that disputes which involve persons entitled to immunity from suit and legal process, and in which it is decided that immunity shall not be waived, are settled by agreement between the parties " (A/4164, annex).

3. Turning to the amendments proposed to article 30, he expressed support for the amendment submitted by Poland to paragraph 2 (L.171). With respect to an implied waiver, he said there would be no certainty that it had been authorized by the sending State. Such certainty would be greater with respect to an express waiver. Diplomatic immunities were intended to benefit the sending State, and any misunderstanding over the waiving of immunity could only cause embarrassment.

4. He was opposed to the several proposals for the deletion of paragraph 4 which provided for separate waivers of immunity from jurisdiction in respect of civil or administrative proceedings and in regard to the execution of the judgment. That distinction was accepted by long-standing tradition in many countries; and it was unlikely that a diplomatic agent would fail to respect the judgment of a court once the initial waiver had been made. Moreover, the execution of a judgment against a diplomat was a delicate matter and if not handled carefully could lead to international incidents.

5. The amendment to paragraph 1 proposed jointly by Belgium, Brazil, Chile, Colombia and Spain (L.283) was an improvement, for it removed any possible doubt left by article 36 concerning the waiver of the diplomatic immunities of persons other than diplomatic agents.

6. Mr. KIRSCHSCHLAEGER (Austria) drew attention to a question of terminology that might be examined by the Drafting Committee. As he understood it, a waiver of immunity under article 30 was intended to apply to articles 27 (Personal inviolability) and 29 (Immunity from jurisdiction); it would be logical for it to include

[1] For the list of the amendments, see 28th meeting, footnote to para. 35.

also the diplomatic courier referred to in article 25, paragraph 5. However, the expression " diplomatic agents " in article 30, paragraph 1, did not include couriers. Moreover the expression " waiver of immunity of jurisdiction " in article 30, paragraph 4, did not cover a waiver of the non-liability of a diplomatic agent to arrest or detention under article 27.

7. Mr. TUNKIN (Union of Soviet Socialist Republics) pointed out that article 30, paragraph 1, rightly recognized that the waiver of immunity, like the granting of immunity, was the prerogative of a government. The procedure proposed in the French amendment (L.217) was contrary to international law. If a diplomatic agent announced that he was waiving his own immunity, there was no knowing whether or not he had his government's consent to do so, and it was essential for the receiving State to have official notification from the government concerned.

8. On the other hand, the five-Power amendment (L.283) was acceptable and even necessary. As a member of the International Law Commission he could affirm that it was in complete accordance with what the Commission had had in mind.

9. He agreed that article 30, paragraphs 2 and 3, were not very clear. The International Law Commission had not been entirely satisfied with its draft but had been unable to find more suitable wording. He would support the Polish amendment (L.171), whose intention, as he understood it, was to ensure that a waiver of immunity should be express in civil as well as in criminal proceedings.

10. With regard to the amendments proposed by Libya, Morocco and Tunisia (L.200/Rev.2), he said that the first was a drafting amendment and should, he suggested, be referred to the Drafting Committee. The second went beyond existing practice and could be interpreted as meaning that a diplomat could never in any circumstances claim immunity once he had initiated proceedings. The International Law Commission had rightly limited the scope of the provision to counter-claims directly connected with the principal claim. The third amendment likewise seemed to him of a rather dubious nature, for it implied that the sending State should assume the obligation for the execution of the judgment. The difficulties of securing judgment in foreign courts were well known, and it was entirely unrealistic to lay down such a rule without regard to the means of applying it.

11. Nor did he support the amendment submitted by Ecuador, Colombia, Chile and Guatemala (L.290 and Add.1), because the mode of giving effect to the article should not really be specified in a convention — indeed, it would not be wise to lay down rules on such details, as they might not fit in with the regulations of individual States.

12. Finally, he was also opposed to the amendments submitted by the Holy See (L.292), for it was the kind of provision that gave rise to innumerable legal problems and complications.

13. Mr. MONACO (Italy) said that in principle he was in favour of article 30 as it stood. With regard to paragraphs 2 and 3, however, he believed that a waiver should always be express and he therefore supported the Polish amendment (L.171).

14. There had been a number of proposals to delete paragraph 4, but he would prefer to see it retained, for the distinction in question was part of the doctrine and practice of law.

15. Mgr. CASAROLI (Holy See), introducing his delegation's amendment (L.292), said he would welcome a statement of principle by the Conference showing that it recognized the moral and humanitarian principles which imposed upon the sending State an obligation to ensure justice for persons who had suffered loss or damage through the act of a diplomat. In his opinion, the difficulties and complications referred to by the Soviet representative would be worth facing.

16. Mr. YASSEEN (Iraq) fully supported the Polish amendment (L.171). He was also in favour of the Mexican amendment deleting paragraph 4 (L.179); if it were not adopted he would support the three-Power amendment (L.200/Rev.2) as the closest to it in aim.

17. Mr. CARMONA (Venezuela) said the representative of Mexico had admirably explained the object of his amendment (L.179) at the 28th meeting (para. 41). It was clear that there were two schools of thought on the question of a separate waiver for the execution of judgment: in many countries, including Venezuela, it was inconceivable that if diplomatic immunity had been waived for legal proceedings it was not automatically waived for the execution of judgment. In his opinion it would be better to delete paragraph 4 and leave each country to interpret the article in accordance with its own legislation.

18. With regard to the other amendments, he supported that submitted by Poland (L.171). A waiver of immunity should always be express, except of course in the obvious case where a diplomat instituted proceedings and where immunity was automatically assumed to be waived. That remark would also explain his attitude to the three-Power (L.200/Rev.2). The five-Power amendment (L.283) was based on an excellent principle, but he thought that the replacement of " diplomatic agents " in paragraph 1 by " persons enjoying immunity under article 36 " would prejudge action on article 36 which had not yet been discussed. Regarding the new paragraph proposed by Ecuador, Colombia, Chile and Guatemala (L.290 and Add.1), he said it was difficult to lay down a general rule on procedure in the event of proceedings against a diplomatic agent, since practice varied from country to country. He would support the amendment of the Holy See (L.292) which conformed with his ideas.

19. Mr. CAMERON (United States of America) said he would comment on only three of the amendments. The four-Power amendment (L.290 and Add.1) had no place in a multilateral treaty, and he hoped that its sponsors would agree to withdraw it. The amendment of the Holy See (L.292) caused him grave concern, for it imposed an obligation on the sending State without establishing its liability or its responsibility for com-

pensating of individuals suffering damage. It also failed to provide a process whereby the responsibility for the injury or the amount of damages could be determined in uncertain cases. He could understand the reasons prompting the amendment, but his government could not accept an obligation in such conditions. He therefore opposed the amendment. The five-Power amendment (L.283) was acceptable in intent but omitted some important words used in article 30. He proposed that the words " diplomatic agents and " should be inserted before " persons ".

20. Mr. de ROMREE (Belgium) said that the amendment of the Holy See had given rise to some confusion: he thought that its intention was that the sending State should take steps to see that fair compensation for damage was provided — not that the State should itself provide compensation.

21. Mr. BARTOŠ (Yugoslavia) said that the five-Power amendment would be useful in that it re-drafted article 30, paragraph 1, in more specific terms, though it would be better if it spoke of " diplomatic agents and other persons enjoying immunity ".

22. He supported the amendment submitted by the Holy See (L.292) as representing a progressive development of international law. The amendment did not make the sending State itself liable to pay damages: it merely set forth that State's duty to provide the claimant with some means of obtaining redress. It was only just and proper that the sending State, which in fact shielded its diplomatic agent, should in return ensure that the injured party was not left without any remedy.

23. In regard to civil and administrative proceedings, he favoured the system which would permit an implied waiver and therefore could not support the Polish amendment (L.171).

24. He supported the three-Power amendment to paragraph 4 (L.200/Rev.2). The amendment had the merit of setting forth the duty of the sending State to seek with the receiving State some suitable means of enforcing execution of the judgment, while maitaining the distinction between the waiver of immunity in respect of proceedings and that in respect of execution.

25. He could not support the amendments deleting paragraph 4 altogether. From the point of view of legal theory, it might be logical to say that the waiver of immunity from jurisdiction in respect of proceedings should imply a similar waiver in respect of execution of the judgment. There were, however, political considerations involved in the distinction usually drawn in that regard. Moreover, there were cases where it was desirable that a judgment should be given so as to establish the facts but where the State concerned would not wish necessarily to permit measures of execution against its diplomatic agent.

26. Lastly, he could not support the four-Power amendment (L.290 and Add.1), adding a new paragraph on the procedure to be followed. Without the sponsors intending it, the proposed provision could serve to exert moral pressure on the sending State to waive immunity. For that reason, it was desirable to follow the existing practice, which did not permit any proceedings before immunity had in fact been waived.

27. Mr. MELO LECAROS (Chile), speaking on behalf of the sponsors, agreed to insert in the five-Power amendment (L.283), before the words " persons enjoying immunity ", the words " diplomatic agents and other ", as suggested by the United States and Yugoslav representatives.

28. Mr. REGALA (Philippines) said that the bulk of legal opinion and the majority of court decisions in the United States of America, England and the countries of the continent of Europe agreed that immunity could not be waived by a diplomatic agent without the consent of the government of the sending State. As far as court cases were concerned, that principle was even more firmly established on the continent than in England and the United States of America. It was a generally accepted principle of international law that the action of a diplomatic agent in submitting to the jurisdiction of a court was not material and that the consent of the sending State was necessary for the purpose of waiving immunity.

29. For those reasons, he believed that the waiver of immunity could never be implied but should always be express and therefore supported the Polish amendment (L.171).

30. He also supported the amendments deleting paragraph 4.

31. Mr. GLASER (Romania) supported the idea expressed in the five-Power amendment (L.283), on the understanding that the Drafting Committee would settle the final wording.

32. He supported the Polish amendment (L.171), which was based on sound legal grounds. A waiver, like any other act by which a right was renounced, could not be given an extensive interpretation. A renunciation should be construed restrictively, and consequently the waiver of immunity in respect of proceedings could not be held to imply a similar waiver in respect of execution.

33. The diplomatic agent could not waive his immunity either in criminal or in civil proceedings because the immunity did not vest in him. The sending State alone could renounce a right which was established both in its interest and in that of the receiving State, which was equally interested in the maintenance of diplomatic immunity, without which diplomatic relations would not be possible.

34. A further argument in favour of the Polish amendment was the need to respect the sovereignty of States. To disregard diplomatic immunity was to infringe the sovereignty of a foreign State. It was therefore proper to require an express waiver as a condition for proceedings of any kind against a diplomat.

35. He could not support the proposal for a new paragraph (L.290 and Add.1), which would reverse the existing practice in the matter. If the defendant could prove that he was a diplomatic agent, the proceedings should be stopped. In accordance with the established doctrine and practice, only if an express waiver had been given by the sending State could proceedings be instituted against a diplomatic agent.

36. The amendment of the Holy See (L.292) introduced an entirely novel concept which raised many difficult legal problems. The proposal was not clear regarding the extent of the responsibility to be assumed by the sending State. Did that State have a duty to obtain for the claimant a fair compensation and, in the event of failure, was it answerable for the acts of its agent ? The difficult questions raised by the amendment deserved study but it was premature to raise them in the Conference.

37. Lastly, he opposed the proposals to delete paragraph 4. In law, a waiver should be construed strictly and should therefore be limited in scope to actual proceedings; a separate and express waiver was necessary for the purpose of measures of execution. Moreover, from the political point of view, measures of execution might be much more difficult to accept than the mere submission of a case to a court. By way of analogy, he drew attention to the difficulties inherent in the execution of foreign judgments, arising from the need to respect the sovereignty of the State where the judgment was to be executed.

38. Mr. BOUZIRI (Tunisia), in reply to the Soviet representative, pointed out that the object of the second of the three-Power amendments (L.200/Rev.2) was simply to debar the diplomatic agent from pleading immunity to counter-claims in proceedings which the agent had himself initiated.

39. The third of the three-Power amendments was based on the same considerations as the proposals to delete paragraph 4, but kept the distinction between a waiver of immunity in respect of proceedings and a waiver of immunity in respect of measures of execution. If immunity was waived for the purpose of the proceedings, it did not seem fair that the diplomatic agent should be able to avail himself of a favourable judgment but plead immunity to prevent execution if the judgment went against him. For that reason, it was proposed in the amendment that the sending State should consult with the receiving State on suitable means of enforcing the judgment.

40. Mr. VALLAT (United Kingdom) said that the amendment of the Holy See (L.292) would, if adopted, involve serious legal and constitutional difficulties for many governments. He felt certain that there was widespread support for the intention underlying the amendment, but had doubts regarding its form. He therefore urged the representative of the Holy See to withdraw the amendment and consider instead means of placing on record the Committee's view that it was desirable, in cases where immunity was relied upon, that some remedy should be available for the injured party.

41. Mgr. CASAROLI (Holy See) agreed to the course suggested by the United Kingdom representative.[1]

42. The CHAIRMAN said that the three-Power amendments to paragraphs 2 and 3 (L.200/Rev.2) would not be put to the vote, but would be referred to the Drafting Committee, since they did not seek to amend the substance of the article.

The five-Power amendment to article 30, paragraph 1 (L.283), as further amended (see para. 27 above), was adopted by 65 votes to 1, with 1 abstention.

The Polish amendment to paragraph 2 (L.171) was adopted by 42 votes to 9, with 12 abstentions.

The Polish amendment to paragraph 3 (L.171) was adopted by 43 votes to 11, with 15 abstentions.

The proposal for the deletion of paragraph 4 (L.179 and Add.1, L.230 and Add.1) was rejected by 42 votes to 13, with 13 abstentions.

The three-Power amendment to paragraph 4 (L.200/Rev.2) was rejected by 25 votes to 23, with 20 abstentions.

The four-Power amendment (L.290 and Add.1) was rejected by 34 votes to 16, with 20 abstentions.

Article 30, as amended, was adopted as a whole by 60 votes to none, with 8 abstentions.

Article 25 (Freedom of communication) *(resumed from the 26th meeting)*

43. The CHAIRMAN invited the Committee to continue its debate on article 25 and the amendments thereto.[2]

44. Mr. VALLAT (United Kingdom) expressed his delegation's appreciation of the time allowed by the adjournment for consultations. Although it had not proved possible to work out a generally acceptable provision concerning the use of radio transmitters by diplomatic missions, he hoped that his delegation's amendment (L.291) would find favour at least with the majority of members. To allay the fears which had been expressed the amendment stipulated that the mission should use its own radio transmitter strictly for the purpose of telegraphic communication with the government and other missions and consulates of the sending State. The use of the radio transmitter for propaganda purposes would be excluded by that limitation and by the fact that telegraphic communication was entirely unsuited to the dissemination of propaganda, for which voice transmission was necessary. The fear had also been expressed that radio transmission might take place in secret, leaving the receiving State with no reasonable means of dealing with any abuse or interference. Accordingly, the amendment provided that the existence of radio transmitters should be notified by the mission to the receiving State which, on the basis of that information, could take up with the diplomatic mission or with the government of the sending State any problems that might arise. Although the United Kingdom Government agreed that the receiving State should be informed of the existence of radio transmitters, it believed that their use was an essential means of communication and in

[1] A resolution on this subject was later adopted by the Conference (A/CONF.20/10/Add.1, resolution II).

[2] For particulars of the amendments submitted earlier, see 26th meeting, footnote to para. 1. Since then, further amendments had been submitted: France and Switzerland, L.286; United Kingdom, L.291; Ghana, L.294. The sponsors of the six-Power amendment (L.264) had agreed to the replacement of the words " after making proper arrangements " by " after obtaining authorization " (24th meeting, paras. 53 and 54.)

consequence its amendment did not go so far as to stipulate that the permission of the receiving State should be sought. It had, however, added a proviso that nothing in article 25 should be construed as prejudicing the application of the international conventions and regulations on telecommunications, although it would have preferred not to include the proviso.

45. Mr. OJEDA (Mexico) said that his delegation would vote for the amendment of which it had become a co-sponsor (L.264) [1] and would oppose the United Kingdom amendment. The discussion had shown that there were serious and well-founded fears in regard to the use of radio transmitters by diplomatic missions. Although no one denied a diplomat's right to drive a car, he always had to comply with the receiving State's regulations concerning licences and qualifications for driving. To give the sending State the unrestricted right to use radio transmitters would not only be contrary to the present practice in many countries but would introduce a cause for dissension into the future convention.

46. Mr. KRISHNA RAO (India), in reply to remarks made by the representative of France (25th meeting, paras. 18 and 19), said that the expectation was that the convention would be carried out in good faith. No government of a receiving State would send its officials into a diplomatic mission to search for a radio transmitter. Even the less-developed countries possessed adequate instruments for the detection of transmitters.

47. During the earlier discussion on article 25 the United Kingdom delegation had questioned his interpretation of the relevant international regulations governing telecommunications (25th meeting, para. 53). In reply, he would point out that the International Law Commission itself in paragraph 2 of its commentary on article 25 (A/3859) had said that if a mission wished to make use of its own wireless transmitter " it must, in accordance with the international conventions on telecommunications, apply to the receiving State for special permission." His government would be extremely reluctant to accept a provision in the convention on diplomatic intercourse and immunities only to provoke a controversy on the interpretation of the international telecommunication conventions and have to resort to the procedure for the settlement of disputes in that regard.

48. It had been argued that the " full facilities " which under article 23 should be accorded by the receiving State for the performance of the mission's functions included the facility of setting up a radio transmitter. The International Law Commission's opinion which he had just quoted, and which had not been challenged during the discussion, meant that facilities should not be accorded if they were incompatible with international rules and regulations. The six-Power amendment (L.264) merely transferred the International Law Commission's commentary to the text of the draft article.

49. The United Kingdom amendment appeared reasonable at first glance, but closer inspection showed it to be without substance. Although it referred to the international conventions and regulations on telecommunications, it made no mention of the receiving State's consent, which was the main basis of the six-Power amendment. It provided merely that the transmitter's existence should be notified to the receiving State as a *fait accompli*. The inclusion of the reference to the international conventions and regulations meant perhaps that the United Kingdom delegation had changed its earlier opinion that they did not apply to the radio transmitters of diplomatic missions. The representative of Ghana had shown conclusively that they did apply to such transmitters (26th meeting, para. 11). The acceptance of that view necessitated support of the six-Power amendment.

50. Mr. MATINE-DAFTARY (Iran) asked whether the reference in the United Kingdom amendment to international conventions and regulations on telecommunications meant that the receiving State could suspend the use of a radio transmitter if it found there had been abuse. He also asked which provision of the telecommunications conventions the representative of India had in mind.

51. Mr. KRISHNA RAO (India) said that the provision under which the receiving State's consent had to be sought was article 18, section 1, of the Radio Regulations, Geneva 1959.[2]

52. Mr. HAASTRUP (Nigeria) said that although a diplomatic mission had the right to install a wireless transmitter it should respect the receiving State's authority by informing it of its intention to install such a transmitter and letting it decide whether to allow the transmitter to be operated. The question had political as well as technical aspects, particularly in young countries where the situation was not completely stable and where the diplomatic mission of a country which did not entirely support the party in power might have the opportunity of interfering in the internal affairs of the receiving State. The receiving State had to reserve the right to revoke its consent to the operation of a transmitter if it later found any misuse of the transmitter. That point would appear to be covered by the six-Power amendment as it contained a reference to the laws of the receiving country. If the United Kingdom amendment was not revised to provide that there should be prior notification to the receiving State, and to include either a reference to the domestic laws of the receiving State or to its right to revoke consent if there should be abuse, his delegation would support the six-Power amendment.

53. Mr. CAMERON (United States of America) supported the United Kingdom amendment and in consequence withdrew that part of his own delegation's amendments which referred to the provisions of the applicable postal and telecommunications conventions (L.154, para. 1 (*a*), as amended at the 25th meeting, para. 21).

54. His delegation maintained its second and eighth amendments to article 25 (L.154, paras. 1 (*b*) and 6).

[1] In addition to Argentina, India, Indonesia and the United Arab Republic, Mexico and Venezuela had become sponsors of the amendment.

[2] Published by the International Telecommunication Union, Geneva, 1959.

55. It would, however, withdraw its third amendment (L.154, para. 1 (*c*)). In addition, having withdrawn its fourth amendment (L.154, para. 2) it would support the first of the amendments submitted jointly by France and Switzerland (L.286). Although the United States amendment in question related to paragraph 2 of article 25 while the French-Swiss amendment related to paragraph 3, the latter amendment did in fact incorporate the United States view that official correspondence meant all correspondence relating to the mission and its functions. His delegation withdrew its fifth amendment (L.154, para. 3) in favour of that submitted by the United Arab Republic (L.151/Rev.2) which offered a reasonable compromise between the United States view and the other views expressed in that connexion. Lastly, he announced the withdrawal of his delegation's seventh amendment (L.154, para. 5).

56. Mr. KEVIN (Australia) reintroduced as his own delegation's amendment that just withdrawn by the United States defining official correspondance to mean all correspondence relating to the mission and its functions (L.154, para. 2). It was important that there should be a definition of official correspondence, which was not always carried in diplomatic bags. The amendment by France and Switzerland (L.286), in favour of which the United States amendment had been withdrawn, referred only to diplomatic documents or articles contained in the diplomatic bag and only in that connexion were they defined as being " of an official nature necessary for the performance of the functions of the mission ".

57. Mr. BOUZIRI (Tunisia) supported the six-Power amendment (L.264) and opposed the United Kingdom amendment regarding the use of radio transmitters, which omitted the essential stipulation that the receiving State's consent was required.

58. Mr. BINDSCHEDLER (Switzerland) said that his delegation maintained the first of its amendments (L.158, para. 1) to delete the words " and consulates " in paragraph 1 of article 25 for the reasons he had explained earlier (25th meeting, para. 46). The convention dealt with diplomatic intercourse and immunities and was not the appropriate place for a reference to consulates, which should be dealt with in the convention on consular intercourse and immunities being prepared by the International Law Commission. The United Kingdom amendment (L.291) also included a reference to " consulates " and he could not support it unless that word was deleted. He thought, however, that a clear and simple provision along the lines of paragraph 2 of the International Law Commission commentary would be the most satisfactory solution.

59. He withdrew his delegation's third, fourth and fifth amendments (L.158, paras. 3 and 4 and L.158/Add.1) in favour of the corresponding amendments sponsored jointly by France and Switzerland (L.286).

60. Mr. VALLAT (United Kingdom) said he had no wish to argue in favour of the inclusion of a reference to consulates in article 25, paragraph 1, and suggested that a separate vote should be taken on the words " and consulates ".

61. Mr. de ERICE y O'SHEA (Spain) and Mr. BAYONA (Colombia) supported the six-Power amendment (L.264).

62. Mr. SUFFIAN (Federation of Malaya) noted that no objection had been made to his delegation's amendment (L.152) which had been introduced to emphasize both that the diplomatic bag should bear visible external marks of its character and that it should contain only diplomatic documents or articles intended for official use. He suggested that it should be referred to the Drafting Committee.

63. Mr. TUNKIN (Union of Soviet Socialist Republics) stressed that both inviolability and freedom of transport should be provided for the diplomatic bag. If either of those conditions was not fulfilled, the value of the diplomatic bag as a means of free communication for the sending State would be greatly diminished, if not destroyed. The amendment proposed by the United Arab Republic (L.151/Rev.2) provided that, if the receiving State had serious grounds for suspicion, the sending State might be required to withdraw the diplomatic bag. The granting of such discretionary power to the receiving State took away the guarantee of freedom of transport for the diplomatic bag and might at any moment be used to block the channel of communication for genuine or invented motives. The draft already provided the receiving State with adequate means to prevent the misuse of the diplomatic bag. It could make representations or use the other means provided; it could even in cases of serious abuse declare the diplomatic agent involved persona non grata. He firmly believed that the inviolability of the diplomatic bag should be maintained so that it would remain a genuine means of free communication and there was no possibility of its being opened or of that channel of communication being blocked.

64. A close examination of the first amendment submitted by France and Switzerland (L.286, para. 1) suggested that it might mean that the diplomatic bag enjoyed inviolability only if its contents were in keeping with the specifications laid down in the amendment. In theory, of course, inviolability was based on the contents of the diplomatic bag. The International Law Commission had, however, tried to avoid the kind of misinterpretation to which the amendment seemed to be open by avoiding a direct link between the definition of the contents of the bag and the statement that the bag was inviolable. Article 25, paragraph 3, provided that the diplomatic bag should not be opened or detained, while paragraph 4 provided that it should only contain diplomatic documents or articles intended for official use. If one of those provisions was infringed, the necessary action could be taken, although there was no direct link. Paragraphs 3 and 4 as they stood were therefore preferable to the terms of the amendment.

65. The Swiss proposal that the reference to consulates in article 25, paragraph 1, should be omitted would, if accepted, leave open the question whether the diplomatic mission could communicate with the sending State's consulates, or might even be interpreted as meaning that the diplomatic mission had no right to such commu-

nication. Everyone knew that the practice existed, and it was correctly reflected in the existing text of paragraph 1.

66. Undue importance seemed to have been attached to the question of the use of radio transmitters by diplomatic missions. The Committee should not adopt a provision which might be interpreted as meaning that the use of radio transmitters was an extraordinary or dangerous means of communication which should be dealt with in a special manner. If some embassies were allowed to use radio transmitters while others were not, it would lead to great practical difficulties and to a deterioration of relations between States. It might be deduced from the six-Power amendment (L.264) that the receiving State had an unrestricted right to allow or to forbid the use of radio transmitters by diplomatic missions. That went further than was necessary to allay the fears that had been expressed and yet was not adequate to cover the cases which the delegations particularly concerned had in mind. Although he found the United Kingdom amendment (L.291) acceptable, he realized that some delegations had objections. He therefore suggested that further efforts should be made to work out a provision along the lines of the International Law Commission's commentary, which might prove acceptable to the majority.

67. Mr. JEZEK (Czechoslovakia) withdrew his amendment (L.162) in order to facilitate the Committee's work.

68. The CHAIRMAN said he would put to the vote the amendments to article 25, paragraph 1.

At the request of the representative of the United Kingdom a vote was taken by roll-call on the amendment sponsored by Argentina, India, Indonesia, Mexico, the United Arab Republic and Venezuela (L.264).

The Federation of Malaya, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Federation of Malaya, Ghana, Guatemala, Holy See, Honduras, India, Indonesia, Iraq, Ireland, Italy, Korea, Liberia, Libya, Mexico, Morocco, Nigeria, Pakistan, Peru, Philippines, Portugal, Saudi Arabia, Senegal, Spain, Tunisia, Turkey, Union of South Africa, United Arab Republic, Venezuela, Viet-Nam, Yugoslavia, Argentina, Brazil, Burma, Cambodia, Ceylon, Chile, Colombia, Congo (Leopoldville), Dominican Republic, Ecuador and Ethiopia.

Against: France, Federal Republic of Germany, Hungary, Israel, Netherlands, Poland, Romania, Sweden, Switzerland, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Austria, Belgium, Bulgaria, Byelorusian SSR, Canada, Czechoslovakia.

Abstaining: Finland, Iran, Japan, Liechtenstein, Norway, Thailand, Australia, China, Denmark.

The amendment was adopted by 41 votes to 20, with 9 abstentions.[1]

[1] As a consequence of this vote the United Kingdom amendment (L.291) and Switzerland's amendment (L.158, para. 2) relating to the same subject were not put to the vote.

69. The CHAIRMAN put to the vote the amendment by the United States of America (L.154, para. 1 (*b*)).

The amendment was rejected by 19 votes to 19, with 28 abstentions.

70. The CHAIRMAN put to the vote the amendment of Switzerland (L.158, para. 1).

The amendment was rejected by 57 votes to 3, with 7 abstentions.

71. The CHAIRMAN put to the vote the amendment to paragraph 2 submitted originally and then withdrawn by the United States of America (L.154, para. 2) and since reintroduced by Australia (see para. 56 above).

The amendment was adopted by 22 votes to 18, with 28 abstentions.

72. The CHAIRMAN said that the Committee would next proceed to vote on the amendments to article 25, paragraphs 3 and 4. Two of those amendments, submitted by the United Arab Republic (L.151/Rev.2) and Ghana (L.294) respectively, were similar in purpose, although the latter referred to paragraph 3 and the former proposed a new paragraph. The Committee also had before it the amendment submitted by France and Switzerland (L.286, para. 1) replacing paragraphs 3 and 4.

73. Mr. de VAUCELLES (France) thought that the various amendments should be voted on in the order of the paragraphs to which they related, and suggested that the vote should begin with the amendment submitted by France and Switzerland relating to paragraphs 3 and 4.

74. Mr. EL-ERIAN (United Arab Republic) withdrew his delegation's amendment (L.151/Rev.2) in favour of that submitted by Ghana, which should be voted upon first as it referred to paragraph 3.

75. Mr. VALLAT (United Kingdom) said that he preferred the amendment originally proposed by the United Arab Republic and now withdrawn (L.151/Rev.2) to that of Ghana (L.294). His delegation therefore wished to reintroduce the former amendment (L.151/Rev.2) as an addition to paragraph 3.

76. After a procedural discussion in which Mr. CAMERON (United States of America), Mr. EL-ERIAN (United Arab Republic) and Mr. DADZIE (Ghana) took part, Mr. YASSEEN (Iraq) said that the amendment of Ghana was farthest removed from the original text of paragraph 3. It would permit the rejection of a diplomatic bag in the case of reasonable suspicion of misuse, whereas the other amendment would only permit such rejection in an exceptional case where there were serious grounds for suspicion.

77. The CHAIRMAN put to the vote the amendment submitted by Ghana (L.294).

The amendment was rejected by 43 votes to 8, with 14 abstentions.

78. The CHAIRMAN put to the vote the amendment originally submitted by the United Arab Republic (L.151/Rev.2) and reintroduced by the United Kingdom as an addition to paragraph 3.

The amendment was rejected by 37 votes to 22, with 6 abstentions.

79. The CHAIRMAN put to the vote the amendment submitted by France and Switzerland replacing paragraphs 3 and 4 by a single paragraph (L.286, para. 1).

The amendment was rejected by 24 votes to 24, with 15 abstentions.

80. The CHAIRMAN said that the Committee had before it four amendments to paragraph 5, sponsored respectively by Mexico (L.131, para. 2), France and Switzerland (L.286, para. 2), Chile and Liberia (L.133) and the United States of America (L.154, para. 6).

81. Mr. OJEDA (Mexico) withdrew his amendment.

82. The CHAIRMAN put to the vote the amendment submitted by France and Switzerland for an alternative formulation of paragraph 5.

The amendment was adopted by 33 votes to 22, with 10 abstentions.

83. Mr. MELO LECAROS (Chile), speaking on behalf of the two sponsors, said that the amendment sponsored by Chile and Liberia (L.133) was intended to confer inviolability on the diplomatic courier *ad hoc* and on the diplomatic bag carried by such a courier. It was not intended to apply to the personal baggage of the courier. As a matter of drafting, he pointed out that the term " accredited " used in his amendment should be replaced by " designated ".

84. Subject to these explanations, the CHAIRMAN put to the vote the amendment proposed by Chile and Liberia.

The amendment was adopted by 53 votes to 3, with 10 abstentions.

85. The CHAIRMAN said that the Committee had before it an amendment by the United States (L.154, para. 6) which would have the effect of specifying that the diplomatic courier would enjoy the same inviolability as a member of the administrative and technical staff of the mission.

86. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the Committee had already adopted an amendment (L.286, para. 2) which defined the extent to which the diplomatic courier enjoyed personal inviolability. It was therefore not necessary to vote on the United States amendment.

87. Mr. CAMERON (United States of America) recalled that it had been expressly understood when the amendment of France and Switzerland (L.286, para, 2) had been voted upon that the United States amendment (L.154, para. 6) would be voted upon later.

88. The CHAIRMAN put the United States amendment to the vote.

The amendment was rejected by 36 votes to 8, with 17 abstentions.

89. The CHAIRMAN said that the Committee had before it an amendment submitted by France and Switzerland (L.286, para. 3) adding a new paragraph to cover the case where the diplomatic bag was entrusted to the captain of a commercial aircraft.

90. Mr. TUNKIN (Union of Soviet Socialist Republics) said that probably the question was covered by the adoption of the amendment on diplomatic couriers *ad hoc* (L.133).

91. Mr. BINDSCHEDLER (Switzerland) pointed out that the amendment of France and Switzerland (L.286, para. 3) did not purport to turn the captain of the aircraft into a courier, and urged that a vote be taken on the amendment.

92. After a discussion in which Mr. de VAUCELLES (France), Mr. VALLAT (United Kingdom) and Mr. BAYONA (Colombia) took part, the CHAIRMAN asked the Committee to decide whether a vote should be taken on the amendment.

The Committee decided by 48 votes to 7, with 7 abstentions, that the amendment should be put to the vote.

93. The CHAIRMAN put the amendment (L.286, para. 3) to the vote.

The amendment was adopted by 34 votes to 20, with 8 abstentions.

94. The CHAIRMAN put to the vote article 25 as a whole, as amended.

Article 25 as a whole, as amended, was adopted by 50 votes to 12, with 3 abstentions, subject to drafting changes.

95. Mr. WESTRUP (Sweden) said that he had voted against the proposal relating to diplomatic couriers *ad hoc* and a number of other amendments, not because he was against then im substance but because he felt that the details mentioned in them were already covered by the original text, thus making the amendments unnecessary.

96. Mr. VALLAT (United Kingdom) said that he had voted against article 25 as amended because the adoption of the amendment relating to wireless transmitters made paragraph 1 unacceptable to his delegation.

97. Mr. TUNKIN (Union of Soviet Socialist Republics) said that he had voted against article 25 as a whole because a number of amendments had been adopted which weakened the provision prepared by the International Law Commission. He hoped that further efforts would be made to improve the text so as to make it acceptable to all the delegations when article 25 was considered by the Conference in plenary meeting.

98. Mr. de VAUCELLES (France) said that he had voted against article 25 as a whole for reasons similar to those given by the Soviet Union representative, but the amendments to which he objected were not the same as those criticized by that representative.

The meeting rose at 7.45 p.m.

THIRTIETH MEETING

Monday, 27 March 1961, at 10.30 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 31 (Exemption from social security legislation) *(resumed from the 25th meeting)*

1. The CHAIRMAN invited debate on article 31 and the amendments thereto.[1]

2. Mr. RIPHAGEN (Netherlands) withdrew his delegation's amendment (L.187) in favour of the paragraph 5 proposed in the Austrian amendment (L.265).

3. Mr. MONACO (Italy) withdrew his delegation's amendment (L.196) in favour of the Austrian amendment, which expressed the same idea.

4. Mr. KIRCHSCHLAEGER (Austria) announced that Switzerland and Spain had also withdrawn their amendments (L.238 and L.268) in favour of the Austrian amendment, which would replace article 31 by provisions taken, after adjustment, from articles 44 and 65 [second text] of the International Law Commission's draft on consular intercourse and immunities (A/4425). The proposed provision concerning the relationship between the instrument being prepared and other international conventions was intended to fill a gap in the draft.

5. In addition, his delegation's amendment proposed that the expression " social security " should be replaced by " social insurance ". That change was based on Austrian legislation, but if other delegations had any difficulty in accepting the new expression, he was prepared to withdraw it.

6. Mr. de VAUCELLES (France) introducing his delegation's amendment (L.218), said that the second sentence of article 31 would, as had been indicated by the Assistant Director-General of the International Labour Office (25th meeting), impose certain obligations on the head of mission. Conceivably, however, the sending State might not wish him to assume those obligations. Accordingly, under the article the participation of diplomatic missions in the social security system of the receiving State should be reduced to the indispensable minimum.

7. If the amendment should be rejected, he would propose that participation be made conditional on the permission of the receiving State, rather than on its legislation.

8. Lastly, he drew attention to the need to change the term " employee ", which was not defined in article 1.

9. Mr. KEVIN (Australia) said that the reason for his delegation's amendment (L.226) was that, under Australian law, it was the employer, not the employee, who paid social security contributions. In view of the paragraph 3 proposed in the Austrian amendment, however, he was prepared to withdraw his amendment if the Austrian representative agreed to add the words " and members of their families who form part of their households " after the words " members of the mission ".

10. Mr. KIRCHSCHLAEGER (Austria) accepted the Australian sub-amendment.

11. Mr. CAMERON (United States of America) said that his delegation's amendment (L.262) was intended to provide the sending State with absolute exemption from the social security legislation of the receiving State in the case of services rendered by a diplomatic agent or a member of the subordinate staff to the sending State itself. Persons who were permanent residents of the receiving State would be excluded from such exemption.

12. The exemption provided for in the proposed paragraph 1 would be confined to persons employed by the sending State itself. Paragraph 2 provided that if members of the mission employed in their private service persons subject to the social security legislation of the receiving State, they had to comply with that legislation. Paragraph 3 of his delegation's amendment was a redraft of the last sentence of article 31, but he was prepared to withdraw it.

13. Mr. GLASSE (United Kingdom) said that his delegation's amendment (L.201), if read in conjunction with article 36, paragraph 1, was only a drafting amendment. He suggested that it should be referred to the Drafting Committee.

It was so agreed.

14. Mr. RUEGGER (Switzerland), supporting the Austrian amendment, said that article 44 of the draft on consular intercourse and immunities was more detailed than the article 31 under discussion; it represented the results of the International Law Commission's most recent work and took existing conditions more fully into account. Thus the Austrian proposal in fact replaced an older text by a more recent one.

15. Mr. ROMANOV (Union of Soviet Socialist Republics) thought it quite natural that the more recent of the two texts prepared by the International Law Commission should be more detailed, clearer and more generally acceptable than the earlier one. He therefore supported the Austrian amendment.

16. The United States amendment introduced the new concept of permanent residence. He was aware that the law of many countries attached considerable importance to permanent residence or domicile, but the decisive criterion should remain that of nationality. Para-

[1] The following amendments had been submitted: Netherlands, A/CONF.20/C.1/L.187; Italy, A/CONF.20/C.1/L.196; United Kingdom, A/CONF.20/C.1/L.201; France, A/CONF.20/C.1/L.218; Australia, A/CONF.20/C.1/L.226; Switzerland, A/CONF.20/C.1/L.238; India, A/CONF.20/C.1/L.254; United States of America, A/CONF.20/C.1/L.262; Austria, A/CONF.20/C.1/L.265; Spain, A/CONF.20/C.1/L.268.

graph 2 (*a*) of the Austrian proposal took both nationality and permanent residence into account; hence it did not entirely overlook the point which the United States delegation wished to cover.

