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31st meeting of the Committee of the Whole

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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 re-submitted 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).

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.

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

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 support the 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.