United Nations Conference on Diplomatic Intercourse and Immunities

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38th 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)*

67. Mr. WESTRUP (Sweden) associated himself unreservedly with the views of the United States and Swiss representatives. He supported the latter's request for a roll-call vote on article 45. Only if the roll-call vote was adverse to the article would he support the proposal for a special protocol.

The meeting rose at 6.40 p.m.

THIRTY-EIGHTH MEETING

Tuesday, 4 April 1961, at 10.50 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 45 (Settlement of disputes) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 45 and to amendments thereto.[1]

2. Mr. MERON (Israel) said that his government was among those which had accepted the compulsory jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Statute of the Court. But also apart from that he thought a clause providing for the compulsory jurisdiction of the Court was particularly appropriate for a convention on diplomatic privileges and immunities. His delegation was prepared to support article 45 of the International Law Commission's draft, and would be very sorry if the majority of the delegations were unable to do likewise.

3. Mr. ZLITNI (Libya) said that, since some States did not recognize the jurisdiction of the International Court of Justice as compulsory in disputes concerning the interpretation of a treaty, a special optional protocol should be attached to the convention, to provide for the compulsory settlement of differences. His delegation would therefore support the proposal for such a protocol (L.316/Add.1).

4. Mr. PUPLAMPU (Ghana) considered that the convention should contain a provision for settlement of disputes. However, as the inclusion of such a provision in the body of the instrument might prevent some States from signing, his delegation thought it should be embodied in a special protocol. He would therefore support the proposal for a protocol.

5. Mr. JEZEK (Czechoslovakia) said that his delegation could not accept article 45 because it violated the principle of the equality of States. It was unnecessary to include in the convention a special provision for the settlement of disputes. States should be left to settle among themselves by agreement any disputes concerning the interpretation or application of the convention. It might be provided that, in the absence of agreement, its dispute would be referred to the International Court of Justice, but for that purpose the case would have to be referred to the Court by both parties, as the Court's Statute required. Some States might not sign the convention if article 45 were retained. His delegation thought the article should be deleted, and would therefore vote for the Bulgarian amendment (L.296). If, however, a majority of the Committee considered that a clause on the settlement of disputes was necessary, his delegation would support the proposal for an optional protocol.

6. Mr. GLASER (Romania) considered that a provision for the compulsory settlement of disputes concerning interpretation had no place in the convention, the purpose of which was to codify the international law on diplomatic intercourse and immunities. If, nevertheless, a clause on the settlement of disputes was to appear in the convention, it should at least conform to international law and to the Statute of the International Court of Justice. Draft article 45 did not do so, and consequently his delegation would vote for its deletion. Moreover, the principle of the compulsory jurisdiction of the Court violated that of the sovereignty of States, and his delegation would vote on the various amendments to article 45 in the light of that consideration.

7. Mr. PATEY (France) said that three solutions to the problem had been suggested. The first was that put forward by Bulgaria (L.296) to delete the whole of article 45, or the almost equally radical proposal of Argentina (L.139) which made recourse to the International Court of Justice depend on agreement between the parties. His delegation was unable to accept those formulas. It was convinced of the need to include in the convention itself a clause on the settlement of disputes. One could not make the competence of a tribunal dependent upon the signature of a compromise, in other words, on the goodwill of the other party. As to the second solution, under which article 45 would be replaced by a separate protocol modelled on the Geneva Protocol of 1958, his delegation felt that would be a false compromise solution, for only States which had recognized the compulsory jurisdiction of the International Court would sign it, and not those which rejected article 45. It had been agreed that, as the purpose of the draft was to codify international law on diplomatic intercourse and immunities, the Conference was not concerned with the interpretation of the rules which it was formulating; but General Assembly resolution 1450 (XIV) laid down that the Conference's task was to embody the result of its work in " a convention ". That argument was therefore not tenable. The French delegation would support, and vote for, the third solution, the maintenance of article 45 of the International Law Commission's draft, which was in keeping with France's traditional position.

