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5th meeting of the Committee of the Whole

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be retained as a safeguard. It might perhaps be amended to indicate that the Conference thought the practice was rare and not to be recommended.

43. Mr. TAKAHASHI (Japan) said that, while the comments and the amendments seemed to him valid, he felt that it would be unwise to depart too far from the draft prepared with such care by the International Law Commission.

44. Mr. HORAN (Ireland) supported the amendment to article 6 proposed by France. With regard to article 8, paragraph 2, he agreed with the representative of Israel that it would be wise to define "a reasonable period". His delegation had not yet made up its mind concerning article 7.

45. Mr. do NASCIMENTO e SILVA (Brazil) proposed an amendment to article 7, which he thought might reconcile the views expressed during debate. The article should lay down the basic principle that the staff of diplomatic missions should be appointed from the nationals of the sending States; in exceptional cases, and only with the express consent of the receiving State, the staff could include nationals of the receiving State or of a third State (see L.77).

46. Mr. SUCHARITAKUL (Thailand) announced that he was submitting an amendment to article 9 deleting the words "of the staff" (L.51). The reason was that the words "members of the staff of the mission" excluded the head of the mission; but "members of the mission", as defined in article 1 (b), included him.

47. Mr. KRISHNA RAO (India) pointed out that article 9 did not indicate when notice should be given of the arrival and departure of members of a mission.

48. Mr. CARMONA (Venezuela) considered article 9 useful but had doubts regarding its second sentence, which seemed to give locally engaged members of the mission the same status as diplomats.

49. Mr. OJEDA (Mexico) supported article 9 as it stood. It was essential that the arrival and departure of all members of a mission should be notified.

The meeting rose at 5.55 p.m.

FIFTH MEETING

Wednesday, 8 March 1961, at 10.55 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 1 (Definitions)

Article 2 (Establishment of diplomatic relations and missions)

Article 3 (Functions of a diplomatic mission)

Article 4 (Appointment of the head of the mission: agrément)

Article 5 (Appointment to more than one State) (resumed from the second meeting)

1. The CHAIRMAN invited the Committee to resume its debate on articles 1 to 5 of the International Law Commission's draft (A/CONF.20/4). He drew attention to a number of amendments submitted to those articles.¹ He referred to his earlier suggestion (first meeting, para. 8) concerning the procedure for dealing with article 1 (Definitions). The terminological amendments proposed by the Swiss delegation (L.24) would, with that delegation's agreement, be referred to the Drafting Committee.

2. Mr. PUPLAMPU (Ghana) said that, as it could not accept the definition of the head of the mission in article 1, sub-paragraph (a), his delegation would submit an amendment (L.89). The amendment proposed jointly by Colombia and Spain (L.5) did not satisfy his delegation. He supported the Irish delegation's amendment to sub-paragraph (d) (L.16) and recalled the practice followed by various countries in drawing up the diplomatic list. The amendment to sub-paragraph (e) proposed by the Guatemalan delegation (L.8) failed to take account of established custom and was too restrictive. In his opinion, the definition of "diplomatic agent" proposed by the International Law Commission should stand. He supported the United States amendment to article 1, sub-paragraph (h) (L.17) and also that delegation's proposal for the addition of a sub-paragraph (i) defining "members of the family".

3. Mr. TUNKIN (Union of Soviet Socialist Republics) expressed his country's great interest in the development of diplomatic relations. A codification in the form of a multilateral convention would enable diplomats to perform their duties more efficiently and would help to strengthen international co-operation and establish friendly relations among nations.

4. He believed that the International Law Commission's draft took good account of generally accepted rules and constituted an excellent working basis.

5. Article 1 was exclusively terminological, and he regretted the tendency of some delegations to stray from its subject matter.

¹ The following amendments had been submitted by the date of the meeting:

To article 1: A/CONF.20/C.1/L.5, L.8, L.16, L.17, L.23, L.24, L.25, L.35, L.73 (and Corr.1), L.81, L.89, L.90, L.91.

To article 2: A/CONF.20/C.1/L.6, L.15.

To article 3: A/CONF.20/C.1/L.13, L.14, L.26, L.27, L.30, L.31, L.33, L.82.

To article 4: A/CONF.20/C.1/L.18, L.28, L.37, L.42, L.43.

To article 5: A/CONF.20/C.1/L.19, L.22, L.36, L.40, L.41, L.44 (and Corr.1), L.71, L.75, L.83.

In addition, a new article had been proposed (A/CONF.20/C.1/L.7).

