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The United Kingdom proposal for the reconsideration of paragraph 2 was adopted by 60 votes to 10, with 6 abstentions.

49. Mr. BARTOŠ (Yugoslavia) said he had voted in favour of the United Kingdom proposal because he believed that a sincere effort should make it possible to reconcile the various points of view and settle the question under consideration which, in practice, was of very great importance. Recourse to customary international law was impossible since there were no universal rules in the matter, and in fact, four different systems were applied in different countries. Hence it was the duty of the Conference to find a generally acceptable solution.

50. Mr. OJEDA (Mexico) said that he shared that view and had accordingly voted for the United Kingdom proposal. He emphasized, however, that that vote was without prejudice to his delegation's decision on paragraph 2.

51. Mr. VALLAT (United Kingdom) said that as a conciliatory gesture, his delegation would be prepared to co-sponsor an amendment taking into account the sub-amendment proposed by Spain, adding the words " and administrative " between the words " civil " and " jurisdiction ".[2]

52. Mr. de VAUCELLES (France) thanked the United Kingdom representative for his courageous and constructive attitude. It was because the Spanish sub-amendment had been rejected that the French delegation had had to abstain in the vote on the United Kingdom amendment.

53. Mr. YASSEEN (Iraq) said he had voted against paragraph 2 as approved by the Committee of the Whole, but had voted in favour of reopening the discussion because he thought new efforts could usefully be made to find a solution acceptable to the majority. On the other hand, it hardly seemed proper to revert to rejected amendments or to a text combining them.

54. Mr. BOUZIRI (Tunisia), agreed with the representative of Iraq that the Conference should not revert to rejected texts. He had voted against the Spanish sub-amendment because he did not understand very clearly what " administrative jurisdiction " implied and would like to have that point clarified. In any case, the addition of those words would not reconcile the different points of view. The reason why the Conference had rejected the texts submitted to it was that it had considered them contrary to international law. The participants in the Conference were not expected to legislate and they should seek a solution that took account of the fundamental interests of the States which would become parties to the convention.

55. He reserved the right to speak again, if necessary, when a new text was submitted to the Conference.

56. Mr. REGALA (Philippines) moved the adjournment of the debate.

[2] A fresh amendment on those lines was subsequently circulated (A/CONF.20/L.21); see 11th meeting, para. 58.

The motion was carried by 55 votes to 1, with 6 abstentions.

ARTICLE 30, PARAGRAPH 3 *(resumed from the 7th plenary meeting)*

57. The PRESIDENT said he considered it his duty to draw attention to what seemed to be a lacuna in article 30, paragraph 3, adopted at the seventh plenary meeting.

58. Paragraph 1 of that article dealt with the waiver of immunity from jurisdiction " of diplomatic agents and of persons enjoying immunity under article 36 ".

59. Paragraph 3 provided that " The initiation of proceedings by a diplomatic agent shall preclude him invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim."

60. It would be noted that the paragraph only referred to diplomatic agents and made no mention of other persons who enjoyed immunity from jurisdiction under article 36. It therefore appeared to follow *a contrario* that if a person who enjoyed immunity from jurisdiction without being a diplomatic agent initiated porceedings, he could invoke immunity from jurisdiction in respect of a counter-claim.

61. If the Conference agreed that that was simply a lacuna, he suggested that the Drafting Committee should be asked to add the words " or by a person enjoying immunity under article 36 " after the words " diplomatic agent " in article 30, paragraph 3.

It was so agreed.[3]

The meeting rose at 6.25 p.m.

[3] The Drafting Committee amended the provision in question accordingly.

ELEVENTH PLENARY MEETING

Friday, 14 April 1961, at 10 a.m.

President: Mr. VERDROSS (Austria)

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959 (item 10 of the agenda) *(continued)*

1. The PRESIDENT proposed that, as the Conference was to finish its work that day, in order to allow time for preparations for the signing ceremony on Tuesday, 18 April, the time allowed for each speaker should be limited to five minutes.