8. Mr. VALLAT (United Kingdom) said that his government had approved the principle of the judicial settlement of legal disputes. Hence the United Kingdom

[1] For the list of amendments, see 37th meeting, footnote to para. 44. The United States amendment (L.299) was withdrawn. The United Arab Republic had become a co-sponsor of the proposal for an optional protocol (L.316/Add.1).

delegation supported article 45, which endorsed that principle. Disagreeing with the Romanian representative, he said that none of the provisions of article 45 was in conflict with the Statute of the International Court of Justice. Under Article 36, paragraph 1, of the Statute, the jurisdiction of the Court comprised all matters specially provided for in treaties and conventions in force. He recognized, however, that in the context of the convention on diplomatic intercourse and immunities article 45 was not indispensable, and might even be regarded by some delegations as restricting the jurisdiction of the International Court. But surely, the Conference should strengthen, not weaken, the Court's authority. To state in article 45 that States could submit their disputes to the International Court of Justice at the request of both parties would make the article quite meaningless and be a retrograde step. Accordingly, his delegation would oppose any such amendment. On the other hand, it realized that the adoption of article 45 might cause difficulties for certain States. Thus, although it intended to vote in favour of article 45 if it was put to the vote, the United Kingdom delegation would support the proposal that article 45 should be replaced by an optional protocol of signature concerning the settlement of disputes, and would vote for that proposal if it was put to the vote first.

9. Mr. BOUZIRI (Tunisia) said he was opposed to the compulsory jurisdiction of the International Court of Justice and would therefore vote against article 45.

10. Mr. NISOT (Belgium) said that his delegation's sub-amendment (L.325) to the Argentine amendment to article 45 was self-explanatory.

11. Mr. NGUYEN-QUOC DINH (Viet-Nam) regretted that, for the reasons he was going to explain, his delegation would be obliged to vote against the International Law Commission's draft of article 45, which had been supported with such conviction. The article was based on two related, but separate, principles, the first being the obligation to settle disputes by peaceful means, and the second the tacit recognition of the compulsory jurisdiction of the International Court of Justice. While his delegation approved the first of those principles, it was not yet prepared to accept the second. It would support the amendments submitted by Argentina and China, which were consistent with that position. For the same reasons, it would vote against the Japanese amendment and the Belgian sub-amendment. The Bulgarian amendment went much too far, for to delete article 45 was equivalent to rejecting both the principle of peaceful settlement of disputes and that of the compulsory jurisdiction of the International Court of Justice. His delegation would be able to support the four-nation proposal, provided that its sole object was the drafting of a separate optional protocol of signature.

12. Mr. SUBARDJO (Indonesia) noted that for various reasons many States could not accept compulsory jurisdiction, and that different States preferred different means of settling disputes concerning the interpretation or application of a convention or treaty. The same situation had arisen at the Bandung Conference, where the question had been raised. In that connexion, he wished to recall that the Bandung Conference had declared that States should seek to settle their disputes by negotiation, conciliation, arbitration, judicial settlement, or by any other peaceful means they might choose, provided that they were in conformity with the United Nations Charter. Since it subscribed to the principles laid down by the Bandung Conference, the Indonesian Government could not agree to submit to compulsory jurisdiction, and its delegation would therefore vote for the amendments which advocated methods acceptable to Indonesia.

13. Mr. CAMERON (United States of America) stated that his delegation had regretfully concluded that the Conference was not prepared by the two-thirds majority which would eventually be required for the adoption of proposals in the plenary meeting to accept the compulsory jurisdiction of the International Court of Justice for the settlement of disputes arising from the interpretation or application of the convention. The United States delegation was thus ready to support the concept of an optional protocol of signature, on the understanding that the proposal would commend itself to a large majority.

14. Mr. MELO LECAROS (Chile) considered the proposal for a special protocol satisfactory, and announced that he would vote for it.

15. Mr. GLASER (Romania), exercising his right of reply, challenged the — to say the least — imaginative interpretation given to Article 36 of the Statute of the International Court of Justice by the United Kingdom representative. Contrary to what the United Kingdom representative had said, article 45 was incompatible with the basic principle underlying Article 36 of the Statute; the United Kingdom representative had implicitly admitted as much in saying that if it gave States the right to submit their disputes to the Court at the request of both parties article 45 would become meaningless. Under international law a sovereign State could not be subjected to the jurisdiction of the International Court of Justice except by its own consent.

16. Mr. BOTELHO (Brazil) recalled that it was on his country's initiative that the optional clause had been inserted into Article 36, paragraph 2, of the Statute of the Permanent Court of International Justice.[2] The peaceful settlement of disputes was part of Brazil's traditional policy, and recourse to arbitration was expressly provided for in the Brazilian Constitution. All frontier problems, for instance, had been settled by arbitration or direct negotiation. Hence the Brazilian delegation was prepared to support the amendment submitted by Argentina and Guatemala; but, since some countries did not recognize the Court's compulsory jurisdiction, it might also vote for the proposal for an optional protocol.

