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Fifth plenary meeting

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)*

During the debate in the Committee of the Whole on the abolition of the class of ministers plenipotentiary, it had been pointed out that that abolition would accord with the trend towards a single class of permanent heads of mission — that of ambassadors. Attention had been drawn at that time to the need to respect the principle of the equality of States. But the maintenance of different classes of heads of mission would be discrimination between States, and endorsement in the convention of a distinction between two categories of *chargés d'affaires* which were in fact only one would likewise be a mistake.

48. Moreover, in the Committee of the Whole some speakers had maintained that there was a difference between a *chargé d'affaires* accredited by his government and one appointed by the head of mission. That argument, however, was not very convincing, since the method of appointment was a purely secondary matter.

49. In the opinion of the Chilean delegation the words "ad interim" should be deleted, because by differentiating between *chargés d'affaires* they might lead to discrimination between States and thus to confusion. The deletion would not in any way change the practice of States. Those which appointed or received permanent *chargés d'affaires* or *chargés d'affaires en pied* could continue to do so; while there would be no problem for States which, like Chile, recognized only one category of *chargé d'affaires*. Thus the convention would be acceptable to both groups of States.

The Conference decided by 53 votes to 9, with 8 abstentions, to retain the words "ad interim".

Paragraph 3

50. Mr. MARESCA (Italy) said that paragraph 3 was based on an amendment submitted by Colombia (A/CONF.20/C.1/L.36) at the tenth meeting of the Committee of the Whole. In the opinion of the Italian delegation it should be laid down that the sending State was bound to notify the receiving State when appointing its head of mission or a member of the diplomatic staff of its mission to represent it in an international organization. It did not propose any change in paragraph 3, but wished to place on record its interpretation of that paragraph.

51. Mr. de VAUCELLES (France) said his delegation had voted for the Colombian amendment in Committee, but had later taken the view that the proposed provision was rather too restrictive because it only covered international organizations which had their headquarters in the receiving State. The Drafting Committee had enlarged the original text, so that it was important to consider the receiving State's possible reactions. Conceivably, the sending State might appoint as its representative in some international organization a head of mission accredited to a State which considered, rightly or wrongly, that the organization in question was acting against its interests. Accordingly, he proposed that in paragraph 3, between "may" and "act as representative", the words "in the absence of any objection by the receiving State" should be inserted. It did not seem necessary to obtain the prior consent of the receiving State; but that State

should at least be notified of the decision of the sending State.

52. Mr. RUEGGER (Switzerland) supported the French amendment. If that amendment should be rejected, the Italian representative's interpretation of paragraph 3 would be on record. The relations between international organizations and the States in which they had their headquarters were excellent; but it was often necessary in practice that a decision of a sending State to appoint a head of mission or a member of its diplomatic staff to represent it in an international organization should be subject to the agreement of the receiving State. In his delegation's view, the customary consultations between the sending and the receiving State should be preserved, because they were most useful, especially on the appointment of a permanent representative, and even more so if a head of mission was appointed to perform his functions in a city other than that in which the diplomatic mission had its seat. Moreover, that practice derived from customary international law, which was expressly safeguarded in the preamble.

53. Mr. AGUDELO (Colombia) thanked the delegations which had supported his delegation's amendment and appreciated the way in which the Drafting Committee had interpreted it. His delegation saw no difficulty in supporting the Italian suggestion, and thought, indeed, that it should be incorporated in paragraph 3. The French amendment would then be superfluous, since prior notification of the appointment of a chief of mission to an international organization would imply the tacit or express consent of the receiving State.

The French amendment was rejected by 32 votes to 27, with 11 abstentions.

Paragraph 3 was adopted by 55 votes to 2, with 15 abstentions.

Article 5 as a whole was adopted by 72 votes to none, with 1 abstention.

The meeting rose at 6.25 p.m.

FIFTH PLENARY MEETING

Tuesday, 11 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 invited the Conference to continue its debate on the draft convention (A/CONF.20/L.2/Add.1).

ARTICLE 5 *bis*

2. Mr. BARTOŠ (Yugoslavia) said that his delegation had reservations concerning article 5 *bis*, since it did

not think that a principle which had not been submitted to governments for comment or recommended by the International Law Commission should be introduced into the convention without adequate consideration. The provision would give rise to a number of serious difficulties in practice, as he had said before in the Committee (12th meeting, para. 68). He therefore requested a roll-call vote on article 5 *bis*.