The proposal was adopted by 59 votes to 1, with 2 abstentions.

Provisions concerning the settlement of disputes

2. The PRESIDENT said that in conformity with the decision of the Committee of the Whole (38th meeting)

the Drafting Committee had prepared a draft optional protocol (CA/CONF.20/L.2/Add.2) concerning the compulsory settlement of disputes relating to the interpretation or application of the convention. He also drew attention to a proposal submitted by Switzerland (A/CONF.20/L.16).

3. Mr. RUEGGER (Switzerland) said that his delegation's proposal was that the provision which had originally been article 45 in the International Law Commission's draft (A/CONF.20/4) should be inserted as a new article between articles 44 and 45 of the draft convention under discussion (A/CONF.20/L.2/Add.1). Explaining the purpose of the proposal, he said his delegation did not wish to reopen the discussion that had taken place in the Committee of the Whole (37th and 38th meetings), which had shown that there was still not a sufficient majority in favour of including in the convention an arbitration or jurisdiction clause of a truly compulsory character. His delegation thought, however, that the logical conclusion of that discussion should have been a vote, as had been the case at the Geneva Conference on the Law of the Sea, 1958; the application of the rules of procedure had, however, made the vote impossible in the Committee of the Whole — a vote which would be of great importance from several points of view. It would show which States were ready to accept the principle of the compulsory settlement of disputes, at least to the limited extent of an arbitration clause in a convention which did not deal with serious political issues: that would be of considerable importance from the point of view of general international law. The Institute of International Law, after long and patient work, had drawn up a model clause of that kind. Switzerland had very recently approached many States, including those which had recently entered the international community, with a view to extending the network of bilateral treaties of jurisdiction and arbitration which Switzerland had already concluded.

4. Admittedly, the vote would not reflect the whole picture. Several delegations would be bound by their instructions to vote against the Swiss proposal. Others would consider, in the absence of instructions, that they should abstain. In their case, it would be known — and that was a valuable pointer — that their governments were not opposed outright to the principle of jurisdiction. If the result of the vote should be adverse to the Swiss proposal, then his delegation hoped that the Conference would adopt the protocol of optional signature, which had been proposed in Committee by Iraq, Italy, Poland and the United Arab Republic (A/CONF.20/C.1/L.316 and Add.1) and which was analogous to the protocol proposed by Switzerland itself at the Geneva Conference on the Law of the Sea, 1958.[1] In that event, Switzerland would, of course, be prepared to sign the protocol.

5. Mr. KRISHNA RAO (India) thought it strange that a delegation should wish to reintroduce an article after the Committee of the Whole had decided (38th meeting) by 49 votes to 7, with 16 abstentions, that it should be deleted and that its subject matter should be dealt with in a separate protocol. The Swiss proposal should be considered in conjunction with the protocol which he proposed should be put to the vote first.

6. The Government of India had filed a declaration under Article 36, paragraph 2, of the Statute of the International Court of Justice accepting the compulsory jurisdiction of the Court. If further information was required, and if that was the object of reintroducing the article, the latest Yearbook of the International Court would show how many countries had put their faith in the Court by filing declarations under Article 36, paragraph 2. It was neither the time nor the place, nor was it necessary, to introduce such a proposal. If the draft optional protocol was put to the vote first and approved, there would be no need to put the Swiss proposal to the vote.

7. Mr. CAMERON (United States) supported the Swiss proposal, for the reasons he had stated when the original article 45 had been under consideration by the Committee of the Whole. If that proposal was not adopted, the United States would vote in favour of the optional protocol.

8. Mr. REGALA (Philippines) said that his delegation's position had been fully explained in the Committee of the Whole. It backed the compulsory jurisdiction of the International Court of Justice. Unfortunately, the Court had decided only seventeen contentious cases since its establishment, because certain Powers had not accepted its compulsory jurisdiction. It was gratifying to hear that the United States would accept that jurisdiction as far as the convention on diplomatic relations was concerned, since the acceptance of the Court's jurisdiction was the keystone of the establishment of the rule of law and of a just and lasting peace.