17. Mr. REGALA (Philippines) regretted that some countries were not prepared to submit their disputes to the International Court of Justice; the recognition of

[2] At the first Assembly of the League of Nations, 20th plenary meeting, 13 December 1920.

its compulsory jurisdiction would make no small contribution to the progressive development of international law, to which some speakers referred so often. The Philippine delegation would vote for article 45.

18. Mr. ÇARÇANI (Albania) said that the application of article 45 would infringe the sovereignty of States in so far as it provided for the submission of disputes to the International Court of Justice " at the request of either of the parties ". Hence Albania would vote for the Bulgarian amendment.

19. Mr. BAYONA (Colombia) said that his country would vote for article 45, since it had always advocated the peaceful settlement of disputes and, moreover, recognized the compulsory jurisdiction of the International Court of Justice. It might, however, support the adoption of an optional protocol of signature.

20. Mr. PONCE MIRANDA (Ecuador) said that the convention should of necessity contain a clause providing for the compulsory jurisdiction of the International Court. That was indispensable for the protection of the interests of the small Powers, and for the defence of States of good will against those in bad faith. The Ecuadorian delegation could not, therefore, support the proposal for a separate protocol and would vote for article 45.

21. Mr. DASKALOV (Bulgaria) noted that the majority of delegations seemed disposed to vote for the proposal for an optional protocol; accordingly he was prepared to withdraw his delegation's amendment (L.296) so that the convention might be approved by the greatest possible number of States.

22. The CHAIRMAN called on the Committee to vote on the various amendments relating to article 45, and said that the proposal for an optional protocol (L.316 and Add.1), which in substance was furthest removed from the original draft, would be put to the vote first.

23. Mr. TALJAARD (Union of South Africa) considered that the proposal was too vague; the Committee should vote on a more specific text.

24. The CHAIRMAN stated that, if the proposal were adopted, the Drafting Committee would draft the final text of the protocol, but *mutatis mutandis* that text would be similar to the protocol adopted on 29 April 1958 at Geneva by the first United Nations Conference on the Law of the Sea.

25. Mr. RUEGGER (Switzerland), speaking on a point of order, said that at the preceding meeting (para. 59) he had requested that the Committee should first vote by roll-call on the principle of incorporating in the convention a clause providing for the compulsory jurisdiction of the International Court of Justice. Since it would show which States recognized the court's jurisdiction, that vote would have the advantage of clarifying the discussion. It it were negative, the Committee could then vote on the adoption of a protocol.

26. Mr. NISOT (Belgium) supported that procedure.

27. The CHAIRMAN said that, in the absence of objection, he was ready to ask the Committee to vote in the manner described by the Swiss representative.

28. Mr. CARMONA (Venezuela) objected, and asked for the strict application of rule 41 of the rules of procedure. The Committee's members were well aware of the principles underlying the various amendments, and there was no object in taking a preliminary vote. The proposal for an optional protocol should be put to the vote first.

29. Mr. BOUZIRI (Tunisia) agreed. If the Committee wished States to respect the convention it was to draft, it should respect its own rules of procedure.

30. The CHAIRMAN, noting the objections, put the proposal for an optional protocol (L.316 and Add.1) to the vote.

The proposal was adopted by 49 votes to 7, with 16 abstentions.[3]

31. Mr. BOLLINI SHAW (Argentina) explained that he had abstained from voting for two reasons. His delegation would naturally support a draft resembling its own amendment (L.139); on the other hand, the optional protocol had the merit of leaving States to choose whether or not to accept the compulsory jurisdiction of the International Court.

32. Mr. SICOTTE (Canada) said that he had voted for the proposal in order that the convention might have the widest possible support, but his delegation fully agreed with article 45 as it stood.

33. Mr. CARMONA (Venezuela) said that he had voted unreservedly for the proposal because his government wished to leave States free to settle their disputes as they chose. Venezuela none the less strongly believed in the peaceful settlement of disputes.

34. Mr. PATEY (France) said that he had intended to abstain because his delegation had no great faith in an optional protocol. However, he had cast an adverse vote in the hope of a vote on the principle embodied in article 45.

35. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) explained that he had voted for the proposal because his delegation favoured deletion of article 45. Since Article 33 of the Charter provided a number of ways of settling disputes peacefully, it was not desirable that a clause providing for the compulsory jurisdiction of the Court should be included in the convention.

36. Mr. RUEGGER (Switzerland) said that the vote had produced an ambiguous situation, for the optional protocol had been approved by the States in favour of compulsory jurisdiction and by those opposing it. Nevertheless, his delegation's abstention did not mean that Switzerland would not sign the optional protocol.