Panama, having been drawn by lot by the President, was called upon to vote first.

In favour: Philippines, Portugal, Saudi Arabia, Senegal, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Union of South Africa, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Argentina, Austria, Belgium, Brazil, Burma, Canada, Ceylon, China, Congo (Leopoldville), Denmark, Finland, France, Federal Republic of Germany, Ghana, Guatemala, Holy See, Iraq, Ireland, Japan, Korea, Lebanon, Liberia, Libya, Liechtenstein, Luxembourg, Morocco, Netherlands, Nigeria, Norway, Pakistan.

Abstaining: Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Viet-Nam, Yugoslavia, Australia, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Chile, Colombia, Cuba, Czechoslovakia, Ecuador, Ethiopia, Federation of Malaya, Hungary, India, Indonesia, Iran, Israel, Italy, Mexico.

The result of the vote was 44 in favour and none against, with 25 abstentions.

Article 5 bis was adopted, having obtained the required two-thirds majority.

ARTICLE 6

3. Mr. BOUZIRI (Tunisia), introducing his delegation's amendment to article 6 (A/CONF.20/L.8), said that the last sentence of article 6 was unacceptable. Military, naval and air attachés formed a very limited and special category of mission staff. Their appointment was not as frequent as might be inferred from the text of article 6. They were set apart from the other staff of the mission by their training, uniform and functions, and by the close link they retained with the armed forces; their presence was not consistent with the prevailing aspirations of all peoples for peace, and the efforts being made to secure disarmament.

4. The provision that the receiving State might require the names of attachés to be submitted beforehand "for its approval" meant that, although it might refuse to approve a number of names, it could not in the last resort refuse to accept the appointment of an attaché. Thus the principle of the appointment of attachés was implicitly accepted, although many countries were opposed to it or could only accept it with considerable reservations. The sovereignty and freedom of the receiving State were infringed, since it had to ask for the names to be submitted, whereas, on the contrary, the sending State should have to request consent.

5. Accordingly, under his delegation's amendment, the appointment of such attachés required the prior express

consent of the receiving State. That formula would stress the exceptional character of their appointment and would be in harmony with the convention and its preamble, which referred to the maintenance of international peace and security and the development of friendly relations among nations.

6. Mr. BOLLINI SHAW (Argentina) said he agreed to a great extent with the representative of Tunisia. He thought, however, that the last sentence of article 6 did not reflect the real intention of the Committee of the Whole; to provide simply that the receiving State might require the names to be submitted "for its approval" left no option but to approve the appointments. He therefore proposed that the words "for its approval" should be replaced by the words "in order that it may give or refuse its consent".

7. The PRESIDENT called for a vote on the Tunisian amendment.

At the request of the representative of Libya a vote was taken by roll-call.

Senegal, having been drawn by lot by the President, was called upon to vote first.

In favour: Senegal, Spain, Tunisia, United Arab Republic, Venezuela, Viet-Nam, Yugoslavia, Congo (Leopoldville), Ethiopia, Ghana, India, Indonesia, Iran, Iraq, Italy, Lebanon, Liberia, Libya, Morocco, Philippines, Saudi Arabia.

Against: Sweden, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, China, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, France, Federal Republic of Germany, Hungary, Ireland, Israel, Korea, Luxembourg, Norway, Poland, Romania.

Abstaining: Switzerland, Thailand, Turkey, Argentina, Australia, Austria, Burma, Cambodia, Ceylon, Chile, Colombia, Dominican Republic, Federation of Malaya, Guatemala, Holy See, Japan, Liechtenstein, Mexico, Netherlands, Nigeria, Pakistan, Panama, Portugal.

The Tunisian amendment was rejected by 27 votes to 21, with 23 abstentions.

8. The PRESIDENT put to the vote the amendment proposed by the representative of Argentina.

The result of the vote was 29 in favour and 18 against, with 20 abstentions.

The amendment was rejected, having failed to obtain the required two-thirds majority.

Article 6 was adopted without amendment, by 61 votes to 3, with 5 abstentions.

