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16th meeting of the Committee of the Whole

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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 LEO (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 Vietnamese 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, inter-nuncios 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.