9. Mr. AMLIE (Norway) expressed his appreciation (with which the delegation of Sweden had asked to be associated) of the Swiss proposal.

10. At an early stage Norway had become a party to the Statute of the International Court of Justice and had accepted the optional clause of that Statute. By doing so, it had recognized, on a basis of reciprocity, the compulsory jurisdiction of the Court in all legal matters, in the hope that it would eventually be recognized by all States, since only then could it truly be said that the rule of law had been established as governing relations between them.

11. His government had warmly welcomed the original article 45 and had hoped that many States, even though they might not find it possible at the moment to accept the optional clause, might find it possible as a first step to accept compulsory jurisdiction in the limited field of the convention under discussion. It had hoped that at some future time, when a third Vienna Conference was held, the delegations might look back to the Vienna Conference of 1961 and see that the nations had had

[1] For discussion of Switzerland's proposal at the 1958 Conference, see *United Nations Conference on the Law of the Sea, 1958, Official Records*, United Nations publication, Sales No. 58.V.4, vol. II, seventh and thirteenth plenary meetings. For the text of the Optional Protocol adopted by the 1958 Conference, see *ibid.*, annexes, pp. 145 and 146.

enough confidence to include an article on compulsory jurisdiction. His delegation had come prepared to vote in favour of such an article.

12. It would seem, however, from the outcome of the debate in Committee, that the goal could not yet be attained, since confidence among the nations was not yet great enough. His delegation did not consider the optional protocol to be a worthy alternative to the inclusion of an article and had therefore voted against it in Committee for the sake of the principle involved. However, although the optional protocol was only a second-best alternative that was almost worthless, his delegation would vote for it in the plenary meeting as being the best it could get; but it would do so with regret and disillusionment.

13. Mr. de ROMREE (Belgium) strongly supported the Swiss proposal, which was in full conformity with Belgium's traditional policy. He requested a roll-call vote on the proposal, to show which States were favourable to the cause of international justice.

14. Mr. MATINE-DAFTARY (Iran) regretted that he had been absent during the debate on the question in Committee and expressed his satisfaction that the Swiss proposal had given him an opportunity of stating his views. The representative of Switzerland was known in the world of international law as an advocate of the extension of the powers of the International Court ol Justice. When Switzerland had submitted a like proposaf at the United Nations Conference on the Law of the Sea, 1958, he had doubted, not the impartiality of the International Court of Justice, but the advisability of referring to it disputes on such vitally important questions as the continental shelf and fishing limits, for a number of the small nations were not very well prepared to defend their cases before the Court. He had therefore supported the optional protocol on the settlement of disputes and not the inclusion of an article in the conventions. The convention on diplomatic relations, however, would not give rise to disputes of such gravity. His delegation would therefore accept the compulsory jurisdiction of the International Court of Justice in regard to the convention and would vote for the Swiss proposal.

15. Mr. AGO (Italy) said that he had greatly regretted the decision to delete the original article 45 which, as a member of the International Law Commission, he had supported. An instrument codifying international law should include a provision for the peaceful settlement of disputes. Italy was, in general, in favour of arbitration or international jurisdiction as a means of settling disputes. It could understand that some States might be reluctant to submit for judicial settlement disputes on questions that were not well defined, when it was uncertain which law the judge would apply. The convention on diplomatic relations, however, concerned a field in which the law was clearly established and there was no such uncertainty. He therefore expressed his gratitude to the Swiss delegation and hoped that its appeal would be heeded by the Conference.

16. Mr. de VAUCELLES (France) recalled that in Committee he had opposed the deletion of the original article 45. He maintained his opinion, and would vote for the Swiss proposal. He was firmly opposed to the proposal of the representative of India that a vote should first be taken on the optional protocol, which was an inferior solution. The Conference should not try to avoid taking a decision on such a vital issue, and should vote first on the Swiss proposal.