[3] As a consequence of this vote, it became unnecessary to vote on the amendments submitted by Argentina or Guatemala (L.139 and Rev.1), Belgium (L.325), China (L.302 and Corr.1) and Japan (L.307/Rev.1). The Drafting Committee subsequently prepared the draft of an optional protocol (A/CONF.20/L.2/Add.2).

37. Mr. BAYONA (Colombia) said he had voted against the proposal in the hope of a vote on article 45. Colombia was in principle in favour of the compulsory jurisdiction of the Court and intended to sign the optional protocol.

38. Mr. YOURAN CHAN (Cambodia) said he had voted for the proposal in a spirit of compromise, but fully supported the principle of compulsory jurisdiction set forth in article 45.

39. Mr. TAKAHASHI (Japan) explained that he had abstained because his delegation thought the principle of compulsory jurisdiction of the Court should be embodied in the convention.

Article 1 (Definitions): Second reading

40. The CHAIRMAN said it had been agreed in the course of the earlier discussion on article 1 that the definitions then provisionally approved would be reviewed in the light of the draft as a whole. The Drafting Committee had prepared a redraft of article 1 (L.324) on which he invited debate. In addition, amendments submitted by Japan (L.305), the United States of America (L.312) and Argentina, Ghana, Guatemala, India, the Federation of Malaya, Mexico, Spain and the United Arab Republic (L.326) remained to be considered. The delegation of Ceylon had withdrawn its amendment (L.91) at the seventh meeting (para. 24).

41. He invited debate in the first place on the amendment submitted by Japan; both the other amendments concerned a proposed definition of " family ".

42. Mr. TAKAHASHI (Japan), introducing his delegation's amendment, said that under article 32 (*f*) diplomatic agents were not exempt, " subject to the provisions of article 21 ", from registration etc. fees and stamp duty, while under article 21 the head of mission was exempt from all taxes and dues " in respect of the premises of the mission ". In article 1 as redrafted (L.324) the " premises of the mission " were defined in terms which did not cover the residence of the head of mission, who would not, as a consequence, qualify for exemption from the dues and charges mentioned in article 32 (*f*) in respect of his residence. Indeed, he might not be exempt from the charges mentioned in article 32 (*b*), owing to the vagueness of the term " private " which was used in a different context in article 28, paragraph 1. In his delegation's opinion, the residence of the head of mission should have the same exemption as the other premises of the mission, and for that reason it had submitted its amendment.

The amendment submitted by Japan (L.305) was adopted by 52 votes to 9, with 11 abstentions.

43. The CHAIRMAN invited debate on the amendments defining the " family ".

44. Mr. WESTRUP (Sweden) noted that the United States amendment (L.312) defined the persons who under the convention would enjoy a number of privileges. During the discussion on article 36 (persons entitled to privileges and immunities) the Committee had not seen fit to define " members of the family ", since that question pertained to article 1. It was true — as the Indian representative had observed on the first reading of article 1 — that even the concept " family " varied from country to country. Nevertheless, governments could not request their national authorities to determine the persons entitled to privileges and immunities merely by the standards of courtesy, commonsense and respect for tradition. Swedish law laid down an age-limit for minor children of non-tax-paying diplomats. In other countries, other rules might apply. " Members of the family " should therefore be defined somewhere in the convention. The definition proposed by the United States deserved support, since it laid down the *minimum* number of persons to be considered " members of the family " and left open the possibility of adding others by special agreement.

45. He stated for the record that the expression " minor children " was interpreted by his government to mean children under the age of eighteen years.

46. Mr. de ERICE y O'SHEA (Spain) considered that the meaning of the term " family " should be defined in the convention. The United States proposal was a praiseworthy effort, but there could be no question of letting the State settle the meaning of " member of the family ". Some speakers had feared abuse if the term " family " were interpreted too widely; but the amendment submitted by Argentina and several other delegations, including that of Spain (L.326) defined it so as to leave no room for doubt.

47. Mr. BOLLINI SHAW (Argentina) said that without a definition of " members of the family " article 1 would be incomplete. What was needed was not so much a strict definition as an explanation. While appreciating the intention of the United States amendment, he considered the wording was not satisfactory: in particular, the last part of the definition was not very clear.

48. Mr. BOUZIRI (Tunisia) thought that the United States definition was likely to raise problems and that " family " could not be defined by agreement among States. The amendment sponsored by Argentina and other delegations was open to abuse because it contained no definition and would allow the number of the privileged to be increased unduly. His delegation would have been prepared to support the Ceylonese amendment (L.91) which, though not entirely satisfactory, nevertheless contained a definition which was both broad and precise.