ARTICLE 7

9. Mr. MATINE-DAFTARY (Iran) requested that separate votes be taken on the words "in principle" in paragraph 1, and on paragraphs 2 and 3.

It was decided by 50 votes to 4, with 13 abstentions, to retain the words "in principle".

Paragraph 1 was adopted without amendment, by 63 votes to 1, with 3 abstentions.

Paragraph 2 was adopted by 66 votes to 3, with no abstentions.

Paragraph 3 was adopted by 60 votes to none, with 3 abstentions.

Article 7 as a whole was adopted without amendment by 70 votes to 1, with no abstentions.

ARTICLE 8

Paragraph 1 was adopted unanimously without discussion.

Paragraph 2 was adopted without discussion by 68 votes to none, with 1 abstention.

Article 8 as a whole was adopted.

ARTICLE 9

10. Mr. OJEDA (Mexico) stated that his delegation accepted the words "or such other ministry as may be agreed", which appeared after the words "Ministry for Foreign Affairs" in article 9, paragraph 1, and in several other articles of the draft convention, solely and exclusively because assurances has been given in the Committee of the Whole (16th meeting, para. 7) that the only purpose of those was to allow for an established practice by which the diplomatic agents of the Commonwealth countries in London dealt not with the Foreign Office, but with another ministry specially responsible for relations with those countries.

11. Mr. AGO (Italy) introduced the amendment submitted jointly by his delegation and those of Brazil, Italy, Liberia, Libya, Morocco, the Philippines and Tunisia (A/CONF.20/L.11), providing that the Foreign Ministry of the receiving State should be notified of the appointment of members of missions and not merely of their arrival. That provision would emphasize the provision in article 8, paragraph 1, that a person could be declared *non grata* or not acceptable before his arrival in the receiving State; it would obviously be more satisfactory in every way if any objections were made when the person in question was appointed and not after he had already arrived in the receiving State. Moreover, without the amendment it would be difficult for the receiving State to exercise its right of objection.

12. Mr. CARMONA (Venezuela) requested that separate votes be taken on sub-paragraphs (a), (b), (c) and (d) of paragraph 1, on which opinions had differed widely in the Committee of the Whole. He had no objection to sub-paragraphs (a) and (b) but had certain doubts regarding the application of sub-paragraph (c). With regard to sub-paragraph (d) — which was in effect the second part of the original amendment by Czechoslovakia (A/CONF.20/C.1/L.49) — he thought that the adoption of such a provision was potentially dangerous. While in itself inoffensive, it was open to abuse by countries which did not respect international usage. The inquisitorial practices under the German nazi and Italian fascist régimes provided convincing examples. He was making his request so that delegations which shared

his views could put them on record without prejudice to their general approval of the article.

13. Mr. MATINE-DAFTARY (Iran) supported the joint amendment. He suggested the expression "members of the staff of the mission" should be substituted for the expression "members of the mission" which, as defined in article 1 (b), included the head of the mission, notification of whose appointment was already provided for in articles 4 and 12.

14. Mr. AGO (Italy) thanked the representative of Iran and accepted his suggestion.

15. The PRESIDENT put to the vote article 9, paragraph 1 (a) as amended by the joint proposal (A/CONF.20/L.11) and by the representative of Iran.

Paragraph 1 (a) as amended was adopted by 43 votes to 13, with 9 abstentions.¹

Paragraph 1 (b) was adopted unanimously.

Paragraph 1 (c) was adopted by 65 votes to none, with 4 abstentions.

Paragraph 1 (d) was adopted by 58 votes to 3, with 3 abstentions.

Paragraph 2 was adopted by 45 votes to 1, with 19 abstentions.

Article 9, as amended, was adopted by 68 votes to none, with 1 abstention.

ARTICLE 10

16. Mr. TUNKIN (Union of Soviet Socialist Republics) moved that a separate vote be taken on the words "by it" in paragraph 1 ("... the receiving State may require that the size of the mission be kept within limits considered by it to be reasonable and normal..."). Although the receiving State should be allowed some say in the matter, the mission was an organ of the sending State, and it was the sending State which should be mainly responsible for deciding on the size of its own mission. Therefore the deletion of the words "by it" would remove the possibility of misinterpretation.