17. Mr. YASSEEN (Iraq) supported the Austrian amendment, subject to drafting changes.

18. Mr. GLASER (Romania) said that paragraphs 1 to 4 as proposed by Austria were acceptable, but suggested that the final wording should be left to the Drafting Committee.

19. The proposed paragraph 5 stated a recognized principle of international law, but one which could also apply to other articles of the draft. A general convention would not prevent States from adopting broader provisions in bilateral or multilateral agreements. He therefore suggested that the Drafting Committee should be asked to consider whether paragraph 5 of the Austrian amendment should not be treated as a separate article applying to the whole of the draft.

20. Mr. KRISHNA RAO (India) withdrew his delegation's amendment (L.254) in favour of the Austrian amendment. He, too, doubted whether the general principle of international law stated in paragraph 5 should be embodied in an article dealing with the particular matter of exemption from social security legislation.

21. Mr. HUCKE (Federal Republic of Germany) drew attention to the use of the expression " members of the private staff " in the Austrian amendment. The expression " private staff " was used in the draft on consular intercourse and defined in its article 1. It was not used in the draft on diplomatic intercourse and he suggested that the Drafting Committee should be asked to consider the advisability of substituting the term " private servant ", which was defined in article 1 (*h*) of that draft.

22. Mr. KEVIN (Australia) suggested that in paragraph 3 of the Austrian amendment the words " if not nationals of or permanently resident in the receiving State " should be added.

23. Mr. BARTOŠ (Yugoslavia) suggested the inclusion of a similar proviso in paragraph 1 of the Austrian amendment. Such a proviso was necessary in order to safeguard the right of the locally recruited staff of foreign missions to social security and, in particular, to old-age and invalidity benefits. Perhaps the omission was involuntary and the authors of the amendment had not intended the result obtained.

24. Mr. PATEY (France) said that his delegation's amendment (L.218) could be withdrawn if the words " the laws of " were deleted from paragraph 4 of the Austrian amendment, so that voluntary participation was made possible if " permitted by the receiving State ".

25. Mr. SMITH (Canada) urged that the reference to permanent residence be maintained, since serious inequities would result from its omission.

26. Mr. CAMERON (United States of America) said that he would not be able to support the Austrian amendment unless the application of paragraph 1 was confined to persons actually employed by the mission itself. It was also necessary to make proviso (*a*) of paragraph 2 — which excluded nationals of and residents in the receiving State — applicable to paragraph 1. Lastly, the term " obligations " in paragraph 3 should be qualified by the addition of the words " with respect to contributions ".

27. The CHAIRMAN said that there appeared to be very wide support for the Austrian amendment, subject to certain adjustments, and he suggested that a small working party, consisting of the representatives of Austria, Switzerland, the United States of America, the Soviet Union and India should be appointed to prepare a redraft of article 31 on the basis of the Austrian amendment, in the light of the suggestions made by the Federal Republic of Germany, the United States and France.

It was so agreed.[1]

Article 32 (Exemption from taxation)

28. The CHAIRMAN invited debate on article 32 and the amendments thereto.[2]

29. Mr. de ERICE y O'SHEA (Spain) withdrew his delegation's amendments (L.269) with the request that the Drafting Committee should bear the first of those amendments in mind, since a similar provision had been approved for inclusion in article 29, paragraph 1 (*b*) (28th meeting, para. 27).

30. Mr. CAMERON (United States of America) withdrew the second and fourth of his delegation's amendments (L.263). The point raised in the fourth amendment would be taken up in connexion with articles 36 and 37. The third was intended to clarify what he believed to be the intention of sub-paragraph (*f*) of article 32, viz., to refer to registration fees, etc., on immovable property.

31. Mr. KEVIN (Australia) withdrew his delegation's amendment (L.282), the substance of which could be covered in subsequent articles.

32. Mr. RIPHAGEN (Netherlands) withdrew the first of his delegation's amendments (L.188) in favour of the third amendment (L.239), and the second in favour of the Canadian amendment to sub-paragraph (*c*) (L.257).

33. Mr. RUEGGER (Switzerland) withdrew the first of his delegation's amendments (L.239) which was covered by the amendments proposed by Nigeria (L.244) and France (L.219). In addition, he withdrew the second Swiss amendment in favour of the Austrian amendment (L.235).

---

[1] For the continuance of the debate on article 31, see 32nd meeting.

[2] The following amendments had been submitted: Netherlands, A/CONF.20/C.1/L.188; United Kingdom, A/CONF.20/C.1/L.202; France, A/CONF.20/C.1/L.219; Venezuela, A/CONF.20/C.1/L.231; Austria, A/CONF.20/C.1/L.235; Switzerland, A/CONF.20/C.1/L.239; Nigeria, A/CONF.20/C.1/L.244; Japan, A/CONF.20/C.1/L.247; Canada, A/CONF.20/C.1/L.257; United States of America, A/CONF.20/C.1/L.263; Spain, A/CONF.20/C.1/L.269; Australia, A/CONF.20/C.1/L.282.

34. Mr. GLASSE (United Kingdom), introducing his delegation's amendments (L.202), said that the second was a drafting amendment. The first was intended to cover the position arising when a tax usually incorporated in the price of an article was payable separately.

35. The CHAIRMAN noted that, in consequence of the withdrawal of the first Swiss amendment, the only amendments relating to the opening passage of the article were the substantially similar French and Nigerian amendments (L.219 and L.244).

36. Mr. HAASTRUP (Nigeria) said that his delegation's amendment was of wider scope than that submitted by France, and he therefore maintained it.

37. Mr. PATEY (France) confirmed the Nigerian representative's interpretation. The French amendment would exclude not only nationals of the receiving State, but also persons who were nationals neither of the receiving State nor of the sending State.

38. Mr. MARESCA (Italy) supported the Nigerian amendment, which would exclude only nationals of the receiving State. He was not in favour of attempting to deal with the case of nationals of a third State; a State's right of taxation was primarily exercised over its own nationals.

39. The CHAIRMAN put the Nigerian amendment (L.244) to the vote, as being the one furthest removed from the original text.

The amendment was adopted by 35 votes to 16, with 19 abstentions.

40. Mr. MATINE-DAFTARY (Iran), speaking on a point of order, said that as only one article — article 37 — dealt with diplomatic agents who were nationals of the receiving State, the amendment just adopted was superfluous.

41. Mr. TUNKIN (Union of Soviet Socialist Republics) said that he had voted against the amendment, not because of any basic objection to it but because he thought that it was valueless and might even be harmful. He thought there had been a misunderstanding. Article 37 defined the privileges and immunities of diplomatic agents who were nationals of the receiving State; none of the other articles dealt with their position, and if a reference to their position was inserted in article 32, the same should be done in every other article. He suggested that the matter should be referred to the Drafting Committee.

42. Mr. HAASTRUP (Nigeria) said that he did not think his delegation's amendment could have any adverse effect. He would, however, have no objection to the matter being referred to the Drafting Committee.

It was so agreed.

43. The CHAIRMAN said that it was evident that the Committee had only wished to make it clear that tax exemption would not extend to the nationals of receiving States. He was sure the Drafting Committee would be able to remove any ambiguity or redundancy.

44. He added that the adoption of the amendment of Nigeria made a vote on the first of the French amendments (L.219) unnecessary.

Sub-paragraph (a)

45. Mr. SMITH (Canada) withdrew his delegation's amendment (L.257, para. 1).

46. Mr. KIRCHSCHLAEGER (Austria) withdrew his delegation's amendment (L.235) in favour of the United Kingdom amendment (L.202, para. 1).

47. The CHAIRMAN recalled that the amendment proposed by Switzerland (L.239, para. 2) had also been withdrawn.

48. Mr. TAKAHASHI (Japan) said that his delegation had submitted its amendment (L.247) on the grounds that the expression " indirect taxes " was not clear and might give rise to difficulties. Taxes on goods or services could be made direct or indirect by national legislation, whereas the expression " excise taxes " (*droits d'accise*) would cover all taxes on goods or services, whether charged directly or indirectly. The amendment was based on article IV, section 11 (*g*) of the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946.

49. Mr. GIMÉNEZ (Venezuela) withdrew his delegation's amendment (L.231).

50. Mr. JEZEK (Czechoslovakia) thought that the first of the United Kingdom amendments (L.202) would not be an improvement on the text. The phrase " of a kind which are normally " was just the sort of wording that was difficult to interpret, for who was to decide what was normal ?

51. Mr. SOMERVILLE (Australia) said that the Japanese amendment was very similar to the United Kingdom amendment. He saw a difficulty, however. If the Japanese amendment were adopted, sub-paragraph (*a*) would refer only to excise taxes, including sales taxes, whereas the opening passage used the word " national " and hence, as he understood it, included customs duties which were dealt with in article 34. Thus exemption from customs duties would be dealt with in two articles.

52. Mr. DONOWAKI (Japan) pointed out that his delegation had also submitted an amendment to article 34 (L.248) which would, he thought, balance its amendment to article 32.

53. The CHAIRMAN put the amendment submitted by Japan (L.247) to the vote.

The amendment was rejected by 42 votes to 7, with 23 abstentions.

54. The CHAIRMAN proposed that the first of the United Kingdom amendments (L.202) be put to the vote and that the second be referred to the Drafting Committee.

55. Mr. TUNKIN (Union of Soviet Socialist Republics) doubted whether the second United Kingdom amendment was in fact merely a drafting change. The

International Law Commission's draft provided that diplomatic agents were not exempt from indirect taxes incorporated in the price of goods or services; the amendment provided, however, that a diplomat was not exempt from the tax on retail prices. In practice, that was not universally feasible, because methods of charging taxes varied from one country to another. In his opinion the amendment could only cause confusion.

56. Mr. KEVIN (Australia) suggested that any difficulties might be removed by inserting the words " wholesale or retail " before the word " price ".

57. Mr. TUNKIN (Union of Soviet Socialist Republics) thought the word " price " used by the International Law Commission was sufficient by itself.

58. Mr. GLASER (Romania) said that an amendment introducing a distinction not already made in the article was manifestly not a mere drafting change.

59. In view of the comments that had been made, Mr. GLASSE (United Kingdom) withdrew the second of his delegation's amendments (L.202). He explained, however, that it had only been introduced for the sake of precision: his delegation had considered the diplomatic agent as the ultimate purchaser of goods over the counter.

60. The CHAIRMAN put the first of the United Kingdom amendments (L.202) to the vote.

The amendment was adopted by 27 votes to 18, with 26 abstentions.

Sub-paragraph (b)

61. Mr. SCOTT (Canada) withdrew the second and third of his delegation's amendments (L.257).

62. Mr. de VAUCELLES (France) explained that the French amendment to sub-paragraph (*b*) added a reference to article 21 (Exemption of mission premises from tax) with the object of specifying that all buildings held privately, whether by the head of mission or by his assistants — or even by the sending State, in cases where that State had acquired or rented premises for the exclusive purpose of housing the members of the mission — remained subject to the tax legislation of the receiving State.

63. The CHAIRMAN put the French amendment to sub-paragraph (*b*) (L.219) to the vote.

The amendment was rejected by 26 votes to 18, with 25 abstentions.

Sub-paragraph (c)

64. Mr. CAMERON (United States of America) withdrew his delegation's amendment to sub-paragraph (*c*) in favour of the Canadian amendment to that provision.

65. Mr. WESTRUP (Sweden) announced that he would re-submit the United States amendment in the name of the Swedish delegation.

66. Mr. de VAUCELLES (France) said that his delegation's amendment to sub-paragraph (*c*) was a consequence of its amendment to article 38 (L.225), which proposed the deletion of a sentence that was not in conformity with French law. He suggested that a decision on sub-paragraph (*c*) of article 32 should be postponed until article 38 had been dealt with.

67. Mr. WESTRUP (Sweden) said that the United States amendment which he was re-submitting was preferable to the French amendment, because it stated clearly a principle that was recognized in Sweden and should be made clear in the convention. It would also cover the Swedish amendment to article 38 (L.293).

68. Mr. RIPHAGEN (Netherlands) thought that the Canadian amendment was better than the United States amendment because it referred to estate, succession or inheritance taxes on property in the receiving State — a limitation he was sure most delegations would wish to include in sub-paragraph (*c*).

69. The CHAIRMAN suggested that further discussion of sub-paragraph (*c*) should be deferred until the Committee had discussed article 38.

It was so agreed.[1]

Sub-paragraph (d)

70. The CHAIRMAN said that, the United States amendment having been withdrawn, the only remaining amendment to sub-paragraph (*d*) was that submitted by Switzerland (L.239, para. 3).

71. Mr. SMITH (Canada) said he wished to re-submit the United States amendment to sub-paragraph (*d*). In tax negotiations, the concept of " source of income " was the subject of much controversy, and he believed that the United States amendment, which established that for diplomats the source of income was the sending State and not the State in which they worked, would be a valuable addition to article 32.

72. Mr. AMLIE (Norway) thought that the International Law Commission had erred on the generous side in requiring the diplomatic agent to pay tax only on his private immovable property in the receiving State. He should also be taxed on other property, such as investments in commercial enterprises. That would be consistent with the practice in Norway and in other countries and he therefore supported the amendment submitted by Switzerland.

73. Mr. RIPHAGEN (Netherlands) also supported the Swiss amendment, for similar reasons. Investments had nothing to do with the official work of a diplomat.

74. Mr. MATINE-DAFTARY (Iran) said he could understand the desirability of such a provision for a country like Switzerland which had an ample supply of capital, but he did not think it would help the less-developed States which needed foreign capital: a capital tax was not likely to encourage investment. He thought

[1] See 35th meeting, para. 25.

that the taxability of a diplomat's investment income should be settled by bilateral negotiation and should not be dealt with in a general convention.

75. Mr. HAASTRUP (Nigeria) said that, as was clear from the explanatory comment, his delegation's amendment (L.244) had the same purpose as the United States amendment to paragraph (*d*). It therefore seemed that no useful purpose would be served by adopting the United States amendment.

76. Mr. de ERICE y O'SHEA (Spain) said that in view of the new article proposed by Colombia (L.174) which was intended to prevent diplomats from conducting commercial activities or investing in commercial undertakings in the receiving State, it would be better not to mention such matters in article 32. Hence he would not support the Swiss amendment.

77. Mr. KEVIN (Australia) had some doubts about the advisability of singling out capital taxes for special mention.

78. Mr. CAMERON (United States) inquired whether the " capital taxes on investments " referred to in the Swiss amendment meant taxes on capital investment or capital gains taxes.

79. Mr. DADZIE (Ghana) suggested that the insertion of the word " private " before the word " income " might remove some of the difficulties that had arisen during the discussion; for article 32 was concerned with the diplomatic agent quite apart from his sending State. He agreed with the speakers who considered that article 32 was not the proper context for a reference to commercial undertakings.

80. Mr. BARTOŠ (Yugoslavia) said that the basis of privileges and immunities was the diplomatic function, and a diplomat was not entitled to privileges or immunities on capital, private property or investments in the receiving State. He was in favour of any amendment which supported that principle, and would therefore vote for the Swiss amendment.

81. The CHAIRMAN put the amendment submitted by Switzerland to sub-paragraph (*d*) to the vote.

The amendment was adopted by 25 votes to 15, with 31 abstentions.

82. The CHAIRMAN put to the vote the United States amendment to sub-paragraph (*d*), which had been resubmitted by Canada.

The amendment was rejected by 28 votes to 21, with 22 abstentions.

83. The CHAIRMAN thought the suggestion of the representative of Ghana that the word " private " be inserted before the word " income " in sub-paragraph (*d*) should be referred to the Drafting Committee.

It was so agreed.

The meeting rose at 1.10 p.m.

THIRTY-FIRST MEETING

Monday, 27 March 1961, at 3.20 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 32 (Exemption from taxation) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 32 and the amendments thereto.[1]

Sub-paragraph (e)

2. The CHAIRMAN said that no amendments had been submitted to sub-paragraph (*e*).

Article 32, sub-paragraph (e), was adopted unchanged.

3. Mr. ULLMANN (Austria) said that, according to his delegation's interpretation, the charges referred to in sub-paragraph (*e*) included charges for permission to install and operate a wireless or television receiver.

Sub-paragraph (f)

4. The CHAIRMAN drew attention to the United States amendment to sub-paragraph (*f*) (L.263).

5. Mr. CAMERON (United States of America) said that the sub-paragraph as it stood was vague. If it was meant to refer to registration and other dues on movable and immovable property it was acceptable. But if it was only intended to refer to such dues relating to immovable property, that should be specified.

6. Mr. REGALA (Philippines) thought that the actual wording of the provision suggested it was meant to refer only to registration and other dues on immovable property.

The United States amendment to sub-paragraph (f) was adopted.

New sub-paragraph proposed by France

7. The CHAIRMAN drew attention to the new sub-paragraph proposed by France (L.219).

8. Mr. de VAUCELLES (France), introducing the new provision, explained that, in addition to taxes, there were dues payable to the local authorities by reason of the occupancy of residences other than the official residence of the diplomatic agent. The object of the new provision was to specify that such dues should be payable in respect of a residence that was not the official residence of the diplomatic agent.

9. Mr. TUNKIN (Union of Soviet Socialist Republics) thought that the International Law Commission's inten-

[1] For the amendments originally submitted, see 30th meeting, footnote to para. 28. With the exception of those relating to sub-paragraphs (*c*) and (*f*) and the French delegation's third amendment (L.219) they were all either voted on or withdrawn at the 30th meeting.

tion had been to exempt from taxes residences occupied by diplomats. The French proposal seemed to question that exemption. A diplomatic agent often had a residence other than his permanent residence, a country house for instance, and, in that case, it seemed difficult to exempt only the permanent residence.

The proposed new sub-paragraph was rejected by 31 votes to 9, with 25 abstentions.

10. The CHAIRMAN said that the Committee had dealt with all the amendments to article 32, except those relating to sub-paragraph (*c*), which as had been agreed (30th meeting, para. 69) would be discussed in connexion with article 38.

11. Mr. SCHRØDER (Denmark) stated that Danish fiscal legislation contained some provisions which were incompatible with article 32 and which the Danish authorities did not intend to alter. Danish law stipulated that from the moment a diplomatic agent took up his post he was fully subject to Danish taxes in respect of the emoluments received by reason of his official functions, and there was no provision for any exemptions. The Ministry of Finance alone could grant an exception. His delegation did not wish to submit an amendment, but wished to make the statement for the record.

Proposed new article concerning the " diplomatic clause " in leases

12. The CHAIRMAN said that the delegation of Spain had submitted a proposal for a new article to be added after article 32 (L.280). He understood, however, that the delegation did not press for a vote on its proposal.

Article 33 (Exemption from personal services and contributions)

13. The CHAIRMAN invited debate on article 33 and drew attention to the amendments submitted by Belgium (L.266) and Spain (L.270).

14. Mr. HERRERO (Spain) withdrew his delegation's amendment.

15. Mr. de VAUCELLES (France) said he would vote for the Belgian delegation's redraft of article 33 if the words " members of the administrative and technical staff " were added to the list in sub-paragraph (*a*).

16. Mr. de ROMREE (Belgium) accepted the French suggestion.

17. Mr. TUNKIN (Union of Soviet Socialist Republics) noted that the text proposed by Belgium was in line with the International Law Commission's recent draft on consular intercourse and immunities (A/4425), and thought it should be approved.

18. Mr. KAHAMBA (Congo: Léopoldville) said that the point raised by the French delegation was dealt with in article 36, paragraph 1.

19. Mr. de VAUCELLES (France) agreed, but considered that, logically, either the whole list should be deleted in the redraft of article 33 or it should mention all persons exempted from personal services and contributions.

20. Mr. TUNKIN (Union of Soviet Socialist Republics) pointed out that article 36 mentioned the members of a diplomatic agent's family and the administrative and technical staff of a mission, together with the members of their families forming part of their respective households. He thought the words " members of their families, and service staff in their sole employ " could be deleted from the Belgian redraft of article 33 since article 36 had the specific purpose of settling the position of the persons in question.

21. Mr. BOUZIRI (Tunisia) said that the Belgian redraft was too broad; unless it received satisfactory explanations his delegation would vote against it.

22. Mr. YASSEEN (Iraq) observed that if the expression " the members of the mission " were retained, the French delegation's wishes would be met. Only one exception would remain: the service staff would be exempt only if they were in the sole employment of members of the mission.

23. Mr. KRISHNA RAO (India) thought that the two sub-paragraphs of the redraft could be amalgamated; the resulting provision would be clearer and more concise.

24. Mr. HUCKE (Federal Republic of Germany) agreed with the views expressed by the representatives of the USSR and India.

25. Mr. MONACO (Italy) supported the Belgian redraft as it stood, as being more specific.

26. Mr. TUNKIN (Union of Soviet Socialist Republics), explaining the structure of the draft prepared by the International Law Commission, said it first defined the privileges and immunities of the diplomatic agent, and then proceeded to deal with those extended to the family, the service staff and others. The immunities of nationals of the receiving State who were employed by a diplomatic mission were the subject of article 37. It was therefore superfluous to include a list in each article.

27. Mr. BOISSIER-PALUN (Senegal) agreed with the USSR delegation.

28. Mr. de ROMREE (Belgium) agreed that if his delegation's proposed provision were revised in the manner suggested by the USSR and India the provision would become more concise.

29. Mr. BOUZIRI (Tunisia) observed that the provisions covered persons other than diplomatic agents.

30. Mr. RIPHAGEN (Netherlands) pointed out that there were differences of substance between the Belgian redraft and article 33 as it stood. The redraft would exempt service staff in the diplomatic agent's sole employ from all personal services, and in that respect it followed the draft on consular intercourse and immunities.

31. Mr. BAIG (Pakistan) expressed support for the Belgian redraft of article 33.

32. Mr. EL-ERIAN (United Arab Republic) said that he had no objection to the Belgian proposal. The expression " public services " seemed to him wide enough to cover all possibilities. He would rely upon the Drafting Committee to draw up a final text.

33. The CHAIRMAN proposed that the Committee should adopt article 33, as redrafted by Belgium, on the understanding that the final text would be settled by the Drafting Committee.

It was so agreed.

Article 34 (Exemption from customs duties and inspection)

34. The CHAIRMAN invited debate on article 34 and the amendments thereto.[1]

35. Mr. CAMERON (United States of America), introducing his delegation's amendments (L.272), said that in the United States there were both customs duties and import taxes. His delegation's redraft of paragraph 1 covered both.

36. He added that he was prepared to withdraw paragraph 1 (*c*) and (*d*) of the amendment.

37. In reply to a question by the CHAIRMAN, Mr. CAMERON (United States of America) said he would not press for a vote on paragraph 1 (*b*) as proposed by his delegation. A good deal would depend on whether the meaning of " members of the family " was ultimately defined in article 1.

38. Mr. GLASSE (United Kingdom) said that, in the United Kingdom, exemptions were granted to diplomatic staff by virtue of regulations, not by virtue of statute law. Hence the article should include the words " in accordance with its laws and regulations ", as proposed in the USSR amendment (L.194), which his delegation would support.

39. With reference to the United Kingdom amendments to paragraph 1 (L.203), he said that he construed " customs duties " to mean duties leviable on articles of foreign origin. The reference to members of the family had been dropped in paragraph 1 (*b*) as proposed by his delegation because their position was dealt with in article 36. Exemption from customs duties for service staff was a privilege which the United Kingdom could not grant.

40. Mr. TAKAHASHI (Japan) announced the withdrawal of his delegation's amendments (L.248). Instead, it would support the opening passage as proposed by the United States (L.272) and the United Kingdom amendment to paragraph 1 (*b*) (L.203).

41. Mr. MASCARA (Italy) said that the object of his delegation's amendment (L.197) was to restrict the family circle eligible for customs exemption.

42. Mr. CARMONA (Venezuela) said that article 34 dealt with a very delicate subject. He thought that customs exemption should be confined to diplomatic staff. Nor did he think that customs exemption should be granted to members of the staff of a mission individually; the request for their exemption should be made by the head of the mission, in accordance with existing practice.

43. Mr. de VAUCELLES (France) said he was willing to confer with the Soviet Union delegation with a view to working out a joint amendment to paragraph 1. However, the French delegation insisted on the inclusion of the principle of reciprocity which was mentioned in its amendment (L.222). Article 34 as it stood was rather categorical and liable to raise difficulties. He agreed with the Venezuelan representative on the desirability of restricting privileges to the smallest possible number of beneficiaries. The danger of States becoming exasperated and refusing to grant any exemptions at all would thus be avoided.

44. Mr. BINDSCHEDLER (Switzerland) said that his delegation's amendment (L.240) reflected its view that diplomats should be exempt not only from customs duties but also from import or export restrictions of an economic or financial nature. The quotas fixed by most States should not apply to diplomats, but — and that was the object of his delegation's second amendment — the exemption should not apply to articles expressly prohibited by the laws of the receiving State for reasons of morality, security, health or public order.

45. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the Swiss amendment was not very satisfactory. It laid down excessively strict rules, and he recalled that the International Law Commission had wished to submit a simpler wording. His delegation did not consider it advisable to increase the number of exceptions to the principle of customs exemption, and accordingly would not vote for the Swiss amendment.

46. Mr. KEVIN (Australia) said that, in submitting its amendment (L.277), his delegation had understood that only diplomatic agents, but not administrative and technical staff, would be exempt from customs and excise duties.

47. Mr. CAMERON (United States of America) said that the idea underlying the first Soviet Union amendment (L.194) was expressed in the United States amendment (L.272). The United States delegation was not opposed to the French amendment (L.222), but considered that exemption should not extend to export taxes. His delegation was prepared to support the Swiss amendment (L.240), but like the Soviet Union delegation considered that exemption should also extend to import taxes.

48. Mr. EL-ERIAN (United Arab Republic) was in favour of article 34 as it stood, which treated exemption

[1] The following amendments had been submitted: Guatemala, A/CONF.20/C.1/L.184; USSR, A/CONF.20/C.1/L.194; Italy, A/CONF.20/C.1/L.197; United Kingdom, A/CONF.20/C.1/L.203; Denmark, A/CONF.20/C.1/L.212/Rev.1; France, A/CONF.20/C.1/L.222; Australia, A/CONF.20/C.1/L.227 and L.277; Venezuela, A/CONF.20/C.1/L.232; Austria, A/CONF.20/C.1/L.236; Switzerland, A/CONF.20/C.1/L.240; Japan, A/CONF.20/C.1/L.248; Federation of Malaya, A/CONF.20/C.1/L.252; India, A/CONF.20/C.1/L.255; United States of America, A/CONF.20/C.1/L.272.

from customs duties as a rule of international law, in accordance with the practice followed by many countries. In his delegation's opinion the article should simply lay down the principle without going into details. The application of the principle of reciprocity, as proposed by France (L.222), would create serious difficulties, and accordingly his delegation was reluctant to accept it, at all events in the context of article 34.

49. Mr. DADZIE (Ghana) considered that the expression " in accordance with its laws and regulations " met all possible requirements.

50. Mr. de VAUCELLES (France), replying to the representative of the United Arab Republic, said that practice in the matter of exemption from customs duties differed from country to country; most commonly, the principle of reciprocity was applied. The French amendment (L.222) endorsed that principle, which left States full latitude.

51. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the International Law Commission did not share the French representative's view; he referred to paragraph 1 of its commentary on article 34 (A/3859). The question of reciprocity had been raised more than once during the Commission's discussions, but the Commission had considered that, notwithstanding that principle, it was necessary to formulate a rule of international law that might serve as a guide for States.

52. Mr. SCHRØDER (Denmark) considered that the interpretation given by the International Law Commission in its commentaries should be reflected in article 34. The article would then be in agreement with article 46 of the draft on consular intercourse and immunities, on which the Danish amendment (L.212/Rev.1) was modelled.

53. Mr. BARTOŠ (Yugoslavia) drew attention to article 44, which recognized a State's right to apply the provisions of the convention restrictively in certain circumstances and which provided that if the receiving State granted, on the basis of reciprocity, greater privileges and immunities than required by the convention, such action should not be regarded as discriminatory.

54. Mr. MARESCA (Italy) considered that the opening passage of article 34 should speak of " laws and regulations ". He would be prepared to support the Swiss amendment (L.240), provided that the word " restrictions " were deleted, since that word might be open to misinterpretation. He was opposed to the extension of exemption from customs duties to staff other than diplomatic staff.

55. Mr. BOUZIRI (Tunisia) said that the attempt to include everything and provide for everything in the draft convention made only for confusion. What mattered was the principle that diplomatic agents only should be exempt from customs duties. The reciprocity rule, however, conflicted with that strict concept. The object of the Swiss amendment (L.240) was not very clear, and the Tunisian delegation could not support it. It would also oppose all amendments which would extend exemption from customs duties to staff other than diplomatic staff.

56. The CHAIRMAN put to the vote first the amendments affecting the opening passage of article 34.

The first French amendment (L.222) was rejected by 38 votes to 11, with 21 abstentions.

The first Swiss amendment (L.240) was rejected by 40 votes to 5, with 23 abstentions.

The first Danish amendment (L.212/Rev.1) was rejected by 29 votes to 7, with 34 abstentions.

The United States amendment (L.272) to the opening passage of article 34 was adopted by 40 votes to 4, with 23 abstentions.

57. The CHAIRMAN said that in consequence of the adoption of the United States amendment it was unnecessary to put to the vote the Australian amendment (L.277) and the Soviet Union amendment (L.194).

Paragraphs 1 (a) and (b)

58. Mr. KEVIN (Australia) said he would not press for a vote on his delegation's amendment to paragraph 1 (*a*) (L.227).

59. Mr. SCHRØDER (Denmark) withdrew his delegation's amendment to paragraph 1 (*b*) (L.212/Rev.1) which only referred to a matter of drafting.

60. Mr. TUNKIN (Union of Soviet Socialist Republics) said that paragraph 1 (*a*) as it stood was perfectly clear and precise. The amendments would not improve it and his delegation would vote against them.

61. Mr. DADZIE (Ghana) requested that, when the United States amendment to paragraph 1 (*a*) was put to the vote, a separate vote should be taken on the words " including materials and equipment intended for use in the construction, alteration, or repair of the premises of the mission ".

62. Mr. BOISSIER-PALUN (Senegal) said he would not be able to vote for the United States amendment to paragraph 1 (*a*) for it would deprive small countries of a legitimate source of income from customs duties on materials and equipment imported by missions.

63. Mr. CAMERON (United States of America) said that his delegation had proposed the clause because it conformed to his country's practice, but if it aroused objections, he would not insist on a vote.

64. Mr. BOISSIER-PALUN (Senegal) thanked the United States representative. He could rest assured that, in practice, small countries would not fail to show liberality in exemptions for materials and equipment of missions.

The Venezuelan amendment (L.232) was rejected by 27 votes to 16, with 26 abstentions.

The United Kingdom amendment (L.203) to paragraph 1 was rejected by 38 votes to 4, with 26 abstentions.

The French amendment (L.222) to paragraph 1 (a) was adopted by 32 votes to 17, with 19 abstentions.

The Italian amendment (L.197) to paragraph 1 (b) was rejected by 36 votes to 13, with 19 abstentions.

Paragraph 2

65. Mr. CAMERON (United States of America) withdrew his delegation's amendment (L.272) adding a new paragraph.

66. Mr. TUNKIN (Union of Soviet Socialist Republics), introducing his delegation's amendment (L.194) to article 34, paragraph 2, said it was necessary to specify that it was personal baggage accompanying the diplomatic agent that was exempt from inspection. He did not attach great importance to the proviso that the baggage must accompany the diplomatic agent in the same unit of transport, and would be prepared to delete from its amendment the words in brackets.

67. Mr. MENDIS (Ceylon) was pleased that the Soviet Union representative had raised the question of the diplomatic agent's personal baggage, for article 34 on that point was incomplete.

68. Mr. LINARES (Guatemala) considered that, in the case mentioned in article 34, paragraph 2, it would be better to allow for the withdrawal of the diplomatic agent's personal baggage, as in the case of the diplomatic bag, rather than to provide for its possible inspection. In any case, if there were an inspection, it should be conducted only in the presence of an official of the Ministry for Foreign Affairs of the receiving State, as provided in the Guatemalan amendment (L.184).

69. Mr. GHAZALI (Federation of Malaya) considered that article 34, paragraph 2, contravened the principle laid down in article 28, paragraph 2. His delegation would be willing to withdraw its amendment (L.252) to article 34, paragraph 2, on condition that that paragraph was deleted.

70. Mr. BAIG (Pakistan), supported by Mr. DADZIE (Ghana), asked for further explanations regarding the USSR amendment concerning the personal baggage accompanying a diplomatic agent. In practice the diplomatic agent was not, strictly speaking, accompanied by his personal baggage, but followed by it. Did the Soviet representative accept that interpretation ?

71. Mr. KRISHNA RAO (India) agreed with the Malayan representative and referred to the Indian amendment (L.255).

72. Mr. TUNKIN (Union of Soviet Socialist Republics), in reply to the representatives of Pakistan and Ghana, said that his delegation's amendment covered not only personal baggage actually accompanying the diplomatic agent, but also that following him. The main point was that it should really be personal baggage, and not a consignment of goods sent on afterwards.

73. Mr. de ERICE y O'SHEA (Spain) said he would support the amendment of the Federation of Malaya as well as the Indian amendment. He would also support the Guatemalan amendment (L.184).

74. Mr. REGALA (Philippines) supported the Indian and Malayan amendments. In his opinion, the question of the diplomatic agent's personal baggage was covered by article 28, paragraph 2, which prescribed the inviolability of all the diplomatic agent's property.

75. Mr. GHAZALI (Federation of Malaya) considered that the Soviet amendment was very useful. The main point was that the baggage should be the diplomatic agent's personal baggage, whether it accompanied or followed him.

76. Mr. EL-ERIAN (United Arab Republic) did not agree that article 34, paragraph 2, was in contradiction with article 28, paragraph 2. Article 34 referred to the inspection of the diplomatic agent's personal baggage in the exceptional circumstances and with the guarantees specified in that paragraph, and article 28 to the inviolability of his residence, papers and correspondence.

77. Mr. BOUZIRI (Tunisia) approved the principle on which the Soviet amendment was based. His delegation would vote against the Malayan amendment (L.252) which was too sweeping. On the other hand it supported the Guatemalan amendment (L.184) which provided a necessary safeguard in the event of inspection, and the Indian amendment (L.255), at any rate the proposed sub-paragraphs (*a*) and (*b*); he did not think it desirable to provide, as in the proposed sub-paragraph (*c*), for the eventuality of goods imported duty free being resold. Lastly, he would suppor tthe Austrian amendment (L.236).

78. Mr. TUNKIN (Union of Soviet Socialist Republics), commenting on the Guatemalan amendment, said that it might be difficult for countries covering a vast area, and with numerous points of access to neighbouring States, to provide for the presence of an official of the Ministry for Foreign Affairs whenever a diplomatic agent's baggage had to be inspected. The Australian amendment (L.227) covering animals in quarantine was useful. The Indian amendment (L.255) did not add anything to article 34, for the provisions of that article did not prevent a State from applying the restrictions mentioned in the Indian amendment.

79. Mr. GLASER (Romania) said he could not see any contradiction between article 34, paragraph 2, and article 28, for the two articles dealt with entirely different matters. Article 34, paragraph 2, should be retained, but the wording could be improved. The Soviet representative was right in saying that the diplomatic agent's personal baggage included both that accompanying him and that following him. The wording of the Soviet amendment could no doubt be improved, but the idea was correct.

80. Mr. GHAZALI (Federation of Malaya) withdrew his delegation's amendment.

81. Mr. de ERICE y O'SHEA (Spain) re-submitted on his delegation's behalf the amendment withdrawn by the Federation of Malaya (L.252).

82. Mr. SCHRØDER (Denmark) withdrew his delegation's amendment (L.212/Rev.1) to paragraph 2.

83. Mr. KRISHNA RAO (India) supported the amendment originally submitted by the Federation of Malaya and resubmitted by the Spanish representative (L.252). His own delegation's amendment (L.255) could constitute a third paragraph in article 34.

The amendment re-submitted by Spain (L.252) was rejected by 42 votes to 14, with 9 abstentions.

The Soviet amendment (L.194) to paragraph 2 was rejected by 31 votes to 26, with 12 abstentions.

The amendment submitted by Guatemala (L.184) was rejected by 31 votes to 17, with 24 abstentions.

The Australian amendment (L.227) to paragraph 2 was adopted by 44 votes to 3, with 21 abstentions.

The first of the amendments submitted by Austria (L.236) was rejected by 25 votes to 12, with 31 abstentions.

The second Austrian amendment was adopted by 26 votes to 23, with 17 abstentions.

84. Mr. BAIG (Pakistan) requested that the amendment submitted by India (L.255) should be put to the vote sub-paragraph by sub-paragraph.

Sub-paragraph (a) of the Indian amendment was rejected by 32 votes to 20, with 17 abstentions.

Sub-paragraph (b) was rejected by 33 votes to 17, with 18 abstentions.

Sub-paragraph (c) was rejected by 28 votes to 22, with 19 abstentions.

Article 34 as a whole, as amended, was adopted by 66 votes to none, with 5 abstentions.

85. Mr. TUNKIN (Union of Soviet Socialist Republics) said he had voted against the Indian amendments because, in his view, article 34 even without those amendments in no way prevented the receiving State from limiting the principle of customs exemption, and the adoption of more elaborate provisions would in fact restrict the rights of the receiving State.

86. Mr. KRISHNA RAO (India) said that the essential object of his delegation's amendment had been to safeguard the rights of the receiving State, and he thanked the Soviet representative for his interpretation of article 34.

87. Mr. AMLIE (Norway) said he had voted against the second of the Australian amendments (L.227) because, in his view, article 34, paragraph 2, automatically covered the receiving State's quarantine regulations.

Article 35 (Acquisition of nationality)

88. The CHAIRMAN invited debate on article 35 and on the amendments thereto.[1]

89. Mr. MELO LECAROS (Chile) considered that nationality questions were governed by municipal law and that article 35 was therefore out of place in the convention. Moreover, some countries would, by virtue of their constitutions, be unable to adopt the article. For those reasons his delegation was prepared to vote for the United Kingdom amendment (L.204).

90. Mr. HART (United Kingdom) said his delegation had no objection to the principle laid down in article 35, since members of the mission should not be subject to the legislation of the receiving State. That principle was very widely recognized, and had never raised any practical difficulties. Nevertheless, article 35 would inevitably raise insurmountable difficulties in so far as it was not in conformity with the municipal law of particular countries. Moreover, as the Chilean representative had said, provisions on the acquisition of nationality seemed out of place in a convention on diplomatic privileges and immunities. For those reasons the United Kingdom delegation proposed the deletion of article 35.

