United Nations Conference on Diplomatic Intercourse and Immunities

Vienna, Austria
2 March - 14 April 1961

Document:-
A/CONF.20/C.1/SR.37

37th 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)*

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 ZLITNI (Libya) regretted that the Spanish proposal had been withdrawn and suggested that it might be reintroduced in connexion with article 43 (*a*).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).