17. Mr. BOUZIRI (Tunisia) was opposed to a separate vote. The question of substance had been debated at length in the Committee of the Whole, and he did not find the arguments for the deletion of the words in question very convincing. He strongly believed that the final decision should be left to the receiving State, on whose territory the mission was established; otherwise there was no safeguard against an excessive burden being imposed by the unreasonable demands of a sending State. It was essential to respect the receiving State's sovereignty.

18. The PRESIDENT said that, since objection had been made, he would put the motion for the division of the text to the vote in accordance with rule 40 of the

¹ However, the Drafting Committee subsequently advised that the words "of the staff" should be omitted, on the ground that the arrival and departure of the head of mission should be notified to the appropriate ministry. The Conference agreed to this change.

rules of procedure; under that rule, two speakers would be allowed to speak in favour and two speakers against the motion.

19. Mr. BOLLINI SHAW (Argentina) opposed the motion, on the same grounds as the Tunisian representative. Since the retention of the words "by it" would make the meaning of article 10 completely different from that of the provision prepared by the International Law Commission, the proper course was to vote for or against article 10 as drafted rather than for or against those two words.

20. Mr. BIRECKI (Poland) supported the motion. The arguments against the motion did not have much force. The deletion of the words "by it" would not deprive the receiving State of its right to influence the size of the mission; it would merely change the emphasis of the provision.

21. Mr. VALLAT (United Kingdom) also supported the motion. In the past, the sending State had always been regarded, in accordance with international law, as having the main authority to decide on the size of its missions abroad. Article 10 went beyond mere codification, because it reversed that position. The Conference should therefore be given an opportunity of voting on that important innovation; a separate vote on the words "by it" would alone provide such an opportunity.

The motion for a separate vote on the two words in question was carried by 33 votes to 25, with 14 abstentions.

22. Mr. BOLLINI SHAW (Argentina) said that article 10, paragraph 1, as drafted took into account an Argentine amendment (A/CONF.20/C.1/L.119) which had been adopted at the 14th meeting of the Committee of the Whole. Although the Drafting Committee had not used the actual words of that amendment, it had incorporated the idea in article 10, and he therefore strongly opposed the deletion of the words "by it".

23. The size of a mission would normally be decided by agreement between the two States concerned but, in the absence of agreement, it was essential to recognize the right of the receiving State to decide, in the last resort, whether a particular size was reasonable and normal for a diplomatic mission established in its territory.

24. Mr. GLASER (Romania) said that the choice lay between adopting an objective criterion — that of a "reasonable and normal" size — and giving the receiving State discretionary powers in the matter by allowing it to decide whether a particular size was reasonable and normal, a criterion which was neither reasonable nor normal. The Romania delegation would vote for the first solution.

25. The PRESIDENT put to the vote the words "by it" appearing in article 10, paragraph 1.

The words were adopted by 42 votes to 19, with 6 abstentions.

Paragraph 1 was adopted by 52 votes to 13, with 2 abstentions.

Paragraph 2 was adopted unanimously.

Article 10 as a whole was adopted by 55 votes to 10, with 4 abstentions.

ARTICLE 11

Article 11 was adopted unanimously.

ARTICLE 12

Article 12 was adopted unanimously.

ARTICLE 13

26. Mr. BARTOŠ (Yugoslavia) said that his delegation had not changed the views on paragraph 2 which it had expressed during the discussions in the Committee of the Whole.

27. Mr. WESTRUP (Sweden) said that his delegation was in the same position.

Article 13 was adopted by 65 votes to none, with 3 abstentions.

ARTICLE 14

Article 14 was adopted unanimously.

ARTICLE 15

28. Mr. BIRECKI (Poland) asked for a separate vote on article 15, paragraph 3, in which his delegation would abstain. The paragraph in question referred to a practice which was not followed by the great majority of countries. The Vienna Regulation contained a similar provision on the position of the Papal representative, but conditions had greatly changed since 1815. Only a small number of States had participated in the formulation of the Vienna Regulation and most of them had given a privileged position to a particular religion. In modern times, religious equality was admitted practically everywhere, and the Conference was attended by a much larger number of countries, representing the most diverse social systems, cultures, traditions and religions. There was therefore no reason to give a position of special prominence to any one religion.

29. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) said that paragraph 3 reflected the practice of only a small number of States and consequently had no place in a convention intended to codify general practice. Moreover, the provision was not in tune with the times. He would therefore abstain in the vote on that paragraph.

Article 15, paragraph 3, was adopted by 53 votes to none, with 18 abstentions.²

Article 15, as a whole, was adopted unanimously.

30. Mr. TUNKIN (Union of Soviet Socialist Republics) said that he had abstained from voting on paragraph 3 for the reasons he had given in the Committee of the Whole (18th meeting).

² For a statement by a delegation absent at the time of this vote see 7th meeting, para. 1.

31. Mr. BARTOŠ (Yugoslavia) said that he had abstained from voting on paragraph 3, but had voted for article 15 as a whole, because his delegation had not changed the views he had expressed on paragraph 3 in the Committee of the Whole.

32. Mr. GLASER (Romania) said that he had abstained from voting on paragraph 3 because he shared the views expressed by the previous speakers on that paragraph.

33. Mr. JEZEK (Czechoslovakia) said that he had abstained from voting on paragraph 3, because it was in conflict with paragraph 1. The special position given to the representative of the Holy See was a relic of past practices and was inconsistent with the universally recognized principle of the sovereign equality of States.

34. Mr. USTOR (Hungary) said that he had abstained from voting on paragraph 3, but had voted in favour of article 15 as a whole for the reasons given by his delegation in the Committee of the Whole.

35. Mr. GOLEMANOV (Bulgaria), explaining his vote, said that he had abstained from voting on paragraph 3 for the reasons he had given in the Committee of the Whole.

ARTICLE 15 bis

Article 15 bis was adopted unanimously.

ARTICLE 16

Article 16 was adopted unanimously.

The meeting rose at 12.55 p.m.

SIXTH PLENARY MEETING

Tuesday, 11 April 1961, at 3.25 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) (continued)

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

ARTICLE 17

Paragraph 1

2. Mr. AGUDELO (Colombia) recalled that at the fourth plenary meeting the Conference had decided to retain the words "ad interim" in article 5. Despite that vote some delegations still had doubts; accordingly, in order to avoid any confusion, his delegation requested a separate vote on the words "ad interim" in article 17, paragraph 1.

The Conference decided by 56 votes to 4, with 6 abstentions, to retain the words "ad interim" in paragraph 1.

Paragraph 1 was adopted by 70 votes to none.

Paragraph 2

Paragraph 2 was adopted.

Article 17 as a whole was adopted by 69 votes to none.

ARTICLE 18

3. Mr. CASTREN (Finland) proposed the deletion of the words "including the residence of the head of the mission" in article 18, since, according to article 1 (i) as adopted, the expression "premises of the mission" included the residence of the head of the mission.

4. Mr. EL-ERIAN (United Arab Republic) agreed that the Finnish representative's proposal was sound. The Drafting Committee had indeed appreciated the point, but had thought it better to mention the residence of the head of the mission expressly in article 18.

5. Mr. CASTREN (Finland) agreed that his amendment should be referred to the Drafting Committee.

6. Mr. BOUZIRI (Tunisia) requested a formal vote on article 18. The amendments submitted to that article in the Committee of the Whole had been withdrawn, but his delegation would interpret article 18 in accordance with them, and would therefore abstain from voting on the article.

7. The PRESIDENT put article 18 to the vote, on the understanding that the Finnish amendment would be referred to the Drafting Committee.

Article 18 was adopted by 64 votes to none, with 4 abstentions.¹

ARTICLE 19

Paragraph 1

8. Mr. BOLLINI SHAW (Argentina) criticized the drafting of paragraph 1.

9. The PRESIDENT suggested that the paragraph should be referred to the Drafting Committee.

It was so agreed.

Article 19 was adopted by 70 votes to none.²

ARTICLE 20

Paragraph 1

Paragraph 1 was adopted.

Paragraph 2

Paragraph 2 was adopted.

¹ The Drafting Committee subsequently decided that the words "including the residence of the head of the mission" should stand in article 18.

² The Drafting Committee decided not to change the wording of article 19.

ERRATUM

Page 13, paragraph 11: the third line should read France, Liberia, etc., instead of Italy, Liberia, etc.