91. Mr. KRISHNA RAO (India) agreed, and pointed out that there were already a number of international conventions dealing with nationality questions. Hence, he supported the United Kingdom amendment and considered that the Committee should first take a decision on the proposal for the deletion of article 35.

92. Mr. TUNKIN (Union of Soviet Socialist Republics) did not consider the arguments of the United Kingdom representative very convincing. Article 35 was not concerned with nationality questions in general, but rather with the privileges and immunities granted to diplomats in the matter of nationality. For a diplomat it was, moreover, extremely important to be sure that his children would not be regarded as nationals of the receiving State, since otherwise the proper functioning of the mission might be prejudiced.

93. Mr. REGALA (Philippines) shared the United Kingdom representative's opinion. Nationality questions were extremely complex and did not fall within the terms of reference of the Conference.

94. Mr. de ERICE y O'SHEA (Spain) agreed with the Soviet Union representative that the principle of diplomatic privileges and immunities should be safeguarded; besides, a question so complex as that of the acquisition of nationality could hardly be dealt with in a single article. The Drafting Committee might perhaps be requested to study the possibility of drafting a generally acceptable provision.

95. Mr. EL-ERIAN (United Arab Republic) considered that article 35 was very useful and important, and should therefore be retained. The International Law Commission had carefully avoided choosing between the principles which governed the acquisition of nationality. Article 35 meant in effect that the members of the mission should not have the nationality of the receiving State forced upon them, but in no way prevented them from choosing that nationality should they so desire.

96. Mr. YASSEEN (Iraq) supported article 35 as it stood. The article should be retained since it was in fact con-

[1] The following amendments had been submitted: Guatemala, A/CONF.20/C.1/L.185; Italy, A/CONF.20/C.1/L.198; United Kingdom, A/CONF.20/C.1/L.204; France, A/CONF.20/C.1/L.223; Switzerland, A/CONF.20/C.1/L.241; Australia, A/CONF.20/C.1/L.245.

cerned with the privileges and immunities granted to diplomats, and since it provided for their complete independence of the nationality laws of the receiving State.

97. Mr. PATEY (France), introducing his delegation's amendment (L.223), said that article 35 as it stood was incompatible with the fundamental principles of the French nationality code. Another possibility might be to omit article 35 altogether. As suggested by the Indian representative, the Committee should first take a decision on the United Kingdom amendment. The French delegation was prepared to vote for that amendment.

98. Mr. BARTOŠ (Yugoslavia) emphasized that article 35 was directly concerned with the question of diplomatic privileges and immunities, as the International Law Commission had unanimously recognized. The comments of governments on the draft had moreover shown that the majority of States wished article 35 to be included in the convention. And furthermore, since some States considered that in nationality matters their municipal law prevailed over the rules of international law, the convention should specifically provide that the nationality of the receiving State could not be forced upon the members of a mission.

99. Mr. BOLLINI SHAW (Argentina) said he would have no difficulty in voting for article 35, since Argentine law provided that the *jus soli* principle was not applicable to the children of foreign diplomats. Since, however, the constitution of some States prevented their approving that article, it seemed to him preferable not to include it in the convention and to support the United Kingdom amendment.

100. Mr. NAM-KEE LEE (Korea) said that the rule stated in article 35 was in consonance with the provisions of chapter IV, article 12, of the Hague Convention on certain questions relating to the conflict of nationality laws, 1930,[1] and that those provisions were recognized as rules of international law. Since, moreover, Korea applied the *jus sanguinis* principle, he would have no difficulty in voting for article 35. He considered the Swiss amendment (L.241) to be satisfactory.

101. Mr. BOUZIRI (Tunisia) considered that it was not the Committee's business to legislate on the question of the acquisition of nationality. Hence, his delegation was not able to support article 35 and would vote for the United Kingdom amendment.

102. Mr. CAMERON (United States of America) said that he too would vote for the United Kingdom amendment.

103. Mr. GLASER (Romania) said he would vote against the United Kingdom amendment. Children born in countries that applied the *jus soli* principle automatically acquired the nationality of those countries unless — and it was precisely the object of article 35 to make that exception — they were the children of diplomats. Hence, it could hardly be said, as some speakers had done, that article 35 was not concerned with diplomatic privileges and immunities and should not therefore be included in the convention. Moreover, although admittedly nationality questions were too complex to be disposed of in a single article of the convention, the principle laid down in article 35 was very clear. The article stipulated simply that the members of the mission did not automatically acquire the nationality of the receiving State.

104. Mr. GLASSE (United Kingdom) suggested, in order to reconcile the two points of view, that the Committee should omit article 35 from the convention and recommend the adoption of a resolution on the acquisition of nationality.

105. Mr. AGUDELO (Colombia) said that, since article 35 as it stood was incompatible with Colombian law, he would be ready to vote for the United Kingdom amendment (L.204). In view of the importance of the matter, however, he would also be prepared to vote for the French amendment (L.223).

106. Mr. CARMONA (Venezuela) said he had carefully studied the laws of the various countries on nationality and found that the rule stated in article 35 was contained in the great majority of them. But the laws of four or five States contained no provisions on the subject, and insurmountable difficulties would arise if the Conference adopted article 35 in its existing form. The Venezuelan delegation would therefore vote for the United Kingdom amendment, but it would also be prepared to vote for the French amendment.

107. Mr. LINARES (Guatemala) said that article 35 was incompatible with a clause of the Guatemalan Constitution, and for that reason his delegation had submitted its amendment (L.185).

108. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the overriding principle was that diplomats should not be subject to the laws of the receiving State. The fact that nationality laws varied from country to country was not an argument for the omission of article 35, since on that argument it would become impossible to draw up any rules of international law.

109. Mr. de ERICE y O'SHEA (Spain) suggested that, in order to overcome the difficulty, a small working group should be set up to revise article 35. The Committee might then decide whether the working group's redraft should replace article 35 or should form the subject of a separate resolution.

110. The CHAIRMAN proposed that a working group consisting of the representatives of France, Guatemala, the Philippines, the Soviet Union, Spain, the United Arab Republic and the United Kingdom should be appointed with the terms of reference suggested by the representative of Spain.

It was so agreed.[2]

The meeting rose at 7.20 p.m.

[1] League of Nations *Treaty Series*, vol. CLXXIX, p. 89; text reprinted in United Nations *Legislative Series*, ST/LEG/SER.B/4, annex I, p. 567.

[2] For the continuation of the debate on article 35, see 34th meeting.

THIRTY-SECOND MEETING

Tuesday, 28 March 1961, at 10.30 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 31 (Exemption from social security legislation) *(resumed from the thirtieth meeting)*

1. The CHAIRMAN, inviting the Committee to resume its debate on article 31, drew attention to the redraft (L.310) prepared by the working party appointed (30th meeting, para. 27) to revise the article on the basis of the Austrian amendment (L.265) and in the light of comments made in debate.

2. Mr. KIRCHSCHLAEGER (Austria), speaking as Chairman of the working party, explained the points of difference between the working party's redraft and the Austrian amendment.

3. The working party had restored the term " social security " used by the International Law Commission, but had replaced the word " legislation " by the word " provisions ", which seemed more appropriate.

4. The words " the members of the mission and the members of their families who form part of their households " were not in conformity with articles 27, 28, 29, 30, 32, 33 and 34, where the words " diplomatic agent " were used. The working party had therefore preferred the latter expression, and had assumed that it would not conflict with article 36, paragraph 1, which dealt with the application of the privileges and immunities specified in articles 27 to 34. However, article 36, paragraph 2, did not provide that service staff should be exempt from social security provisions, and the working party therefore suggested that some such words as " and the exemption from social security provisions provided by article 31 " should be added to the end of the paragraph. If, when considering article 36, the Committee decided that it would be desirable to specify in each of the articles 27 to 34 the persons entitled to privileges and immunities, then the words " members of the mission and the members of their families who form part of their households " could be restored in article 31.

5. In accordance with the United States amendment (L.262), paragraph 1 of the working party's redraft provided for exemption from social security legislation with respect to services rendered for the sending State.

6. By referring to social security provisions which " may be " in force, the redraft recognized the fact that not every country had a social security system.

7. The term " private servants " was used in paragraph 2, in conformity with article 1 (Definitions).

8. Paragraph 3 of the redraft used the words " shall observe the obligations " in preference to the words " shall be subject to the obligations " thus ensuring that in accordance with article 29, paragraph 3 (Immunity from jurisdiction), no measures of execution could be taken in respect of a diplomatic agent as employer, but that he would have to pay social insurance contributions and fulfil the other obligations of an employer.

9. In paragraph 5, the working party had thought it desirable to provide for bilateral or multilateral agreements between States; but the reference to the conclusion of future conventions could be put in a separate paragraph if that were preferred.

10. In conclusion he thanked the International Labour Office for its most helpful co-operation.

11. The CHAIRMAN asked whether the Committee would approve the redraft of article 31. The only possible difficulty was the term: " diplomatic agent "; he believed it would be better to adopt that term and make the necessary change in article 36 at the appropriate time.

12. Mr. BARTOŠ (Yugoslavia) said that if the amendment were put to a vote he would abstain for reasons which he had explained during the discussion of article 31.

13. Mr. de VAUCELLES (France) associated himself with the previous speaker. He would not vote against the amendment, because it did contain some improvement; but he would abstain because he feared that difficulties would arise in the application of the article.

14. Mr. BOUZIRI (Tunisia) said that he would also abstain.

The redraft of article 31 (L.310) was adopted by 53 votes to none, with 14 abstentions.

Article 36 (Persons entitled to diplomatic privileges and immunities)

15. The CHAIRMAN invited debate on article 36 and the amendments thereto.[1]

16. Mr. SCHRØDER (Denmark) withdrew his delegation's amendment (L.213) in favour of the Australian amendment (L.278/Add.1).

17. Mr. GLASSE (United Kingdom) said that as the first of his delegation's amendments (L.205) involved only a drafting change, he would not press it to a vote, but would be willing for it to be referred to the Drafting Committee.

18. Mr. de ROMREE (Belgium) said that his delegation's amendment (L.216) could be dealt with in the same way.

[1] The following amendments had been submitted: Netherlands, A/CONF.20/C.1/L.189; Italy, A/CONF.20/C.1/L.199; United Kingdom, A/CONF.20/C.1/L.205; Libya, Morocco and Tunisia, A/CONF.20/C.1/L.211/Rev.1; Denmark, A/CONF.20/C.1/L.213; Belgium, A/CONF.20/C.1/L.216; Burma, Ceylon and Federation of Malaya, A/CONF.20/C.1/L.228/Rev.1; Venezuela, A/CONF.20/C.1/L.233; Austria, A/CONF.20/C.1/L.237; Switzerland, A/CONF.20/C.1/L.242; Japan, A/CONF.20/C.1/L.249; India, A/CONF.20/C.1/L.256; Canada, A/CONF.20/C.1/L.258; United States of America, A/CONF.20/C.1/L.273 and Rev.1; Australia, A/CONF.20/C.1/L.278 and Add.1; Viet-Nam, A/CONF.20/C.1/L.285/Rev.1; Brazil, A/CONF.20/C.1/L.295; Sweden, A/CONF.20/C.1/L.308.

19. Mr. WESTRUP (Sweden) said that the effect of the first amendment and of the new paragraph proposed by his delegation (L.308) would be, if read together, to limit the exemption of administrative and technical staff from customs duties to articles imported in connexion with their installation in the receiving State. There seemed, however, to be a trend of opinion in the Committee in favour of excluding administrative and technical staff from the benefit of customs exemption entirely. If that opinion prevailed, he would withdraw hsi amendment.

20. Mr. BOUZIRI (Tunisia), introducing the amendment submitted by Libya, Morocco and Tunisia (L.211/Rev.1), said that he and his co-sponsors considered article 36 quite unacceptable. They were astonished that the International Law Commission, previously so cautious and so careful to respect international law, should have shown such unexpected boldness in article 36. For that article went far beyond the limits of the rules of international law regarding diplomatic privileges and immunities and it was clear from its commentary (A/3859) that the Commission had known it was making an innovation. The Commission had clearly recognized that it was the general practice and a rule of international law to grant to members of the diplomatic staff of a mission the same privileges as were enjoyed by heads of mission; it had also recognized that there was no uniformity in the practice of States in deciding which members of the staff of a mission should enjoy privileges and immunities. It was therefore difficult to see why the Commission had tried to establish a universal rule in article 36. There were dangers in such a rule and the extension of privileges and immunities to other than diplomatic staff could place a crushing burden on receiving States. The United States amendment (L.273/Rev.1) went even further than article 36, but he would refrain from extensive comment on it and would only say that he found it entirely unrealistic.

21. The amendment of which he was a joint sponsor was a reasonable one. It took account of realities and admitted the granting of certain immunities to administrative and technical staff, chiefly by virtue of their official work; it also provided for the granting of further immunities by agreement between the receiving State and the sending State.

22. Mr. MONACO (Italy) said that article 36 was one of the most difficult and controversial in the draft. It had been studied and discussed at length by the International Law Commission and was the result of a decision by the majority, though it was clear from the commentary that there had been great diversity of opinion among members.

23. The Italian delegation, considering that the Conference was concerned with the codification and not with the progressive development of international law, had therefore submitted an amendment (L.199) excluding administrative and technical staff and their families from the provisions of paragraph 1. The International Law Commission had recognized the difficulty of distinguishing between different kinds of staff and in order to overcome it had drawn up the rather general rule to which so many delegations were opposed; but that was not the way to codify existing practice in international law.

24. Mr. NGUYEN-QUOC DINH (Viet-Nam), introducing his delegation's amendment (L.285/Rev.1) to paragraph 1, said that with the increase in the number of foreign diplomatic missions and in the size of their staffs, the question of the position of administrative and technical staff had become extremely important, for it was most disturbing for a receiving State to have in its territory many thousands of persons who were not amenable to its authority.

25. Only diplomatic agents were representatives and they alone enjoyed the full measure of immunities. The administrative and technical staff of diplomatic missions should enjoy immunity only in respect of acts performed in the course of their duties, as was proposed in his delegation's amendment to paragraph 2. It was, of course, difficult to distinguish between those acts and acts performed outside official duties, but he recalled that the distinction in question was made in the Conventions on the Privileges and Immunities of the United Nations and of the specialized agencies.

26. Mr. CARMONA (Venezuela) said that no fewer than ten States, in their comments (A/3859, annex) on the International Law Commission's 1957 draft, had voiced objections to the extension of privileges and immunities to administrative and technical staff. Notwithstanding those objections, the Commission in 1958 had decided in favour of that extension, as a matter of progressive development of international law, while recognizing in its commentary on article 36 that state practice was not uniform in the matter.

27. Many amendments had been submitted, either deleting the reference to administrative and technical staff entirely or excluding such staff from the benefit of the customs exemption provided for in article 34, or limiting that exemption to articles imported at the time of first installation. The number of those amendments clearly showed that the Commission had gone too far in trying " to establish a general and uniform rule based on what would appear to be necessary and reasonable " (paragraph 4 of the commentary on article 36).

28. Preferably the whole subject matter of article 36 should be left to be settled by special agreements between States, as was proposed in his delegation's amendment (L.233). Such agreements could, of course, be either bilateral, regional or multilateral.

29. If his delegation's amendment should not be adopted, he would support the deletion of the reference to administrative and technical staff.

30. U BA THAUNG (Burma) introduced the revised amendments (L.228/Rev.1) sponsored by his delegation jointly with those of Ceylon and the Federation of Malaya. The effect of the first two of those amendments would be to restrict the privileges of administrative and technical staff in two ways. First, customs exemption would not apply to such staff; it was only granted in some countries by courtesy. Secondly, the immunities

specified in articles 27 to 33 would only apply to persons who were neither nationals of, nor resident in, the receiving State. Because of the large number of aliens living in Burma, his government was particularly anxious not to create a privileged class of foreign residents.

31. Mr. RIPHAGEN (Netherlands), introducing his delegation's amendment (L.189), pointed out that article 29 excluded from immunity from jurisdiction persons who exercised private professional or commercial activities in the receiving State. It was therefore appropriate to exclude such persons from the benefit of the immunities specified in articles 31 to 34, except, of course, in so far as the receiving State allowed them to enjoy such immunities.

32. Mr. KIRCHSCHLAEGER (Austria), introducing his delegation's amendment (L.237), said that its effect would be to exclude the administrative and technical staff of diplomatic missions from customs exemption under article 34. His delegation placed a high value on the services of such staff, but saw no real need to grant them customs exemption. That exemption was granted in the interest of the sending State, which did not require such a privilege for administrative and technical staff.

33. There was no objection to granting administrative and technical staff the privileges specified in articles 27 to 33; but to grant them customs exemption as well would be a complete departure from the existing practice, at least in Austria.

34. Mr. PINTO de LEMOS (Portugal) said that, in general, his delegation supported the International Law Commission's draft articles; but it could not accept article 36, paragraph 1, as it stood.

35. The Commission had recognized in paragraph 2 of its commentary that " while it was the general practice to accord to members of the diplomatic staff of a mission the same privileges and immunities as were enjoyed by heads of mission ", there was " no uniformity in the practice of States " regarding other categories of staff.

36. Since there was thus no uniform state practice to support the extension of diplomatic privileges and immunities to administrative and technical staff, it was appropriate to consider whether the Commission's decision on that matter was consistent with its approach to the problem of the theoretical basis of diplomatic privileges. In its introductory general comments to section II of the draft, the Commission had stated that it had been guided by the " functional necessity " theory in solving problems on which practice gave no clear pointers, while also bearing in mind the representative character of the head of the mission and of the mission itself. On the basis of the " functional necessity " theory there was no reason to grant diplomatic privileges and immunities to administrative and technical staff otherwise than in connexion with acts performed in the course of their official duties. Moreover, such staff had no representative character, and consequently were not eligible for privileges on that basis either.

37. In paragraph 8 of its commentary on article 36 the Commission had sought to justify the extension of privileges and immunities to administrative and technical staff by referring to borderline cases of persons who performed confidential tasks, such as an ambassador's secretary or an archivist, who might be " as much the repository of secret or confidential knowledge as members of the diplomatic staff ". The Commission had concluded that " Such persons equally need protection of the same order against possible pressure by the receiving State." He could not accept that conclusion, which was based on special cases; a rule could not be based on exceptions.

38. Mr. SMITH (Canada), introducing his delegation's amendments (L.258/Rev.1), said that the first and fourth would have the effect of limiting the privileges enjoyed by administrative and technical staff. In the first place, they would not enjoy any privileges if they were nationals of the receiving State or nationals of a third State ordinarily resident in the receiving State immediately prior to their appointment or employment; on that latter point, his delegation shared the views expressed by Burma. In the second place, the benefit of customs privileges would be limited in all cases to articles imported at the time of first arrival.

39. His delegation's amendments gave members of the administrative and technical staff all the privileges needed to enable them to carry out their official duties unhindered, and to secure reasonable living facilities. In substance his delegation's amendments were similar to those proposed by Burma, Ceylon and the Federation of Malaya (L.228/Rev.1), but he thought the Canadian text was preferable and hoped that it would find general acceptance.

40. Mr. MATINE-DAFTARY (Iran) said that undue importance should not be attached to the designation given to officials. The distinction between diplomatic officers and administrative officers was not a matter of international law; it was a matter for the administrative law of the sending State. It was the sending State, and the sending State alone which was empowered to say which of its officials was a diplomatic agent; the receiving State had neither the authority nor the means to exercise control over such a designation.

41. Administrative officers were not infrequently more important than certain members of the diplomatic staff. It was unthinkable that the head of the chancery of a diplomatic mission or a cypher officer should be placed in the same position as a domestic servant in the matter of diplomatic privileges. When the International Law Commission had decided to extend diplomatic privileges and immunities to members of the administrative and technical staff, it had not taken that decision lightly.

42. He urged the Committee to take a realistic view and to accept the article as it stood, which constituted a contribution to the progressive development of international law.

43. Mr. JEZEK (Czechoslovakia) said that his delegation agreed with the International Law Commission's view that members of the administrative and technical staff should, in general, enjoy the same privileges as diplomatic agents. His government had been convinced

of the justice of that view by the reasons given by the International Law Commission in its commentary. The developments which had taken place in recent years should be borne in mind; certain members of the administrative staff of a diplomatic mission performed functions which in the past had been performed exclusively by diplomatic agents. It followed that such persons should enjoy the same privileges and immunities as diplomatic agents.

44. It was the general practice to grant diplomatic privileges and immunities to administrative and technical staff, and the only disagreement arose in connexion with customs privileges. In his opinion the exemption from customs duties provided in article 34, paragraph 1, should extend to administrative and technical staff; but the exemption from customs inspection provided in article 34, paragraph 2, was usually only granted to them as a matter of courtesy, and hence there was no reason to specify it in the convention.

45. In conclusion, he expressed his support for article 36 as it stood, which constituted a valuable step forward in the progressive development of diplomatic law.

46. Mr. TAKAHASHI (Japan), introducing his delegation's amendments (L.249) said that they were not intended to affect the extent of the privileges enjoyed by members of the family of the diplomatic staff of the mission. Their purpose was to restrict the enjoyment of privileges by members of the administrative and technical staff to persons who were nationals of the sending State and were not nationals of the receiving State. That formulation would not exclude those who had dual nationality of both the sending and a third State. He was prepared to accept a change of wording along the lines proposed by Australia (L.278) which would also exclude persons who resided permanently in the receiving State.

47. Since his delegation's amendments would subsist whatever changes were made with respect to privileges and immunities provided for in the final paragraph of the article, he requested that they should be put to the vote after the other substantive amendments to paragraph 1.

48. Mr. NAFEH ZADE (United Arab Republic) said that he could not accept the principle that all the privileges specified in articles 27 to 34 should be extended to administrative and technical staff and members of their families forming part of their households, subject only to the condition that those persons were not nationals of the receiving State.

49. Diplomatic privileges and immunities should be extended only to members of the diplomatic staff. Administrative and technical staff should enjoy immunity only in respect of acts performed in the course of their official duties, and exemption from taxation only in respect of their remuneration.

50. The distinction between diplomatic staff and other staff of the mission was a fundamental one in the draft articles. For instance, under article 8, as adopted by the Committee only members of the diplomatic staff could be declared persona non grata. Other members of the staff could only be declared unacceptable. It had also been agreed, in connexion with article 17, that only a diplomatic agent could be a chargé d'affaires ad interim. Because of their greater responsibilities, diplomatic agents needed a greater measure of privileges and immunities than members of the administrative staff.

51. Lastly, there was a practical reason why full diplomatic privileges and immunities should not be accorded to administrative and technical staff. Since the Second World War, the size of such staff had greatly increased, which caused difficulties for receiving States.

52. For those reasons, his delegation could not accept the extension of diplomatic privileges and immunities to administrative and technical staff, except in so far as was necessary for the performance of their functions and to provide exemption from taxation on their salaries.

53. Mr. RUEGGER (Switzerland) said that the amendment introduced at the wish of his government (L.242) resembled, in its intention, some amendments submitted by other delegations, particularly that of Italy (L.199). Although his delegation wished to maintain, as far as possible, the text of the draft articles adopted by the International Law Commission, which had given them long and careful consideration, it found that the serious disagreement on article 36 within the Commission was reflected in the text of the article and in the present discussion. The Conference should remain on the solid ground of codification of existing law and should not attempt to create new rules. Those were the considerations underlying the Swiss amendment. The Swiss Confederation had concluded a large number of agreements with the international organizations established in its territory and had thus extended considerable privileges to a wide circle of persons. It was undesirable to extend too far the circle of persons eligible for the benefit of immunities, as would happen if a new provision like that proposed by the International Law Commission were adopted.

54. Mr. BARTOŠ (Yugoslavia) said that his government had been opposed to the extension of privileges and immunities, but if the majority should decide in favour of such an extension he would accept it, as his government's main concern was that the rule should be the same in all countries. The Yugoslav practice was to grant diplomatic privileges and immunities to diplomats only; to other categories of the staff of a diplomatic mission certain privileges and immunities might be granted by courtesy and reciprocity. The personal immunity of administrative and technical staff should be recognized, but there should be some limitation, and his delegation would therefore support those amendments which accorded only limited privileges and immunities to administrative and technical staff.

55. Mr. KRISHNA RAO (India) said that no existing rule of international law required the extension of privileges and immunities to staff other than diplomatic staff. The International Law Commission had therefore recognized that article 36 was a development of the law, not a codification. His delegation could not disagree with the general principles underlying the Commission's

text. The ambassador's secretary or the archivist might be the repository of secret or confidential information and might also need protection against pressure from the receiving State. His delegation therefore agreed that the administrative and technical staff should enjoy the privileges and immunities specified in articles 27 to 33. Most of the amendments, however, had been directed against the application of article 34 to administrative and technical staff, and his own delegation's amendment (L.256) had the same purpose.

56. Mr. HERRERO (Spain) said that article 36 provided for an extension that was too general. His delegation would therefore support the amendments which transferred the reference to administrative and technical staff and members of their families from paragraph 1 to paragraph 2, such as those submitted by Libya, Morocco and Tunisia (L.211/Rev.1) and, particularly, by Viet-Nam (L.285/Rev.1). It would also support the amendment submitted by Burma, Ceylon and Malaya (L.228/Rev.1).

57. Mr. de SOUZA LEAO (Brazil) said that the amendments submitted by his delegation (L.295) were intended to follow the International Law Commission's text as closely as possible, but also to take into consideration the position of countries like his own, which did not wish to extend all privileges and immunities to administrative and technical staff. The majority of States had not yet recognized such a considerable extension and it was felt that article 36 went too far in that respect. His delegation's amendments were intended to reconcile the opposing views.

58. Mr. GLASER (Romania) said it had been clearly recognized that the duties of administrative and technical staff in modern times differed greatly from those of similar staff a century earlier. Many non-diplomatic members of the staff of a mission had access to secret information, and the sending State must have an assurance that such persons would be protected from the possibility of action by the authorities of the receiving State, or even by private bodies, which might endanger their personal safety, in an attempt to make them divulge secrets. The formula used in paragraph 2 of article 36 to cover the immunity to be granted to members of the service staff (" in respect of acts performed in the course of their duties ") was too restrictive in the case of administrative and technical staff. A cipher clerk might, for example, be arrested on a charge which was not directly connected with his actual work. It was essential that such persons should be granted full immunity so that they could not be arrested on any pretext.

59. Mr. SUCHARITAKUL (Thailand) thought that the extension of diplomatic privileges and immunities to administrative and technical staff went beyond the rules of international law. His delegation would therefore support those amendments which deleted the reference to such staff and the members of their families from paragraph 1. Such persons should be entitled to certain privileges and immunities, but they should not be placed on the same level as diplomatic staff. If any State was prepared to grant them full privileges and immunities, that should be the subject of an agreement between the sending and receiving States concerned.

60. Mr. CAMERON (United States of America) said that the principle of article 36 was among the most important in the draft. His delegation took the view that the same privileges should be granted to administrative and technical staff as to diplomatic staff, a view reflected in its amendments (L.273 and Rev.1). The function of the mission as an organic whole should be considered, and not the individual tasks allotted to members of its staff. Members of the administrative and technical staff were sometimes in possession of highly confidential information and they needed protection of the same order as that given to the diplomatic staff against possible pressure by the receiving State.

61. A number of amendments had been submitted with the same intention as the United States amendment. His delegation would therefore agree to delete the reference to " service staff " in the first of its amendments and proposed that the Committee should vote on the principle embodied in it and in the other similar amendments, rather than on any one specific amendment.

62. His delegation's amendment provided that administrative and technical staff should " enjoy the privileges and immunities specified in articles 27 to 34 ". There had been considerable objection to the inclusion of a reference to article 34, which dealt with exemption from customs duties and inspection, although it was in fact a widespread practice for such exemption to be granted to administrative, technical and service staff. He therefore proposed that a separate vote be taken on the inclusion of a reference to each article, from 27 to 34, in paragraph 1 of article 36.

63. Mr. BAIG (Pakistan) said he could not accept article 36 as it stood, since it appeared to extend diplomatic privileges and immunities far beyond what his government could accept.

64. He was not unimpressed by the argument that it was the function of the mission as an organic whole which should be considered and not the actual work done by each member of its staff. It would seem idealistic and even imprudent, however, to suggest that the standards and requirements of an ambassador and his doorman were identical, although in some cases that might well be true. In that connexion he was referring less to immunities than to privileges. It has in the past been normal to extend both privileges and immunities to recognized diplomats not only by reason of their functional capacity, but because it was presumed that they knew by education, experience or training what their responsibilities were, not only to their own country, but also to the receiving State. It would, however, be undesirable to extend diplomatic privileges too far; there had been many cases in his own country in which they had been flagrantly abused. A good principle did not, of course, become a bad principle merely because it was abused and there were always remedies, but it was easier to advocate than to find them.

65. His delegation would oppose any attempt to extend diplomatic immunities and privileges beyond their

existing limits. The sending and the receiving States would still remain free to make reciprocal arrangements providing for special treatment, a procedure which his delegation would much prefer.

66. Mr. BOLLINI SHAW (Argentina) referred to the view expressed by his government in its comments on the 1957 draft (A/3859, annex) that equal consideration should be granted to administrative and technical staff in accordance with the regulations established under local legislation, subject to reciprocity. The extension of privileges and immunities to such staff, as provided for in article 36, paragraph 1, would introduce a new principle into international law. His delegation would, therefore, support the amendment proposed by Venezuela (L.233) and also that proposed by Libya, Morocco and Tunisia (L.211/Rev.1).

The meeting rose at 1.5 p.m.

THIRTY-THIRD MEETING

Tuesday, 28 March 1961, at 3.15 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 36 (Persons entitled to privileges and immunities) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 36 and the amendments thereto.[1]

2. Mr. DANKWORT (Federal Republic of Germany) said that article 36, paragraph 1, as drafted by the International Law Commission, was perfectly balanced. As the Commission had indicated in its commentary on article 36, the provision constituted progressive development. His delegation would therefore vote for paragraph 1, perhaps supplemented by the United Kingdom amendment (L.205).

3. Mr. DADZIE (Ghana) said he would support article 36, paragraph 1, as amended by India (L.256). However, his delegation suggested the deletion in that amendment of the words " under uniform rules and regulations ", and the addition at the end of the sentence of the words " under rules and regulations applied to such staff without discrimination ".

4. Mr. KRISHNA RAO (India) accepted that suggestion.

5. Mr. SUBARDJO (Indonesia) said that the problem was how to reconcile the different points of view on the granting of diplomatic privileges and immunities to administrative and technical staff. Perhaps the best solution would be to provide that the treatment of such staff should be governed by reciprocity. That solution had the merit of flexibility and of allowing for the progressive development of international law. His delegation would vote for the Indian amendment (L.256), as just further amended. It would also vote for the amendment (L.228/Rev.1) proposed jointly by Burma, Ceylon and the Federation of Malaya to article 36, paragraph 1.

6. Mr. SCOTT (Canada) stated that, in conjunction with the delegations of Australia, Brazil, Burma, Ceylon, the Federation of Malaya and Sweden, his delegation had prepared a revised draft provision concerning the extension of diplomatic privileges and immunities to the administrative and technical staff of missions (L.258/Rev.1, para. 4).

7. Mr. WESTRUP (Sweden) said that the revised provision submitted by the Canadian representative did not replace sub-paragraph (ii) of the Swedish delegation's amendment (L.308) to paragraph 1 of article 36.

8. Mr. TUNKIN (Union of Soviet Socialist Republics) recalled that the International Law Commission had proposed that diplomatic privileges and immunities should be extended to administrative and technical staff because it wished to take into account the progressive development of international law. The Soviet Union had not initially supported that extension, but it recognized that the new provision would benefit small countries whose missions often had scanty staffs that had to carry out several functions at once.

9. The existing practice showed that a number of States had already started to grant the main diplomatic privileges to the administrative and technical staff of missions on the basis of legislation and bilateral agreements.

10. The practice of the Soviet Union, since 1956, had been to grant the diplomatic privileges to the administrative, technical and service staff of the foreign missions in Moscow on a reciprocal basis.

11. The Soviet Union was ready to agree to a general rule in the convention extending the main diplomatic privileges and immunities (personal inviolability, inviolability of premises, immunity from jurisdiction and so on) to the administrative and technical staff of diplomatic missions.

12. Accordingly, the USSR delegation supported in principle article 36 as it stood.

13. Mr. CARMONA (Venezuela) said that his delegation had submitted an amendment (L.233) to article 36 to the effect that diplomatic privileges and immunities could be granted to the administrative and technical staff and to the service staff of the mission on the basis of special agreements subject to reciprocity. Since the Committee apparently wished to establish a general rule on the subject, his delegation would not press its amendment and would support the Italian amendment (L.199), but remained free to vote according to circumstances on the various amendments submitted to article 36.

14. The CHAIRMAN called on the Committee to vote first on the United States amendment (L.273) to article 36,

[1] For the list of amendments submitted to article 36, see 32nd meeting, footnote to para. 15.

paragraph 1, which was furthest removed from the original proposal.

The amendment was rejected by 58 votes to 3, with 9 abstentions.

15. Mr. MARESCA (Italy) withdrew the first of his delegation's amendments (L.199).

16. The CHAIRMAN put to the vote the Swedish amendment to article 36, paragraph 1 (L.308, sub-para. (ii)).

The amendment was rejected by 35 votes to 5, with 31 abstentions.

17. The CHAIRMAN invited the Committee to vote on the principle of the amendments proposed by Libya, Morocco and Tunisia to article 36, paragraphs 1 and 2 (L.211/Rev.1).

The principle was rejected by 35 votes to 24, with 10 abstentions.

18. The CHAIRMAN put to the vote the revised amendments submitted by the Canadian representative (L.258/Rev.1) affecting paragraph 1 of article 36 and proposing a new paragraph which, if adopted, would become paragraph 2 of article 36.

The amendments were adopted by 47 votes to 7, with 13 abstentions.

19. The CHAIRMAN put to the vote the Australian amendment (L.278) to paragraph 1 of article 36.

The amendment was rejected by 24 votes to 9, with 33 abstentions.

20. The CHAIRMAN observed that, after the adoption of the revised amendment submitted by Canada, all that remained of the Japanese amendment (L.249) to paragraph 1 of article 36 was sub-paragraph (ii), on which the Committee should now vote.

That amendment was rejected by 17 votes to 5, with 42 abstentions.

21. The CHAIRMAN drew attention to the Netherlands amendment (L.189), which proposed the addition of a new provision to paragraph 1 of article 36.

22. Mr. RIPHAGEN (Netherlands) explained that the proposed provision was intended to apply both to diplomatic agents and to other members of the administrative and technical staff to whom the benefit of diplomatic privileges and immunities would be extended.

23. Mr. BOUZIRI (Tunisia) thought that the Committee should not vote on the amendment before it had decided whether or not a diplomat had the right to engage in a private professional or commercial activity, a question which had been left in suspense at the time of the discussion of article 29 (27th meeting, para. 16).

24. The CHAIRMAN put to the vote the question whether the Committee should proceed to an immediate vote on the Netherlands amendment.

The Committee decided to proceed to an immediate vote by 24 votes to 23, with 16 abstentions.

The Netherlands amendment was rejected by 28 votes to 19, with 21 abstentions.

25. Mr. KRISHNA RAO (India) withdrew his delegation's amendment (L.256), on the understanding that the receiving State had the right to exercise supervision over some of the articles imported by the administrative and technical staff at the time of their installation. That was how the Indian Government interpreted the revised amendment submitted by Canada and adopted by the Committee.

26. The CHAIRMAN observed that, in consequence of the adoption of the revised amendment, it was unnecessary to vote on the Swiss amendment (L.242) or on the first two amendments submitted by Viet-Nam (L.285/Rev.1). There remained before the Committee the amendment to paragraph 3 (future paragraph 4) of article 36 submitted by Burma, Ceylon and the Federation of Malaya (L.228/Rev.1), and the Japanese (L.249), the Canadian (L.258/Rev.1) and Australian amendments (L.278) to paragraph 2 (future paragraph 3) of article 36.

27. Mr. KEVIN (Australia) withdrew his delegation's amendment in favour of that of Canada.

28. The CHAIRMAN, replying to a question by Mr. MARESCA (Italy), said that service staff were provisionally defined in article 1 (*g*).

29. Mr. RIPHAGEN (Netherlands) drew attention to the interdependence between the new paragraph 3 of article 36 and article 37. Under the terms of that paragraph and of several amendments, some members of a diplomatic mission who were not nationals of the receiving State would only have the benefit of immunity and of exemption from dues and taxes in respect of acts performed in the exercise of their functions. It would therefore be advisable to make a mental reservation about what could be approved within the framework of article 37, because that article laid down that only a diplomatic agent who was a national of the receiving State enjoyed immunity from official acts performed in the exercise of his functions.

30. The CHAIRMAN emphasized that article 36 referred to members of the staff who were not nationals of the receiving State, while article 37 dealt only with nationals of that State. There was therefore a fundamental distinction between the two articles.

31. Mr. SCOTT (Canada) thought that, in order to bring the second and third of his delegation's amendments (L.258/Rev.1) into line with the texts of the new paragraphs 1 and 2 of article 36, the words " or nationals of a third State ordinarily resident in the receiving State immediately prior to their appointment or employment " should be replaced by the words " or permanent residents ".

32. The CHAIRMAN put to the vote the second of the Canadian amendments as so amended.

33. Mr. BOUZIRI (Tunisia) and Mr. PINTO de LEMOS (Portugal), speaking on a point of order, said that the Committee should not vote on oral amendments, and

that delegations should be given time to study at their leisure amendments submitted in writing.

34. Mr. MARESCA (Italy) agreed, and said he had some doubts about the manner in which the first two paragraphs of article 36 had been approved.

35. Mr. CARMONA (Venezuela) also protested against the procedure followed in taking votes and deplored the confusion which prevailed in the Committee's work.

36. The CHAIRMAN said that the change in wording which the Canadian representative had proposed was not in any sense an oral amendment; its sole purpose was to bring the second and third Canadian amendments into line with the provisions which had been adopted as paragraphs 1 and 2 of article 36. All the other amendments which had been put to the vote had been submitted in writing. However, if any members of the Committee were in doubt about a particular point, he was at their entire disposal to give any explanations they might require.

37. Mr. TALJAARD (Union of South Africa) had no criticism to make of the procedure followed by the Committee. With regard to the second Japanese amendment (L.249), he thought that it duplicated the Canadian amendment.

