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42. Mr. GUNEWARDENE (Ceylon) agreed with the representative of India. While recognizing the merits of the United States proposal, his delegation considered that a general debate on the recognition of compulsory jurisdiction was inadvisable and would not facilitate the Committee's work. The important thing was to adopt a convention on consular relations and, for that purpose, to find the most generally acceptable formula.

43. The Swiss proposal was a praiseworthy compromise, but suffered from the drawback of obliging more than half of the States Members of the United Nations to make express reservations. He urged the representatives of the United States and Switzerland, in the interests of justice and good understanding, to withdraw their proposals and thus enable the Committee to arrive at a unanimous decision.

44. Mr. GHEORGHIEV (Bulgaria) noted that the International Law Commission had not seen fit to include a compulsory arbitration clause in its draft. That meant that it had been aware of the difficulties which the problem had raised at the 1961 Conference. The omission of that clause was even more justified in the case of the convention on consular relations. Since arbitration affected the sovereignty of States, it should not be mandatory; rather, parties to disputes should be free to choose whatever procedure they wished. He would vote in favour of a separate protocol, and against the United States and Swiss proposals.

45. Mr. JELENIK (Hungary) agreed with the representatives who had criticized the Swiss and United States proposals. As in 1961, his delegation would support the fundamental principle of the voluntary acceptance of the jurisdiction of the Court and it would vote in favour of an optional protocol.

46. Mr. van SANTEN (Netherlands) said that the United States proposal offered the simplest solution and would receive his delegation's support, al the more as the traditional policy of the Netherlands was based on the universal recognition of law and justice to be based on final decisions of a court. The Committee had rejected the idea that States parties to the convention would be free to conclude treaties at variance with the terms of the convention. The consequence would be that disputes relating to the interpretation or application of so rigid a convention would be much more serious, and hence the clause dealing with the settlement of disputes should logically form an integral part of the convention. The fact that obligatory submission of disputes to judges had not been achieved at an earlier codification conference did not invalidate his argument, nor was the fact that many States were not prepared to recognize a compulsory jurisdiction under Article 36, paragraph 2, of the Statute of the Court a sound reason against accepting a compulsory jurisdiction clause in the Convention, as that clause would be in keeping with the provisions of Article 36, paragraph 1, of the Statute of the Court to which all Members of the United Nations and of the Court were bound. That being so, he could not understand the objections raised by certain small States for whom the maintenance of the law through the courts was of such great importance.

47. In his opinion, the only difference between the Swiss proposal and the proposal for a separate protocol was that, in the first case, it was the refusal of compulsory jurisdiction — in the form of a reservation — which was exceptional, whereas in the second case, it was the acceptance of compulsory jurisdiction which was exceptional. For the international lawyer, therefore, the Swiss proposal was the more appropriate. He could not share the Spanish representative's opinion on the question of reservations, for he regarded the fact of relegating the matter to a protocol outside the Convention as itself constituting a reservation forced upon all the parties thereto. The question of the settlement of disputes within the Convention was of the highest importance, and he urged the Committee to accept at least the Swiss proposal, if it found it impossible to adopt that of the United States.

48. Mr. WU (China) said that the United States proposal was preferable in that it made express provision for the jurisdiction of the International Court of Jurtice, to which all States Members of the United Nations should refer their disputes. It was true that many of them did not recognize the compulsory jurisdiction of the Court, but, inasmuch as the disputes to which the interpretation of the convention might give rise would never be so serious as to endanger fundamental principles, it would be particularly desirable for the Conference to encourage the universal acceptance of the Court's jurisdiction and so to promote the progressive development of the international rule of law. The Republic of China had accepted the Court's jurisdiction from the start and would vote unreservedly for the United States proposal.

49. Mr. EL KOHEN (Morocco) moved that the vote on the various proposals should be postponed so as to enable certain delegations to obtain instructions from their governments concerning the very recently submitted proposals for an optional protocol.

It was so agreed.

The meeting rose at 6 p.m.

THIRTY-FIRST MEETING

Thursday, 28 March 1963, at 10.15 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Disputes clause (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the proposals for a clause relating to the settlement of disputes submitted by the United States of America (L.70) and Switzerland (L.161) and of the proposals by Belgium (L.162) and by Ghana and India (L.163) for an optional protocol.

2. Mr. KRISHNA RAO (India) requested that the joint proposal by Ghana and India should be put to the vote first.

3. Mr. RUEGGER (Switzerland) opposed the Indian representative's motion. As a legal body, discussing the codification of international law, the Conference should approach legal issues dispassionately. He therefore urged that the rules of procedure should be applied in the normal way.

4. A vote should first be taken on the question whether a disputes clause should be included in the convention or not. The Committee was discussing the articles of the convention itself, and that was the appropriate stage at which to consider that question. An optional protocol was a separate document, which should be discussed separately and voted upon separately, if and when the Committee came to consider it. He urged that the Committee should proceed in the same manner as the first United Nations conference on the codification of international law — the 1958 Conference on the Law of the Sea — had proceeded in an identical situation. The International Law Commission not having made any proposal for a disputes clause, a Colombian proposal — similar to the present United States proposal (L.70) — had been voted on first. Upon that proposal being rejected, but only then, a vote had been taken on an optional protocol submitted by the Swiss delegation as a last resort.[1]

5. The Swiss delegation at the 1958 Conference had made its proposal with extreme reluctance and solely in order to establish a link between a convention codifying international law and the principle of compulsory jurisdiction. Unfortunately, the 1958 Protocol had soon become a sort of prototype. An optional protocol had been proposed by Iraq, Italy, Poland and the United Arab Republic at the 1961 Vienna Conference; at the present conference, Belgium, India and Ghana had made similar proposals.