17. Mr. BAYONA (Colombia) said that his government, in keeping with a long tradition, had no objection even to compulsory jurisdiction for the peaceful settlement of international disputes. Colombia was a party to the Statute of the International Court of Justice, and in Committee his delegation had voted against the optional protocol because it had hoped that the original article 45 would be adopted; unfortunately, however, the rules of procedure had not permitted a vote to be taken on that article. His delegation would vote for the Swiss proposal, but if it was not adopted, Colombia would sign the optional protocol.

18. Mr. TRAN VAN MINH (Viet-Nam) expressed his surprise that a provision which the Committee of the Whole had rejected by a large majority had been reintroduced. The reversal of a decision scarcely a week later would injure the prestige of the Conference and the integrity of its discussions. His delegation therefore supported the representative of India.

19. Mr. GASIOROWSKI (Poland) said the situation was unprecedented. The Italian delegation was supporting the restoration of the original article 45, after having been one of the sponsors of the proposal, submitted in Committee, that it should be deleted.

20. Mr. EL-ERIAN (United Arab Republic) said that it had been suggested that a vote on the Swiss proposal would show which States supported the Statute of the International Court of Justice and which did not. In his opinion, it could not be argued that a vote in favour of the optional protocol would show opposition to the Statute of the International Court. Only when States had had the opportunity of considering the convention carefully and of deciding whether or not to sign the optional protocol, would it be clear which of them accepted the compulsory jurisdiction of the International Court of Justice.

21. Mr. BOLLINI SHAW (Argentina) supported the opinions expressed by the representatives of India, Viet-Nam, Poland and the United Arab Republic. He recalled that Argentina had been one of the sponsors of an amendment (A/CONF.20/C.1/L.139 and Rev.1) making submission to the jurisdiction of the International Court of Justice optional. That amendment had not been put to the vote, however, because of the adoption of the proposal for the deletion of article 45, for which proposal he had voted in a spirit of compromise. The Government of Argentina had not filed a declaration accepting the " optional clause " of the Statute of the International Court of Justice. He would vote in favour of the draft optional protocol, though without committing his government to signing it.

22. Mr. GHAZALI (Federation of Malaya) said that the Committee of the Whole had decided very definitely

against the inclusion of the original article 45 in the body of the convention, and consequently the Swiss proposal seemed entirely out of place. His own government had always respected international law and supported the principle that disputes should be submitted to the International Court of Justice. The Conference had not, however, been convened for the purpose of committing governments. He proposed that in accordance with rule 42 of the rules of procedure, which provided that proposals should be voted on in the order in which they had been submitted, the Conference should vote first on the draft optional protocol.

23. Mr. WESTRUP (Sweden) supported the views expressed by the representatives of Iran and France. It would be unworthy of the Conference if the real issue were evaded and a vitally important matter were dealt with by a mere procedural vote.

24. Mr. CARMONA (Venezuela) said that the settlement of international disputes by peaceful means was a fundamental principle of the Venezuelan Constitution. But while he was in favour of the principle that disputes should be submitted to the International Court of Justice, he was not empowered to commit his government, for such matters could only be decided by the legislature. He was therefore in favour of the draft optional protocol, though he hoped that it would one day be possible for a provision on the lines of the original article 45 to be adopted.

25. Mr. MARESCA (Italy), replying to the representative of Poland, said that his delegation had always supported the principle embodied in the original article 45; it had joined the sponsors of the proposal for a special protocol in a spirit of compromise, in order to help the Committee reach a solution. That being so, he was bound to support the Swiss proposal.

26. Mr. OJEDA (Mexico) said that he was prepared to accept the original article 45. However, since several representatives of Latin American countries had explained in the Committee of the Whole that they could not accept the compulsory jurisdiction of the International Court of Justice, and since the draft optional protocol seemed to be a fairly widely acceptable solution, he would abstain from voting.