38. Mr. DONOWAKI (Japan) believed that the wording proposed by his delegation was wider than that proposed by Canada in so far as it included nationals of a third State whether they were permanent residents of the receiving State or not.

39. After a discussion in which Mr. de VAUCELLES (France), Mr. WICK KOUN (Cambodia), Mr. SUCHARITAKUL (Thailand), Mr. BOUZIRI (Tunisia) and Mr. TUNKIN (Union of Soviet Socialist Republics) took part, Mr. DONOWAKI (Japan) withdrew his amendment.

40. Mr. CAMERON (United States of America) recalled that at the previous meeting the chairman of the working party set up to consider article 31 had mentioned the suggestion that a reference to exemption from social security provisions should be added in what would become the new paragraph 3 of article 36 (32nd meeting, para. 4). In the circumstances, he wondered if the Committee could proceed to vote on the new paragraph 3 without taking into account that suggestion.

41. The CHAIRMAN called on the Committee to vote on the paragraph 3 proposed by Burma, Ceylon and the Federation of Malaya (L.228/Rev.1).

The provision was rejected by 18 votes to 18, with 27 abstentions.

The Canadian amendment (L.258/Rev.1) to paragraph 2, as amended, was adopted by 54 votes to 2, with 12 abstentions.

42. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation was in favour of the new wording of paragraph 2, which had become indispensable after the adoption of article 31.

43. The CHAIRMAN put to the vote the amended paragraph 2 of the draft. With the addition of the words " and from social security provisions contained in article 31 " that paragraph would constitute paragraph 3 of the new text.

Paragraph 2, as amended, was adopted by 59 votes to none, with 7 abstentions.

44. Mr. SMITH (Canada), in explaining his vote, observed that article 31 and article 32 (*a*) might conflict, in cases where a State's social security legislation provided for the levy of an indirect tax. He assumed that the Committee was taking into consideration only direct taxes such as municipal property taxes, in which case the two texts would not conflict. His delegation had voted in favour of paragraph 2, as amended, on that assumption.

45. The CHAIRMAN proposed that the Committee should proceed to consider paragraph 3 (future paragraph 4).

46. Mr. GLASSE (United Kingdom) said that the reason why his delegation had submitted its amendment (L.205) was that it considered that the International Law Commission had perhaps gone a little too far in granting exemption from taxes and dues on the wages of private servants of members of the mission. In the United Kingdom, only servants of the head of a mission were exempt from tax, their services being considered as indispensable to the proper functioning of the mission. However, since the amendment was not of any particular importance, the United Kingdom delegation did not insist on its being put to the vote.

47. Mr. NGUYEN-QUOC DINH (Viet-Nam) withdrew his delegation's third amendment (L.285/Rev.1).

48. Mr. BOUZIRI (Tunisia) announced the withdrawal of the third of the amendments co-sponsored by Tunisia (L.211/Rev.1). The provision in question formed part of a whole, the constitutent parts of which could not be separated.

49. Mr. de SOUZA LEAO (Brazil) and U SOE TIN (Burma) also withdrew their delegations' respective proposals (L.295, para. 4 and L.228/Rev.1, para. 3).

50. Mr. CAMERON (United States of America), referring to his delegation's amendment to paragraph 3 of the article (L.273/Rev.1), said he would not press it to the vote for, as a result of the rejection of the first United States amendment, it would mean that private servants would enjoy privileges not granted to their employers.

51. The CHAIRMAN, before calling on the Committee to take a decision on paragraph 3, asked the chairman of the working party which had considered article 31 whether exemption from social security legislation should not be included in the paragraph.

52. Mr. KIRCHSCHLAEGER (Austria) replied that the working party had considered the question of private servants and had not thought it necessary to deal with the matter at that stage of the discussion.

53. The CHAIRMAN put to the Committee vote paragraph 3, as amended by Canada (L.258/Rev.1).

Paragraph 3, as amended, was adopted by 56 votes to 1, with 8 abstentions.

54. The CHAIRMAN called upon the Committee to vote on article 36 as a whole, as amended.

At the request of the representative of Tunisia, a vote was taken by roll-call.

Senegal, having been drawn by the Chairman by lot, was called upon to vote first.

In favour: Spain, Sweden, Switzerland, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia, Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Congo (Leopoldville), Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Federation of Malaya, Finland, Federal Republic of Germany, Ghana, Holy See, Hungary, India, Indonesia, Iran, Ireland, Israel, Japan, Korea, Liberia, Liechtenstein, Luxembourg, Netherlands, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Romania.

Against: Senegal, Tunisia, United Arab Republic, Venezuela, Viet-Nam, Italy, Libya, Morocco, Portugal, Saudi Arabia.

Abstentions: Turkey, Union of South Africa, Ethiopia, France, Iraq, Mexico, Panama.

Article 36, as amended, was adopted by 54 votes to 10, with 7 abstentions.

55. Mr. WESTRUP (Sweden) said he would revert to the subject matter of his delegation's proposal when the Committee came to consider article 1 in second reading.[2]

56. Mr. ZLITNI (Libya) said that his delegation had voted against the adoption of article 36 because it considered that as administrative and technical staff had no representative functions, they were not entitled to privileges granted to diplomats as such. There was no legal basis for those innovations.

57. Mr. CARMONA (Venezuela) announced that his government had sent him instructions which obliged him, in accordance with United Nations practice, to enter reservations to article 36 as adopted.

58. Mr. BESADA (Cuba) said he had voted for the adoption of the article, but had some reservations as regards the expression "permanent resident", which seemed to him insufficiently clear.

59. Mr. GLASER (Romania) pointed out that governments were at all times free to make reservations on any particular article, either during the discussion or even depositing their instruments of ratification.

60. Mr. BOUZIRI (Tunisia) considered that article 36 as adopted contained new provisions which altered the nature of a diplomatic mission, and which the Tunisian delegation could not accept. For procedural reasons, the Tunisian delegation had not taken part in the vote on some amendments.

61. Mr. SINACEUR BENLARBI (Morocco) associated himself with the representatives of Libya and Tunisia and asked that their reservations should be mentioned in the record.

62. Mr. PINTO de LEMOS (Portugal) expressed the opinion that the principles adopted were contrary to the spirit of the convention and to the rules of international law.

63. Mr. de VAUCELLES (France), while admitting that the amendments adopted had improved the text, nevertheless considered that its provisions unduly extended the scope of diplomatic privileges. For that reason the French delegation had considered it necessary to abstain from voting.

64. Mr. BIRECKI (Poland) said he was generally in favour of the extension of diplomatic privileges. Nevertheless, he was glad that it had been possible to find a compromise formula acceptable to the majority of delegations.

65. Mr. DEJANY (Saudi Arabia) reserved his government's rights in regard to the article as a whole.

66. Mr. MONACO (Italy) said that the wording as adopted contained innovations which were hardly in conformity with recognized practice or the rules of international law.

67. Mr. MARISCAL (Mexico) said he had abstained from voting because his delegation preferred article 36 as drafted by the International Law Commission.

68. Mr. MENDIS (Ceylon) said he was not very much in favour of an extension of exemptions, for fear of possible misuse and of the particularly heavy financial burdens placed on States with limited means. His delegation had nevertheless voted for the article as a mark of its appreciation of the spirit of compromise on which the redraft was based.

The meeting rose at 6 p.m.

THIRTY-FOURTH MEETING

Wednesday, 29 March 1961, at 10.30 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 35 (Acquisition of nationality) *(resumed from the thirty-first meeting)*

1. The CHAIRMAN, inviting the Committee to continue its debate on article 35 and the amendments

[2] See 38th meeting.

thereto,[1] drew attention to the report (L.314) of the working group appointed at the thirty-first meeting (para. 110).

2. Mr. KEVIN (Australia) said that the words " first paragraph of article 36 " in his delegation's amendment (L.245) should be amended to read " first two paragraphs of article 36 ".

3. Mr. de ERICE y O'SHEA (Spain), introducing the working group's redrafting of article 35, said that the problem of the nationality of the children of diplomatic agents born in the territory of the receiving State was an extremely complex one, which causes serious difficulties for many countries. That explained why widely different amendments to article 35 had been submitted.

4. The proposed redraft, being an attempt to compromise between very different views, could not be an ideal formulation. However, it made clear that the nationality of the country of birth could not be imposed upon the children of a diplomat who, precisely because of his official duties, served outside his own country. The redraft did not specify what the children's nationality would be and consequently their possible right to opt for a nationality other than that of their parents was safeguarded.

5. A proviso (passage in brackets) limiting the application of the article to children born of parents not " having their private domicile in the receiving State according to the law of that State " had been introduced in deference to the law of the receiving State. The criterion of the private domicile of the parents was applied in the nationality legislation and constitutional provisions of several Latin American countries, and such a proviso would make the proposed text more acceptable to those countries.

6. The proposed text was sufficiently flexible to allow some latitude in interpretation by the receiving State. Of course, if the sending State did not agree to the receiving State's interpretation, it could resort to the procedure set forth in article 45 for the settlement of disputes.

7. He hoped that the compromise text would prove generally acceptable.

8. Mr. PONCE MIRANDA (Ecuador) said that the provisions of article 35 raised an extremely complex legal problem. Under the law of Ecuador, a diplomat was considered as having maintained his original domicile in the sending State and as residing temporarily in the receiving State; he therefore transmitted his nationality to his children born in the receiving State and they did not become nationals of that State. His delegation felt strongly, however, that the Conference should not attempt to settle the question — certainly not in the manner proposed in the redraft of article 35.

9. The article dealt with a case of conflict of laws and belonged in a convention on private international law rather than in a convention on diplomatic law. Moreover, the solution proposed was inconsistent with the principles of private international law applicable to the matter. The foreign law was made to prevail over the territorial law, whereas under the rules on conflict applicable in the matter of nationality, it was invariably the territorial law which prevailed. Nationality legislation involved matters of public policy (ordre public) in which the foreign law was always set aside. The attempt to make the foreign law prevail over the territorial law of the country concerned was particularly unfortunate because in many States, including Ecuador, nationality was regulated by the Constitution itself.

10. The aim pursued was the commendable one of avoiding dual nationality, but the method was unsatisfactory. He opposed both the original text of article 35 and the working group's redraft and urged that the article be deleted.

11. It has been suggested as an alternative to the adoption of an article on the acquisition of nationality, that the Conference should adopt a resolution which would recommend the amendment of municipal law so as to avoid conflicts of the nationality laws of the receiving and the sending States. But he had serious doubts whether, under its terms of reference, the Conference could make a recommendation on a subject which was outside the scope of diplomatic law.

12. Mr. MONACO (Italy) said that while in theory there might be no place for an article on the acquisition of nationality in the convention which the Committee was discussing, article 35 nevertheless served a practical purpose.

13. The question before the Committee was whether the proposed redraft was preferable to the original article 35. For his part, he supported the original text, which was of wider scope than the redraft; for it covered not only the case of children born to foreign diplomats in the territory of the receiving State, but also the acquisition of the receiving State's nationality by a woman member of the mission or a daughter of a member of the mission, as a result of marriage. The case of the children was certainly the more common and the more important one; but there was no reason to ignore the acquisition of nationality by marriage.

14. Lastly, he did not favour the adoption of a resolution recommending changes in the nationality laws of States. States were very anxious to maintain the principles underlying their nationality laws, and nationality was held to be a matter coming under domestic jurisdiction exclusively.

15. Mr. de VAUCELLES (France) said he was prepared to support the working group's redraft, but if it was not adopted by the Committee, he would reintroduce his delegation's amendment (L.223).

16. Mr. RUEGGER (Switzerland) said he was prepared to accept the working group's redraft which might perhaps gain more support than the original article 35. If the redraft were not adopted, however, he would reintroduce his delegation's amendment (L.241).

17. Mr. GLASSE (United Kingdom) recalled the terms of reference given to the working group (thirty-first

[1] For the amendments submitted, see thirty-first meeting, footnote to para. 88.

meeting, para. 110). In fact, some members of the working group had expressed serious reservations regarding the adoption of the text in the form of an article, and consequently unanimous agreement had proved impossible. Many other States represented in the Committee had similar misgivings, and he therefore proposed that the Committee should first vote on the question whether the redraft should be treated as a draft article or as a provision to be embodied in a resolution.

18. His delegation intended to vote for a resolution and maintained that article 35 should be deleted from the draft.

19. Mr. GASIOROWSKI (Poland) agreed with the comments of the Italian representative and thought it was necessary to include a provision on the acquisition of nationality. The question was an extremely important one and was connected with the need to ensure the independence of diplomatic agents with respect to local authorities. Hence, it could not be dealt with satisfactorily in a resolution, the effect of which would be much weaker than that of an article of a binding instrument.

20. He requested that when the working group's redraft was put to the vote, a separate vote be taken on the words in brackets. If those words were included, the application of article 35 would be restricted to children born of parents both of whom fulfilled two conditions: (1) that of not being nationals of the receiving State, and (2) that of not having their private domicile in the receiving State according to the law of that State. The combination of those two conditions dangerously narrowed down the scope of the article.

21. He preferred the original article 35 to the redraft.

22. Mr. YASSEEN (Iraq) saw no valid reason for drawing a distinction between members of the mission and their children. Members of the mission had the same need as their children to be exempt from the operation of the nationality laws of the receiving State. In some countries, marriage to a woman who was a national, or the mere fact of prolonged residence could result in the automatic imposition of the nationality of the country. It was therefore necessary to ensure that no member of the mission, whether male or female, could be deemed to be a national of the receiving State solely by the operation of the law of that State.

23. He would prefer a provision along the lines of the first paragraph of article 12 of the Hague Convention of 12 April 1930:

> " Rules of law which confer nationality by reason of birth on the territory of a State shall not apply automatically to children born to parents enjoying diplomatic immunities in the country where the birth occurs." [2]

Of the two texts now proposed for article 35 he preferred the original draft, but if that was not adopted, he would be prepared to accept the working group's redraft.

[2] Convention on certain questions relating to the conflict of nationality laws, signed at The Hague on 12 April 1930; League of Nations *Treaty Series*, vol. CLXXIX, p. 103, reprinted in United Nations document ST/LEG/SER.B/4, annex I, p. 567.

24. Mr. LINARES (Guatemala) said that if the working group's redraft was adopted with the words in brackets he would be prepared to withdraw his delegation's amendment (L.185). If those words were deleted, however, the text would be incompatible with the Constitution of Guatemala and he would be obliged to express reservations.

25. Mr. KRISHNA RAO (India) thought the working group's redraft created more problems than it solved. It focused attention on the children of diplomatic officers and ignored the problems raised by the effect of marriage on nationality under the law of many countries.

26. He favoured the deletion of article 35. If, however, an article on the acquisition of nationality was to be included, he found the original text more acceptable than any of the others put forward; it was well-balanced and less confusing and dealt with all the nationality problems that arose.

27. Mr. CAMERON (United States of America) said that neither the original text nor the working group's redraft was acceptable to his delegation. The law of the United States provided that all persons born in and subject to the jurisdiction of the United States were citizens of the United States. Persons enjoying diplomatic immunity were exempted from the jurisdiction of the United States, and hence their children were not deemed to be born subject to that jurisdiction within the meaning of the law. Since neither the original nor the working group's redraft covered that point, his delegation would vote for the deletion of article 35.

28. Mr. GHAZALI (Federation of Malaya) also criticized the working group's redraft for dealing only with the case of children of diplomatic officers. In fact, there were many cases in which the law of the receiving State could impose a nationality on persons enjoying diplomatic immunity. He supported the original article 35, which dealt adequately with a multitude of problems.

29. Mr. DADZIE (Ghana) said he could not support the redraft, in particular because it introduced the concept of private domicile which, even if known to international jurisprudence, was foreign to many national legal systems.

30. His delegation continued to support the original article 35, which would settle many of the difficult constitutional and legal questions raised.

31. Mr. de ERICE y O'SHEA (Spain) said that in the working group it had not been considered necessary to confuse the text by referring to the acquisition of nationality by marriage. The case of a woman member of a diplomatic mission marrying a national of the receiving State was so rare that he personally had not heard of a single instance of such an occurrence. In any event, if a woman diplomat acquired the nationality of the receiving State by marriage, the express consent of that State would be required, under article 7, for her to continue as a member of the diplomatic staff of the mission.

32. The CHAIRMAN said that the United Kingdom proposal for the deletion of article 35 (L.204), being

the furthest removed from the original, would be put to the vote first.

The proposal was rejected by 41 votes to 20, with 8 abstentions.

33. The CHAIRMAN said that the Committee had thus decided to include an article on the acquisition of nationality. He invited it to take a decision on the working group's redraft (L.314), first voting separately on the words " nor having their private domicile in the receiving State according to the law of that State ".

The words in question were rejected by 37 votes to 7, with 24 abstentions.

The working group's redraft of article 35, thus amended, was rejected by 47 votes to 13, with 9 abstentions.

34. Mr. MONACO (Italy) withdrew his delegation's amendment (L.198).

35. The CHAIRMAN recalled that the delegations of France and Guatemala had made the withdrawal of their amendments conditional on the adoption of the working group's redraft. That redraft having been rejected, the amendments in question were revived by virtue of rule 32 of the rules of procedure. In addition, the amendments submitted by Switzerland and by Australia (as amended) would be put to the vote. All those amendments related to article 35 as drafted by the International Law Commission.

The amendment submitted by France (L.223) was rejected by 44 votes to 10, with 12 abstentions.

The amendment proposed by Guatemala (L.185) was rejected by 44 votes to 6, with 15 abstentions.

The amendment proposed by Switzerland (L.241) was rejected by 48 votes to 8, with 11 abstentions.

36. Mr. CAMERON (United States of America) asked whether it would be in order to introduce an oral sub-amendment to the Australian amendment (L.245), in view of the statement by its author and its connexion with the text of article 36 as adopted by the Committee.

37. The CHAIRMAN ruled that it would not be in order to introduce a sub-amendment, since voting on the article was in progress.

38. Mr. KEVIN (Australia) suggested that the words " likewise entitled " should be added after the words " members of their families " in article 35.

39. The CHAIRMAN said that the Drafting Committee could consider that point.

The amendment submitted by Australia (L.245), as orally amended by its author, was rejected by 36 votes to 10, with 20 abstentions.

40. The CHAIRMAN put to the vote the International Law Commission's draft of article 35 without amendment (A/CONF.20/4).

Article 35 was adopted without amendment by 46 votes to 12, with 12 abstentions.

41. Mr. MATINE-DAFTARY (Iran) drew attention to the fact that the French text of article 35 did not correspond exactly to the English text.

42. Mr. MELO LECAROS (Chile), Mr. AGUDELO (Colombia), Mr. PONCE MIRANDA (Ecuador), Mr. LINARES (Guatemala) and Mr. CARMONA (Venezuela) said that their delegations would have to make express reservations concerning article 35 in so far as it was incompatible with the law of their countries.

43. Mr. GLASER (Romania) explained that his delegation had voted in favour of article 35 and against all the amendments submitted since it believed that the principle had been correctly stated in the International Law Commission's text, while the amendments had been improvised — a dangerous practice in dealing with such a complex question.

44. Mr. CAMERON (United States of America) explained that it might be necessary for his delegation to make an express reservation to article 35 because the term " members of the mission " included persons who were not granted immunity under the draft articles.

45. Mr. GLASSE (United Kingdom) said that his delegation had voted againt article 35 because, apart from its general objection to the inclusion of that provision, it considered that the difficulties to which the International Law Commission's draft would give rise had not been fully appreciated. There was, for example, no provision for the case of a child born in the receiving State, one of whose parents was a national of that State.

46. Mr. KEVIN (Australia) said that the basis of exemption for Australian citizens under Australian law was immunity similar to that accorded to an envoy; hence his delegation's amendment and his abstention in the vote on the article.

Article 37 (Diplomatic agents who are nationals of the receiving State)

47. The CHAIRMAN invited debate on article 37 and the amendments thereto.[3]

48. Mr. GLASSE (United Kingdom) said that the amendment to article 37 submitted by his delegation (L.206) was linked with the original text of article 36. Since, however, article 36 had been amended to exclude from its benefit nationals and permanent residents of the receiving State, a reference to such persons should be included in article 37. The United Kingdom amendment was no longer appropriate, therefore, and would be withdrawn on the understanding that the Drafting Committee would correlate the text of articles 36 and 37.

49. Mr. de VAUCELLES (France) explained that the intention of his delegation's amendment (L.224) was to clarify the meaning of the text. It might be inferred from paragraph 1 of the article that the inviolability of a diplomatic agent who was a national of the receiving State was absolute and that only his immunity from jurisdiction was restricted to official acts performed in the exercise of his functions. The French amendment

[3] The following amendments had been submitted: Mexico, A/CONF.20/C.1/L.180; United Kingdom, A/CONF.20/C.1/L.206; France, A/CONF.20/C.1/L.224; Venezuela, A/CONF.20/C.1/L.234; Canada, A/CONF.20/C.1/L.246/Rev.1; Japan, A/CONF.20/C.1/L.250; United States of America, A/CONF.20/C.1/L.274; Australia, A/CONF.20/C.1/L.279.

made it clear that both inviolability and immunity were so restricted.

50. Mr. DONOWAKI (Japan) said that, since his delegation's amendment to article 36 (L.249) had not been accepted and since it was clear that amendments of that kind found little favour with the Committee, he would withdraw his amendment to article 37 (L.250) in favour of the Canadian amendment (L.246). He pointed out, however, that if the Canadian amendment was adopted, persons possessing both the nationality of the sending State and that of a third State would still fall within the scope of article 37. His delegation would request that the Drafting Committee should consider article 37 in relation to article 7, paragraph 3 of which as adopted at the twelfth meeting stated that the receiving State could reserve the same right with regard to nationals of a third State who were not also nationals of the sending State.

51. Mr. KEVIN (Australia) said that in its amendment (L.279), his delegation proposed the inclusion in paragraph 2 of a reference to " persons who have entered the receiving State for permanent residence ". For the sake of consistency, he would further propose that a similar reference be included in paragraph 1 of article 37.

52. Mr. CARMONA (Venezuela), explaining his delegation's proposal (L.234) that article 37 be deleted, said that the article was superfluous. Article 7 as adopted stipulated that members of the diplomatic staff of a mission had to be nationals of the sending State unless express consent was given by the receiving State for the appointment of its own nationals. Accordingly, it covered paragraph 1 of article 37. Similarly, paragraph 2 of article 37 was rendered unnecessary by the new draft of article 36 adopted at the 33rd meeting, which specifically excluded from its benefit nationals of the receiving State and left them subject to the provisions of article 7. He would vote against article 37 as it seemed inappropriate to provide for a particular category of staff in an international convention.

53. Mr. EL-ERIAN (United Arab Republic) said he was entirely opposed to the idea of appointing members of a mission from among the nationals of the receiving State. Even though admittedly that happened sometimes, he could not accept the idea of nationals of the receiving State being immune from the jurisdiction of their own country. When the draft had been discussed in the International Law Commission in 1957 it had been agreed that a diplomatic agent who was a national of the receiving State should be granted certain minimum privileges strictly for the purpose of his official functions.[4] Article 37 as since drafted, however, introduced an entirely new conception of inviolability which would mean that a national who had committed a crime could not be punished in his own country. The question of the immunity of the national of the receiving State was one which, he strongly believed, should not be dealt with in a convention but should be left to the receiving State, like the question whether a national could be appointed to a foreign mission.

[4] For relevant discussion see ILC, 408th meeting, paras. 1 to 33.

54. Mr. YASSEEN (Iraq) said that while article 37 made it clear that a diplomatic agent who was a national of the receiving State could enjoy immunity from jurisdiction only in his official capacity, it could be interpreted as granting unconditional inviolability, to which he would be opposed. The redraft of paragraph 1 contained in the French amendment (L.224) left no room for doubt, and he would therefore support it.

55. Mr. USTOR (Hungary) said he was opposed to the recruitment of members of the diplomatic staff of a mission from among nationals of the receiving State and would therefore prefer article 37 to be deleted, as proposed by Venezuela (L.234). However, since article 7 (Appointment of nationals of the receiving State) had been adopted by the Committee, it was only logical to include in the convention some provision regarding the inviolability and immunities of such persons.

56. He fully agreed with the International Law Commission that they should not have the same inviolability and immunities as nationals of the sending State, and he would therefore support the inclusion of article 37 provided that it was amended in the sense proposed by France. On that point he shared the views of the representatives of Iraq and the United Arab Republic. He was opposed to the United States amendment (L.274) as being too far-reaching, and pointed out that according to the definition in article 1 (*e*), the term " diplomatic agent " included the head of the mission. As article 37 did not apply to the head of the mission he proposed that the expression " members of the diplomatic staff " should be used.

57. Mr. BARTOŠ (Yugoslavia) said that, although he had opposed article 7, article 37 was a logical consequence of its adoption. Once it had been accepted that a national of the receiving State could become a member of the mission of the sending State, it should be recognized that he was entitled to the inviolability and immunities necessary for the performance of his official functions. He was therefore in favour of article 37 and in the interests of clarity would also support the French amendment.

58. Mr. MONACO (Italy) was opposed to the Canadian amendment (L.246/Rev.1) because it proposed a single category for all persons not nationals of the sending State; in practice, nationals of the receiving State were in a special position. Article 37 recognized the fact that the appointment of members of a diplomatic mission from among nationals of the receiving State was a fairly frequent practice and could not be ignored. He would support paragraph 1, which provided that such people should be given the privileges and immunities necessary for the performance of their functions; but he considered paragraph 2 superfluous, since the persons to which it referred did not have diplomatic status and their position was the responsibility of the receiving State.

59. Mr. MATINE-DAFTARY (Iran) agreed that the adoption of article 7 (though he had opposed it) made article 37 necessary. He was not very happy about the article, however, for it gave the diplomatic agent who was a national of the receiving State better treatment than one who was a national of the sending State —

whose immunity did not exempt him from the jurisdiction of his own country. The result was that a diplomat who was a national of the receiving State was like a dangerous amphibian that could not be caught either in the water or on dry land. In fact, article 37 would make the national of the receiving State immune from any jurisdiction. Unless article 37 could be redrafted, therefore, he would propose that both it and article 7 be deleted.

60. Mr. CAMERON (United States of America) said that the most important part of his delegation's amendment (L.274) was the second sentence, which extended immunity from jurisdiction in respect of their official capacity to all members of the mission who were nationals or permanent residents of the receiving State. He believed that as long as they were members of the mission, nationals of the receiving State and of the sending State should enjoy the same immunity. The first sentence of his amendment was of no great importance and he would not object to its deletion; what he wished to ensure was that nationals of the receiving State, when working for the sending State, should not be impeded in the performance of their functions and should have the same immunity from jurisdiction as the ambassador whom they represented and for whom they were working.

61. Mr. SUBARDJO (Indonesia) was in favour of deleting article 37 as proposed by Venezuela, because he was opposed to the appointment of nationals of the receiving State to a foreign diplomatic mission. In a spirit of compromise, however, he would follow the example of the representative of Yugoslavia and vote for the inclusion of article 37, subject to the French amendment.

62. Mr. TALJAARD (Union of South Africa) said he would abstain from voting on article 37 because the law of his country forbade the granting of immunities, privileges and exemptions to citizens of the Union of South Africa.

63. Mr. WICK KOUN (Cambodia) said he would support the Venezuelan proposal to delete article 37 because nationals of his country were not allowed to become diplomatic agents in foreign missions established in Cambodia, and Cambodian nationals recruited as technical or administrative staff of such missions were not granted diplomatic privileges or immunities.

64. Mr. ZLITNI (Libya) said that he had opposed article 7, and he also opposed article 37. In his country it would be unacceptable for a citizen to be immune from national jurisdiction, and he thought it would be better for international relations if nationals of receiving States were not allowed to act as diplomatic agents for sending States. If they served on a foreign mission without diplomatic rank, they could be protected to the extent permitted under the laws of the receiving State.

65. The CHAIRMAN said that the Venezuelan proposal (L.234) that article 37 should be deleted would be put to the vote first.

66. Mr. MATINE-DAFTARY (Iran) requested a separate vote on the deletion of each of the two paragraphs of the article.

The Venezuelan proposal that paragraph 1 of article 37 should be deleted was rejected by 43 votes to 12, with 12 abstentions.

The Venezuelan proposal that paragraph 2 of article 37 should be deleted was rejected by 46 votes to 12, with 11 abstentions.

67. The CHAIRMAN put to the vote the amendment by Mexico (L.180).

The Mexican amendment was rejected by 26 votes to 14, with 30 abstentions.

68. Mr. CAMERON (United States of America) requested a separate vote on the first sentence of his delegation's amendment (L.274).

The first sentence of the United States amendment was rejected by 35 votes to 12, with 23 abstentions.

The second sentence of the United States amendment was rejected by 36 votes to 11, with 23 abstentions.

The amendment submitted by France (L.224) was adopted by 43 votes to 7, with 17 abstentions.

69. In reply to a question by the CHAIRMAN regarding the Australian amendment (L.279), Mr. KEVIN (Australia) confirmed that his delegation's amendment should be construed as proposing the addition of the words " or permanent resident(s) " after " national(s) " in paragraphs 1 and 2 of article 37.

The Australian amendment was adopted by 27 votes to 8, with 32 abstentions.

70. The CHAIRMAN announced that the Canadian amendment (L.246/Rev.1) was no longer applicable.

Article 37, as amended, was adopted by 52 votes to 3, with 13 abstentions.

The meeting rose at 1.10 p.m.

THIRTY-FIFTH MEETING

Wednesday, 29 March 1961, at 3.20 p.m.

Chairman: Mr. LALL (INDIA)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 38 (Duration of privileges and immunities)

1. The CHAIRMAN invited debate on article 38 and the amendments thereto.[1]

[1] The following amendments had been submitted: Mexico, A/CONF.20/C.1/L.181; Netherlands, A/CONF.20/C.1/L.190; United Kingdom, A/CONF.20/C.1/L.207/Rev.1; France, A/CONF.20/C.1/L.225; Switzerland, A/CONF.20/C.1/L.243; France and Italy, A/CONF.20/C.1/L.251; Federation of Malaya, A/CONF.20/C.1/L.253; Spain, A/CONF.20/C.1/L.271; United States of America, A/CONF.20/C.1/L.275 and Rev.1; Sweden, A/CONF.20/C.1/L.293.

2. Mr. RIPHAGEN (Netherlands) said that the first of his delegation's amendments (L.190) concerned the definition of the family and hence the Committee would not need to discuss it. He withdrew the second amendment in favour of the second United Kingdom amendment (L.207/Rev.1).

Paragraph 1

3. Mr. de VAUCELLES (France), introducing the amendment submitted jointly with Italy (L.251), said that the benefit of diplomatic privileges and immunities could hardly be accorded to members of the mission as soon as they entered the territory of the receiving State, if the competent authorities of that State had not been notified of their arrival. And yet, except for the head of the mission and military attachés — who could not be appointed without the agrément or consent of the receiving State — that would be the position of the members of the mission. They could, of course, show their diplomatic passports, but the customs officials of the receiving State might not know the language of the sending State and hence might not be able to understand the particulars entered in the passports. That was the consideration underlying the joint amendment (L.251). Diplomats outside the scope of sub-paragraphs (*a*), (*b*) and (*c*) of the amendment should enjoy only the privileges specified in article 39 until such time as the receiving State had in some way acknowledged notification of their arrival.

4. Mr. CAMERON (United States of America) withdrew his delegation's amendment to paragraph 1 (L.275) in favour of the joint amendment submitted by France and Italy.

5. Mr. TUNKIN (Union of Soviet Socialist Republics) considered that sub-paragraphs (*a*) and (*b*) and the first part of sub-paragraph (*c*) of the joint amendment introduced unnecessary explanations, since it was obvious that the persons referred to could not enter the territory of the receiving State without having obtained the necessary agrément, consent or visa. The second part of sub-paragraph (*c*) would only complicate relations between States. The Soviet delegation would therefore vote against the joint amendment.

The joint amendment to paragraph 1 (L.251) was rejected by 29 votes to 12, with 22 abstentions.

The Swiss amendment (L.243) was rejected by 31 votes to 7, with 28 abstentions.

6. The CHAIRMAN said that accordingly paragraph 1 of article 38 remained unchanged.

Paragraph 2

7. Mr. CAMERON (United States of America), introducing his delegation's amendments (L.275 and Rev.1), said that their object was to specify, first, that the termination of functions involved the cessation of exemption from the customs duties and import taxes and charges referred to in article 34; secondly, that in case of national emergency, civil strife or armed conflict, the receiving State could take appropriate measures to ensure the safety of the members of the mission and of their property. The latter provision merely confirmed a practice of many years' standing and it seemed only natural to include it in the convention.

8. Mr. TUNKIN (Union of Soviet Socialist Republics) thought the original text much clearer than the United States amendment. The International Law Commission had rightly considered that members of the mission, as nationals of the sending State, should continue to enjoy privileges and immunities until they left the territory of the receiving State. His delegation held that the loss of privileges and immunities could not in any circumstances take effect from the time when the functions ceased, and it would therefore vote for the original text of paragraph 2.

9. Mr. de VAUCELLES (France) asked that separate votes be taken on the United States amendment to paragraph 2 and on the proposed new paragraph 3 (L.275 and L.275/Rev.1).

At the request of the representative of the United States of America, the votes were taken by roll-call.

Paragraph 2 (L.275)

Argentina, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Austria, Belgium, Chile, China, Dominican Republic, France, Holy See, Korea, Liechtenstein, Luxembourg, Union of South Africa, United States of America, Viet-Nam.

Against: Argentina, Brazil, Bulgaria, Byelorussian SSR, Colombia, Czechoslovakia, Denmark, Ecuador, Finland, Federal Republic of Germany, Ghana, Hungary, India, Indonesia, Iran, Iraq, Japan, Morocco, Nigeria, Poland, Romania, Saudi Arabia, Spain, Sweden, Switzerland, Ukrainian SSR, Union of Soviet Socialist Republics, Albania.

Abstaining: Australia, Burma, Cambodia, Canada, Ceylon, Congo (Leopoldville), Ethiopia, Federation of Malaya, Ireland, Israel, Italy, Liberia, Libya, Mexico, Netherlands, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Thailand, Tunisia, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Venezuela, Yugoslavia.

The amendment was rejected by 28 votes to 13, with 28 abstentions.

New paragraph 3 (L.275/Rev.1)

Switzerland, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Union of South Africa, United States of America, Viet-Nam, China, Italy, Korea.

Against: Switzerland, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Albania, Argentina, Austria, Belgium, Brazil, Bulgaria, Byelorussian SSR, Canada, Colombia, Czechoslovakia, Denmark, Ecuador, Finland, France, Ghana, Guatemala, Hungary, India, Indonesia, Iran, Iraq, Japan, Luxembourg, Mexico, Morocco,

Netherlands, Nigeria, Norway, Poland, Portugal, Romania, Saudi Arabia, Spain, Sweden.

Abstaining: Thailand, Tunisia, Turkey, United Arab Republic, Venezuela, Yugoslavia, Australia, Burma, Cambodia, Ceylon, Chile, Congo (Leopoldville), Dominican Republic, Ethiopia, Federation of Malaya, Federal Republic of Germany, Holy See, Ireland, Israel, Liberia, Libya, Liechtenstein, Pakistan, Panama, Peru, Philippines.

The paragraph proposed by the United States was rejected by 38 votes to 6, with 26 abstentions.

10. The CHAIRMAN said that as a consequence of the voting, paragraph 2 of article 38 remained unchanged.

New paragraph proposed by Mexico

11. Mr. de ROSENZWEIG DIAZ (Mexico), introducing his delegation's proposal (L.181), said that the reason for it was that the International Law Commission's text contained no provision concerning the immunities enjoyed by the family of a deceased member of the mission. The proposed new paragraph was based on article 24 of the Havana Convention of 1928 (A/CONF. 20/7).

12. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the Mexican proposal, which was entirely in accordance with the International Law Commission's intentions.

The new paragraph proposed by Mexico (L.181) was adopted by 63 votes to none, with 5 abstentions.

13. The CHAIRMAN said that the new provision would become paragraph 3 of article 38.

Paragraph 3 (new paragraph 4)

14. Mr. de ERICE y O'SHEA (Spain) withdrew his delegation's amendment (L.271), which had the same purpose as the provision adopted for the new paragraph 3.

15. Mr. WESTRUP (Sweden) said that his delegation's amendment (L.293) was based on the same considerations as the new article proposed by the Colombian delegation (L.174) — intended to prevent diplomats from practising a liberal profession or commercial activity — and the Swiss amendment to article 32 (*d*) (L.239) which had been adopted at the 30th meeting (para. 81). The addition proposed by his delegation reproduced a provision of Swedish law on death duties, and the Swedish Government was most anxious that it should be included in the convention. He would probably be able to support the United Kingdom amendment to paragraph 3 (L.207/Rev.1), which would limit the classes of goods exempted from death duties.

16. Mr. de VAUCELLES (France) said that his delegation had submitted its amendment (L.225) because, under French law, the estate of a foreign diplomat who had died in France was administered in the sending State. That being so, death duties were levied only on movable or immovable property physically or nationally situated in France, excluding the furniture of the deceased's home.

17. Mr. AGUDELO (Colombia) suggested that, if the Chairman and the Swedish delegation agreed, the Swedish amendment (L.293) should be considered at the same time as the Colombian proposal (L.174).

18. Mr. de ROSENZWEIG DIAZ (Mexico) noted that the last sentence of paragraph 3 of the draft article made no mention of movable property. The object of the Mexican amendment to that paragraph (L.181) was to specify that estate, succession and inheritance duties would only be charged on movable property if the heirs or legatees were nationals of the receiving State.

19. Mr. GHAZALI (Federation of Malaya), introducing his delegation's amendment (L.253), said that if the last part of the first sentence of paragraph 3 were retained, some absurd situations would result. The receiving State would have difficulty in ascertaining what goods subject under an export ban had been acquired in the country. Besides, the goods might have been acquired at a time when they could have been exported lawfully. And in any case, to apply the provision in question the receiving State would have to make long inquiries, which would be painful to the family of the deceased. Hence, the clause should not be retained as it stood.

20. Mr. MACDONALD (Canada) approved the provision in the draft enabling the receiving State to levy death duties on immovable property situated in its territory regardless of the diplomat's domicile. The Canadian delegation did not, however, agree with the International Law Commission on the distinction between movable and immovable property. What mattered was whether the movable property were in the receiving State at the time of death. The principle of charging duty only on property necessary to the diplomat in the exercise of his functions had worked well in Canada for the last twenty years. A bank account should be taxable, and it was difficult to decide whether part of it should be exempt. Hence, the best solution would be to allow the receiving State to decide what should be done within reasonable limits.