6. The amendment submitted by Colombia and Spain (L.5) did not introduce any improvement. The novel expression "official diplomatic representative" which it employed could lead to misunderstanding, since it was nowhere defined. It would therefore be unwise to adopt that amendment. With regard to the Swiss amendments (L.23), he approved of the definition of "head of the mission" as "the person accredited as such", and the Soviet delegation would vote in favour of that text.

7. He agreed that the definition of "diplomatic staff" was of importance. But the amendments proposed by Guatemala (L.8) and Ireland (L.16) did not seem to be satisfactory or in accordance with existing practice. Even if it were possible to reach agreement on a realistic definition, it would be inadvisable to place it within such a narrow framework, for difficulties might arise if a country's practice differed from the future convention. He therefore thought it preferable to retain the less categorical definition drafted by the International Law Commission.

8. Mr. ASIROGLU (Turkey), commenting first on certain suggestions concerning the draft as a whole made earlier in the debate by some delegations, said that his delegation supported the suggestion that the convention should be introduced by a preamble (first meeting, para. 9). It also supported the suggestion that article 1 should define "special mission" (*ibid.*, para. 19).

9. With regard to articles 1 to 5, his delegation approved on the whole the provisions of article 1 as drafted by the International Law Commission. It was difficult, perhaps even impossible, to work out clear and comprehensive definitions which would satisfy everybody. It was a delicate and complex matter to draft definitions, as was proved by the difficulties encountered by United Nations organs in their efforts to define certain terms used in the Charter of the United Nations, such as "aggression", "peoples" and "nations". Guatemala and Ireland, for instance, took the view, reflected in their amendments (L.8 and L.16), that the members of the diplomatic staff should be specified. But, he pointed out, usage differed from country to country. In Turkey, for example, there was a class of diplomats called "chargé d'affaires en pied". Because it was hard to work out less ambiguous definitions, he would prefer the Commission's definitions to stand.

10. Nevertheless, some purely drafting changes should perhaps be made. In article 1, sub-paragraph (h), for example, the words "of the head or" might be deleted. That was, of course, only a suggestion, not a formal proposal. The Turkish delegation would accordingly vote for article 1 of the International Law Commission's draft and would abstain from voting on the amendments submitted to that article, with the exception of the United States amendment concerning members of the family (L.17).

11. With regard to the Czechoslovak proposal for a new article to be added before article 2 (L.7), he said that the introduction of a reference to the right of legation in the draft might be open to dangerous interpreta-

tions. The establishment of diplomatic relations between States could only be effected by mutual agreement. He would therefore vote against the Czechoslovak proposal.

12. The amendment submitted by the Czechoslovak delegation to article 2 (L.6) contained a perfectly acceptable idea. His own government entertained diplomatic relations with countries whose constitutional, legal and social systems differed from Turkey's. Nevertheless, it attached great importance to the principle of mutual consent in the establishment of diplomatic relations between States. Inasmuch as the Czechoslovak amendment might be misconstrued, he would vote against it.

13. Nor was there any reason to change article 3. The idea expressed in the Indian amendment (L.13) was implicit in paragraph (b) of the article in question.

14. So far as articles 4 and 5 were concerned, he considered that the International Law Commission's text should be retained.

15. Mr. BIRECKI (Poland) said it was fitting that the Conference should be held at Vienna, a city of tradition and inspiration. Yet, times had changed since the Congress of Vienna. Already during the life-time of its architects, the principles of the Holy Alliance had been upset by reality; the membership of the Conference proved how profound the change had been. The modern world consisted of a great many States with different systems. For the sake of peace, all those States had to maintain relations with each other. One of the objects of the Congress of Vienna had been to lay down rules governing diplomatic representatives with a view to preventing the frequently embarrassing incidents of earlier times. Subsequent events had made it doubtful whether that aim had been fully achieved. The Conference of 1961 would probably not achieve perfect results either, but if it was willing to take account of existing new conditions it would certainly do useful work. The Polish delegation would have preferred the Conference to be enlarged, which would have enhanced its authority; he had earlier expressed regret at certain absences, and in that connexion he endorsed the apt remarks of the representative of Mali at the fourth meeting (para. 13).

16. The draft prepared by the International Law Commission provided a satisfactory basis for the Conference's work. It was a well-balanced draft, and even though there were certain omissions which should be made good, the Conference should not depart too much from it. The object was to codify, simplify and improve diplomatic relations between States, and in particular those between States with different systems. In striving to attain that objective, the Conference would make a substantial addition to the Regulation of Vienna. It was with that aim in mind that the Polish delegation would participate in the proceedings of the Conference.