27. Mr. TUNKIN (Union of Soviet Socialist Republics) said he could see no reason for reopening the discussion on the original article 45. The Committee of the Whole had accepted the proposal for an optional protocol by a large majority and it was unlikely that a vote in the plenary conference would have a different result. The arguments in favour of the Swiss proposal had not convinced him. The adoption of that proposal could only be harmful, for it would weaken the convention by reducing the number of ratifications and increasing the number of reservations. In his opinion the draft optional protocol offered the best solution of the problem.

28. Mr. SUBARDJO (Indonesia) recalled that in Committee many representatives had said that the inclusion of the original article 45 might make it impossible for them to sign the convention. He had voted against the article and supported the proposal made by the representative of India.

29. Mr. de ERICE y O'SHEA (Spain) recalled that the adoption of the proposal for an optional protocol and the deletion of article 45 had been approved by 49 votes to only 7. The draft optional protocol was a compromise and a proof of the will for peace, mutual understanding and international friendship and he could not understand the move to reintroduce the original article 45. If it succeeded, the Conference would be back in the very situation from which it had emerged by an effort at compromise. Many States would be unable to ratify the convention and many would have to make reservations. He was strongly opposed to the reintroduction of article 45.

30. Mr. GLASER (Romania) said the Swiss proposal was a surprising one. The argument that it would give delegations an opportunity of showing their support for the International Court of Justice was hardly tenable, for a State might conceivably submit a particular problem to the International Court of Justice without ever having signed the protocol; and it was possible to accept the "optional clause" of the Statute of the International Court of Justice with reservations that amounted to a denial of the Court's juridiction. Reference had been made to a change of attitude on the part of certain representatives, and he hoped that the spirit of compromise would lead to the rejection of the Swiss proposal.

31. Mr. SUCHARITAKUL (Thailand) said that he had voted in favour of the deletion of article 45 because he considered an optional protocol more satisfactory. He was opposed to the Swiss proposal and did not think the reasons — namely, to discover which States were ready to accept the principle of the compulsory settlement of disputes — were valid, for the States which rejected an arbitration clause in the body of the convention might voluntarily accept the jurisdiction of the International Court of Justice by signing the protocol later, which was a question to be decided by the governments of the States concerned.

32. Mr. RUEGGER (Switzerland), exercising his right of reply, said that it had not been possible to vote on the original article 45 in the Committee of the Whole, because the procedure followed at the Conference on the Law of the Sea had not been applied. At that conference, a vote had been taken first on the principle embodied in the corresponding article, and only when the article and the amendments thereto had been rejected had the representative of Switzerland introduced the draft protocol as a last resort. That was the model on which the protocol prepared by the Drafting Committee was based: it was not in fact an amendment to article 45. The adoption of the Indian proposal would prevent a vote in plenary just as it had been prevented in Committee, despite the wishes of many representatives.

33. The PRESIDENT put to the vote the proposal of India that the Conference should vote first on the draft optional protocol.

The proposal was adopted by 40 votes to 28 with 7 abstentions.

The draft optional protocol concerning the compulsory settlement of disputes (A/CONF.20/L.2/Add.2) was adopted by 63 votes to 3, with 9 abstentions.[2]

34. The PRESIDENT invited the Conference to continue its debate on the draft convention (A/CONF.20/L.2/Add.1).

ARTICLES 45, 46 AND 47

35. Mr. CAMERON (United States of America) said that article 45, dealing with signature, and article 47, dealing with accessions, were interrelated. Together they established the categories of States eligible to become parties to the Convention.

36. The formulation of those articles, which had its origin in a proposal co-sponsored by his delegation (A/CONF.20/C.1/L.289), was not new; it was substantially the same as that of the provisions adopted without dissent at the United Nations Conference on the Law of the Sea in 1958. The provisions appeared as articles 26 and 28 of the Convention on the Territorial Sea and the Contiguous Zone, articles 31 and 32 of the Convention on the High Seas, articles 15 and 17 of the Convention on Fishing and Conservation of the Living Resources of the High Seas and articles 8 and 10 of the Convention on the Continental Shelf.[3]

37. Articles 45 and 47 were based on the idea that, in the case of conventions drafted within the United Nations system or at a conference convened by the United Nations, the proper organ to decide the complex political question of the categories of States to be authorized to become parties was the General Assembly. Articles 45 and 47 therefore included all those States which the General Assembly had invited to attend the Conference. In addition, they permitted any other State which subsequently might be invited by the General Assembly to become a party. The decision in the matter was thus appropriately left to the competent political organ of the United Nations.