21. Mr. GLASSE (United Kingdom), introducing his delegation's amendment to paragraph 3 (L.207/Rev.1), said that its object was to achieve greater clarity. As it stood, the provision was too broad. Undoubtedly, diplomats had to defray some expenses in the exercise of their functions; but the convention was not concerned with their private and personal incomes. All movable property in the receiving country, including clothes, jewels, pictures and accumulated salary, might well be exempted.

22. Mr. SIMMONS (Ghana) said that his delegation and that of India had decided to support the Federation of Malaya's amendment (L.253).

23. The CHAIRMAN said that the Swedish delegation had agreed that its amendment (L.293) should be discussed with the Colombian proposal (L.174).[2]

24. Mr. CAMERON (United States of America), replying to a question by the French representative, said that

[2] See 36th meeting.

the second sentence of the paragraph proposed by the United States to replace the existing paragraph 3 (L.275) referred to estate, succession and inheritance duties, which would be chargeable only if such duties were payable in the receiving State and if the property was more than what the diplomat needed for the fulfilment of his mission.

The United States redraft of the existing paragraph 3 (L.275, para. 4) was rejected by 34 votes to 9, with 26 abstentions.

The United Kingdom amendment adding the words " or permanent resident " after the word " national " in paragraph 3 (L.207/Rev.1) was adopted.

The amendment submitted by the Federation of Malaya (L.253) was rejected by 32 votes to 22, with 15 abstentions.

The amendment submitted by France (L.225) was rejected by 40 votes to 9, with 18 abstentions.

The amendment to paragraph 3 submitted by Mexico (L.181) was rejected by 24 votes to 9, with 36 abstentions.

The second amendment submitted by the United Kingdom (L.207/Rev.1) was adopted by 30 votes to 24, with 13 abstentions.

Article 38 as a whole, as amended, was adopted by 66 votes to none, with 5 abstentions.

25. Mr. RUEGGER (Switzerland) asked that his delegation's reservations on paragraph 1 of article 38 should be noted. The provision seemed to confer on members of a mission other than the head of mission all diplomatic privileges and immunities on entry into the receiving country. In Switzerland, that provision might create many difficulties. According to Swiss practice, members of diplomatic missions did not enjoy privileges and immunities until their appointment had been notified to the federal government and the government had signified its agreement, at least tacitly, by entering them on the diplomatic list.

Article 32 (Exemption from taxation) *(resumed from the 31st meeting)*

26. The CHAIRMAN recalled that it had been agreed at the 30th meeting (para. 69) and confirmed at the 31st (para. 10) that the discussion on article 32, sub-paragraph (*c*) would be deferred until the Committee had settled the terms of article 38. Since then the delegations of France, Canada, and the United States of America had informed him that they would not press their amendments (L.219, L.257 and L.263) to the sub-paragraph. Accordingly, he suggested that sub-paragraph (*c*) and article 32 as a whole, as amended, should be regarded as adopted.

It was so agreed.

Article 39 (Duties of third States)

27. The CHAIRMAN invited debate on article 39 and the amendments thereto.[3]

28. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic), introducing the amendments proposed jointly by Bulgaria and the Ukrainian SSR (L.183), said that their object was to make the language of the article more specific. A diplomat who passed through the territory of a third State should enjoy not only inviolability and all other immunities necessary for his transit or return, as the draft article laid down, but also immunity from jurisdiction and customs privileges. In addition, paragraph 3 should mention the diplomatic bag, which should be strictly inviolable.

29. Mr. CAMERON (United States of America) said that his delegation's amendment (L.276) would grant privileges and immunities to a diplomatic agent in immediate and continuous transit. By custom a diplomat could only enjoy those privileges if he did not deviate from his itinerary and did not stay in the territory of a third State.

30. Mr. de ERICE y O'SHEA (Spain) believed that, in submitting its amendment (L.319), his delegation had not raised a serious problem.

31. With regard to the Bulgarian-Ukrainian amendment, he hoped that its sponsors would agree to add the words " and all other immunities ".

32. Mr. RIPHAGEN (Netherlands) said that a diplomatic agent sometimes found himself unexpectedly in the territory of a third State — for example, when an aeroplane in which he was travelling was diverted. His delegation's amendment (L.191) to paragraph 1 of article 39 was designed to cover that case.

33. Mr. TUNKIN (Union of Soviet Socialist Republics) thought the amendment to paragraph 1 proposed by Bulgaria and the Ukrainian SSR clarified without altering the meaning of the provision. The Spanish amendment did not add anything fresh, but was acceptable to the Soviet delegation. The United States amendment to paragraph 1 introduced the undefined concept of immediate and continuous transit. Moreover, the new paragraph 4 proposed by the United States would entitle any State to deny passage in transit to a diplomat or to impose any conditions it saw fit. That provision was contrary to international law and completely unacceptable.

34. Mr. GLASER (Romania) said the purpose of the amendment submitted by Bulgaria and the Ukrainian SSR and of the Spanish amendment was to clarify paragraph 1 considerably. In particular, it was important that a diplomatic agent in transit through the territory of a third State should be immune from jurisdiction and have customs privileges. Likewise, the second Bulgarian-Ukrainian amendment has rightly extended to the diplomatic bag the inviolability of a diplomatic courier in transit.

35. The innovations suggested in the United States amendment were either superfluous or dangerous. The purpose of the convention was to facilitate diplomacy; but the provisions of the United States amendment would complicate and hinder it. Every State was admittedly entitled to deny passage through its territory to any

[3] The following amendments had been submitted: Bulgaria and Ukrainian SSR, A/CONF.20/C.1/L.183; Netherlands, A/CONF.20/C.1/L.191; United States of America, A/CONF.20/C.1/L.276; Spain, A/CONF.20/C.1/L.319.

person; but it was unnecessary to say so in the convention. The International Law Commission had stated in paragraph 3 of its commentary on article 39 (A/3859) that it felt it should adopt an intermediate position. Moreover, the United States amendment introduced a new and vague concept — immediate and continuous transit. For those reasons the Romanian delegation could not support the United States amendments.

36. Mr. da SILVA MAFRA (Brazil) supported the Netherlands amendment, which covered all the points with which the other amendments were concerned.

37. Mr. CAMERON (United States of America) said he would support the Netherlands amendment (L.191). Replying to the criticisms of the USSR and Romanian representatives concerning the United States amendments, he pointed out that the first merely recognized the duties and obligations of a third State under article 39. The only novelty in the United States amendment was the concept of immediate and continuous transit. Admittedly that concept was not defined, but that was not a valid reason for not mentioning it. The Committee had not succeeded in defining the meaning of " reasonable and normal " in connexion with another article, but had retained the expression. The sole object of the second United States amendment was to forestall and prevent misuse of the privilege of transit.

38. Mr. MONACO (Italy) said that he would support the Netherlands amendment (L.191); the class of persons entitled to the privileges provided in article 39 should be defined.

39. Mr. MELO LECAROS (Chile) supported the Netherlands amendment (L.191). The Chilean delegation considered that the protection accorded to diplomatic couriers by the article should be extended to diplomatic couriers *ad hoc*. He suggested that the Drafting Committee might be asked to redraft the last sentence of paragraph 3 to that effect.

It was so agreed.

40. Mr. OMOLOLU (Nigeria) supported article 39 with the amendments proposed by Bulgaria and the Ukrainian SSR (L.183) and by the Netherlands (L.191).

41. Mr. de VAUCELLES (France) said he accepted the second of the Bulgarian-Ukrainian amendments (L.183) but not the first, which might raise problems and difficulties in the case, for instance, of a stop during transit through the territory of a third State. The words " and such other immunities as may be required " in paragraph 1 of the draft were amply sufficient.

42. The French delegation would support the Netherlands amendment (L.191).

43. He asked whether the Spanish amendment (L.319) implied that a third State was obliged to grant a visa to a diplomatic agent passing through its territory in transit.

44. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) accepted the oral sub-amendment proposed by the Spanish representative (see para. 31 above) to the joint amendment submitted by Bulgaria and the Ukrainian SSR.

The United States amendment to paragraph 1 (L.276) was rejected by 29 votes to 3, with 34 abstentions.

The Spanish amendment (L.319) was adopted by 27 votes to 11, with 26 abstentions.

The Bulgarian-Ukrainian amendment to paragraph 1 (L.183), as amended orally, was rejected by 30 votes to 22, with 16 abstentions.

The Bulgarian-Ukrainian amendment to paragraph 3 (L.183) was adopted by 56 votes to none, with 14 abstentions.

45. Mr. CAMERON (United States of America) announced that, in view of the reception given to his delegation's first amendment, and of the comments made on the second, he would withdraw the latter.

46. The CHAIRMAN pointed out that, since the Spanish amendment (L.319) to paragraph 1 had been adopted, the first part of the Netherlands amendment (L.191) lapsed; in any case he understood the Netherlands representative had withdrawn that part.

47. Mr. TUNKIN (Union of Soviet Socialist Republics) considered that the Netherlands amendment might well be retained if the word " also " were inserted before " apply ". The question might be referred to the Drafting Committee. In any case, if the Netherlands amendment were put to the vote, the Soviet Union delegation would support it.

48. Mr. YASSEEN (Iraq) pointed out that the Netherlands amendment was more general than that of Spain: it spoke of an authorization, not of a visa.

49. Mr. PINTO de LEMOS (Portugal) resubmitted the Netherlands amendment in full.

50. The CHAIRMAN invited the Committee to vote on the Netherlands amendment (L.191) resubmitted by Portugal in full.

The amendment was adopted by 59 votes to none, with 10 abstentions.

Article 39 as a whole, as amended, was adopted by 69 votes to none, with 1 abstention.

Article 40

51. The CHAIRMAN said that section III of the International Law Commission's draft concerned the mission's conduct towards the receiving State. It consisted of one article (article 40), on which he invited debate. Amendments had been submitted by Albania and Czechoslovakia (L.303) and by Japan (L.306).

52. Mr. MYSLIL (Czechoslovakia), introducing the amendment submitted jointly by Albania and Czechoslovakia (L.303), said it was self-explanatory; its object was greater flexibility in the procedure to which paragraph 2 referred. That procedure varied from State to State, and the convention should recognize the fact. The words proposed to be added to paragraph 2 would allow States whose procedure was less rigid than in others to retain their practice.

53. Mr. DONOWAKI (Japan) said that his delegation's amendment (L.306) was concerned mainly with drafting.

If the Drafting Committee could produce better wording for the amendment, his delegation would be satisfied.

54. Mr. GLASSE (United Kingdom) suggested that the joint amendment would be improved if the words " and also " were replaced by " or ".

55. Mr. MYSLIL (Czechoslovakia) accepted that suggestion.

The joint amendment (L.303) of Albania and Czechoslovakia to paragraph 2, with the drafting amendment suggested by the United Kingdom representative, was adopted by 37 votes to 12, with 20 abstentions.

Article 40, as amended, was adopted by 61 votes to none, with 6 abstentions.

56. Mr. BARTOŠ (Yugoslavia), explaining his abstention, said that the diplomatic relations of the mission became more difficult if several departments could conduct official business with it. In fact, that was why the International Law Commission had wisely mentioned only the Ministry of Foreign Affairs.

57. Mr. MARISCAL (Mexico), Mr. BOLLINI SHAW (Argentina), Mr. LINARES (Guatemala), Mr. de ERICE y O'SHEA (Spain) and Mr. PINTO de LEMOS (Portugal) stated that they had abstained in the vote on article 40 because in their countries the sole official body empowered to negotiate with foreign diplomatic missions was the Ministry of Foreign Affairs.

58. Mr. MYSLIL (Czechoslovakia) pointed out that the joint amendment of his country and Albania, just adopted by the Committee, specified that the mission could conduct official business with other departments and institutions to the extent compatible with existing rules or established practice in the receiving State.

The meeting rose at 6.15 p.m.

THIRTY-SIXTH MEETING

Thursday, 30 March 1961, at 10.30 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

New article proposed by Colombia debarring diplomatic staff from the exercise of professional and commercial activities

1. The CHAIRMAN recalled that it had been agreed at the 27th meeting (para. 16) that the new article proposed by the Colombian delegation (L.174) and the same delegation's amendment to article 29, paragraph 1 (*c*) (L.173) would be discussed together. In addition, at the 35th meeting (para. 23) the Swedish delegation had agreed that its amendment to article 38 (L.293) should be discussed in conjunction with the new proposed article by Colombia. However, a United Kingdom amendment to article 38, paragraph 3 (L.207/Rev.1), which covered the point raised in the Swedish amendment, had been adopted at the 35th meeting.

2. Mr. WESTRUP (Sweden) said that, on the understanding that article 38 as adopted by the Committee at its previous meeting covered the point raised in his delegation's amendment, he withdrew it.

3. Mr. AGUDELO (Colombia) said that the new article proposed by his delegation (L.174) dealt with the delicate question of the incompatibility which should exist between the performance of diplomatic functions and the exercise of a liberal profession or commercial activities. That incompatibility was universally admitted, but it was nevertheless essential to state it explicitly in the convention. The International Law Commission's comments, particularly paragraph 7 of its commentary on article 29, showed that it had had doubts as to the advisability of including an article on incompatibility. His delegation had no such doubts. It might be argued that diplomatic privileges and immunities were granted exclusively in the interests of the exercise of diplomatic functions and to safeguard the representative character of diplomatic agents and hence would not cover non-diplomatic activities. Such a distinction, however, would render the problem even more complex because the diplomatic agent would be acting simultaneously in two different capacities, only one of which was covered by diplomatic privileges and immunities. It would be necessary to specify, in connexion with each particular privilege, the exceptions resulting from that dual capacity. The number of amendments which had been submitted to deal with the problem in regard to various articles (e.g., the Danish amendment to article 34 (L.212), the Netherlands amendment to article 36 (L.189) and the Swedish amendment to article 38 (L.293)) showed that, unless the general principle of incompatibility was clearly laid down in a separate article, many gaps would subsist in the future convention and they would constitute a constant source of difficulties in its practical application.

4. The proposed new article would safeguard the prestige of the diplomatic corps in the eyes of public opinion. It was the purpose of the convention not only to ensure the enjoyment of diplomatic privileges and immunities, but also to define the obligations involved. The proposed new article would give the sending State the assurance that its diplomatic agents abroad would limit their activities to their official duties. It would assist the receiving State by eliminating difficult problems, and would enhance the dignity of the diplomatic corps accredited to its government. Lastly, it would serve to protect diplomatic agents from any suggestion that they might be using the prestige of their office to further their outside interests.

5. For those reasons, his delegation urged that the proposed article be inserted as the first article of section III on " conduct of the mission and of its members towards the receiving State ", and that the Committee should consider the desirability of deleting sub-paragraph (*c*) from article 29, paragraph 1.

6. Mr. RIPHAGEN (Netherlands) supported the proposal. The new article was necessary because the draft articles did not specify anywhere that diplomatic privileges and immunities did not apply to a person who carried on professional activities in the receiving State.

7. Mr. CARMONA (Venezuela) warmly supported the Colombian proposal. The exercise of gainful outside activities by a diplomatic officer would be detrimental to the dignity of his office.

8. Mr. BOLLINI SHAW (Argentina) said that the incompatibility of diplomatic or consular functions with any other occupation was laid down by Argentine legislation. He therefore warmly supported the Colombian proposal, which would eliminate a source of complications and difficulties.

9. Mr. MELO LECAROS (Chile) said that the problem under discussion raised a serious moral issue, and expressed his strong support for the proposal.

10. Mr. de ERICE y O'SHEA (Spain), supporting the proposal, said that it applied with particular force to commercial activities. A diplomatic agent who engaged in such activities would be guilty of an act of unfair competition; his commercial activity would be detrimental to his own nationals and to other persons engaged in the same trade.

11. The proposed provision was not meant to debar diplomats from the exercise of literary or artistic activities or to prevent a diplomatic agent from acting as counsel in proceedings before the International Court of Justice. He suggested that the principle of the proposal be voted upon and that the Drafting Committee should be asked to settle the actual text.

12. Mr. WESTRUP (Sweden) warmly supported the proposal.

13. Mr. de ROMREE (Belgium) supported the proposal in principle, but pointed out that the expression " staff of a diplomatic mission " was not defined in article 1. He asked whether the intention was to cover members of the diplomatic staff only, or all members of the mission's staff.

14. Mr. de VAUCELLES (France) supported the proposal but pointed out that such activities as lectures at universities and elsewhere, even if paid, were exclusively cultural in character. That type of activity, which rendered a service to the receiving State, should not be discouraged any more than the literary activity of a diplomat who happened to be a well-known author.

15. Lastly, the proposed provision should not be applied to too large an area. There was no need to lay down the principle of incompatibility in respect of such subordinate staff as typists, for example.

16. Mr. PONCE MIRANDA (Ecuador) said that diplomatic functions were obviously incompatible with the exercise of an outside gainful occupation. A diplomat's personality was indivisible; it was not possible to draw a distinction between the time which he gave to his diplomatic functions and that which he might devote to his outside activities.

17. Mr. MENDIS (Ceylon) thought that the supporters of the proposed new article had in mind a regular professional activity from which a permanent income was derived, and not an occasional activity, particularly of a cultural character. There could be no objection to a diplomat who happened to be a scholar of repute and an authority on a special subject giving a course of lectures at a university in the receiving State. He suggested that the Drafting Committee might consider whether the proposed provision should be applicable solely to activities for which remuneration was paid.

18. Mr. LINARES (Guatemala) supported the proposal for the reasons given by its sponsor.

19. Mr. BREWER (Liberia), supporting the proposal, said that the possibility of a diplomatic agent engaging in a professional or commercial activity in the receiving State outside his official functions should not even be contemplated; for that reason, his delegation had misgivings regarding the provisions of article 29, paragraph 1 (*c*).

20. With reference to commercial activities, he stressed the injustice which would be done to persons having commercial dealings with someone who enjoyed diplomatic immunities. A private person dealing with a diplomat in such a case would be deprived of such legal remedies as the possibility of attaching the diplomat's property.

21. Mr. AGUDELO (Colombia), in reply to the Belgian representative, said that the proposed provision was meant to apply exclusively to members of the diplomatic staff.

22. The question had also been raised of literary and other cultural activities. The proposed provision was not intended to debar diplomats from such activities or to preclude their receiving the modest remuneration usually paid in respect of university lectures.

23. Mr. SILVA MAFRA (Brazil) supported the Colombian proposal for the reasons given by other representatives.

24. Mr. OJEDA (Mexico) said that there was an irrefutable argument in support of the Colombian proposal. If the exercise of outside activities were to be deemed compatible with diplomatic office, the diplomat would have a dual status. If, for example, he requested exemption from customs dues in respect of an imported article, it would be difficult to ascertain whether that article was to be used for his diplomatic or for his other activities.

25. Mr. SOSA PARDO (Peru), supporting the Colombian proposal, said that the incompatibility of diplomatic functions and the exercise of other activities was recognized in Peruvian law. He noted the explanations given by the Colombian and Spanish representatives in regard to cultural and professional activities.

26. Mr. TAKAHASHI (Japan) said he was ready to support the Colombian proposal for a new article but hesitated to support the Colombian proposal (L.173) to delete sub-paragraph (*c*) from article 29, paragraph 1, because that sub-paragraph applied not to diplomatic

agents only, but also applied, in virtue of article 36, to members of a diplomatic agent's family forming part of his household and to the administrative and technical staff of the mission.

27. Mr. MONACO (Italy) thought that the question raised by the Colombian proposal was more a matter for municipal law than for an international instrument. On practical grounds, however, he favoured the proposal, provided that it was made clear in the wording of the proposed provision that the intention was to prevent diplomats from engaging in gainful activities such as commerce, industry or a regular profession.

28. Mr. PINTO de LEMOS (Portugal) said that the law of Portugal, like that of most other countries, debarred diplomats from engaging in activities extraneous to their official duties. Because of the privileges which they enjoyed, diplomats should be careful not to lay themselves open to criticism.

29. He supported the proposed new article, and noted that it would not preclude cultural activities on the part of a diplomat.

30. Mr. GLASSE (United Kingdom) said there could be no question as to the soundness of the principle underlying the Colombian proposal that diplomatic functions were incompatible with other activities, particularly those of a commercial character. The wording of the proposed provision should, however, be carefully examined so as not to make it unduly sweeping. The extra-diplomatic activities of diplomats — mostly of a cultural character — were in the main of a beneficial kind, and no one would wish to discourage them. On a more practical plane, there was no reason to prevent an embassy chaplain or physician from ministering to the spiritual needs or attending to the physical health of persons outside the diplomatic mission.

31. Mr. NGUYEN-QUOC DINH (Viet-Nam) supported the Colombian amendment, particularly after hearing the explanations given by its sponsor.

32. Mr. AMLIE (Norway) said that the Colombian proposal embodied a sound principle which was recognized by the Norwegian Foreign Service Act. He would, however, like some explanation about the scope of the expression " commercial activity ". Would it, for example, apply to a loan to a friend in financial difficulties, or to operations on the stock exchange ? And if so, what would be the position of a diplomatic agent who had undertaken such operations before his appointment ?

33. Mr. GHAZALI (Federation of Malaya), speaking also on behalf of the representative of India, agreed with the principle underlying the Colombian proposal but considered that it should be limited to commercial activity for personal profit. It was surely permissible for a diplomatic agent to take part in a raffle or auction for charity, or to give a lecture on a subject on which he was a specialist. He therefore suggested that the Committee should vote on the principle of the proposal and refer it to the Drafting Committee.

34. Mr. BIRECKI (Poland) was in favour of the Colombian amendment as it remedied an omission in the convention. He had some doubts, however, regarding the definition of " liberal profession " and therefore supported the procedure suggested by the representative of the Federation of Malaya.

35. Mr. KEVIN (Australia) questioned the need to provide in a convention for a matter that should be a question of professional ethics and therefore the concern of individual States.

36. Mr. CONTRERAS CHÁVEZ (El Salvador) expressed support for the Colombian proposal.

37. The CHAIRMAN proposed that a vote should be taken on the principle of the Colombian proposal and that, if adopted, it should be referred to the Drafting Committee for revision in the light of the debate.

It was so agreed.

The principle of the proposal of Colombia (L.174) was adopted by 63 votes to none, with 2 abstentions, on the basis proposed by the Chairman.

38. In view of the comments that had been made, Mr. AGUDELO (Colombia) withdrew his delegation's amendment (L.173) to article 29, paragraph 1 (*c*).

Article 41 (Modes of termination)

39. The CHAIRMAN invited debate on article 41 and on the Brazilian delegation's amendment thereto (L.116).

40. Mr. SILVA MAFRA (Brazil) introduced his delegation's amendment (L.116) deleting sub-paragraph (*a*) dealing with appointments of limited duration. In the introduction to its draft (A/3859), the International Law Commission stated that the draft dealt only with permanent diplomatic missions, and not with what might be termed " *ad hoc* diplomacy ", covering itinerant envoys, diplomatic conferences and special missions sent to a State for limited purposes. The Commission had not examined the question of *ad hoc* diplomacy until its twelfth session in 1960 (A/4425, chapter III), and he believed that sub-paragraph (*a*) of article 41 was intended to provide for the kind of mission that was used at the end of the war. Nevertheless, a convention dealing with permanent diplomats should not contain provisions regarding *ad hoc* diplomacy.

41. Mr. GLASSE (United Kingdom), supporting the Brazilian amendment, said it was questionable whether there was any need for article 41 at all. To justify itself the article should contain an exhaustive list of the circumstances in which a diplomatic agent's function might be brought to an end. The reference books on legal practice contained very complete catalogues of such circumstances, and the article ignored a very important one, namely, the death, abdication or deposition of the sovereign head of the State to which the diplomatic agent was accredited. As it was evidently intended that the convention should be as complete a guide as possible to legal practice, in his opinion article 41 should either be removed or expanded.

42. Mr. de ERICE y O'SHEA (Spain) fully supported the view of the United Kingdom representative. As it stood, article 41 was entirely inadequate. In effect sub-

paragraphs (*b*) and (*c*) only covered the head of the mission, although the term " diplomatic agent " was defined in article 1 (*e*) as including members of the diplomatic staff of the mission. It also failed to mention several important circumstances which would bring the function of a diplomatic agent to an end. All that it said, in effect, was that the diplomatic agent's term of office was ended by agreement between the receiving State and the sending State.

43. Mr. EL-ERIAN (United Arab Republic) said he had been impressed by the comments of the representatives of Brazil, the United Kingdom and Spain. Article 41 presented certain difficulties. It was not clear if sub-paragraph (*a*) referred solely to *ad hoc* diplomacy, which usually had a particular purpose, or to normal missions of limited duration. Nor was it clear whether the article referred to the closing of a mission or to the termination of a diplomatic agent's term of office. He suggested that the article should be referred to the Drafting Committee for consideration in connexion with the report of the Sub-Committee on Special Missions, and that no decision should be taken on whether to delete or amplify article 41 until the Drafting Committee's report had been received.

44. The CHAIRMAN pointed out that the Sub-Committee's report had already been issued (L.315) and that in any case decisions of substance could not be referred to the Drafting Committee.

45. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the Brazilian amendment. He agreed that article 41 did not fit in with the general structure of the convention, which was concerned with permanent missions. Even after the deletion of sub-paragraph (*a*), it did not add much to the convention and he believed that the International Law Commission had only included it because it would be awkward if nothing were said about modes of termination. The Commission had cautiously used the term " *inter alia* " because it was aware that too much detail could only lead to controversy. While he had no great enthusiasm for the article, he felt it would be better to retain it in the convention, subject to the deletion of sub-paragraph (*a*), rather than omit it altogether.

The Brazilian amendment (L.116) was adopted by 54 votes to 1, with 10 abstentions.

Article 41 as amended was adopted by 65 votes to none, with 2 abstentions.

Article 42 (Facilitation of departure)

46. The CHAIRMAN invited debate on article 42 and the amendments thereto.[1]

47. Mr. SICOTTE (Canada) said that article 42 had two defects: first, it implied that the receiving State had an obligation to facilitate the departure of diplomats at all times and not only in the event of an emergency. Secondly, it was not reasonable to expect the receiving State to supply means of transport in times of emergency, such as flood, when there would be a shortage. He hoped that his delegation's amendment (L.309) would clarify the intention of the article and remedy its shortcomings.

48. Mr. GLASSE (United Kingdom) said that while his delegation's amendment (L.300) introducing the words " other than nationals of the receiving State " might appear to be a statement of the obvious, he felt it essential to establish that the receiving State should not be under an obligation to permit (much less to facilitate) the departure of its own nationals to another country with which it might, for example, be in a state of war.

49. Mr. de ERICE y O'SHEA (Spain) said that the International Law Commission was to be congratulated on having dealt with the very important situation of armed conflict. He was opposed to the Canadian amendment, which was too narrow. It was only in the event of armed conflict that a diplomat could leave the receiving State; in other emergencies it would be his duty to remain at his post to maintain relations with the receiving State and protect the nationals of his own country. Moreover, it was in the case of armed conflict that the provision of transport was of the greatest importance. He supported the United Kingdom amendment, for in the event of armed conflict the nationals of the receiving State would have to remain in their own country, even if previously they had been serving a foreign Power; in fact, article 42 should only apply to persons who were not nationals of the receiving State.

50. With regard to the Belgian amendment (L.287), he said that, although not convinced of the need for it, he would not oppose it. With regard to the additional paragraph proposed by his own delegation (L.321), he said that events in the Second World War had proved the need to make provision for the protection of the receiving State's agents in the sending State without leaving it to the good faith or discretion of the government concerned.

51. Mr. de ROMREE (Belgium) said that in spite of the optimism expressed by several members, experience had unfortunately shown that cases did arise in which more than two States were in armed conflict. The addition proposed in his delegation's amendment (L.287) would be in keeping with the provisions adopted in article 39 concerning the duties of third States.

52. Mr. BOLLINI SHAW (Argentina), although in agreement with the principle expressed in the Belgian amendment, considered it unnecessary to state it expressly, for third States would not be in the position which article 42 was intended to cover. His delegation would vote for the United Kingdom amendment. In regard to the Canadian amendment, he agreed with the representative of Spain that it was a diplomat's duty to remain in the receiving State in case of riot, rebellion or other emergency to protect his country's interests. It should be remembered, however, that there were other persons enjoying privileges and immunities, such as the members of the diplomat's family, who were under no obligation to remain. Article 42 should be amended to provide that the receiving State's obligation

[1] The following amendments had been submitted: Belgium, A/CONF.20/C.1/L.287; United Kingdom, A/CONF.20/C.1/L.300; Canada, A/CONF.20/C.1/L.309; Spain, A/CONF.20/C.1/L.321.

in an emergency other than armed conflict was limited to providing protection for members of the diplomat's families. An important omission in the Canadian amendment was that it made no reference to the necessary means of transport.

53. Mr. KEVIN (Australia) suggested that in the United Kingdom amendment the words " and permanent residents " might be added after " nationals ".

54. Mr. OMOLOLU (Nigeria) supported the United Kingdom amendment, as amended by the Australian suggestion. Subject to that amendment, his delegation would support article 42 as it stood. The reference in the Canadian amendment to " riot, rebellion or other emergency " was too wide, since diplomats must remain at their posts in certain cases. It would also be too much to expect the receiving State to provide transport in case of rebellion or riot, for example.

55. Mr. GLASSE (United Kingdom) doubted the wisdom of the Australian suggestion, for permanent residents were in a very different category from that of the persons covered by article 42 and would have to be dealt with under a different régime. The intention of the United Kingdom amendment was to cover the case of nationals of the receiving State employed by diplomatic missions, over whom the receiving State retained its jurisdiction and who could not properly be granted facilities to leave in case of armed conflict.

56. Mr. TUNKIN (Union of Soviet Socialist Republics) accepted the United Kingdom amendment but agreed with its sponsor that the addition suggested by the representative of Australia would be inadvisable. Article 42 was quite different from article 36 and should not employ the same terminology. Article 42, as amended by the United Kingdom, was preferable to the text proposed by Canada. His delegation also had some doubts in regard to the Belgian amendment and could not support the additional paragraph proposed by Spain, which, if accepted, would lead to confusion. There was no need to include specific provisions regarding reprisals in the convention.

57. Mr. GASIOROWSKI (Poland) opposed the Belgian amendment, which was unnecessary, since the point was already covered by article 39 concerning the duties of third States. His delegation would support the United Kingdom amendment without the Australian sub-amendment. It would, however, oppose the Canadian amendment, since the Polish Government had always held the view that diplomatic privileges and immunities should be as wide as possible. The subject of the Spanish proposal was covered by international law outside the scope of the present convention, and in particular by the right of reprisal.

58. Mr. KEVIN (Australia) said that he had not meant to introduce a sub-amendment but had merely asked the representative of the United Kingdom to consider the advisability of including a reference to permanent residents of the receiving State.

59. Mr. de ROMREE (Belgium) accepted the view expressed by the representative of Poland that his delegation's amendment was covered by article 39 concerning the duties of third States. Accordingly, as a conciliatory gesture, his delegation would withdraw the amendment.

60. Mr. DADZIE (Ghana) supported the United Kingdom amendment. His delegation would, however, oppose the Spanish proposal, which did not improve the article, and the Canadian amendment, which omitted to mention the most important matter of transport.

61. Although his delegation was in general agreement with the provisions of article 42, it thought that the reference to " property " in the last line was not entirely appropriate. It would be impracticable to require the receiving State to provide transport for the entire property of all persons enjoying immunity. The intention might be to include simply personal effects, but the article could be interpreted as meaning all movable property including, for example, office furniture. His delegation, together with that of India, would therefore propose the insertion of the word " personal " before " property ".

62. Mgr. CASAROLI (Holy See) said that the first part of article 42, with the United Kingdom amendment, was entirely acceptable and in conformity with practice. He agreed with the representatives of Ghana and India, however, in regard to the second part of the article. It was too much to expect the receiving State, even in case of need, to provide transport for all persons enjoying privileges and immunities, and their property.

63. His delegation would be ready to accept the Spanish proposal, but the drafting was not entirely clear and might be open to misinterpretation.

64. Mr. de ERICE y O'SHEA (Spain) agreed that the wording of the proposed additional paragraph might not be entirely clear. He had wished to avoid the use of terms such as " detention " and " reprisals " since it was understood that the point was already covered by general principles of international law and by the provisions of article 43 (*c*). His delegation would not press its proposal.

65. Mr. GHAZALI (Federation of Malaya) strongly supported the United Kingdom amendment on condition that the Australian suggestion for the addition of a reference to permanent residents of the receiving State was adopted. It would be wrong to stipulate that the receiving State should provide transport to enable a permanent resident, who had his home in that State and had been given privileges and immunities by virtue of his function, to flee the country in case of armed conflict.

66. Mr. GLASER (Romania) said that the great importance of the provisions of article 42 was generally recognized. The immunities and privileges of a diplomatic agent needed protection most precisely when relations between the sending and receiving States were broken off, or in case of dangers arising from armed conflict and a possibly hostile population. The greatest care should therefore be exercised in modifying the International Law Commission's text. The United Kingdom amendment was entirely justified, but its sponsor had

been right to reject the Australian suggestion, which would entirely change the situation. The permanent resident was not a citizen of the receiving State. There might be strong arguments in favour of the proposal that the word " personal " should be added before the word " property ", but careful consideration should be given to possible alternative terms. He would suggest, therefore, that the Drafting Committee should consider the point.

67. Mr. ZLITNI (Libya) regretted that the Spanish proposal had been withdrawn and suggested that it might be reintroduced in connexion with article 43 (*a*).

68. The question of persons permanently resident in the receiving State was a very difficult one. Such residents had a different status in that State from that of foreign diplomats. The United Kingdom representative might perhaps explain whether the words " other than nationals of the receiving State " included nationals of the receiving State appointed as diplomatic agents.

69. Mr. KEVIN (Australia) suggested that the reference in article 42 might be to " persons enjoying privileges and immunities and having the nationality of the sending State " (L.328, submitted at next meeting).

70. Mr. SICOTTE (Canada), speaking on a point of order, proposed that the United Kingdom amendment should be incorporated in the Canadian amendment.

71. Mr. GLASER (Romania) requested that the United Kingdom and Canadian amendments should be voted on separately since some delegations, like his own, would wish to support the United Kingdom amendment but not the Canadian.

72. Mr. HUCKE (Federal Republic of Germany) agreed with the principle contained in the United Kingdom amendment but asked what would happen, if it was adopted, to those members of the family of a diplomat who might have the receiving State's nationality or double nationality; such persons should be allowed to leave with their husbands. His delegation would therefore propose that article 42 should apply to persons enjoying privileges and immunities " other than nationals of the receiving State, and members of the family of such persons, irrespective of their nationality " (L.327, introduced at the next meeting).

73. Mr. GLASSE (United Kingdom) accepted that concept. It was clearly necessary to include a reference in article 42 to the families of persons covered by the article.

74. Mr. TUNKIN (Union of Soviet Socialist Republics) objected that the provision proposed by the Federal Republic of Germany was completely new and might raise a number of controversial questions. It would be wiser to maintain the article as it stood with the United Kingdom amendment. The terms were sufficiently wide to allay the doubts which had been expressed, since the article referred to " persons enjoying privileges and immunities ".

The meeting rose at 1.5 p.m.

THIRTY-SEVENTH MEETING

Thursday, 30 March 1961, at 3.15 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 42 (Facilitation of departure) *(continued)*

1. The CHAIRMAN said that of the amendments previously submitted to article 42 (36th meeting, footnote to para. 46) those of Belgium (L.287) and Spain (L.321) had been withdrawn. Two fresh amendments had been submitted, one by the Federal Republic of Germany (L.327) and one by Australia and the Federation of Malaya (L.328). He insisted on continued debate on article 42.

2. Mr. SICOTTE (Canada) said that his delegation would not press for a vote on its amendment (L.309).

3. Mr. GLASER (Romania) thought that, with the exception of that of the United Kingdom (L.300), the amendments submitted were liable to cause serious difficulties. The effect of the German amendment would be to give persons enjoying privileges and immunities a legal status different from that of members of their families. He thought it dangerous to lay down two different rules and his delegation would vote against that amendment and also against the amendment submitted by Australia and the Federation of Malaya.

4. Mr. TUNKIN (Union of Soviet Socialist Republics) said his delegation had originally intended to abstain, but had since decided to support article 42 as amended by the United Kingdom.

5. Mr. LUSH (United Kingdom) thought the German amendment an improvement on his own delegation's. The United Kingdom amendment did not deal with the case of a national of the receiving State — for instance, the wife of a diplomat who had retained her original nationality, and he thought the proposal deserved support. Humanitarian reasons could be invoked in favour of the German amendment and the United Kingdom delegation would vote for it. He asked that it should be put to the vote before his own delegation's proposal, which he would maintain if the German amendment was rejected.

6. The CHAIRMAN put to the vote the amendment submitted by Australia and the Federation of Malaya (L.328).

The amendment was rejected by 19 votes to 19, with 24 abstentions.

The amendment submitted by the Federal Republic of Germany (L.327) was adopted by 35 votes to 4, with 27 abstentions.

7. The CHAIRMAN noted that in the circumstances there was no need to put the United Kingdom proposal to the vote.

Article 42 as a whole was adopted, as amended, by 60 votes to none, with 4 abstentions.

Article 43 (Protection of premises, archives and interests)

8. The CHAIRMAN invited debate on article 43 and on the Mexican delegation's amendment thereto (L.182).

9. Mr. OJEDA (Mexico) said that the object of his delegation's amendment (L.182) was to clarify the meaning of sub-paragraph (*c*) of the article. He would not press for a vote on the amendment, however, since the underlying principle seemed to be generally accepted; it would suffice to recommend the Drafting Committee to take that principle into account in preparing the final text.

10. Mr. WESTRUP (Sweden) said that his delegation had not submitted any amendment to article 43, but it wished to make a few comments. It thought there was a gap in the article. Sub-paragraph (*b*) provided that the sending State might entrust the custody of the premises of the mission to the mission of a third State, while sub-paragraph (*c*) provided that it might entrust the protection of its interests to another mission, adding that such a mission must be acceptable to the receiving State. Perhaps a provision would be advisable preventing the receiving State from obstructing the normal operation of that procedure by refusing to accept any third State as the guardian of the interests of the sending State. The idea that a State could be deprived of all means of securing the protection of its nationals and its interests after breaking off diplomatic relations with the receiving State seemed to be incompatible with international law. During the two world wars both persons and interests in enemy countries had been constantly protected, and Sweden, which had a wide experience in the matter, had never met with a refusal on the ground that it was not acceptable as guardian of the nationals and interests of the sending State. He could not believe that international law had retrogressed so far and that universally accepted principles could be called in question. Presumably the International Law Commission had not overlooked those principles, and that view was confirmed by the general line it had taken in its draft.