49. Mr. YASEEN (Iraq) pointed out that the expression " minor child " was used in several amendments. It would be absurd if in the same capital the 18-year-old son of one diplomat were considered an adult, and that of another diplomat a minor. Either there should be uniformity, or the rule determining majority should be that of the receiving State. That was a principle often applied in private international law, and would not therefore be an innovation.

50. Mr. TUNKIN (Union of Soviet Socialist Republics), speaking on the treatment of members of diplomats' families, pointed out that some countries gave a broader interpretation than others. No serious problems had apparently occurred in the past, and accordingly the

Committee had two possibilities before it. It could accept a definition which did not call for any substantial change in national laws. In that respect the United States text was the most satisfactory, possibly with the addition of a reference to unmarried daughters.

51. Alternatively, the Committee could dispense with any definition. The International Law Commission had not inserted one, and several States seemed to prefer that course. His delegation had nothing against either solution, provided that " family " were not given too wide a definition.

52. Mr. SUBARDJO (Indonesia) said that " family " meant different things in East and West. His delegation wanted a text acceptable to the majority. It was prepared to support the joint amendment (L.326) and requested that, if there were a vote, that text should be put to the vote first.

53. Mr. GHAZALI (Federation of Malaya) said he would not be able to agree to a definition under which the receiving State would decide whether a particular person belonged to the diplomat's family or not.

54. Mr. CAMERON (United States of America) observed that the differences of view which had come to light at the first reading of article 1 remained. Countries exchanging diplomatic missions should facilitate the fulfilment of their functions, and for that purpose his delegation's amendment provided for agreements to determine who were members of the family. It did not seem possible to find a definition that would receive sufficiently wide acceptance, and that being so he thought it would perhaps be better to dispense with a definition of " family " altogether.

55. Mr. VALLAT (United Kingdom) considered that the wisest course would be to adhere to the International Law Commission's text. In several articles of the convention the term " member of the family " was usually accompanied by the qualification " forming part of his household ". The Argentine amendment (L.326) introduced a new concept by mentioning " dependants, who form part of his household "; that expression seemed even more vague than " member of the family ". The United States amendment would be almost acceptable, since it allowed for agreement among States; but it also spoke of a " minor child " without explanation. Consequently, the various proposed definitions were hardly likely to improve the article.

56. Mr. WESTRUP (Sweden) said he had listened with great interest to the statements of the Spanish and Tunisian representatives. He did not consider it advisable to include a definition of " family " in article 1, since any definition might offend some delegations. It would be better to mention in article 36, paragraph 1, the persons who, whether members of the family or not, were entitled to privileges and immunities. If his delegation had any reservations, it would submit them in connexion with article 36, paragraph 1.

The meeting rose at 1.5 p.m.

THIRTY-NINTH MEETING

Tuesday, 4 April 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) *(continued)*

Article 1 (Definitions): second reading *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on the proposed definitions of " family " (L.312 and L.326).

2. Mr. WESTRUP (Sweden) said that at the previous meeting he had expressed support for the United States definition (L.312). He had, however, been impressed by the arguments against including such a definition — especially those advanced by the representative of Spain. He would therefore not oppose withdrawal of the amendment, but might raise the matter later if necessary.

3. Mr. CAMERON (United States of America) said that because of the comments made at the 38th meeting, and also because he felt that the Committee was not likely to reach agreement on the definition, he would not press his amendment to a vote. He would, however, raise the matter again if any article appeared to suffer from absence of the definition.

4. On behalf of its sponsors, Mr. KRISHNA RAO (India) withdrew the eight-Power amendment (L.326).

5. Mr. BOUZIRI (Tunisia) resubmitted the amendment originally submitted and then withdrawn by Ceylon (L.91) in the name of the Tunisian delegation. He thought it essential to define the family, because families were referred to in several of the articles; furthermore, the definition proposed by Ceylon was a good compromise between the eight-Power definition and that of the United States.

6. Mr. MENDIS (Ceylon) thanked the representative of Tunisia. He felt that the definition was necessary to make the convention complete.

7. Mr. KEVIN (Australia) also thought there was a need for some definition of the family in the convention.

The amendment (L.91) was rejected by 34 votes to 3, with 26 abstentions.

8. The CHAIRMAN put to the vote the redraft of article 1 (L.324) as amended by Japan (L.305).

Article 1, as amended, was adopted unanimously.

9. The CHAIRMAN said the Committee had completed the consideration of the draft articles prepared by the International Law Commission. The provisions adopted would be referred to the Drafting Committee, which would prepare the text to be submitted to the plenary conference.