17. Mr. YASSEEN (Iraq) said that as early as the General Assembly's thirteenth session in 1958, during the debate on the International Law Commission's report (A/3859), his country had paid a tribute to the work done by the Commission. The delegation of Iraq

had then expressed the opinion that the Commission's draft formed an adequate basis for the preparation of a convention and had the merit of faithfully stating existing practice while at the same time taking international requirements into account. Nevertheless, it had felt bound to make reservations concerning certain articles which it had not found entirely satisfactory. It was in the same spirit that the Iraqi delegation to the Conference would make his contribution to the examination of the draft articles.

18. In general, it would defend the original draft and would comment on some articles which it did not think entirely satisfactory. But it would consider without prejudice any amendment that might improve the Commission's draft.

19. For the moment, in connexion with the debate on article 1, his delegation would merely speak on procedure. By reason of the nature of that article, which was intended to explain the meaning of a few terms used in the draft, it would have been better to discuss it later. Only after discussing the rest of the draft should the Committee take up article 1. That was why his delegation was reluctant at that stage to express an opinion regarding the article and the amendments relating thereto.

20. The Chairman had wisely suggested that any decisions concerning article 1 should be provisional; but even provisional decisions would be justified only in so far as they related strictly to drafting.

21. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) said that the International Law Commission's draft was an acceptable basis for discussion. The Commission had done useful work, and its draft would contribute to the codification of the rules governing diplomatic relations, for it dealt with all the essential problems and reflected recognized international practice.

22. The object of the amendment to article 1 submitted jointly by his own and the Bulgarian delegation (L.25) was to supplement the article by defining the expression "premises of the mission", which occurred in articles 20 and 21 of the draft. The proposed definition was based on the Commission's commentary on article 20.

23. In his delegation's opinion, the amendment to article 1 proposed by Ireland (L.16) did not correspond with recognized practice and was of a restrictive nature. The same criticism applied to the amendment submitted by Guatemala (L.8), which did not improve the Commission's text.

24. Mr. HU (China) said that article 1 was the key to the subsequent articles. It should probably be supplemented by other definitions established in the light of the decisions taken on those articles. Accordingly, the Chairman's suggestion that only provisional decisions be taken on article 1 was wise.

25. The Chinese delegation approved the amendment (L.5) to article 1 proposed by Colombia and Spain, which emphasized the representative character of the head of the mission.

26. The first of the Guatemalan amendments (L.8) and the Irish amendment (L.16) had the same object — to clarify the meaning of "diplomatic staff". The Chinese delegation approved those amendments, but considered that their sponsors should confer with a view to working out an agreed joint amendment.

27. The first of the United States amendments (L.17) was acceptable to the Chinese delegation, which would also support the proposed addition of a definition of "member of the family".

28. The Commission's draft of article 3 had its merits, but the text proposed for it by Liberia and the Philippines (L.14) was more satisfactory because it laid less emphasis on protection in the receiving State of the interests of the sending State and of its nationals, which might be a pretext for interference in the internal affairs of the receiving State.

29. The Chinese delegation would support the Spanish delegation's amendment (L.42) to article 4, and the United States amendments (L.18 and L.19) to articles 4 and 5.

30. Mr. CARMONA (Venezuela) agreed with the representative of Iraq that it was premature to take final decisions on article 1. The article should be referred to a drafting committee for revision in the light of amendments to and comments on the other articles.

31. Mr. de ERICE y O'SHEA (Spain) said that the definition of "head of the mission" in article 1, subparagraph (a), was tautological. The Colombian and Spanish delegations considered that the head of the mission should be the representative of the sending State, be officially invested with the diplomatic functions enumerated in draft article 3, and act on behalf of one State in another State. That was the idea behind their joint amendment (L.5), which he hoped would be acceptable to the majority of the Committee.

32. The definition proposed in the first of the Swiss amendments (L.23) was an improvement on that of the draft but still too vague. With reference to the second of the Swiss amendments he said that some countries did not make a categorical distinction between "chancery staff" and "diplomatic staff"; for that reason it would be preferable to retain the expression "administrative and technical staff". On the other hand, the third of the Swiss amendments was acceptable.