11. Mr. CARMONA (Venezuela) considered that the article was very satisfactory, but extraordinary situations might arise. For instance, there might not be time to appoint a third State to protect the sending State's interests. It might also happen that, though the premises of the mission remained inviolate after the break, the sending State did not pay the charges due in respect of the premises. The Drafting Committee might perhaps revise the article in clearer terms.

12. Mr. CAMERON (United States of America) supported article 43 as it stood. The appointment of a protecting Power was allowed by long-standing tradition, and the right should be written into the convention.

13. Mr. GLASSE (United Kingdom) agreed with the Swedish representative's opinion. Sub-paragraphs (*b*) and (*c*) of the draft article established a universally accepted rule. The United Kingdom delegation considered that the receiving State was bound to act reasonably even in a world conflict.

14. Mr. de ROMREE (Belgium) and Mr. PATEY (France) associated themselves with the statements made by the Swedish and United Kingdom representatives.

15. Mr. SUBARDJO (Indonesia) pointed out that article 43 stipulated that the third State must be acceptable to the receiving State. It also said that the sending State " may " entrust to a third State the protection or custody of the premises of its mission. The provision was not mandatory. The receiving State could, at any time it chose, withdraw its agreement to the appointment of the third State. That freedom given the receiving State by the draft article deserved emphasis.

16. Mr. EL-ERIAN (United Arab Republic) agreed.

17. The CHAIRMAN suggested that article 43 should be regarded as adopted and referred to the Drafting Committee for revision in the light of the debate.

It was so agrreed.

Proposed new article concerning the protection of interests of a third State *(resumed from the 9th meeting)*

18. The CHAIRMAN said that at the 9th meeting it had been agreed that the new article proposed by Colombia (L.103) would be discussed after the Committee had dealt with article 43. The Colombian delegation had prepared a revision of the new article (L.103/Rev.1) which was co-sponsored by India and on which he invited debate.

19. Mr. AGUDELO (Colombia) said that the object of the new article was to fill a gap in the International Law Commission's draft. Article 43 dealt with two contingencies: the rupture of diplomatic relations and the permanent or temporary recall of the mission. The draft was silent, however, on the case of simple absence of diplomatic relations, for example where a new State gained independence. The proposed new article would cover such situations.

20. Mr. TUNKIN (Union of Soviet Socialist Republics) said that after careful consideration he had come to the conclusion that the proposed new article would be a useful addition.

The proposed new article was adopted by 44 votes to none, with 23 abstentions.

Article 44 (Non-discrimination)

21. The CHAIRMAN invited debate on article 44, to which amendments had been submitted by the United States of America (L.298), the United Kingdom (L.301) and Bulgaria and Czechoslovakia (L.304).

22. Mr. CAMERON (United States of America) said that, in order to shorten and facilitate the discussion, his delegation would withdraw its amendment.

23. Mr. MYSLIL (Czechoslovakia) said that the recent draft on consular intercourse and immunities (A/4425)

did not contain a provision corresponding to article 44, paragraph 2 (*a*) of the draft before the Committee. Indeed, the International Law Commission doubted whether the provision should stand even in the draft on diplomatic intercourse (*ibid.*, commentary on article 64). Many of the articles in the draft under discussion placed obligations on the contracting States; and it was surely paradoxical and dangerous to provide at the end of the convention that States might apply the rules restrictively, for that was contrary to the principles of international law. His delegation and the Bulgarian delegation had therefore submitted an amendment (L.304) deleting paragraph 2 (*a*).

24. Mr. GLASSE (United Kingdom) said that, though article 44 might seem innocuous, it was in fact one of the most important articles in the draft, for it went to the very root of the convention. The object of his delegation's amendment (L.301) was to enlarge the proviso in paragraph 2 (*b*).

25. Mr. YASSEEN (Iraq) said the rules laid down in the draft could not be applied restrictively. Every rule of law had its own province, which could not be limited without a breach of the rule itself. As the representative of Czechoslovakia had pointed out, the International Law Commission's draft on consular intercourse contained no provision corresponding to that of paragraph 2 (*a*), and the Commission had doubted whether that sub-paragraph should be retained even in the convention on diplomatic intercourse and immunities. His delegation shared the Commission's doubts and would therefore vote for the Bulgarian and Czechoslovak amendment (L.304).

26. Mr. MONACO (Italy) said that in theory it might seem superfluous to include in the convention a rule on non-discrimination; but for the purpose of the practical application of international law it was necessary to state the rule, because non-discrimination was one of the recognized principles of that law. Both the exceptions to the rule laid down in article 44 were based on the principle of reciprocity; but the more important of the two was that in paragraph 2 (*b*). The United Kingdom amendment would considerably change the scope of the article, which as it stood concerned only unilateral action by a State, whereas the United Kingdom amendment would allow an exception to the rule of non-discrimination by bilateral agreement between two States. His delegation therefore supported draft article 44 as it stood.

27. Mr. NGUYEN-QUOC DINH (Viet-Nam) agreed with the United Kingdom representative that article 44 was extremely important, since it affected the application of all the rules laid down in the draft. In drafting that article the International Law Commission had tried to reconcile the rule of non-discrimination with the principle of reciprocity implicit in the matter of diplomatic privileges and immunities. Reciprocity was a difficult and ambiguous concept, and its application in practice could lead to discrimination between diplomatic missions. A State could apply the rules laid down in a restrictive or in a liberal manner. That being so, should reciprocity in relations between States be based on restrictive or liberal practice ? If the former, reciprocity would take the form of reprisals, while the latter would entail equality in liberalism, which would sometimes be difficult to achieve. Nevertheless, the principle should be maintained for the exception specified in paragraph 2 (*a*), and his delegation would therefore oppose the amendment submitted by Bulgaria and Czechoslovakia. As to paragraph 2 (*b*), it considered that the exception specified there should apply to privileges and immunities granted unilaterally by the receiving State; hence it approved of paragraph 2 (*b*) as it stood.

28. Mr. TUNKIN (Union of Soviet Socialist Republics) said he could not understand the importance which some delegations attached to article 44. In fact, that article did no more than sanction departures from the rules laid down in the convention — rules which States were required to apply. As the representatives of Czechoslovakia and Iraq had pointed out, the International Law Commission had finally come to the conclusion that it might be better not to include in the convention on diplomatic intercourse and immunities a provision on the restrictive application of the rules it laid down; for such a provision might open the way for infringement of those rules, and it was only included in the draft submitted to the Conference because the text had already been circulated before the International Law Commission had reached that conclusion. Consequently, the Soviet delegation would support the Bulgarian and Czechoslovak amendment deleting paragraph 2 (*a*). His delegation did not interpret the United Kingdom amendment (L.301) to paragraph 2 (*b*) in the same way as the representative of Italy; in its opinion that amendment did not change the substance of the sub-paragraph, but expressed it better than the International Law Commission's draft.

29. Mr. KRISHNA RAO (India) supported the Bulgarian and Czechoslovak amendment because he thought that paragraph 2 (*a*) was dangerous. He also supported the United Kingdom amendment for the reasons given by the representative of that country, and would vote in favour of it.

30. Mr. CAMERON (United States of America) believed that paragraph 2 (*a*) should be retained; he therefore opposed the Bulgarian and Czechoslovak amendment.

31. Mr. OMOLOLU (Nigeria) supported the Bulgarian and Czechoslovak amendment, as well as the United Kingdom amendment, which merely widened the scope of paragraph 2 (*b*).

32. Mr. GLASER (Romania) was in favour of the rule of non-discrimination, but not of the rule of reciprocity which the International Law Commission itself had hesitated to insert in the draft articles submitted to the Conference, and which it had later decided not to insert in the draft articles on consular intercourse and immunities.

33. Mr. GLASSE (United Kingdom) observed that the numerous comments made clearly showed the importance which delegations attached to article 44. The Bulgarian

and Czechoslovak amendment seemed to have the support of many delegations. His delegation saw no reason to oppose it; on the other hand, it urged that paragraph 2 (*b*) should be retained, but in the form in which it appeared in the United Kingdom amendment (L.301).

34. Mr. DASKALOV (Bulgaria) said that the reasons given for deleting sub-paragraph (*a*) given by the Czechoslovak representative were so convincing that he had no need to elaborate the argument. As to sub-paragraph (*b*), his delegation accepted the text proposed by the United Kingdom, which was preferable to the International Law Commission's text.

35. The CHAIRMAN put the Bulgarian-Czechoslovak amendment (L.304) to the vote.

At the request of the representative of Belgium, a vote was taken by roll-call.

Luxembourg, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Nigeria, Poland, Romania, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Albania, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Czechoslovakia, Ethiopia, Ghana, Hungary, India, Indonesia, Iraq.

Against: Luxembourg, Mexico, Netherlands, Pakistan, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United States of America, Venezuela, Viet-Nam, Argentina, Australia, Belgium, Ceylon, Chile, China, Ecuador, France, Federal Republic of Germany, Greece, Guatemala, Israel, Italy, Japan, Republic of Korea, Liberia.

Abstaining: Morocco, Norway, Panama, Peru, Saudi Arabia, United Arab Republic, Yugoslavia, Austria, Canada, Colombia, Congo (Leopoldville), Denmark, Federation of Malaya, Finland, Holy See, Iran, Ireland, Libya, Liechtenstein.

The amendment was rejected by 30 votes to 20, with 19 abstentions.

36. The CHAIRMAN put the United Kingdom amendment (L.301) to the vote.

The amendment was adopted by 45 votes to 4, with 19 abstentions.

Article 44 as a whole, as amended, was adopted by 55 votes to 1, with 13 abstentions.

New article proposed by Indonesia concerning reciprocity

37. The CHAIRMAN drew attention to the new article proposed by Indonesia (L.297).

38. Mr. SUBARDJO (Indonesia) said that, in view of the terms of article 44 as just adopted, his delegation withdrew its proposal.

New article proposed by Belgium

39. The CHAIRMAN drew attention to the new article proposed by Belgium (L.284).

40. Mr. de ROMREE (Belgium), introducing his delegation's proposal, said that several delegations had signified their intention of entering reservations to the convention. The object of the provision proposed by Belgium was to ensure equality among contracting States if reservations should be permitted to the convention.

41. Mr. TUNKIN (Union of Soviet Socialist Republics) said he could not see what purpose would be served by the proposed new article. Obviously, if a State entered a reservation to a particular provision of the convention, there was no obligation between that State and the other contracting States so far as that provision was concerned.

42. Mr. YASSEEN (Iraq) agreed with the Soviet Union representative. The provision proposed by the Belgian delegation was implicit in the general principles governing the law of treaties.

43. Mr. de ROMREE (Belgium) pointed out that an analagous provision appeared in two international conventions: the European Convention for the Peaceful Settlement of Disputes, signed on 29 April 1957,[1] and the Convention concerning Customs Facilities for Touring, signed on 4 June 1954.[2]

The Belgian proposal (L.284) was rejected by 18 votes to 12, with 35 abstentions.

Article 45 (Settlement of disputes)

44. The CHAIRMAN invited debate on article 45 and the amendments thereto.[3]

45. Mr. NAFEH ZADE (United Arab Republic) supported the proposal submitted by Iraq, Italy and Poland (L.316), since his delegation had some doubts in regard to article 45 as drafted. The first United Nations Conference on the Law of the Sea, held at Geneva in 1958, had shown that disputes concerning the interpretation or application of a convention should be settled within the framework of the principles appropriate to that convention, and that to adopt a rigid formula was not wise. When the International Law Commission had discussed article 45 of the draft before the Conference, Professor François, special rapporteur on the law of the sea, had considered it undesirable to include a compulsory arbitration clause in each of the drafts prepared by the Commission. Such a clause would become common form and automatically give rise to reservations which would deprive the instruments of all their value. For that reason the Conference on Diplomatic Intercourse and Immunities should adopt a protocol for optional signature on the same lines as that which the first Conference on the Law of the Sea had wisely adopted.

---

[1] United Nations *Treaty Series*, vol. 320, p. 243.

[2] United Nations *Treaty Series*, vol. 276, p. 230.

[3] The following amendments had been submitted: Argentina, A/CONF.20/C.1/L.139 and Rev.1; Bulgaria, A/CONF.20/C.1/L.296; United States of America, A/CONF.20/C.1/L.299; China, A/CONF.20/C.1/L.302 and Corr.1; Japan, A/CONF.20/C.1/L.307/Rev.1; Iraq, Italy and Poland, A/CONF.20/C.1/L.316; Belgium, A/CONF.20/C.1/L.325.

46. Mr. HU (China) said that the peaceful settlement of disputes was one of the most important features of the development of modern international law, and opposed the deletion of article 45. His delegation had submitted its amendment (L.302) for two reasons. First, conciliation or arbitration should not be given priority over judicial settlement, and parties to a dispute who had not succeeded in reaching agreement through the diplomatic channel should remain entirely free to choose the mode of pacific settlement that suited them best. Hence the proposal in the amendment to delete the words " failing that ". Secondly, the provision that a dispute might be submitted to the International Court of Justice at the request of only one party was not satisfactory. In practice it would oblige the parties to accept the jurisdiction of the Court, a proposition the majority of States would not accept. Hence the need to eliminate the words " at the request of either of the parties ".

47. The Chinese delegation would be prepared to withdraw its amendment in favour of the amendment submitted by Argentina and Guatemala (L.139/Rev.1), if the sponsors of that amendment would agree to the deletion of the words " by mutual consent of the parties ", which seemed superfluous. Recourse to conciliation or arbitration necessarily implied the consent of the parties, and the Statute of the International Court of Justice provided that the jurisdiction of the Court was obligatory only for States accepting the optional clause in Article 36.

48. Mr. BOLLINI SHAW (Argentina) said that the purpose of the amendment sponsored by his delegation and that of Guatemala (L.139/Rev.1) was to prevent disputes from being submitted to the compulsory jurisdiction of the International Court of Justice at the request of one party. Argentina's well-established policy was not to accept the compulsory jurisdiction of the Court under paragraph 2 of Article 36 of the Court's Statute; but it had settled its frontier problems with Brazil, Paraguay and Chile by arbitration. As not all disputes could be submitted to the Court, the Argentine delegation would have no difficulty in voting for the amendment providing for the adoption of a special protocol (L.316). On the other hand, it could not accept the sub-amendment moved by Belgium (L.325), since that contained a provision entirely contrary to the intention of his delegation's amendment.

49. Mr. GASIOROWSKI (Poland) said that the Conference's task was to codify the existing rules of law, not to define the conditions of their application. In the course of the tenth session of the International Law Commission, Sir Gerald Fitzmaurice had pointed out that " There was no more reason why States should resort to arbitration in disputes relating to diplomatic intercourse and immunities than in disputes relating to any other matter on which customary international law was firmly established." [4] The Committee should think twice before inserting in the draft a provision for compulsory arbitration. Moreover, the International Law Commission had not thought it necessary to insert a compulsory arbitration clause in the more recent draft on consular intercourse and immunities (A/4425). For those reasons the Polish delegation, with other delegations, had submitted an amendment providing for the adoption of a special protocol (L.316).

50. Mr. MONACO (Italy) said his delegation approved the principle of article 45, but had joined with other delegations in submitting the amendment (L.316) because it seemed necessary to recognize that a number of States did not accept the compulsory jurisdiction of the Court.

51. Mr. TAKANO (Japan) said that the words " failing that " could be interpreted to mean " failing recourse to conciliation or arbitration ", instead of " failing settlement by conciliation or arbitration ". Under the former interpretation, parties which succeeded in agreeing only to submit their dispute to conciliation or arbitration would not be obliged, if their attempt at settlement failed, to submit it to the Court. Moreover, the Japanese delegation believed that international disputes should always be subject to judicial settlement when other means of peaceful settlement had failed. Lastly, disputes like those which could occur in matters of diplomatic intercourse and immunities were particularly suitable for settlement by the International Court of Justice. Those were the considerations which had led Japan to submit its amendment (L.307/Rev.1).

52. Mr. YASSEEN (Iraq) thought it was not the business of the Conference to pronounce on the deep differences between States in regard to acceptance of the compulsory jurisdiction of the International Court of Justice. It would therefore be desirable to replace article 45 by an optional protocol. That was his delegation's reason for joining other delegations in submitting an amendment (L.316).

53. Mr. CAMERON (United States of America) said that, by virtue of Article 36, paragraph 1, of its Statute, the competence of the International Court of Justice undoubtedly extended to the subject-matter of the convention being drafted. His delegation fully supported the principle of the compulsory jurisdiction of the Court, which was reflected in article 45 of the Commission's text. His delegation had proposed its amendment (L.299) as a clarification of that text, but was withdrawing the amendment to permit those States which supported the compulsory jurisdiction of the Court to unite in support of the text proposed by the Commission. He invited those States devoted to the rule of law to manifest that devotion.

54. Mr. RUEGGER (Switzerland) said that his delegation attached the utmost importance to a clause truly providing for the compulsory jurisdiction of the International Court of Justice. Accordingly, it would urge that article 45, which had received the support of the majority of the International Law Commission, should stand. In taking that attitude, the Swiss delegation, which at an earlier codification conference had proposed a provision enabling States supporting the same principle to accept compulsory jurisdiction or arbitration, was faithful to Switzerland's traditional policy in the matter of law. His country had negotiated and concluded with a large number of States treaties providing for com-

[4] ILC, *466th meeting*, para. 1.

pulsory arbitration or jurisdiction. It was bound by the " optional clause " of Article 36 of the Statute of the Court and by the General Act of Arbitration. Altogether Switzerland had entered into general instruments providing for arbitration and judicial settlement with forty-seven States. In keeping with that tradition, which had been followed for more than forty years, Switzerland was firmly convinced that the convention being drafted should contain a jurisdiction clause. Compulsory arbitration and jurisdiction should be the corollary and indispensable complement of any codification. To ignore the problem in any convention intended to codify the law would be more serious than in the case of other conventions. As he had said at an earlier codification conference, it was not enough to write the rules of law: in case of dispute there should, in addition, be adjudication by an impartial judge or arbitrator.

55. Switzerland was bound by very general instruments concerning arbitration and judicial settlement with respect to many Powers and in particular towards its neighbours, and hoped on the basis of a recent initiative to conclude like treaties with other States, including those which his country had been happy to welcome as new members of the international community.

56. In the same spirit, the Swiss Government was anxious that wherever possible clauses providing for judicial settlement that were truly binding should be written into multilateral agreements for the purpose of their interpretation and application.

57. For very great Powers the general acceptance of the principle of compulsory jurisdiction applicable to all disputes might involve greater sacrifices than for smaller States which relied mainly on the law. In the case of the convention on diplomatic relations, any possible disputes would hardly have serious political implications. By virtue of article 45, it was possible to isolate the diplomatic channel from disputes that could be settled impartially by an adequate procedure.

58. He added that, by the Constitution of the International Labour Organisation, of which nearly all the Powers represented at the Conference were Members, the principle of the compulsory judicial settlement of all disputes was recognized. That constitution was a precedent which should be followed.

59. His delegation opposed the amendments which provided for *ad hoc* agreements for the settlement of any particular future dispute. Such a provision had no binding force, not even any moral force; it was worthless. Only as a last resort would his delegation agree to a departure from the article as drafted — on which he asked for a roll-call vote — and support the alternative proposal, which had its origin in a Swiss proposal made at Geneva in 1958, submitted by Iraq, Italy and Poland.

60. Mr. CARMONA (Venezuela) said he had hoped the Committee would studiously avoid a debate on the controversial subject of compulsory arbitration or jurisdiction. Fewer than a third of the States parties to the Statute of the International Court had accepted the " optional clause " recognizing the Court's compulsory jurisdiction. Furthermore, of the 64 States which had signed the Geneva Conventions on the Law of the Sea, 1958, only sixteen had signed the Optional Protocol.[5] That meant that a good many States were not at present disposed to accept the compulsory jurisdiction of the Court. It would therefore be preferable for the Committee to adopt the amendment (L.316) providing for an optional protocol.

61. Mr. DASKALOV (Bulgaria) likewise emphasized that the compulsory jurisdiction principle was by no means unanimously accepted and that the adoption of article 45 would prevent many States from ratifying the convention. As a number of means were open to States for the peaceful settlement of disputes — for instance, those mentioned in Article 33 of the United Nations Charter — it would be preferable simply to delete article 45. That was the action proposed in the Bulgarian delegation's amendment (L.296). His delegation would, however, be prepared to vote for the adoption of a special protocol.

62. Mr. SUCHARITAKUL (Thailand) was also in favour of the adoption of a protocol, and therefore supported the proposal in that sense.

63. Mr. LINARES (Guatemala) said that the clause providing for the compulsory jurisdiction of the International Court of Justice conflicted with Guatemalan law. His delegation accordingly co-sponsored the Argentine amendment (L.139/Rev.1).

64. Mr. BARTOŠ (Yugoslavia) said that no rule of law deserved the name unless it was backed by sanctions. His delegation therefore approved and was instructed to vote for article 45. However, since some States opposed the principle of compulsory arbitration it might vote for the proposal for a special protocol.

65. Commenting on the International Law Commission's attitude to compulsory jurisdiction, he said, firstly, that according to the Commission's report on its draft on consular intercourse and immunities, the draft might be supplemented later by a fifth chapter containing the final clauses, including presumably a clause on the settlement of disputes (A/4425, para. 26). Secondly, the Commission's commentary on article 45 of the draft before the Conference explained that a majority had thought that, if the draft on diplomatic relations were submitted in the form of a convention, a provision governing the settlement of disputes would be necessary and that such a provision should stipulate that, in cases where other peaceful means of settlement proved ineffective, the dispute would be referred to the International Court of Justice (A/3859).

66. Mr. TUNKIN (Union of Soviet Socialist Republics) considered that the Committee should bear in mind that many States were openly opposed to the principle of compulsory jurisdiction and that some States not represented at the Conference might also be opposed to it. To ensure the widest possible ratification of the convention, the proposal for an optional protocol of signature should be adopted.

[5] *United Nations Conference on the Law of the Sea, 1958, Official Records*, vol. II. United Nations publication, Sales No. 58.V.4, vol. II, pp. 145 and 146.

67. Mr. WESTRUP (Sweden) associated himself unreservedly with the views of the United States and Swiss representatives. He supported the latter's request for a roll-call vote on article 45. Only if the roll-call vote was adverse to the article would he support the proposal for a special protocol.

The meeting rose at 6.40 p.m.

THIRTY-EIGHTH MEETING

Tuesday, 4 April 1961, at 10.50 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 45 (Settlement of disputes) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 45 and to amendments thereto.[1]

2. Mr. MERON (Israel) said that his government was among those which had accepted the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Statute of the Court. But also apart from that he thought a clause providing for the compulsory jurisdiction of the Court was particularly appropriate for a convention on diplomatic privileges and immunities. His delegation was prepared to support article 45 of the International Law Commission's draft, and would be very sorry if the majority of the delegations were unable to do likewise.

3. Mr. ZLITNI (Libya) said that, since some States did not recognize the jurisdiction of the International Court of Justice as compulsory in disputes concerning the interpretation of a treaty, a special optional protocol should be attached to the convention, to provide for the compulsory settlement of differences. His delegation would therefore support the proposal for such a protocol (L.316/Add.1).

4. Mr. PUPLAMPU (Ghana) considered that the convention should contain a provision for settlement of disputes. However, as the inclusion of such a provision in the body of the instrument might prevent some States from signing, his delegation thought it should be embodied in a special protocol. He would therefore support the proposal for a protocol.

5. Mr. JEZEK (Czechoslovakia) said that his delegation could not accept article 45 because it violated the principle of the equality of States. It was unnecessary to include in the convention a special provision for the settlement of disputes. States should be left to settle among themselves by agreement any disputes concerning the interpretation or application of the convention. It might be provided that, in the absence of agreement, its dispute would be referred to the International Court of Justice, but for that purpose the case would have to be referred to the Court by both parties, as the Court's Statute required. Some States might not sign the convention if article 45 were retained. His delegation thought the article should be deleted, and would therefore vote for the Bulgarian amendment (L.296). If, however, a majority of the Committee considered that a clause on the settlement of disputes was necessary, his delegation would support the proposal for an optional protocol.

6. Mr. GLASER (Romania) considered that a provision for the compulsory settlement of disputes concerning interpretation had no place in the convention, the purpose of which was to codify the international law on diplomatic intercourse and immunities. If, nevertheless, a clause on the settlement of disputes was to appear in the convention, it should at least conform to international law and to the Statute of the International Court of Justice. Draft article 45 did not do so, and consequently his delegation would vote for its deletion. Moreover, the principle of the compulsory jurisdiction of the Court violated that of the sovereignty of States, and his delegation would vote on the various amendments to article 45 in the light of that consideration.

7. Mr. PATEY (France) said that three solutions to the problem had been suggested. The first was that put forward by Bulgaria (L.296) to delete the whole of article 45, or the almost equally radical proposal of Argentina (L.139) which made recourse to the International Court of Justice depend on agreement between the parties. His delegation was unable to accept those formulas. It was convinced of the need to include in the convention itself a clause on the settlement of disputes. One could not make the competence of a tribunal dependent upon the signature of a compromise, in other words, on the goodwill of the other party. As to the second solution, under which article 45 would be replaced by a separate protocol modelled on the Geneva Protocol of 1958, his delegation felt that would be a false compromise solution, for only States which had recognized the compulsory jurisdiction of the International Court would sign it, and not those which rejected article 45. It had been agreed that, as the purpose of the draft was to codify international law on diplomatic intercourse and immunities, the Conference was not concerned with the interpretation of the rules which it was formulating; but General Assembly resolution 1450 (XIV) laid down that the Conference's task was to embody the result of its work in " a convention ". That argument was therefore not tenable. The French delegation would support, and vote for, the third solution, the maintenance of article 45 of the International Law Commission's draft, which was in keeping with France's traditional position.

8. Mr. VALLAT (United Kingdom) said that his government had approved the principle of the judicial settlement of legal disputes. Hence the United Kingdom

[1] For the list of amendments, see 37th meeting, footnote to para. 44. The United States amendment (L.299) was withdrawn. The United Arab Republic had become a co-sponsor of the proposal for an optional protocol (L.316/Add.1).

delegation supported article 45, which endorsed that principle. Disagreeing with the Romanian representative, he said that none of the provisions of article 45 was in conflict with the Statute of the International Court of Justice. Under Article 36, paragraph 1, of the Statute, the jurisdiction of the Court comprised all matters specially provided for in treaties and conventions in force. He recognized, however, that in the context of the convention on diplomatic intercourse and immunities article 45 was not indispensable, and might even be regarded by some delegations as restricting the jurisdiction of the International Court. But surely, the Conference should strengthen, not weaken, the Court's authority. To state in article 45 that States could submit their disputes to the International Court of Justice at the request of both parties would make the article quite meaningless and be a retrograde step. Accordingly, his delegation would oppose any such amendment. On the other hand, it realized that the adoption of article 45 might cause difficulties for certain States. Thus, although it intended to vote in favour of article 45 if it was put to the vote, the United Kingdom delegation would support the proposal that article 45 should be replaced by an optional protocol of signature concerning the settlement of disputes, and would vote for that proposal if it was put to the vote first.

9. Mr. BOUZIRI (Tunisia) said he was opposed to the compulsory jurisdiction of the International Court of Justice and would therefore vote against article 45.

10. Mr. NISOT (Belgium) said that his delegation's sub-amendment (L.325) to the Argentine amendment to article 45 was self-explanatory.

11. Mr. NGUYEN-QUOC DINH (Viet-Nam) regretted that, for the reasons he was going to explain, his delegation would be obliged to vote against the International Law Commission's draft of article 45, which had been supported with such conviction. The article was based on two related, but separate, principles, the first being the obligation to settle disputes by peaceful means, and the second the tacit recognition of the compulsory jurisdiction of the International Court of Justice. While his delegation approved the first of those principles, it was not yet prepared to accept the second. It would support the amendments submitted by Argentina and China, which were consistent with that position. For the same reasons, it would vote against the Japanese amendment and the Belgian sub-amendment. The Bulgarian amendment went much too far, for to delete article 45 was equivalent to rejecting both the principle of peaceful settlement of disputes and that of the compulsory jurisdiction of the International Court of Justice. His delegation would be able to support the four-nation proposal, provided that its sole object was the drafting of a separate optional protocol of signature.

12. Mr. SUBARDJO (Indonesia) noted that for various reasons many States could not accept compulsory jurisdiction, and that different States preferred different means of settling disputes concerning the interpretation or application of a convention or treaty. The same situation had arisen at the Bandung Conference, where the question had been raised. In that connexion, he wished to recall that the Bandung Conference had declared that States should seek to settle their disputes by negotiation, conciliation, arbitration, judicial settlement, or by any other peaceful means they might choose, provided that they were in conformity with the United Nations Charter. Since it subscribed to the principles laid down by the Bandung Conference, the Indonesian Government could not agree to submit to compulsory jurisdiction, and its delegation would therefore vote for the amendments which advocated methods acceptable to Indonesia.

13. Mr. CAMERON (United States of America) stated that his delegation had regretfully concluded that the Conference was not prepared by the two-thirds majority which would eventually be required for the adoption of proposals in the plenary meeting to accept the compulsory jurisdiction of the International Court of Justice for the settlement of disputes arising from the interpretation or application of the convention. The United States delegation was thus ready to support the concept of an optional protocol of signature, on the understanding that the proposal would commend itself to a large majority.

14. Mr. MELO LECAROS (Chile) considered the proposal for a special protocol satisfactory, and announced that he would vote for it.

15. Mr. GLASER (Romania), exercising his right of reply, challenged the — to say the least — imaginative interpretation given to Article 36 of the Statute of the International Court of Justice by the United Kingdom representative. Contrary to what the United Kingdom representative had said, article 45 was incompatible with the basic principle underlying Article 36 of the Statute; the United Kingdom representative had implicitly admitted as much in saying that if it gave States the right to submit their disputes to the Court at the request of both parties article 45 would become meaningless. Under international law a sovereign State could not be subjected to the jurisdiction of the International Court of Justice except by its own consent.

16. Mr. BOTELHO (Brazil) recalled that it was on his country's initiative that the optional clause had been inserted into Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice.[2] The peaceful settlement of disputes was part of Brazil's traditional policy, and recourse to arbitration was expressly provided for in the Brazilian Constitution. All frontier problems, for instance, had been settled by arbitration or direct negotiation. Hence the Brazilian delegation was prepared to support the amendment submitted by Argentina and Guatemala; but, since some countries did not recognize the Court's compulsory jurisdiction, it might also vote for the proposal for an optional protocol.

17. Mr. REGALA (Philippines) regretted that some countries were not prepared to submit their disputes to the International Court of Justice; the recognition of

[2] At the first Assembly of the League of Nations, 20th plenary meeting, 13 December 1920.

its compulsory jurisdiction would make no small contribution to the progressive development of international law, to which some speakers referred so often. The Philippine delegation would vote for article 45.

18. Mr. ÇARÇANI (Albania) said that the application of article 45 would infringe the sovereignty of States in so far as it provided for the submission of disputes to the International Court of Justice " at the request of either of the parties ". Hence Albania would vote for the Bulgarian amendment.

19. Mr. BAYONA (Colombia) said that his country would vote for article 45, since it had always advocated the peaceful settlement of disputes and, moreover, recognized the compulsory jurisdiction of the International Court of Justice. It might, however, support the adoption of an optional protocol of signature.

20. Mr. PONCE MIRANDA (Ecuador) said that the convention should of necessity contain a clause providing for the compulsory jurisdiction of the International Court. That was indispensable for the protection of the interests of the small Powers, and for the defence of States of good will against those in bad faith. The Ecuadorian delegation could not, therefore, support the proposal for a separate protocol and would vote for article 45.

21. Mr. DASKALOV (Bulgaria) noted that the majority of delegations seemed disposed to vote for the proposal for an optional protocol; accordingly he was prepared to withdraw his delegation's amendment (L.296) so that the convention might be approved by the greatest possible number of States.

22. The CHAIRMAN called on the Committee to vote on the various amendments relating to article 45, and said that the proposal for an optional protocol (L.316 and Add.1), which in substance was furthest removed from the original draft, would be put to the vote first.

23. Mr. TALJAARD (Union of South Africa) considered that the proposal was too vague; the Committee should vote on a more specific text.

24. The CHAIRMAN stated that, if the proposal were adopted, the Drafting Committee would draft the final text of the protocol, but *mutatis mutandis* that text would be similar to the protocol adopted on 29 April 1958 at Geneva by the first United Nations Conference on the Law of the Sea.

25. Mr. RUEGGER (Switzerland), speaking on a point of order, said that at the preceding meeting (para. 59) he had requested that the Committee should first vote by roll-call on the principle of incorporating in the convention a clause providing for the compulsory jurisdiction of the International Court of Justice. Since it would show which States recognized the court's jurisdiction, that vote would have the advantage of clarifying the discussion. It it were negative, the Committee could then vote on the adoption of a protocol.

26. Mr. NISOT (Belgium) supported that procedure.

27. The CHAIRMAN said that, in the absence of objection, he was ready to ask the Committee to vote in the manner described by the Swiss representative.

28. Mr. CARMONA (Venezuela) objected, and asked for the strict application of rule 41 of the rules of procedure. The Committee's members were well aware of the principles underlying the various amendments, and there was no object in taking a preliminary vote. The proposal for an optional protocol should be put to the vote first.

29. Mr. BOUZIRI (Tunisia) agreed. If the Committee wished States to respect the convention it was to draft, it should respect its own rules of procedure.

30. The CHAIRMAN, noting the objections, put the proposal for an optional protocol (L.316 and Add.1) to the vote.

The proposal was adopted by 49 votes to 7, with 16 abstentions.[3]

31. Mr. BOLLINI SHAW (Argentina) explained that he had abstained from voting for two reasons. His delegation would naturally support a draft resembling its own amendment (L.139); on the other hand, the optional protocol had the merit of leaving States to choose whether or not to accept the compulsory jurisdiction of the International Court.

32. Mr. SICOTTE (Canada) said that he had voted for the proposal in order that the convention might have the widest possible support, but his delegation fully agreed with article 45 as it stood.

33. Mr. CARMONA (Venezuela) said that he had voted unreservedly for the proposal because his government wished to leave States free to settle their disputes as they chose. Venezuela none the less strongly believed in the peaceful settlement of disputes.

34. Mr. PATEY (France) said that he had intended to abstain because his delegation had no great faith in an optional protocol. However, he had cast an adverse vote in the hope of a vote on the principle embodied in article 45.

35. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) explained that he had voted for the proposal because his delegation favoured deletion of article 45. Since Article 33 of the Charter provided a number of ways of settling disputes peacefully, it was not desirable that a clause providing for the compulsory jurisdiction of the Court should be included in the convention.

36. Mr. RUEGGER (Switzerland) said that the vote had produced an ambiguous situation, for the optional protocol had been approved by the States in favour of compulsory jurisdiction and by those opposing it. Nevertheless, his delegation's abstention did not mean that Switzerland would not sign the optional protocol.

[3] As a consequence of this vote, it became unnecessary to vote on the amendments submitted by Argentina or Guatemala (L.139 and Rev.1), Belgium (L.325), China (L.302 and Corr.1) and Japan (L.307/Rev.1). The Drafting Committee subsequently prepared the draft of an optional protocol (A/CONF.20/L.2/Add.2).

37. Mr. BAYONA (Colombia) said he had voted against the proposal in the hope of a vote on article 45. Colombia was in principle in favour of the compulsory jurisdiction of the Court and intended to sign the optional protocol.

38. Mr. YOURAN CHAN (Cambodia) said he had voted for the proposal in a spirit of compromise, but fully supported the principle of compulsory jurisdiction set forth in article 45.

39. Mr. TAKAHASHI (Japan) explained that he had abstained because his delegation thought the principle of compulsory jurisdiction of the Court should be embodied in the convention.

Article 1 (Definitions): Second reading

40. The CHAIRMAN said it had been agreed in the course of the earlier discussion on article 1 that the definitions then provisionally approved would be reviewed in the light of the draft as a whole. The Drafting Committee had prepared a redraft of article 1 (L.324) on which he invited debate. In addition, amendments submitted by Japan (L.305), the United States of America (L.312) and Argentina, Ghana, Guatemala, India, the Federation of Malaya, Mexico, Spain and the United Arab Republic (L.326) remained to be considered. The delegation of Ceylon had withdrawn its amendment (L.91) at the seventh meeting (para. 24).

41. He invited debate in the first place on the amendment submitted by Japan; both the other amendments concerned a proposed definition of " family ".

42. Mr. TAKAHASHI (Japan), introducing his delegation's amendment, said that under article 32 (*f*) diplomatic agents were not exempt, " subject to the provisions of article 21 ", from registration etc. fees and stamp duty, while under article 21 the head of mission was exempt from all taxes and dues " in respect of the premises of the mission ". In article 1 as redrafted (L.324) the " premises of the mission " were defined in terms which did not cover the residence of the head of mission, who would not, as a consequence, qualify for exemption from the dues and charges mentioned in article 32 (*f*) in respect of his residence. Indeed, he might not be exempt from the charges mentioned in article 32 (*b*), owing to the vagueness of the term " private " which was used in a different context in article 28, paragraph 1. In his delegation's opinion, the residence of the head of mission should have the same exemption as the other premises of the mission, and for that reason it had submitted its amendment.

The amendment submitted by Japan (L.305) was adopted by 52 votes to 9, with 11 abstentions.

43. The CHAIRMAN invited debate on the amendments defining the " family ".

44. Mr. WESTRUP (Sweden) noted that the United States amendment (L.312) defined the persons who under the convention would enjoy a number of privileges. During the discussion on article 36 (persons entitled to privileges and immunities) the Committee had not seen fit to define " members of the family ", since that question pertained to article 1. It was true — as the Indian representative had observed on the first reading of article 1 — that even the concept " family " varied from country to country. Nevertheless, governments could not request their national authorities to determine the persons entitled to privileges and immunities merely by the standards of courtesy, commonsense and respect for tradition. Swedish law laid down an age-limit for minor children of non-tax-paying diplomats. In other countries, other rules might apply. " Members of the family " should therefore be defined somewhere in the convention. The definition proposed by the United States deserved support, since it laid down the *minimum* number of persons to be considered " members of the family " and left open the possibility of adding others by special agreement.