38. Article 45 constituted a conceptual whole; it covered the States which the General Assembly had already decided might become parties to the convention and the States which the Assembly might invite to do so in the future. Neither of those provisions could be changed without abandoning the policy on which the article was based — viz., that the question which States could sign the convention was a political question to be decided by the General Assembly. The same was true of article 47.

39. For those reasons, his delegation would oppose any attempt to excise part of the provisions of the two articles, since such excision would destroy the policy on which they were based. He would therefore oppose any motion to put to the vote separately any part of either article 45 or article 47, and urged that each of the two articles should be voted on as a whole.

40. Mr. MITRA (India) said that the universality of international law was not a political question. He recalled that, in his opening speech, the President of the Conference had said that whereas the 1815 Congress of Vienna had met in the presence of Europe alone, the 1961 Conference affected all humanity. It was accordingly fitting that the convention resulting from the Conference should be open to all the States of the world.

41. His delegation had no intention to propose any amendment to article 45, dealing with signature, but, since the United States delegation had also referred to article 47, he moved that a separate vote be taken on the passage in the first sentence of that article: " belonging to any of the four categories mentioned in article 45 ". If, as he hoped, that passage was not adopted, the first sentence of the article would then read: " The present convention shall remain open for accession by any State."

42. The question of which States could sign the convention had not been discussed at the fourteenth session of the General Assembly; the Assembly had only decided by its resolution 1450 (XIV) which States were to be invited to participate in the Conference. The question of eligibility to sign was a matter for the Conference itself to decide, and since the convention was of interest to all States which maintained diplomatic relations with other States, discrimination was most undesirable. In addition to being unfair, such discrimination would create difficulties for certain States which maintained diplomatic relations with States other than those belonging to the four categories mentioned.

43. Mr. GHAZALI (Federation of Malaya) endorsed the views expressed by the representative of India. The third paragraph of the preamble gave expression to the Conference's belief that the convention would contribute to the development of " friendly relations among nations, irrespective of their differing constitutional and social systems ". By adopting that paragraph, the Conference had voiced the hope that the convention would be applied universally, despite the differences that might exist among nations.

44. Furthermore, the fifth paragraph of the preamble stated that " the rules of customary international law should continue to govern questions not expressly regulated " by the convention. The Conference had thereby confirmed that the convention should be a codification of international law whose application could be nothing less than universal.

45. Having compiled a set of rules which should govern diplomatic relations between States, the Conference should be unanimous in wishing those rules to bind all nations.

46. Whatever could be said for or against British colonial rule, it had left his country a heritage of respect for the rule of law. From Britain his people had learned that all were equal in the eyes of the law and that the law

[2] See, however, 12th meeting, when an amendment extending the application of this protocol to the optional protocol concerning requisition of nationality was adopted.

[3] See *United Nations Conference on the Law of the Sea, 1958, Official Records*, United Nations publication, Sales No. 58.V.4, vol. II, annexes, pp. 132-143.

applied to all, regardless of colour or creed; that the rule of law was extensive and should reach the four corners of the world, and that international law was binding upon all States. His delegation was therefore surprised at the proposal that those rules of international law which had been codified in the convention should apply only to States invited by the General Assembly of the United Nations.

47. International law was independent of the special consent of individual States or groups of States. The underlying principle of articles 45 and 47, however, was that the convention was in the nature of a set of club rules: that was contrary to the principle that international law should be binding on every nation which consented to be found by it. Such an approach presupposed the existence of States which should be placed outside the law of nations, an attitude which his deelgation could not possibly accept.