33. He supported the amendment proposed by the Byelorussian and Bulgarian delegations (L.25) and also the first of Guatemala's amendments (L.8): Unlike the Turkish representative, he considered that the list of diplomatic staff proposed by Guatemala did not exclude *chargés d'affaires*, for when they held a diplomatic post abroad they belonged of necessity to one of the categories mentioned in the list. On the other hand, the second of Guatemala's amendments, defining "diplomatic agent" as meaning the head of the mission or the member of the diplomatic staff replacing him, was unnecessary, for those officials were already defined elsewhere. With reference to the Irish amendment (L.16), he suggested that, as it was very close to the first of the

Guatemalan amendments, the two delegations might try to work out a joint text. The Guatemalan amendment defining "diplomatic official" (L.35) might be referred to the drafting committee.

34. He would comment on the first of the United States amendments (L.17) when the Committee discussed the article relating to private servants; but he unreservedly approved of the United States definition of "member of the family".

35. Mr. GLASER (Romania) considered that the International Law Commission had very wisely endeavoured to draft definitions sufficiently elastic to be acceptable to the majority of States. While the great number of amendments submitted by delegations no doubt proved their sincere desire to prepare as satisfactory a convention as possible, the Committee should be very cautious in trying to improve on the Commission's draft.

36. The definition proposed by Colombia and Spain (L.5), for instance, was not as clear as it seemed at first sight. The word "official" could in some languages mean "public", and the term "representative" could very easily be applied to an adviser negotiating on behalf of a State. The Spanish delegation had obviously realized the difficulty, since it had offered further explanations. But delegations would eventually vote on the articles before them, not on the explanations or comments relating to the articles.

37. The Swiss amendment (L.23) undoubtedly improved the original text, since the word "accredited" implied that the sending State had invested the head of the mission with his functions and the receiving State had given its agrément. The Romanian delegation would therefore support the amendment, though still convinced that the word "accredited" might also be variously interpreted.

38. With reference to the amendments submitted by Ireland (L.16) and Guatemala (L.8), he said that it would be dangerous to give an exhaustive list of diplomatic staff. In the first place, some diplomats did not fall into any of the categories mentioned; secondly, the convention should not fetter future developments. Diplomatic activities were certain to expand, and the Conference would surely not wish to write a convention that might be obsolete even before entering into force. Thirdly, Guatemala's amendment to sub-paragraph (e) (L.8) touched on substance and conflicted with the general character of the draft as a whole. Hence, Romania would vote against those two amendments.

39. On the other hand, his delegation would support the amendment submitted by Bulgaria and the Byelorussian SSR (L.25), which added a very useful definition. It would also vote for the first of the United States amendments (L.17); but the second of the United States amendments should be studied more thoroughly before being put to the vote, since it was a very delicate matter to draft a satisfactory definition of "member of the family".

The meeting rose at 1 p.m.

SIXTH MEETING

Wednesday, 8 March 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)

Article 2 (Establishment of diplomatic relations and missions)

Article 3 (Functions of a diplomatic mission)

Article 4 (Appointment of the head of the mission: agrément)

Article 5 (Appointment to more than one State) (continued)

1. The CHAIRMAN invited the Committee to continue its debate on articles 1 to 5 of the International Law Commission's draft (A/CONF.20/4), and on the amendments relating to those articles.¹

2. Mr. TUNKIN (Union of Soviet Socialist Republics), commenting on the amendments to article 1, said that his delegation supported the proposal by Czechoslovakia for the addition of a new sub-paragraph defining a "diplomatic mission" (A/CONF.20/C.1/L.34). It would also support the United States proposal (L.17) that a new sub-paragraph (i) should be added defining the family of a member of the mission. The United States definition improved the text, but students should perhaps be excluded from it, since not all governments granted diplomatic privileges to adult children, even if they were full-time students. Students might more suitably be covered by the last part of the United States amendment: "such other members of the immediate family of a member of the mission residing with him as may be agreed upon between the receiving and sending States".

3. His delegation would support the amendment submitted jointly by the Byelorussian SSR and Bulgaria (L.25), adding a new sub-paragraph defining the premises of a mission. It was consistent with the intention of the International Law Commission as expressed in paragraph 2 of the commentary on article 20 (A/3859).

4. Switzerland's amendments to sub-paragraphs (c) and (f) of article 1 (L.23) would not improve the text. The replacement of the widely recognized and appropriate expression "administrative and technical staff" by the words "chancery staff" would involve considerable revision of the draft as a whole.

¹ For an interim list of those amendments, see footnote to summary record of the fifth meeting. In addition, it had been suggested that a preamble should be prepared (first meeting, para.9), and a proposal relating to the preamble was submitted (A/CONF.20/C.1/L.29).