45. He stated for the record that the expression " minor children " was interpreted by his government to mean children under the age of eighteen years.

46. Mr. de ERICE y O'SHEA (Spain) considered that the meaning of the term " family " should be defined in the convention. The United States proposal was a praiseworthy effort, but there could be no question of letting the State settle the meaning of " member of the family ". Some speakers had feared abuse if the term " family " were interpreted too widely; but the amendment submitted by Argentina and several other delegations, including that of Spain (L.326) defined it so as to leave no room for doubt.

47. Mr. BOLLINI SHAW (Argentina) said that without a definition of " members of the family " article 1 would be incomplete. What was needed was not so much a strict definition as an explanation. While appreciating the intention of the United States amendment, he considered the wording was not satisfactory: in particular, the last part of the definition was not very clear.

48. Mr. BOUZIRI (Tunisia) thought that the United States definition was likely to raise problems and that " family " could not be defined by agreement among States. The amendment sponsored by Argentina and other delegations was open to abuse because it contained no definition and would allow the number of the privileged to be increased unduly. His delegation would have been prepared to support the Ceylonese amendment (L.91) which, though not entirely satisfactory, nevertheless contained a definition which was both broad and precise.

49. Mr. YASEEN (Iraq) pointed out that the expression " minor child " was used in several amendments. It would be absurd if in the same capital the 18-year-old son of one diplomat were considered an adult, and that of another diplomat a minor. Either there should be uniformity, or the rule determining majority should be that of the receiving State. That was a principle often applied in private international law, and would not therefore be an innovation.

50. Mr. TUNKIN (Union of Soviet Socialist Republics), speaking on the treatment of members of diplomats' families, pointed out that some countries gave a broader interpretation than others. No serious problems had apparently occurred in the past, and accordingly the

Committee had two possibilities before it. It could accept a definition which did not call for any substantial change in national laws. In that respect the United States text was the most satisfactory, possibly with the addition of a reference to unmarried daughters.

51. Alternatively, the Committee could dispense with any definition. The International Law Commission had not inserted one, and several States seemed to prefer that course. His delegation had nothing against either solution, provided that " family " were not given too wide a definition.

52. Mr. SUBARDJO (Indonesia) said that " family " meant different things in East and West. His delegation wanted a text acceptable to the majority. It was prepared to support the joint amendment (L.326) and requested that, if there were a vote, that text should be put to the vote first.

53. Mr. GHAZALI (Federation of Malaya) said he would not be able to agree to a definition under which the receiving State would decide whether a particular person belonged to the diplomat's family or not.

54. Mr. CAMERON (United States of America) observed that the differences of view which had come to light at the first reading of article 1 remained. Countries exchanging diplomatic missions should facilitate the fulfilment of their functions, and for that purpose his delegation's amendment provided for agreements to determine who were members of the family. It did not seem possible to find a definition that would receive sufficiently wide acceptance, and that being so he thought it would perhaps be better to dispense with a definition of " family " altogether.

55. Mr. VALLAT (United Kingdom) considered that the wisest course would be to adhere to the International Law Commission's text. In several articles of the convention the term " member of the family " was usually accompanied by the qualification " forming part of his household ". The Argentine amendment (L.326) introduced a new concept by mentioning " dependants, who form part of his household "; that expression seemed even more vague than " member of the family ". The United States amendment would be almost acceptable, since it allowed for agreement among States; but it also spoke of a " minor child " without explanation. Consequently, the various proposed definitions were hardly likely to improve the article.

56. Mr. WESTRUP (Sweden) said he had listened with great interest to the statements of the Spanish and Tunisian representatives. He did not consider it advisable to include a definition of " family " in article 1, since any definition might offend some delegations. It would be better to mention in article 36, paragraph 1, the persons who, whether members of the family or not, were entitled to privileges and immunities. If his delegation had any reservations, it would submit them in connexion with article 36, paragraph 1.

The meeting rose at 1.5 p.m.

THIRTY-NINTH MEETING

Tuesday, 4 April 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 1 (Definitions): second reading *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on the proposed definitions of " family " (L.312 and L.326).

2. Mr. WESTRUP (Sweden) said that at the previous meeting he had expressed support for the United States definition (L.312). He had, however, been impressed by the arguments against including such a definition — especially those advanced by the representative of Spain. He would therefore not oppose withdrawal of the amendment, but might raise the matter later if necessary.

3. Mr. CAMERON (United States of America) said that because of the comments made at the 38th meeting, and also because he felt that the Committee was not likely to reach agreement on the definition, he would not press his amendment to a vote. He would, however, raise the matter again if any article appeared to suffer from absence of the definition.

4. On behalf of its sponsors, Mr. KRISHNA RAO (India) withdrew the eight-Power amendment (L.326).

5. Mr. BOUZIRI (Tunisia) resubmitted the amendment originally submitted and then withdrawn by Ceylon (L.91) in the name of the Tunisian delegation. He thought it essential to define the family, because families were referred to in several of the articles; furthermore, the definition proposed by Ceylon was a good compromise between the eight-Power definition and that of the United States.

6. Mr. MENDIS (Ceylon) thanked the representative of Tunisia. He felt that the definition was necessary to make the convention complete.

7. Mr. KEVIN (Australia) also thought there was a need for some definition of the family in the convention.

The amendment (L.91) was rejected by 34 votes to 3, with 26 abstentions.

8. The CHAIRMAN put to the vote the redraft of article 1 (L.324) as amended by Japan (L.305).

Article 1, as amended, was adopted unanimously.

9. The CHAIRMAN said the Committee had completed the consideration of the draft articles prepared by the International Law Commission. The provisions adopted would be referred to the Drafting Committee, which would prepare the text to be submitted to the plenary conference.

Preamble

10. The CHAIRMAN said that among the matters still to be dealt with by the Committee was the question of a preamble, concerning which a number of proposals had been submitted.[1]

11. Mr. BAIG (Pakistan) explained the origin and purpose of the proposal which he was sponsoring jointly with eleven other delegations (L.318). The first paragraph was based on the first paragraph of the preamble to the draft convention prepared by the Asian-African Legal Consultative Committee (A/CONF.20/6). The second paragraph was concerned with the development of peaceful relations between States and was based on General Assembly resolution 1236 (XII). The third paragraph embodied an earlier proposal submitted by Mexico (L.127) stating the theoretical basis of diplomatic privileges and immunities. The fourth paragraph simply stated that the principles set out should guide the signatories in observing the convention.

12. Although the sponsors of the twelve-Power proposal considered their ideas appropriate and constructive, they realized that the five-Power proposal (L.329) was essentially the same, and in an effort to help the Committe had agreed not to press their own proposal to a vote.

13. Mr. USTOR (Hungary), introducing his delegation's proposal (L.148), said that, as had been stressed many times during the discussion, the rules that the Conference was going to adopt were not theoretical: they were based on and closely related to the realities, problems and requirements of modern international life. Those realities might not appear too encouraging, for barely sixteen years after the end of the Second World War local wars still occurred; armaments, nuclear weapons and military blocs existed; there was still colonial rule; and there were still poverty, illiteracy, disease and famine. But there were also hopeful signs: in particular, States continued to negotiate with each other; and there was a widespread network of diplomatic relations. The Conference itself constituted evidence of that.

14. Although the Conference was not directly concerned with human problems, the convention it was preparing would undoubtedly influence them, and it was important to make that influence a good one. The obvious purpose of the Conference was to establish order in diplomatic relations. According to article 3 one of the functions of diplomatic missions was to promote friendly relations between States. That idea could not be pursued far in a convention, but there was some scope in the preamble for an expression of views on diplomacy in general and on what its aims and achievements should be. Diplomacy was one of the most important methods of solving world problems; in approving rules for its smooth conduct the Conference would implicitly reaffirm its faith in diplomacy, as opposed to force, and so fulfil the aims of the United Nations Charter.

15. The embodiment of the Charter in international law was the guiding principle of his delegation's draft preamble and also the basis of the first three paragraphs. The fourth paragraph contained an idea common to all the amendments; the fifth, sixth and seventh paragraphs took into account the Czechoslovak proposal (L.6), the preamble to the draft convention of the Asian-African Legal Consultative Committee and the Romanian proposal (L.29).

16. However, he was happy to see that the essentials of his delegation's proposal appeared in the five-Power and twelve-Power proposals, and he would therefore not press it to a vote.

17. Mr. GLASER (Romania) said that his delegation's proposal (L.29) was based on two considerations. First, the division of international law into " law of war " and " law of peace " should be replaced by the single law of peace. Secondly, the object of diplomacy should be co-operation based on respect for national sovereignty and the freedom and independence of nations. He was glad to see the first idea contained in the Hungarian proposal and in the five-Power proposal, and hoped that the second idea could be incorporated as well.

18. Mr. RUEGGER (Switzerland), introducing his delegation's proposal (L.322), said he would not insist upon the first four paragraphs but attached great importance to the last, which embodied the principles of customary international law and of functional necessity. It would be desirable to state those principles in the preamble, as they were not mentioned in the articles, and therefore he suggested that the two points should be added to the five-Power proposal. He was more concerned with the first than with the second and, if a vote were necessary, would ask that they be voted on separately.

19. Mr. SIMMONDS (Ghana) considered that the preamble should provide an index to the Committee's codification of international law on diplomatic intercourse and immunities. Since his delegation had submitted its proposal (L.323), other better texts had been proposed. It would therefore be content if the Drafting Committee would note the various principles in its proposal.

20. Mr. TUNKIN (USSR) said that the five-Power proposal (L.329) was generally acceptable. The International Law Commission, however, had stated in its general comments introducing section II of its draft (A/3859) that it had been guided by the " functional necessity " theory in solving problems on which practice gave no clear pointers, while also bearing in mind the representative character of the head of the mission and of the mission itself. That point had been lost to view in the proposed text. To bring that text into closer accord with the Commission's intention, his delegation would therefore propose that the words " as representative organs of States " should be inserted in the fourth paragraph after the words " functions of diplomatic missions ".

[1] The following proposals had been submitted: Romania, A/CONF.20/C.1/L.29; Brazil, Colombia, Japan, Mexico, Nigeria, Norway, Hungary, A/CONF.20/C.1/L.148; Pakistan, Senegal, Spain, Turkey, United Kingdom and Switzerland, A/CONF.20/C.1/L.322; United States of America, A/CONF.20/C.1/L.318; Ghana, A/CONF.20/C.1/L.323; Burma, Ceylon, India, Indonesia and United Arab Republic, A/CONF.20/C.1/L.329. In addition, it had been agreed at earlier meetings that a provision proposed by Czechoslovakia (L.6) and proposed by Mexico (L.127) would be discussed in connexion with the preamble.

21. The provision in the Swiss proposal (L.322) which affirmed that the rules of customary international law should continue to govern questions not expressly regulated by the convention was not sufficiently specific and could be interpreted in a number of ways. It was also superfluous, since any provision of customary international law not included in the convention would obviously remain in force. His delegation would also oppose the clause in the Swiss proposal stating that the provisions of the convention should be interpreted in accordance with the criterion of functional necessity, for that clause was open to a dangerously wide range of interpretations.

22. Mr. RIPHAGEN (Netherlands) said that in the codification of a particular branch of the law of nations it was sometimes difficult, though always essential to indicate the matters which were and those which were not governed by the rules embodied in the codifying convention. The preamble might serve a useful purpose by defining the field covered by the convention and specifying its relationship to the general rules and principles of international law. Without a strict observance of the general body of law governing relations between States, a specific set of codified rules would have no meaning at all; that was particularly true of the future convention.

23. The various proposals for the preamble reflected those considerations. All referred to the specific subject matter of the convention, and all recognized that the rules to be adopted on diplomatic intercourse should promote peaceful and neighbourly relations between nations in accordance with the purposes and principles of the United Nations Charter. It would indeed be completely artificial to separate the two issues. It was true that the rules adopted gave no guidance on such questions as whether or not diplomatic relations should be established between two particular States. Nor did they contain any indication of the reasons which might or might not justify the severance of diplomatic relations. The articles adopted did, however, lay down the rights and obligations of States which had established diplomatic relations; and they governed relations between States in the case of temporary or even permanent rupture of diplomatic relations.

24. The article on the establishment of diplomatic relations stated simply that they were established by mutual consent. The article on the severance of relations was somewhat more elaborate and provided for the continued protection of interests. Both articles reflected the principle that in all circumstances the rules of international law governed relations between States even before the establishment of diplomatic relations, and continued to do so even after the breach. His delegation wished to place on record its view that acceptance of the theory of " rupture of State relations ", according to which a State could unilaterally break off " State relations " with another State, apparently with the result that it would no longer be bound by the rules of the law of nations vis-à-vis that other State, would undermine the whole fabric of international law and by the same token would reduce the result of the Conference to a meaningless stream of words. The delegations of Sweden, the United States of America and the United Kingdom had stated, in the particular context of the discussion of article 43 (37th meeting), the true purport of the relevant rules of international practice and had indicated the only course in accordance with the purposes and principles of the United Nations Charter. Those statements related to one instance where the rules of international law were particularly significant for the interpretation and application of a specific rule of the convention.

25. In discussing the preamble, the Committee was concerned with general principles. Whatever the precise wording which might eventually be adopted, the vast majority of delegations would recognize that the rules of the United Nations Charter were paramount and, together with other rules of international law, should continue to guide the conduct of States in their diplomatic as well as other relations.

26. Mr. KRISHNA RAO (India) thanked those who had expressed support for the five-Power proposal of which India was a co-sponsor (L.329). Commenting on other proposals he said that the provision proposed by Switzerland concerning " functional necessity " was covered by the fourth paragraph of the five-Power proposal, which provided that the purpose of immunities and privileges was " to ensure the efficient performance of the functions of diplomatic missions ". He supported the Soviet Union representative's view that the other provision proposed by Switzerland, concerning customary international law, was unnecessary; it was self-evident that the rules of customary international law would continue to govern any case to which the convention did not apply.

27. The amendment proposed orally by the Soviet Union was also unnecessary, since the principle that the diplomatic mission was the representative of the sending State was inherent in the whole preamble.

28. Mr. GLASER (Romania) said that he would not press his delegation's proposal (L.29). The sponsors of the five-Power proposal (L.329) might perhaps consider it advisable to insert a reference to the freedom and independence of nations and their national sovereignty.

29. The provision proposed by Switzerland referring to the criterion of functional necessity would introduce theoretical considerations into the convention, a dangerous step. The meaning of the expression " functional necessity " should be viewed against the background of the earlier debate on a number of articles of the convention, especially in connexion with immunity for acts performed outside official duties.

30. Mr. de ERICE y O'SHEA (Spain) supported the five-Power proposal and also the USSR proposal that the representative character of diplomatic missions should be mentioned in the preamble. Although there might be some danger in making statements of theory, the preamble was in fact the right context for a reference to the representative character which the evolution of international law had conferred on all diplomatic missions. He would, however, suggest that the scope of

the USSR proposal might be widened if it spoke of " organs of a representative character " rather than " representative organs ".

31. He agreed with the representative of Switzerland that it would be advisable to include a reference to customary international law. A number of young States were arising which were unacquainted with the customary law. He would not, however, support the provision in the Swiss proposal affirming that the provisions of the convention should be interpreted in accordance with the criterion of functional necessity.

32. Mr. YASSEEN (Iraq) said that the convention should be interpreted in the light of all the theories on which diplomatic privileges and immunities were based and which had guided the International Law Commision, and not according to any one single theory. Although the functional necessity theory should be taken into account, it should not be mentioned specifically. He would support the Soviet Union's oral proposal that a reference to the representative character of the mission should be added in the fourth paragraph of the five-Power proposal.

33. Mr. GHAZALI (Federation of Malaya) said that a preamble should be forceful, succinct and distinctive in its essence, meaningful, and devoid of ambiguity. He would therefore support the five-Power draft, which was excellent and which reflected the consensus of opinion that the differences and divergences in constitutional and social systems should not be a bar to the establishment or development of relations in the family of nations. That principle, which should command universal respect, would be a positive contribution of the convention. His delegation earnestly hoped that any nation which intended to become a party to the convention would be able to apply the articles to diplomatic representatives of all nations equally, despite any policy it might have of discrimination in regard to race or colour. The Conference was an historic occasion for all its members to declare firmly their faith that the family of nations could and should live together in peace, mindful of the United Nations Charter and all its implications for the benefit of mankind.

34. The provision proposed by Switzerland concerning customary international law was unnecessary, for it was the accepted practice in international law that when codification was silent, the rule had to be sought elsewhere, including customary international law. The provision concerning functional necessity was likewise unnecessary for it was covered by the fourth paragraph of the five-Power proposal.

35. Mr. BOUZIRI (Tunisia) suggested that in the five-Power proposal the order of the words " practice " and " conviction " in the first paragraph might be reversed, since practice was based on conviction. He supported the view of the Soviet Union representative that it would be advisable to stress the representative character of the diplomatic mission.

36. The first part of the Romanian proposal (L.29) was covered by the five-Power proposal. He agreed with the Romanian representative, however, that the preamble should contain a reference to the freedom and independence of nations and their national sovereignty.

37. Mr. RUEGGER (Switzerland) considered that the provision in sub-paragraph 1 of his delegation's proposal (L.322) should not be excluded as self-evident. The five-Power proposal rightly contained other statements of principle which might appear self-evident. His delegation considered that equal stress should be laid on the customary law which existed but could not be codified in the convention.

38. He thanked those speakers who had supported his delegation's proposal and withdrew sub-paragraph 2, on the understanding that its substance was largely covered by the penultimate paragraph of the five-Power premable.

39. Mr. TUNKIN (Union of Soviet Socialist Republics) found the wording of the first paragraph of the five-Power proposal somewhat unsatisfactory. Not all international lawyers would agree to the use made in that paragraph of the terms " practice " and " conviction ". Also it would be more appropriate to say that all nations had from ancient times recognized (rather than " respected ") the status of diplomatic agents. He did not propose any formal amendment to the paragraph, but hoped that the Drafting Committee would take into account the points he had raised.

40. He formally proposed that in the fourth paragraph of the five-Power proposal, after the words " the functions of diplomatic missions ", the words " as representative organs of States " should be inserted. He would be satisfied if the Committee adopted the idea contained in his proposal and left the actual wording to the Drafting Committee. It was essential that, if any reference was to be made to the theoretical foundation of diplomatic privileges and immunities, both the " functional necessity " theory and the " representative character " theory should be mentioned, since the International Law Commission had had both in mind when preparing its draft. If his amendment were not adopted, he would request a separate vote on the paragraph in question, in which event he would vote against it; it would be better to have no reference to theories at all than an inaccurate one.

41. Mr. LINTON (Israel) supported the Swiss proposal. It would be appropriate to state that questions not expressly regulated in the convention should continue to be governed by the rules of customary international law. Neither the International Law Commission nor the Conference had attempted an exhaustive codification of the international law relating to diplomatic intercourse and immunities. Thus article 3 stated only the main functions of a diplomatic mission, making clear by the use of the words " *inter alia* " that there were other functions. Even though it might be self-evident that the rules of customary international law would continue to operate in the absence of specific provisions on a particular point, that fact should be expressed in order to emphasize that there was no intention to stifle the development of diplomatic law.

42. The proposed preambles did not mention that the purpose of the convention was the codification of the customs and practices relating to diplomatic intercourse and immunities. He thought it might be useful to include in the preamble a sentence to that effect.

43. Mr. KEVIN (Australia) proposed the deletion, in the fourth paragraph of the five-Power proposal, of the twelve ugly words " and not for the personal benefit of the members of such missions ".

44. Mr. USTOR (Hungary) seconded the proposal.

45. Mr. KRISHNA RAO (India) thanked the Soviet Union representative for asking that his suggestions regarding the first paragraph of the five-Power proposal be referred to the Drafting Committee.

46. With regard to the amendments to the fourth paragraph, he said that the sponsors of the five-Power proposal would prefer to keep the text as it was; he therefore regretted that he could not accept any of the amendments.

47. Mr. YASSEEN (Iraq) suggested that the Committee should vote on the two alternatives: whether to refer in the preamble to the " functional necessity " theory only, or to all the theories.

48. The CHAIRMAN said that by voting on the Soviet Union amendment the Committee would in effect be choosing between those two alternatives.

49. Mr. WALDRON (Ireland) objected that the insertion of the words proposed by the USSR " as representative organs of States " would put all the emphasis on the representative character and in effect discard the " functional necessity " theory.

50. The CHAIRMAN put to the vote the Soviet Union's oral amendment.

The amendment was adopted by 39 votes to 5, with 23 abstentions.

The Australian amendment deleting the words " and not for the personal benefit of the members of such missions " was adopted by 35 votes to 19, with 18 abstentions.

The remaining Swiss proposal (L.322, sub-paragraph 1) was adopted by 38 votes to 11, with 19 abstentions.

51. Mr. VALLAT (United Kingdom) requested a separate vote on the fourth paragraph, as amended, of the five-Power proposal.

The paragraph in question, as amended, was adopted by 45 votes to 9, with 14 abstentions.

The preamble proposed by the five-Powers as amended, was adopted as a whole by 66 votes to none, with 4 abstentions.

52. The CHAIRMAN said that the preamble would be referred to the Drafting Committee which would settle the text to be submitted to the plenary conference.

53. The question of the title and final clauses of the convention would be considered at the next meeting.

Consideration of draft articles on special missions adopted by the International Law Commission at its twelfth session (A/4425)

54. The CHAIRMAN invited the representative of Ecuador, as Chairman of the Sub-Committee on Special Missions, to introduce its report (A/CONF.20/C.1/L.315).

55. Mr. PONCE MIRANDA (Ecuador) said that the Sub-Committee had agreed that the Conference was fully competent, under General Assembly resolution 1504 (XV), to conclude articles on special missions. The draft articles on special missions prepared by the International Law Commission, however, were mainly in the nature of ideas and suggestions and called for further study; moreover they had not been submitted to governments for comment.

56. For those reasons the Sub-Committee had concluded that, while the draft articles on special missions provided an adequate basis for discussion, their elaboration into final texts would require extensive study, which for the reasons stated in the report (paragraph 11) could not yet be undertaken.

57. The Sub-Committee therefore recommended to the Committee of the Whole that it should report to the Conference that the subject of special missions should be referred back to the General Assembly of the United Nations with the suggestion that the Assembly entrust to the International Law Commission the task of further study of the topic, in which the Commission would have the benefit of the definitive text on diplomatic intercourse and immunities established by the Conference.

58. When the International Law Commission completed its work on special missions, the Sixth Committee of the General Assembly might perhaps study the Commission's report and adopt a draft convention on special missions and other aspects of *ad hoc* diplomacy, supplementing the convention being prepared by the Conference.

59. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the general idea contained in the International Law Commission's draft. There was undoubtedly a close link between the rules governing special missions and those governing permanent diplomatic missions, and that link had been stressed by the General Assembly itself in its resolution 1504 (XV). It was therefore quite appropriate that, as proposed by the International Law Commission, the rules applicable to permanent missions should in large measure apply to special missions as well.

60. Although his delegation would thus be prepared to consider the formulation of concrete provisions based on the Commission's draft, he agreed that for practical reasons it would be difficult for the Conference itself to undertake the task, and concurred with the recommendation of the Sub-Committee.

61. Mr. EL-ERIAN (United Arab Republic) said that *ad hoc* diplomacy was constantly increasing in importance. Apart from special missions properly so called,

an increasing use was being made of roving ambassadors. There was also the question of members of arbitral tribunals.

62. At the fifteenth session of the General Assembly his delegation had expressed reservations [2] because the draft articles on special missions had not been submitted to governments for their comments. His delegation had, however, accepted for practical reasons the procedure set out in resolution 1504 (XV). The Sub-Committee on Special Missions had now reached the considered conclusion that the subject of special missions should be referred back to the General Assembly with the suggestion that the International Law Commission be entrusted with the task of further study of the topic; he strongly supported that recommendation.

63. The CHAIRMAN said that there appeared to be unanimous support for the recommendation set forth in paragraph 13 of the Sub-Committee's report. He suggested that the Drafting Committee be asked to prepare, for submission to the Conference, a draft resolution along the lines of that paragraph.

It was so agreed.

The meeting rose at 5.40 p.m.

[2] See *Official Records of the General Assembly, Fifteenth Session, Sixth Committee*, 664th meeting, paragraph 14.

FORTIETH MEETING

Wednesday, 5 April 1961, at 10.50 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Title and final clauses

1. The CHAIRMAN said that, having adopted (subject to final drafting) the substantive provisions and the preamble of the convention to be submitted to the plenary Conference, the Committee would proceed to consider the question of the title of the convention and the final clauses. A number of proposals were before the Committee,[1] the two main proposals being those submitted by Poland and Czechoslovakia (L.175) and by Italy and six other delegations (L.289 and Add.1 and 3). The latter, he thought, covered the proposals submitted individually by Mexico, Nigeria and Ghana, which would not consequently have to be considered separately.

2. Mr. CAMERON (United States of America), introducing the seven-Power proposal (L.289 and Add.1 and 3), drew attention to the comments following the draft final clauses. He pointed out that the title proposed by the seven delegations for the convention was the same as that proposed by Nigeria, Ghana, Ecuador and Venezuela. His delegation would support the motion submitted by Ireland and Sweden (L.331), and the amendments submitted by Iran (L.317) and the Netherlands (L.330/Rev.1).

3. Mr. GASIOROWSKI (Poland) introduced the proposal which his delegation had submitted jointly with that of Czechoslovakia (L.175) and reviewed the commentary appended to the draft final clauses. That commentary showed that the necessary conclusions had merely been drawn from the fact that Vienna had a diplomatic tradition and that the Conference was taking place there.

4. However, the seven-Power proposal (L.289) had been submitted in opposition to the joint Polish-Czech proposal with the argument that, according to established practice, the Secretary-General of the United Nations was designated as the depositary of all conventions adopted by the United Nations except certain commodity conventions which made other arrangements. But if, as was thus admitted, there were already exceptions to that practice, it was not clear why another exception could not be added. Moreover, the annex to the seven-Power proposal, listing several conventions in respect of which the Secretary-General acted as depositary, showed that all those conventions adopted after the establishment of the United Nations had been signed either at Headquarters in New York or at the European Office at Geneva. Since the present Conference was taking place neither in New York nor at Geneva, the annex in fact proved the opposite of what it was intended to prove, and the argument therefore fell to the ground.

5. As the Conference was concerned not with particular but with general rules, it should observe universally recognized practices. And there was one universal practice, based on elementary courtesy, under which the depositary of a multilateral convention was the government of the country in whose territory the convention had been signed. He requested that that practice should be respected, and recalled that the Committee had adopted at its thirty-ninth meeting a draft preamble stating that customary international law remained in force. The Committee would be untrue to itself if on the morrow of the adoption of that statement it were itself to contravene one of the most firmly established customary rules. Nor could it be argued that, because the Conference had been convened by the United Nations, therefore the convention should be deposited with the Secretary-General of the Organization. For since the Conference's terms of reference gave it full freedom to amend the draft of the International Law Commission, it would be illogical to contend that the Conference

[1] The following proposals had been submitted: Poland and Czechoslovakia, A/CONF.20/C.1/L.175; Mexico, A/CONF.20/C.1/L.193; Italy, Liberia, Mexico, Peru, Philippines, Turkey and United States of America, A/CONF.20/C.1/L.289 and Add.1 and 3; Nigeria, A/CONF.20/C.1/L.311; Ghana, A/CONF.20/C.1/L.313; Iran, A/CONF.20/C.1/L.317; Netherlands, A/CONF.20/C.1/L.330/Rev.1; Ecuador and Venezuela, A/CONF.20/C.1/L.332. In addition, Ireland and Sweden had submitted a motion (L.331) concerning the custody of the Final Act of the Conference.

was completely free to draft clauses of substance as it chose, but not the final clauses, which were much less important.

6. Reviewing the various amendments or proposals concerning the final clauses, he said he found the reasons for the Iranian amendment (L.317) hardly convincing, since governments could always give heads of mission the necessary powers to sign the convention. The Netherlands sub-amendment (L.330/Rev.1) added nothing of subtance to the Iranian amendment. As to the motion of Ireland and Sweden (L.331), he said it would be a complicated arrangement if the Final Act and the convention were deposited in two different cities. Lastly, while the general purport of the proposal by Ecuador and Venezuela (L.332) was satisfactory, it was unclear in which draft of the final clauses the new article could be incorporated.

7. Those considerations showed that the arguments advanced in favour of the seven-Power proposal were unsound. The proposal submitted by Poland and Czechoslovakia, on the other hand, was based on objective considerations and he asked members of the Committee to examine it without preconceived ideas.

8. Mr. KRISHNA RAO (India) said that the clause on the accession of States to the convention was very important from the point of view of the convention's usefulness to the international community. International agreements enabled States to pass from isolation to intimate association with other States and marked the direction in which they were moving. In addition, international conventions tended to induce recalcitrant States to take heed of world opinion, and had the merit of curbing individual action. That being so, no State, whether large or small, should be denied the possibility of acceding to the convention on diplomatic intercourse and immunities. The accession of a State which was not recognized by all States would have no effect, in international law, on the " recognition " or " representation " of that State. There were many multilateral conventions to which States which did not recognize each other were nevertheless parties. Besides, the convention being prepared by the Conference was not a political treaty: it was essentially utilitarian. It would serve as a guide to those States which, of their own free will, had decided to have diplomatic relations. The countries signing the convention would be all the less justified in forming an exclusive club because the United Nations Charter did not anywhere provide that only Member States could accede to conventions concluded under the auspices of the United Nations.

9. With regard to the deposit of the instruments of ratification, he thought the sponsors of the various proposals should try to work out an agreed provision. That would avoid a discussion, which it seemed hardly desirable to pursue in Committee.

10. He wished to thank the Austrian Government for its generous hospitality, and considered it only right that the convention should bear the title " Vienna Convention ", in recognition of the leading part which Vienna had played in the history of international relations.

11. Mr. JEZEK (Czechoslovakia) said that the final clauses were of particular importance, in that they determined the universality of the convention. For that reason the draft final clauses proposed by Poland and Czechoslovakia followed as closely as possible the final clauses which had ensured such wide support for the four Geneva Conventions of 1949 cited in the commentary to the proposal.[2]

12. The draft differed from the seven-Power proposal in two respects. First, article 3 provided that the convention should be open to accession by all States; that was perfectly right, since the convention dealt with a matter of interest to all States without exception. Secondly, the draft provided that the instruments of ratification and accession should be deposited with the Federal Government of Austria. That provision was in keeping with the practice which had long been generally followed, of designating as the depositary of a multilateral convention the government of the country in which it had been concluded. True, after the Second World War most of the conventions concluded under the auspices of the United Nations had been deposited with the Secretariat; but there was no hard-and-fast rule. What the Czechoslovak and Polish delegations proposed was that a well-justified exception be made. Other delegations had submitted proposals to the same effect (L.331 and 332). In designating the Austrian Goverment as the depositary of the convention, the Committee would acknowledge the part played by Vienna in the codification of diplomatic law, and the generous hospitality extended by the Austrian Government to the Conference.

13. Mr. PONCE MIRANDA (Ecuador) considered that the clauses relating to the title of the convention, the depositary of instruments of ratification, and the place of registration should be included in one article, as was proposed by Ecuador and Venezuela (L.332). He would, however, be quite prepared to vote for separate articles.

14. The proposal submitted by Ecuador and Venezuela concerning the title of the convention was similar to other proposals on the same subject. The clause relating to the deposit of instruments of ratification accorded with the proposal of Poland and Czechoslovakia, but differed from the seven-Power proposal, article 2 of which provided that instruments of ratification should be deposited with the Secretary-General of the United Nations. Ecuador considered that, both on historical grounds and as an act of courtesy, the Austrian Government should be the depositary.

15. Mr. HAASTRUP (Nigeria) said that by reason of its universality the convention should necessarily be open to accession by all States. Though the Conference

[2] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Geneva Convention relative to the Treatment of Prisoners; Geneva Convention relative to the Treatment of Civilian Persons in Time of War — all of 12 August 1959; United Nations *Treaty Series*, vol. 75.

had been convened by the United Nations, the general practice was nevertheless to designate as the depositary the government of the country in which the multilateral convention had been concluded. For that reason, and as a tribute to the generous hospitality of the Austrian Government, the Committee should decide that the instruments of ratification should be deposited with that government, which would arrange for their registration with the United Nations Secretariat.

16. Mr. REGALA (Philippines) criticized article 3 of the Polish-Czechoslovak proposal, which provided that the convention should be open to accession by all States. Citing General Assembly resolution 1450 (XIV), he said that the Conference would be violating the Assembly's express instructions if it permitted all States to accede to the convention. The participation of States in the Conference had been discussed at length during the fourteenth session of the General Assembly and had been the subject of two draft resolutions. The first had provided that all States might take part in the Conference; the second had confined participation to States Members of the United Nations, States Members of specialized agencies, and States parties to the Statute of the International Court of Justice. The second of those two draft resolutions had been adopted; and Sir Gerald Fitzmaurice, who had represented the International Law Commission in the Sixth Committee at the time, had drawn attention to the difficulties which the adoption of the first of the draft resolutions would have raised. He (Mr. Regala) therefore asked the delegations which proposed that the convention should be open to accession by all States not to press the point, and not to introduce political considerations into the discussion.

17. Mr. GHAZALI (Federation of Malaya) considered that the convention should provide a basis for diplomatic relations among all nations. Hence it should be open to signature by all sovereign States. That would not harm the dignity of the United Nations. The convention was not a political instrument, but a codification of the principles of diplomatic law.

18. Mr. YASEEN (Iraq) held that the principles of international law should be applied universally. Consequently, the convention should admit accession by all sovereign States, for otherwise the uniformity of the diplomatic status might suffer. His delegation would find it difficult to agree that accession to the convention should be restricted to certain nations. He was strongly in favour of the title " Vienna Convention ".

19. Mr. KIRCHSCHLAEGER (Austria) expressed the gratitude of the Austrian Government and people, and of the City of Vienna, for the compliment paid to them by the proposal that the title of the convention should be " Vienna Convention ".

20. The Austrian delegation appreciated the motive of the delegation which proposed that the Austrian Government should be the depositary of the convention. In inviting the United Nations to hold the Conference on Diplomatic Intercourse and Immunities at Vienna, Austria had not sought any honour for itself. It was particularly happy that the discussions had taken place in a friendly atmosphere. He welcomed the proposals submitted by the Netherlands, Sweden and Ireland as a compromise between the various points of view on the deposit of instruments. He hoped that the Committee would understand why, for reasons which would be readily perceived, his delegation felt it necessary to abstain from voting on motions which paid tribute to Austria.

21. Mr. TUNKIN (Union of Soviet Socialist Republics) said that there were four main issues. General agreement had been achieved on the title of the convention. All proposals for the appointment of two depositaries of instruments of ratification should be rejected, since that would contravene existing practice and probably create difficulties. Austria should be designated the depositary, because of the diplomatic traditions of Vienna, in gratitude for its generous hospitality to the delegations, and out of elementary courtesy.

22. No country should be debarred from acceding to an instrument of international law. An attempt to restrict accession would conflict with the purpose of the convention, which was to codify principles and customs and obtain world-wide recognition for them. His delegation had therefore not been convinced by the Philippine representative's argument, and pointed out that General Assembly resolution 1450 (XIV) dealt only with the " convocation " of the Conference; the Conference was not bound by any restriction preventing the accession of all States, and had sovereign power to decide the issue.

23. Lastly, he considered that the time for ratification should be extended until 1 March 1962, as the Netherlands delegation had proposed.

24. Mr. GIMENEZ (Venezuela) noted that all delegations were agreed on the convention's title.

25. So far as the deposit of instruments of ratification was concerned, he said his delegation would in principle accept the seven-Power proposal if the proposal submitted by Ecuador and Venezuela were embodied in it. The instruments of ratification should in tribute to Vienna, the site of the Conference, be deposited with the Federal Government of Austria.

26. Mr. WESTRUP (Sweden) said that the best solution would be to designate the United Nations as the depositary of the convention. The joint proposal of Ireland and Sweden expressed the Conference's gratitude to Vienna and to Austria by making the Federal Government depositary of the Final Act. In company with all others, his delegation tendered its sincere thanks to the host nation. The choice of the convention's title would be confirmed happily by the deposit of the Final Act in the archives of the Austrian Government, and the Committee should make a recommendation to that effect.

27. Mr. BOUZIRI (Tunisia) said that the object of the Conference was to prepare a codification which all countries needed. It was a pity that the Committee was meeting difficulties at the close of its work. His delegation would not accept any clause harmful to the prestige of the United Nations; but out of loyalty to the principle of universality it wished all countries to be free to accede to the convention. He hoped that the

delegations which had submitted proposals would work out a formula which would not place the Committee in a difficult position.

28. Mr. RUEGGER (Switzerland) associated himself with the tributes paid by previous speakers to the government and people of Austria. It was right and proper that the convention should bear the name of a city that had played so great a part in diplomatic history. Nevertheless, respect should also be paid to the United Nations tradition by which the Secretary-General was the depositary of instruments drafted under United Nations auspices. The Austrian delegation had implied clearly that the unanimity of the tribute paid to it should not be qualified. The proposal submitted by Ireland and Sweden would be supported by his delegation, which could not support other proposals that might infringe the competence of the United Nations.

29. Mr. BOTELHO (Brazil) expressed his delegation's appreciation of the dignity of the Austrian representative's statement.

30. Mr. MARESCA (Italy) pointed out that Vienna symbolized the historical continuity of diplomatic law; he unreservedly approved the choice of the title " Vienna Convention ". The deposit of the instruments of ratification was a matter of diplomatic technique. The Conference had met under United Nations auspices, and therefore the Secretary-General should be the depositary. With regard to accessions, he said the convention had been prepated under the auspices of a specific organization, and both should aspire to universality. Hence, the seven-Power proposal (L.289) could hardly be said to restrict the possibilities of accession to the convention.

31. In conclusion he said that the convention did not mention possible reservations by particular governments to particular provisions. His delegation concluded from the convention's silence on that point that reservations would not be admitted. Actually, his delegation thought it would have been desirable if the convention had expressly provided for possible reservations at least in respect of some specific clauses.

32. Mr. MELO LECAROS (Chile) said that three questions had to be settled: What was to be the title of the convention ? Who would be the depositary ? And what States would be free to accede to the convention ?