48. The convention was not intended to bestow any benefit, but merely to regulate and thereby to restrain States from acting as they pleased in their diplomatic relations. He saw no reason why any State should be denied the right to accept that restraint.

49. His government had steadfastly supported the United Nations and its Secretary-General, but it believed that the General Assembly of the United Nations should have no part in determining which States should accede to the convention. There was no authority for the view that the General Assembly had the power, under international law, to determine which States could be bound by the rules of international law.

50. Moreover, the General Assembly should not be exposed to the indignity of having its invitation rejected, and he appealed to the Conference to make the convention open for accession by all States which were independent under international law and could therefore fulfil their international obligations.

51. Mr. JEZEK (Czechoslovakia) referred to the view expressed by his delegation earlier, in Committee, that the convention should be open to all States without discrimination. Any discriminatory clause would, apart from being unjust, have the practical disadvantage of not meeting the needs of States which maintained diplomatic relations with States outside the scope of article 45. In addition, such discrimination would be contrary to the whole purpose of the convention, the effectiveness of which depended on acceptance by the largest possible number of States.

52. For those reasons, he supported the India representative's motion for a separate vote on the passage " belonging to any of the four categories mentioned in article 45 ".

53. Mr. EL GHAMRAOUI (United Arab Republic) supported the Indian motion. He considered that the convention should be open to accession by the largest possible number of States.

54. The PRESIDENT put articles 45 and 46 to the vote.

Article 45 was adopted by 72 votes to none, with 4 abstentions.

Article 46 was adopted unanimously.

55. The PRESIDENT said that as the Indian representative had moved that part of article 47 be voted on separately, and objection had been made by the United States representative, he would put the motion for division to the vote in accordance with rule 40 of the rules of procedure.

The motion was defeated by 49 votes to 24, with 3 abstentions.

Article 47 was adopted by 53 votes to 2, with 20 abstentions.

56. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation had abstained from voting on article 47 but had not voted against because it did not wish to kill the article and thereby close the door to accession, though it considered the terms of the article unjust. There was no legal justification for preventing certain States from acceding to a convention. Such action was contrary to the fundamental principles of international law and to the principles on which the particular convention was based. It was simply a manifestation of the cold war.

57. Mr. SINACEUR BENLARBI (Morocco) said that he had abstained from voting on articles 45 and 47.

ARTICLE 48

Article 48 was adopted unanimously.

ARTICLE 49

Article 49 was adopted by 75 votes to none, with 1 abstention.

ARTICLE 50

Article 50 was adopted unanimously.

ARTICLE 36 *(resumed from the 10th plenary meeting)*

58. The PRESIDENT recalled that at the previous meeting the Conference had decided to reconsider article 36, paragraph 2. He drew attention to a fresh amendment to that paragraph (A/CONF.20/L.21 and Add.2) submitted by ten delegations.

59. Mr. AGO (Italy) said that his delegation had little enthusiasm for the amendment, the adoption of which would mean a considerable sacrifice for Italy. However, it was prepared to make that sacrifice and vote for the amendment in a spirit of conciliation, because it believed that some provision of the kind contained in article 36, paragraph 2, was necessary. It was essential to avoid a vacuum in the codification of international law: what mattered above all was that there should be certainty with regard to the content of rules of law. Because of that overriding consideration, his delegation would

accept the proposed formula in preference to the absence of any rule at all.

60. His delegation hoped that the large number of persons classed as administrative and technical staff would prove worthy of the privileges the Conference was granting them, and that if they did commit offences — in particular offences leading to loss of life — the heads of mission concerned would have sufficient sense of responsibility to see that justice was not frustrated.

The meeting rose at 12.50 p.m.

TWELFTH PLENARY MEETING

Friday, 14 April 1961, at 3.15 p.m.

President: Mr. VERDROSS (Austria)

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959 (item 10 of the agenda) *(concluded)*

1. The PRESIDENT said that the Conference still had to dispose of two articles of the draft convention (A/CONF.20/L.2/Add.1), articles 36 and 37.[1]

ARTICLE 36

Paragraph 2 (continued)

2. The PRESIDENT said that, in addition to the ten-nation amendment (A/CONF.20/L.2 and Add.2), an amendment submitted jointly by Libya, Morocco and Tunisia (A/CONF.20/L.23) was before the Conference.

