United Nations Conference on Diplomatic Intercourse and Immunities

Vienna, Austria
2 March - 14 April 1961

Document:-
A/CONF.20/C.1/SR.17

17th meeting of the Committee of the Whole

Extract from Volume I of the *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

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.