33. So far as the first question was concerned he supported the proposed title " Vienna Convention ". So far as the second question was concerned, he supported the seven-Power proposal, for he thought that the Conference should not introduce an innovation. He also supported the Irish-Swedish motion. In that connexion he asked whether it would be practicable for the Final Act to be deposited in the archives of the Austrian Government and the convention at United Nations Headquarters. So far as the third question was concerned, he said he had been impressed by the Philippine representative's remarks; he doubted whether the Conference could enlarge the terms of reference given it by the General Assembly by allowing all States to become parties to the convention.

34. The Italian representative had very pertinently raised the question of reservations, for it was not dealt with in the text adopted by the Committee. The signatory Powers should be able to make reservations, but not to the provisions on diplomatic immunity.

35. Mr. HAASTRUP (Nigeria) considered that the question of the right of all States to accede to the convention should be distinguished from that of the States invited by the General Assembly to participate in the Conference. Several States not represented at the Conference maintained diplomatic relations with many participating States. Those States, and all fully sovereign States, should be free to accede to the convention.

36. Mr. VALLAT (United Kingdom) said that the seven-Power proposal, the amendment submitted by Iran, the Netherlands sub-amendment and the motion submitted by Ireland and Sweden were complementary and together amounted to a compromise acceptable to the majority of the Committee. The Conference apparently wished to observe two principles: first, to follow United Nations practice with regard to the exercise of depositary functions; and secondly to pay a tribute to the Austrian Government and the City of Vienna. The proposals he had mentioned, taken together, satisfied both those considerations, for their effect would be that instruments of ratification and of accession, in accordance with United Nations practice, would be deposited with the Secretary-General, the name of Vienna would appear in the title of the convention, Austria would be appointed depositary of the Final Act, and the convention would remain open for signature at Vienna for several months.

37. Turning to the details of the seven-Power proposal, he suggested that the word " intercourse " in the English title of the convention should be replaced by the word " relations ". That suggestion might be referred to the Drafting Committee, which should also consider whether the year " 1961 " should be added to the title, as Nigeria had proposed. Article 1 of the draft final clauses submitted by the seven delegations limited the right of accession to the convention to the States referred to in General Assembly resolution 1450 (XIV), paragraph 3. The Conference was not, of course, legally obliged to observe that restriction, but article 1 had been drafted in the spirit of the General Assembly resolution and should be accepted. Moreover, the States Members of the United Nations, the States Members of the specialized agencies and the States which had subscribed to the Statute of the International Court of Justice comprised the vast majority of the States of the world. It would, moreover, be altogether improper if States not acceptable to the United Nations were allowed to accede to a convention drawn up under its auspices.

38. After the Austrian representative's statement, there seemed to be no difficulty in designating the Secretary-General as depositary of the convention and the Austrian Government as custodian of the Final Act of the Conference.

39. Mr. WALDRON (Ireland) supported the seven-Power proposal on the final clauses, and also the Iranian proposal as amended by the Netherlands. Ireland had joined Sweden in proposing that the Final Act of the

Conference should remain in the archives of the Austrian Government, as a just tribute, together with the title of the convention, to the part Austria had played in the success of the Conference. He hoped that that compromise solution would be acceptable to the Committee, particularly since the delegation of Austria had said it was acceptable to the Austrian Government. It would be strange if the Conference were to be a cause of embarrassment or difficulty for the Austrian Government, and he respectfully suggested that those delegations which had made proposals on the final clauses which might cause difficulty or embarrassment should consider the possibility of withdrawing them.

40. Mr. NAFEH ZADE (United Arab Republic) said that his country firmly supported the principle of universality, and he had defended that principle during the debate on the accession of States to the Geneva Conventions on the Law of the Sea. It was even more imperative to observe that principle in the case of a convention which established rules of diplomatic law and which was intended to contribute to the progressive development of international law. His delegation expressed its gratitude to the Austrian Government and to the City of Vienna for the generous hospitality they had accorded to the Conference and to the delegations, and would have great pleasure in voting for the proposals associating the City of Vienna with the title of the convention.

41. Mr. DADZIE (Ghana) said that his delegation's proposal needed little comment, for the proposed title conformed to the nomenclature of legal instruments and to custom. In regard to article 1 of the final clauses proposed by the seven delegations, restricting accession to the convention to the States mentioned in the General Assembly resolution, he referred to the interesting debate in the Sixth Committee of the General Assembly in 1959 on the question of participation in the Vienna Conference.

42. At that time the delegation of Ghana had had special reasons to vote for the formula as it appeared in General Assembly resolution 1450 (XIV); however, in view of the historic importance of the convention on diplomatic intercourse and immunities, it felt bound to support the Indian delegation's opinion that accession to the convention should be open to all States. In regard to the deposit of instruments of ratification, he supported the proposal of Ecuador and Venezuela, which conformed to international courtesy and, like the proposals associating the City of Vienna with the title of the convention, was a just tribute to Austria. He associated his delegation with all those which had expressed their gratitude to the Federal Government of Austria for its generous hospitality, and to the people of Vienna for the courtesy with which they had received the participants in the Conference.

43. Mr. BARNES (Liberia) said that this delegation, as co-sponsor of the seven-Power proposal, wished to express its gratitude to the government and people of Austria by associating the City of Vienna with the title of the convention. In regard to deposit of instruments of ratification, he said the proposal observed the continuity principle and custom. The Conference had met under United Nations auspices, and in resolution 1450 (XIV) the General Assembly had limited the field of accession to the Convention. The Conference, which derived from the General Assembly, was bound to conform to the instructions laid down by its parent body. The article 1 of the final clauses proposed by the seven delegations was the logical consequence of that obligation.

44. Mr. DANKWORT (Federal Republic of Germany) associated his government with the tributes and thanks offered to the Austrian Government and people. In that spirit his delegation would support the proposals of the seven delegations, of Iran and of Ireland and Sweden. In regard to signature and accession, he thought the restrictions laid down by the General Assembly after long discussion were appropriate. It therefore approved the seven-Power proposal for article 1 of the final clauses, which did not prevent other States from acceding to the convention if invited to do so by the General Assembly.

45. Mr. HAYTA (Turkey) said it was hardly necessary to explain at length why his delegation had joined with six others in proposing a title and final clauses of the convention. As mentioned in the commentary to the seven-Power proposal, the practice of designating the Secretary-General as depositary had been observed not only in the case of the Conventions on the Law of the Sea, but in that of all general conventions adopted by or under the auspices of the United Nations. The Conference, which had met to codify the rules of international law governing diplomatic intercourse and immunities, could not depart from the practice followed by other United Nations conferences. The designation of the Secretary-General of the United Nations as depositary of the instruments of ratification of the convention could in no way be considered a breach of courtesy to the Austrian Government.

46. The Turkish delegation supported Iran's proposal as amended by the Netherlands and accepted by the Austrian delegation. It also supported the proposal of Ireland and Sweden, which paid a deserved tribute to the Austrian Government.

The meeting rose at 1 p.m.

FORTY-FIRST MEETING

Wednesday, 5 April 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(concluded)*

Title and final clauses

1. The CHAIRMAN invited the Committee to continue its debate on the title and final clauses of the draft convention on diplomatic intercourse and immunities.[1]

[1] For the various proposals submitted concerning the title and the final clauses, see 40th meeting, para. 1 and footnote.

2. He recalled that at the 40th meeting (para. 33) the representative of Chile had asked whether it would be practicable for the Final Act to remain in the archives of the Government of Austria while the Convention was deposited at United Nations Headquarters. He asked the representative of the Secretary-General to answer the question.

3. Mr. STAVROPOULOS, representative of the Secretary-General, said the arrangement would cause no difficulty. It would require some collaboration, which he was sure would be ready and agreeable, between the Foreign Ministry of the Government of Austria and the United Nations.

4. Mr. GASIOROWSKI (Poland), commenting on points raised at the previous meeting, said that there seemed to have been some misunderstanding of the scope of General Assembly resolution 1450 (XIV) convening the Conference. The purpose of the resolution was simply to invite the participants and to create the technical conditions favourable to the Conference. Once the Conference had been convened, the sovereign States participating were completely free to take any decision they wished.

5. He agreed with the representative of Switzerland that uniformity was an important element of codification, which should be centralized in the United Nations; but that requirement was not excluded by the proposal submitted by Poland and Czechoslovakia (L.175). There were precedents for the deposit of instruments of ratification elsewhere than with the United Nations: for example, the Geneva conventions on the protection of war victims, the most recent of which dated from 1949,[2] had been deposited with the Government of Switzerland, on whose territory they had been drawn up.

6. Since the representative of Switzerland, in stressing the need for uniformity, had taken as his starting-point the advantages of codification, he might have been expected to speak out strongly in favour of universality. Yet he had not done so, even though universality, as the representative of India had pointed out, was vital to effective codification.

7. The Drafting Committee should choose a general rather than an enumerative title which, if complete, would be cumbersome, for in that case it would have to include the word " privileges " which was mentioned in several articles. There was general agreement that the title should contain the name of Vienna. He suggested " Vienna Convention on Diplomatic Relations ", which would at the same time cover diplomatic privileges and immunities.

8. Mr. BOLLINI SHAW (Argentina) expressed his delegation's gratitude to the Government of Austria for its kindness, and to the people of Vienna for their generosity. His delegation would support the final clauses proposed by the seven delegations (L.289 and Adds.1 and 3), with the sub-amendment submitted by the Netherlands (L.330/Rev.1).

[2] For reference, see 40th meeting, fotnoote to para 11.

9. Mr. GLASER (Romania) said that, since the purpose of the convention was to govern diplomatic relations between all States without exception, every sovereign State without exception should have the right to accede to it. To decide otherwise would not only destroy a principle of vital importance but might also cause serious practical difficulties: for example, in a case where an aeroplane in which a diplomatic courier was travelling had to make a forced landing in a State not a party to the convention. Many other examples could be cited. The principle of non-discrimination laid down in article 44 was the essence of the convention. The limitation on accession proposed by the seven delegations was clearly discriminatory, and conflicted with the spirit of the law which the Conference was attempting to codify and the very *raison d'être* of the convention.

10. To deposit the ratifications of a multilateral agreement with the State on whose territory it had been concluded and signed was not merely an act of courtesy but also a common practice. It had been argued that an exception to that practice had been made in the case of the Conventions on the Law of the Sea concluded at Geneva in 1958, the ratifications of which had been deposited with the Secretary-General of the United Nations. Switzerland, however, had no maritime tradition, whereas Austria was traditionally associated with diplomatic agreements, as the General Assembly had recognized. There was no good reason for departing from general usage, to which the proposals by Poland and Czechoslovakia (L.175) and Ecuador and Venezuela (L.332) conformed.

11. Mr. KAHAMBA (Congo: Leopoldville) also paid a tribute to the Government of Austria. Like the representative of Tunisia, he was sure that the Committee would find a satisfactory form for the final clauses of the convention.

12. Mr. SUBARDJO (Indonesia) said that it should be open to all States to accede to the convention, and supported in particular the views expressed by the representatives of India and the Federation of Malaya. It was regrettable that a number of States had not been invited to participate in the work of the Conference, but they should at least be able to express agreement with its conclusions by becoming parties to the convention. His delegation would therefore support the proposal of Poland and Czechoslovakia. It added its thanks to the Government of Austria and the people of Vienna for their generosity and the warmth of their welcome.

13. Mr. de ROMREE (Belgium) expressed the cordial thanks of his delegation to the Government of Austria and the people of Vienna. His delegation would vote for the sub-amendment submitted by the Netherlands (L.330/Rev.1) to the seven-Power proposal, and for the motion concerning the custody of the Final Act submitted by Ireland and Sweden (L.331), an intermediate solution which, he was happy to note, had been supported by the delegation of Austria.

14. Mr. CAMERON (United States of America) pointed out that the designation of the Secretary-General of the United Nations as the depositary of the instruments of

the convention, as proposed by the seven Powers, was consistent with established practice, with regard to conventions concluded by the United Nations or at conferences convened by the Organization. The practice had been followed in the case of 90 conventions drawn up to carry forward the work of the United Nations in accordance with its Charter. The Vienna Conference had been convened by the United Nations, and its proceedings were based on the work of the International Law Commission, an organ established under Article 13 of the United Nations Charter.

15. The seven-Power proposal and the amendment of Iran (L.317) made States Members of the United Nations or of any of the specialized agencies parties to the Statute of the International Court of Justice, and other States invited by the General Assembly of the United Nations eligible to become parties to the convention. Such eligibility corresponded to the provisions of other United Nations conventions, and was compatible with the terms of General Assembly resolution 1450 (XIV). It was essential that political questions should be settled by the General Assembly itself and not by an *ad hoc* technical conference. The Committee could best ensure a successful conclusion of its task by avoiding political controversy alien to the technical purpose of the Conference. The important question was, who was in favour of United Nations practices and procedures, and who was against them ? Any departure from the procedure of the seven-Power proposal, with the amendment by Iran and the sub-amendment by the Netherlands, would be viewed most seriously by his government.

16. His delegation would support the motion proposed by Ireland and Sweden (L.331) concerning the custody of the Final Act.

17. U SOE TIN (Burma) also paid a tribute to Austrian hospitality. It was fitting that the name of Vienna, synonymous with diplomatic history, should be associated with the convention, and that the Government of Austria should be the custodian of the Final Act. He therefore supported the amendments submitted by Iran and the Netherlands, and the motion by Sweden and Ireland concerning the custody of the Final Act.

18. He could not support articles 1 and 3 of the final clauses proposed by the seven delegations, which tended to restrict the number of States which could become parties to the Convention. All States which maintained diplomatic relations with other States should be allowed to accede. He therefore appealed to the sponsors of the proposal in question to agree to the deletion of the words in article 1 " and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention ", and of the words in article 3 " belonging to any of the categories mentioned in article 1 ". If the sponsors would not accept the deletion of those passages, he would request a separate vote on them.

19. Mr. de ERICE y O'SHEA (Spain) said that the Conference was sovereign only within its terms of reference. Those were set forth in resolution 1450 (XIV), operative paragraph 3 of which had invited all States Members of the United Nations, States members of the specialized agencies, and States parties to the Statute of the International Court of Justice to participate in the Conference. Since, by virtue of operative paragraph 1 of the same resolution, the Conference had been convened to consider the question of diplomatic intercourse and immunities and " to embody the results of its work in an international convention ", it followed that only the countries specified in the resolution could sign the convention.

20. Nevertheless, in order to leave the door open to subsequent accession by other States, article 1 of the seven-Power proposal specified that any other State could be invited by the General Assembly to become a party to the convention. The General Assembly, and the General Assembly alone, had power to invite States other than those mentioned in resolution 1450 (XIV) to become parties to the convention. The Conference itself was bound to limit the signatories of the convention to those States which had been invited by the General Assembly to participate.

21. He recalled that resolution 1450 (XIV) had been adopted by the General Assembly by 67 votes to 1. A five-Power amendment which would have opened participation in the Conference to all States had been previously rejected. The question had therefore already been decided by the General Assembly.

22. With regard to the choice of the depositary of the convention, and the suggestion that the country of signature was traditionally made custodian, he pointed out that the Conference was being held under United Nations auspices and therefore in a sense in the United Nations rather than in Austria. Austria acted as host to the United Nations under an agreement which declared the exterritoriality of the meeting-place of the Conference and the privileges and immunities enjoyed by the representatives. The United Nations should therefore act as depositary of the convention.

23. He supported the motion by Ireland and Sweden concerning the custody of the Final Act, which constituted a fitting tribute to the host country.

24. Mr. GHAZALI (Federation of Malaya) supported the request of the representative of Burma for a separate vote on the two specified passages if the sponsors would not agree to their deletion. It was necessary for the universality of the convention that it should be open to all States. It would indeed be tragic if a State willing to abide by the rules laid down in the convention could not accede to it because of international manoeuvres. The right to participate in the observance of the law of nations could not be denied to any State.

25. The prestige of the United Nations called for observance of the principle of universality. If article 1 were adopted as proposed by the seven delegations, the General Assembly would have to pass resolutions in order to invite countries other than those specified in article 1 to accede to the convention. If after such a resolution the country finally decided not to accede to the convention, the rebuff would harm the prestige of the United Nations. It was certainly preferable to open the convention to accession by all, and so avoid such undesirable situations.

26. Mr. TUNKIN (Union of Soviet Socialist Republics) said that General Assembly resolution 1450 (XIV) related only to the convening of the Conference. The representatives of States at the Conference had complete freedom of decision; the General Assembly had no power to dictate conditions to governments. For instance, the General Assembly had referred to the Conference the subject of special missions; but the Committee had recommended the Conference not to deal with it (39th meeting, para. 63). The General Assembly could not dictate the contents of the articles of the convention; they were determined exclusively by the representatives of the sovereign States participating in the Conference.

27. There was undoubtedly a close link between the restrictive language used in General Assembly resolution 1450 (XIV) and that in articles 1 and 5 of the seven-Power proposal; that language was a reflection of the cold war. He urged the Committee to act in accordance with the accepted principles of international law and to open the convention to universal accession.

28. Mr. SIMMONDS (Ghana) supported the representatives of Burma and the Federation of Malaya in regard to the request for a separate vote. He strongly supported the principle of universality of the convention which would be in keeping with the words in the preamble of the Charter requiring Member States to practise tolerance and to live together in peace with one another as good neighbours.

29. Mr. PONCE MIRANDA (Ecuador) withdrew on behalf of its two sponsors the proposal submitted by Ecuador and Venezuela (L.332), the purpose of which was covered by other proposals before the Committee.

30. Mr. REGALA (Philippines) replied to those who had advocated the principle of universality in the application of international law. The Committee, when considering article 45 (Settlement of disputes), had rejected a proposal for the compulsory jurisdiction of the International Court of Justice. Surely, if it were desired to work for universality of the rule of law, no better course could have been followed than to adopt the principle of that compulsory jurisdiction.

31. The principle of the equality of States was indeed fundamental, and he ventured to inquire whether those who advocated it so strongly would be prepared to renounce the right of veto in the Security Council, which conflicted with it.

32. He fully agreed that the General Assembly could not dictate to the Conference the tenor of the articles of the convention; but it had specifically limited participation in the Conference.

33. Mr. KRISHNA RAO (India) joined the representatives of Burma and the Federation of Malaya in urging the sponsors of the seven-Power proposal to delete the two controversial passages. If the sponsors could not agree to that deletion, he would support the request for a separate vote on those passages.

34. General Assembly resolution 1450 (XIV) specified which States should be invited to the Conference, but did not prescribe anywhere that only States participating in the Conference could become parties to the convention.

35. Mr. VALLAT (United Kingdom), speaking on a point of order, said that the greater part of the discussion had focused on the seven-Power proposal. He therefore moved that the Committee should decide to vote on that proposal before voting on the earlier proposal by Czechoslovakia and Poland (L.175). Since the two texts were not amendments, the Committee could decide under rule 42 of the rules of procedure to vote on them out of their order of submission.

36. Mr. GASIOROWSKI (Poland) opposed the motion, and urged that the proposal by Czechoslovakia and Poland should be voted upon first, since it had been submitted before the seven-Power proposal.

The United Kingdom motion was adopted by 46 votes to 16, with 9 abstentions.

37. The CHAIRMAN said that the Committee was therefore called upon to vote on the seven-Power proposal (L.289 and Add.1) with the amendment by Iran (L.317), itself amended by the Netherlands sub-amendment (L.330/Rev.1), since the amendment and sub-amendment had been accepted by the sponsors.

38. Mr. PECHOTA (Czechoslovakia) suggested that it would be desirable to replace in the first sentence of the Netherlands sub-amendment the date 31 October 1961 by the date 31 March 1962, and to delete the remainder of the sub-amendment. It would be more practical to leave the convention open for signature at Vienna for the whole period, and not to transfer the original of the convention to New York before the time-limit scheduled for signature.

39. Mr. RIPHAGEN (Netherlands) could not accept that suggestion.

40. Mr. GLASER (Romania), speaking on a point of order, asked the representatives who wished the two controversial passages to be deleted to explain the apparent inconsistency of the deletions. The deletion from article 1 of the General Assembly's power to invite other States to sign the convention would have a restrictive effect; but the deletion from article 3 of the reference to the categories of States mentioned in article 1 would open the convention to accession by all States.

41. Mr. BOUZIRI (Tunisia) said that the aim of universality could be achieved by opening the convention to both signature and accession by all States. He therefore asked that a separate vote be taken on the passage in article 1 beginning with the words " invited by the General Assembly . . ." If the passage were rejected, article 1 would state that the convention would be open for signature not only by the States invited to participate in the Conference, but also " by any other State ".

42. Mr. KRISHNA RAO (India) explained that his intention and that of the representatives of Burma and the Federation of Malaya had been to open the convention to accession by all States. However, on behalf of the three delegations, he agreed to the Tunisian request.

43. The CHAIRMAN put to the vote the words in article 1 of the proposed final clauses: " invited by the General Assembly of the United Nations to become a Party to the convention ".

At the request of the representative of the Philippines, a vote was taken by roll-call.

Peru, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Peru, Philippines, Portugal, Spain, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Viet-Nam, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Federal Republic of Germany, Greece, Guatemala, Iran, Ireland, Israel, Italy, Japan, Korea, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands, Nigeria, Norway, Pakistan, Panama.

Against: Poland, Romania, Saudi Arabia, Tunisia, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Albania, Bulgaria, Burma, Byelorussian SSR, Cambodia, Ceylon, Congo (Leopoldville), Cuba, Czechoslovakia, Ethiopia, Federation of Malaya, Ghana, Hungary, India, Indonesia, Iraq, Libya, Morocco.

Abstaining: Holy See.

The passage was adopted by 47 votes to 26, with 1 abstention.

44. The CHAIRMAN put to the vote the passage " belonging to any of the categories mentioned in article 1 " appearing in article 3 of the proposed final clauses.

At the request of the representative of the Philippines, a vote was taken by roll-call.

Peru, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Peru, Philippines, Spain, Sweden, Siwtzerland, Thailand, Turkey, Union of South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Viet-Nam, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Denmark, Dominican Republic, El Salvador, France, Federal Republic of Germany, Greece, Guatemala, Iran, Ireland, Israel, Italy, Japan, Korea, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands, Norway, Panama.

Against: Poland, Romania, Saudi Arabia, Tunisia, Ukrainian SSR, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Albania, Bulgaria, Burma, Byelorussian SSR, Cambodia, Ceylon, Cuba, Czechoslovakia, Ethiopia, Federation of Malaya, Ghana, Hungary, India, Indonesia, Iraq, Nigeria.

Abstaining: Portugal, Congo (Leopoldville), Ecuador, Finland, Holy See, Libya, Morocco, Pakistan.

The passage was adopted by 42 votes to 24, with 8 abstentions.

45. The CHAIRMAN put to the vote the proposed final clauses (L.289 and Add.1) with the changes accepted by the sponsors (L.317 and 330/Rev.1).

The final clauses as a whole were adopted by 48 votes to 12, with 14 abstentions.

46. The CHAIRMAN said that the proposal submitted by Czechoslovakia and Poland (L.175) would not be put to the vote, as it was covered by the adoption of the seven-Power proposal.

47. He said the Committee had before it a number of proposals regarding the title of the convention, but since they they were all drafting proposals he suggested that they should be referred to the Drafting Committee.

It was so agreed.

48. The CHAIRMAN put to the vote the motion by Ireland and Sweden concerning the custody of the Final act (L.331).

The motion was adopted by 59 votes to none, with 12 abstentions.

49. Mr. BARTOŠ (Yugoslavia) explained that he had voted against the controversial passages, not for the same reasons as the representatives of Tunisia, but because he believed in the universality principle. International law recognized all States, and it was unthinkable that any State that promoted peaceful relations between countries and support for the United Nations Charter, and observed the rules of the convention, should be excluded from participation.

50. Mr. KIRCHSCHLAEGER (Austria), speaking on behalf of the Government and people of Austria, expressed his sincere thanks for the kind tributes that had been paid to his country and for the honour bestowed on it by the mention of Vienna in the title of the convention and by entrusting the custody of the Final Act of the Conference to the Government of Austria.

51. Mr. BAIG (Pakistan) said he had voted for the seven-Power proposal and the amendments incorporated in it because it seemed to him the best compromise. He had abstained from the vote on whether accession should be open to all States because, though not fully convinced, he had been deeply impressed by the arguments against restriction.

52. He thanked the Government of Austria and the authorities of the City of Vienna for their hospitality and for the excellent arrangements made for the Conference.

53. Mr. BOUZIRI (Tunisia), exercising his right of reply, explained that he had asked for a separate vote on part of the final articles because he wished to preserve the principle of universality. He had voted against the seven-Power proposal because it did not recognize that principle.

54. Mr. PECHOTA (Czechoslovakia) said that the joint proposal submitted by his delegation and that of Poland (L.175) had been motivated by two main considerations.

First, it had incorporated the principle (supported by many representatives) that the convention should be open for accession to all countries. It was in the interest of the international community as a whole that every country should observe the convention, and the exclusion of some countries was a violation of international law. Secondly, it was fitting for the convention to be deposited with the Government of Austria as the host government of the Conference. He had hoped that the proposal of which he was joint sponsor would meet the views of the Conference. Because of the Austrian representative's statement at the fortieth meeting, however, he had not wished to press the matter to a formal vote. He had voted against the seven-Power proposal because it conflicted with the principle of universality.

Completion of the Committee's work

55. The CHAIRMAN announced that the Committee had completed its work.

56. Mr. CAMERON (United States of America) expressed his sincere appreciation to the Chairman for the skill, courtesy and tact with which he had guided the Committee's proceedings. He had played a very significant part at an important stage in the development of diplomatic relations.

57. Mr. MACDONALD (Canada), speaking on behalf of the representatives of the Commonwealth countries, paid a warm tribute to the Chairman. His ability and experience, both literary and technical, his justice, understanding and clear-mindedness, and his personal qualities had been an inspiration to the Committee and had enabled it to produce a convention that would promote friendly relations in the world for generations to come.

58. Mr. OMOLOLU (Nigeria) said that he was speaking on behalf of the African and, he hoped, the Asian countries. The Committee had been fortunate in having a chairman so fitted for his great and complex task. As the spokesman of a number of new countries, he said that, while the value of the experience of the old countries was undeniable, the new countries, with their freshness and enthusiasm, had also something to contribute. He hoped that the spirit of friendship and co-operation which had prevailed during the proceedings would be perpetuated in the convention.

59. Mr. VALLAT (United Kingdom) joined the representatives of Canada and the Commonwealth countries in expressing appreciation and gratitude to the Chairman for his dignity, precision and skill, and for the firmness of purpose with which he had led the Committee to a goal that had at one time appeared unattainable.

60. Mr. RUEGGER (Switzerland) voiced the praise of the countries of the old continent. The Chairman's name would be linked for ever with the convention.

61. Mr. OJEDA (Mexico) thanked the Chairman on behalf of the delegations of Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Panama, Peru, Uruguay and Venezuela.

62. Mr. BARTOŠ (Yugoslavia) said that the successful outcome of the Committee's deliberations was due to the Chairman.

63. Mr. de ERICE y O'SHEA joined in the expression of praise for the Chairman, who had inspired the Committee with the spirit of peaceful co-operation, which was the aim of international law. He also thanked the Secretariat.

64. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the Chairman's unique qualities had enabled the Committee to accomplish its task with unusual speed. He expressed the thanks of his delegation and those of the people's democracies to the Chairman, Vice-Chairman, Rapporteur and Secretariat.

65. Mr. de VAUCELLES (France), Mr. YASEEN (Iraq), Mr. NAFEH ZADE (United Arab Republic) and Mr. BOUZIRI (Tunisia) joined in the tributes to the Chairman.

66. Mr. MARESCA (Italy), speaking as a representative of the country which was the cradle of permanent diplomacy, congratulated the Chairman on his brilliant work at an important stage in international development, when the old rules were being linked with the new. His name would remain associated with that development.

67. Mr. LINTON (Israel) also thanked the Chairman, and said that his country's great respect for diplomacy was shown by the use of the same Hebrew word in ancient times (*malachim*) for both angels and diplomatic agents.

68. Mgr. CASAROLI (Holy See), Mr. HAYTA (Turkey) and M. DANKWORT (Federal Republic of Germany) joined in the tributes to the Chairman.

69. The CHAIRMAN expressed his deep and sincere gratitude to the members of the Committee for their co-operation and for the energy and diligence with which they had applied themselves to their work. Listening to the kind and generous tributes, he had felt that they referred to someone else, for the success of the Committee's work was entirely due to the spirit of the delegations. It had been for him an honour, a privilege and a pleasure to listen to their words of wisdom. He would never forget the Conference.

70. He thanked especially his colleagues on the rostrum, the members of the Secretariat, and other staff, without whose help the Conference could not have succeeded. He was sure that the spirit which had prevailed in the Committee would continue for the remainder of the Conference until the adoption of the convention.

The meeting rose at 6.15 p.m.

WHERE TO BUY UNITED NATIONS PUBLICATIONS

AFRICA

CAMEROUN: LIBRAIRIE DU PEUPLE AFRICAIN
La Gérante, B.P. 1197, Yaoundé.

ETHIOPIA: INTERNATIONAL PRESS AGENCY
P. O. Box 120, Addis Ababa.

GHANA: UNIVERSITY BOOKSHOP
University College of Ghana, Legon, Accra.

MOROCCO: CENTRE DE DIFFUSION DOCUMENTAIRE DU B.E.P.I., 8, rue Michaux-Bellaire, Rabat.

SOUTH AFRICA: VAN SCHAIK'S BOOKSTORE (PTY) LTD.
Church Street, Box 724, Pretoria.

UNITED ARAB REPUBLIC: LIBRAIRIE "LA RENAISSANCE D'ÉGYPTE"
9 Sh. Adly Pasha, Cairo.

ASIA

BURMA: CURATOR, GOVT. BOOK DEPOT
Rangoon.

CAMBODIA: ENTREPRISE KHMÈRE DE LIBRAIRIE
Imprimerie & Papeterie Sari, Phnom-Penh.

CEYLON: LAKE HOUSE BOOKSHOP
Assoc. Newspapers of Ceylon, P. O. Box 244, Colombo.

CHINA:

THE WORLD BOOK COMPANY, LTD.
99 Chung King Road, 1st Section, Taipeh, Taiwan.

THE COMMERCIAL PRESS, LTD.
211 Honan Road, Shanghai.

HONG KONG: THE SWINDON BOOK COMPANY
25 Nathan Road, Kowloon.

INDIA:

ORIENT LONGMANS
Calcutta, Bombay, Madras, New Delhi and Hyderabad.

OXFORD BOOK & STATIONERY COMPANY
New Delhi and Calcutta.

P. VARADACHARY & COMPANY
Madras.

INDONESIA: PEMBANGUNAN, LTD.
Gunung Sahari 84, Djakarta.

JAPAN: MARUZEN COMPANY, LTD.
6 Tori-Nichome, Nihonbashi, Tokyo.

KOREA, REPUBLIC OF: EUL-YOO PUBLISHING CO., LTD.,
5, 2-KA, Chongno, Seoul.

PAKISTAN:

THE PAKISTAN CO-OPERATIVE BOOK SOCIETY
Dacca, East Pakistan.

PUBLISHERS UNITED, LTD.
Lahore.

THOMAS & THOMAS
Karachi.

PHILIPPINES: ALEMAR'S BOOK STORE
769 Rizal Avenue, Manila.

SINGAPORE: THE CITY BOOK STORE, LTD.
Collyer Quay.

THAILAND: PRAMUAN MIT, LTD.
55 Chakrawat Road, Wat Tuk, Bangkok.

VIET-NAM, REPUBLIC OF: LIBRAIRIE-PAPETERIE XUAN THU,
185, rue Tu-do, B.P. 283, Saigon.

EUROPE

AUSTRIA:

GEROLD & COMPANY
Graben 31, Wien, 1.

B. WÜLLERSTORFF
Markus Sittikusstrasse 10, Salzburg.

BELGIUM: AGENCE ET MESSAGERIES DE LA PRESSE, S. A.
14-22, rue du Persil, Bruxelles.

CZECHOSLOVAKIA: ČESKOSLOVENSKÝ SPISOVATEL,
Národní Třida 9, Praha 1.

DENMARK: EJNAR MUNKSGAARD, LTD.
Nørregade 6, København, K.

FINLAND: AKATEEMINEN KIRJAKAUPPA
2 Keskuskatu, Helsinki.

FRANCE: ÉDITIONS A. PÉDONE
13, rue Soufflot, Paris (V[e]).

GERMANY, FEDERAL REPUBLIC OF:

R. EISENSCHMIDT
Schwanthaler Str. 59, Frankfurt/Main.

ELWERT UND MEURER
Hauptstrasse 101, Berlin-Schöneberg.

ALEXANDER HORN
Spiegelgasse 9, Wiesbaden.

W. E. SAARBACH
Gertrudenstrasse 30, Köln (1).

GREECE: KAUFFMANN BOOKSHOP
28 Stadion Street, Athens.

ICELAND: BÓKAVERZLUN SIGFÚSAR EYMUNDSSONAR H. F.
Austurstraeti 18, Reykjavik.

IRELAND: STATIONERY OFFICE
Dublin.

ITALY: LIBRERIA COMMISSIONARIA SANSONI,
Via Gino Capponi 26, Firenze,
and Via D.A. Azuni 15/A, Roma.

LUXEMBOURG: LIBRAIRIE J. TRAUSCH-SCHUMMER,
Place du Théâtre, Luxembourg.

NETHERLANDS: N.V. MARTINUS NIJHOFF
Lange Voorhout 9, 's-Gravenhage.

NORWAY: JOHAN GRUNDT TANUM
Karl Johansgate, 41, Oslo.

PORTUGAL: LIVRARIA RODRIGUES Y CIA.
186 Rua Aurea, Lisboa.

SPAIN:

LIBRERIA BOSCH
11 Ronda Universidad, Barcelona.

LIBRERIA MUNDI-PRENSA
Castello 37, Madrid.

SWEDEN: C. E. FRITZE'S KUNGL. HOVBOKHANDEL A-B
Fredsgatan 2, Stockholm.

SWITZERLAND:

LIBRAIRIE PAYOT, S. A.
Lausanne, Genève.

HANS RAUNHARDT
Kirchgasse 17, Zürich 1.

TURKEY: LIBRAIRIE HACHETTE
469 Istiklal Caddesi, Beyoglu, Istanbul.

UNION OF SOVIET SOCIALIST REPUBLICS:

MEZHDUNARODNAYA KNYIGA
Smolenskaya Ploshchad, Moskva.

UNITED KINGDOM: H. M. STATIONERY OFFICE,
P. O. Box 569, London, S.E.1
(and HMSO branches in Belfast, Birmingham, Bristol, Cardiff, Edinburgh, Manchester).

YUGOSLAVIA:

CANKARJEVA ZALOŽBA
Ljubljana, Slovenia.

DRŽAVNO PREDUZEĆE
Jugoslovenska Knjiga, Terazije 27/11, Beograd.

PROSVJETA
5, Trg Bratstva I Jedinstva, Zagreb.

PROSVETA PUBLISHING HOUSE
Import-Export Division, P. O. Box 559, Terazije 16/1, Beograd.

LATIN AMERICA

ARGENTINA: EDITORIAL SUDAMERICANA, S. A.
Alsina 500, Buenos Aires.

BOLIVIA: LIBRERIA SELECCIONES
Casilla 972, La Paz.

BRAZIL: LIVRARIA AGIR
Rua Mexico 98-B, Caixa Postal 3291,
Rio de Janeiro.

CHILE:

EDITORIAL DEL PACIFICO
Ahumada 57, Santiago.

LIBRERIA IVENS
Casilla 205, Santiago.

COLOMBIA: LIBRERIA BUCHHOLZ
Av. Jiménez de Quesada 8-40, Bogotá.

COSTA RICA: IMPRENTA Y LIBRERIA TREJOS
Apartado 1313, San José.

CUBA: LA CASA BELGA
O'Reilly 455, La Habana.

DOMINICAN REPUBLIC: LIBRERIA DOMINICANA
Mercedes 49, Santo Domingo.

ECUADOR: LIBRERIA CIENTIFICA
Casilla 362, Guayaquil.

EL SALVADOR: MANUEL NAVAS Y CIA.
1a. Avenida sur 37, San Salvador.

GUATEMALA: SOCIEDAD ECONOMICA-FINANCIERA,
6a. Av. 14-33, Guatemala City.

HAITI: LIBRAIRIE "À LA CARAVELLE"
Port-au-Prince.

HONDURAS: LIBRERIA PANAMERICANA
Tegucigalpa.

MEXICO: EDITORIAL HERMES, S. A.
Ignacio Mariscal 41, México, D. F.

PANAMA: JOSE MENENDEZ
Agencia Internacional de Publicaciones,
Apartado 2052, Av. 8A, sur 21-58, Panamá.

PARAGUAY: AGENCIA DE LIBRERIAS DE SALVADOR NIZZA
Calle Pte. Franco No. 39-43, Asunción.

PERU: LIBRERIA INTERNACIONAL DEL PERU, S. A. Casilla 1417, Lima.

URUGUAY: REPRESENTACION DE EDITORIALES, PROF. H. D'ELIA
Plaza Cagancha 1342, 1° piso, Montevideo.

VENEZUELA: LIBRERIA DEL ESTE,
Av. Miranda, No. 52, Edf. Galipán, Caracas.

MIDDLE EAST

IRAQ: MACKENZIE'S BOOKSHOP
Baghdad.

ISRAEL: BLUMSTEIN'S BOOKSTORES
35 Allenby Rd. and 48 Nachlat Benjamin St.,
Tel Aviv.

JORDAN: JOSEPH I. BAHOUS & CO.
Dar-ul-Kutub, Box 66, Amman.

LEBANON: KHAYAT'S COLLEGE BOOK COOPERATIVE,
92-94, rue Bliss, Beirut.

NORTH AMERICA

CANADA: THE QUEEN'S PRINTER
Ottawa, Ontario.

UNITED STATES OF AMERICA: SALES SECTION, UNITED NATIONS, New York.

OCEANIA

AUSTRALIA: MELBOURNE UNIVERSITY PRESS
369 Lonsdale Street, Melbourne, C.1.

NEW ZEALAND: UNITED NATIONS ASSOCIATION OF NEW ZEALAND, C.P.O. 1011, Wellington.

[62E1]

Orders and inquiries from countries where sales agencies have not yet been established may be sent to: Sales Section, United Nations, New York. U.S.A., or to Sales Section, United Nations, Palais des Nations, Geneva, Switzerland.

Printed in France
1603—March 1962—3,000

Price : $ U.S. 3.50; 25/– stg.; Sw. fr. 15.00
(or equivalent in other currencies)

United Nations publication
Sales No.: 61.X.2