3. Mr. BOUZIRI (Tunisia) said he noted with surprise and some resentment that after rejecting the United Kingdom amendment to paragraph 2 (A/CONF.20/L.20) at the tenth meeting, the Conference again had the same amendment before it in the guise of a compromise proposal, incorporating a similarly unsuccessful sub-amendment, but submitted under a different symbol (A/CONF.20/L.21) by a cohort of new sponsors. The procedure was strange, to say the least, and it reflected on the dignity of the Conference. If the ten sponsors thought that fatigue would make the Conference weaken and reverse its earlier, firm decision, the Tunisian delegation hoped that their plan would be frustrated. Tunisia, on the other hand, had made a genuine effort to find an aceptable compromise by submitting, jointly with the delegations of Libya and Morocco, a new paragraph 2 (A/CONF.20/L.23), which took account of, and sought to reconcile, the different views expressed.

4. Mr. de SOUZA LEAO (Brazil) thought that the ten-nation amendment merited the two-thirds majority required for its adoption. It was a commendable effort to reconcile the two schools of thought present in the Conference. It would be regrettable if the convention failed to mention a whole class of staff which was becoming increasingly important for the proper working of a diplomatic mission. The gap which would be left if paragraph 2 disappeared could not be filled by a general reference to the rules of customary international law in the preamble. The delegation of Brazil would therefore vote in favour of the amendment.

5. The PRESIDENT suggested that the Conference should vote on the amendments submitted to paragraph 2; he thought that the amendment proposed by Tunisia, Libya and Morocco, which was furthest removed in substance from the original text, should be put to the vote first.

6. Mr. BOISSIER-PALUN (Senegal) thought that the discussion was not yet exhausted. His own delegation, for example, would like to receive some explanations concerning the meaning of the terms used in the amendments. What, for instance, was meant by the reference to administrative jurisdiction in the ten-nation amendment ? That jurisdiction was concerned with disputes between private persons and the authorities. Hence, it was not clear how it could affect the diplomatic or administrative staff of a mission. In some countries, the administrative jurisdiction was a form of penal jurisdiction, equivalent to that of the police courts in France and in countries whose judicial system was similar to that of France. Accordingly, if immunity from administrative jurisdiction was mentioned, it would also be necessary to refer to immunity from the jurisdiction of police courts, as was done in the joint amendment submitted by Libya, Morocco and Tunisia. Consequently, the delegation of Senegal would vote in favour of that amendment, while reserving the right to propose drafting changes.

7. Mr. BOLLINI SHAW (Argentina) thanked the United Kingdom delegation for the conciliatory spirit it had shown in agreeing to add the words " and administrative " as originally suggested by Spain (10th meeting, paragraphs 30 and 51). As a consequence, the Argentine delegation would be able to vote in favour of the ten-nation amendment. He then gave a detailed explanation of the operation of administrative courts in the countries of Latin America.

8. Mr. TRAN VAN MINH (Viet-Nam) said he wished to refer, not to the legal or technical aspects of the question, but to the moral aspect. Much had been said during the Conference about compromise and conciliation, but he could not help noticing that the compromises had been in one direction and the concessions unilateral. The nineteen delegations which had submitted their amendment to paragraph 2 (A/CONF. 20/L.13 and Add.1) had made all the concessions. They had proposed a provision under which the administrative and technical staff would be eligible not only for the privileges mentioned in articles 27, 28, 30, 31, 32, 33 and 34, paragraph 1, but also for immunity from jurisdiction, subject only to one qualification. They had taken a step forward, but their opponents had not

[1] Paragraph 1 of article 36 had been adopted at the 9th meeting. At the 10th meeting the Conference decided, after voting on paragraph 2 of that article, to reconsider the paragraph.