6. He appreciated the high motives of the Indian delegation, which considered it desirable to secure unanimous agreement on a particular formula at once. But he himself believed that a dispassionate discussion on a controversial subject should logically lead to a vote on the United States proposal, which was desired by many delegations, such as those of the Netherlands, Sweden, and a number of other small countries. The vote would serve the practical purpose of showing which States were in favour of a disputes clause of the kind proposed, which was supported by the highest authority in international law — the Institute of International Law. It would also provide a useful indication to States intending to include disputes clauses in bilateral agreements or in multilateral agreements of a more limited character than the convention on consular relations.

7. The CHAIRMAN said that since the various proposals related to the same question under rule 42 of the rules of procedure they should normally be voted on in the order in which they had been submitted, so that the United States proposal would be voted on first. However, that rule was qualified by the words " unless it (the Conference) decides otherwise ". He would therefore submit the Indian motion to the vote, in order to ascertain whether the Committee wished to depart from the normal rule.

8. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the Indian motion calling for priority for the joint proposal by Ghana and India, which in fact coincided with the proposal by Belgium, was fully in accordance with rule 42 of the rules of procedure. His delegation saw positive advantages in the proposed order of voting and strongly supported the Indian motion.

9. Mr. WESTRUP (Sweden) opposed the Indian motion, which might create a somewhat dangerous precedent. If such motions were carried it would be possible to prevent a relevant proposal from being put to the vote.

10. Mr. ABDELMAGID (United Arab Republic) supported the Indian motion.

11. Mr. GUNEWARDENE (Ceylon) said that such motions were quite normal and very common at United Nations meetings. It was open to any delegation to suggest a particular order of voting in the interests of amity and the progress of the work. In the case in point the Indian motion would facilitate the settlement of the differences which had arisen.

12. Mr. BOUZIRI (Tunisia) considered that the Indian motion was in order. However, he would not support it, because he did not think it advisable to adopt the proposed order of voting. It was desirable that the Committee should express its views clearly on the United States proposal; it should then deal with the proposals by Switzerland and Belgium, in that order. For his part, he would vote against the United States and the Swiss proposals. If, as he hoped, those proposals were rejected, he would vote in favour of an optional protocol.

13. Mr. CAMERON (United States of America) said that he would vote against the Indian motion.

14. Mr. VAN HEERSWIJNGHELS (Belgium) endorsed the Tunisian representative's remarks. As he had made clear at the 29th meeting, the Belgian proposal for an optional protocol had been submitted in a spirit of conciliation and compromise. It had always been his understanding that the proposal by the United States of America and the subsidiary proposal of Switzerland would be voted upon before the Belgian proposal.

15. Mr. MEYER-LINDENBERG (Federal Republic of Germany) thought that the United States proposal should be put to the vote first in order to determine whether the Committee wished to include a disputes clause in the Convention itself. If the voting showed that it did not, it should then take a decision on the desirability of an optional protocol.

16. Mr. MARESCA (Italy) expressed his surprise at the rather literal interpretation which had been placed

[1] See *United Nations Conference on the Law of the Sea, Official Records*, vol. II (United Nations publication, Sales No. 58.V.4, vol. II), 13th plenary meeting.

on rule 42 of the rules of procedure. The Committee was not considering two proposals on the same question, but two completely different sets of proposals. The first set would introduce a new article into the Convention; the second set would add an optional protocol to it. In his opinion, the proposals introducing a new article into the Convention itself were the most closely related to the subject of the Committee's work. Since the International Law Commission had not drafted a disputes clause, it was clear that the proposals introducing such a clause should be voted on first.

17. Mr. van SANTEN (Netherlands) opposed the Indian motion. A codification of consular law would not be complete without a clause on the settlement of disputes. It was therefore essential to vote first on the proposals for the inclusion of such a clause.

18. The CHAIRMAN invited the Committee to take a decision on the Indian motion that the joint proposal submitted by Ghana and India (A/CONF.25/C.1/L.163) be put to the vote first.

The motion was rejected by 33 votes to 24, with 10 abstentions.

19. The CHAIRMAN reminded the Committee that at the twenty-ninth meeting the Argentine delegation had announced its intention of submitting an amendment to the United States proposal.

20. Mr. RUDA (Argentina) proposed that the words " shall be submitted at the request of either of the parties to the International Court of Justice " in the United States text should be replaced by the words " shall be submitted by mutual consent of the parties to conciliation, to arbitration or to the International Court of Justice ".

21. Mr. ALVARADO GARAICOA (Ecuador) supported the Argentine sub-amendment, for the reasons he had given at the thirtieth meeting.

22. Mr. van SANTEN (Netherlands), speaking on a point of order, said that the Argentine amendment would nullify the effect of the United States proposal. That proposal was intended to give either of the parties the right to have recourse to the compulsory jurisdiction of the Court; the language proposed by the Argentine representative would preclude that right, by making submission of a dispute to the Court conditional on the consent of both parties. The Argentine sub-amendment would reopen a debate which had been closed by a vote; he considered that it was out of order.

23. The CHAIRMAN pointed out that the Argentine representative had given notice, at the twenty-ninth meeting, of his intention to introduce the sub-amendment. He therefore ruled that it was not out of order.

The Argentine oral sub-amendment was rejected by 25 votes to 22, with 19 abstentions.

24. The CHAIRMAN invited the Committee to vote on the United States proposal (A/CONF.25/C.1/L.70).

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

The Republic of Korea, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Lebanon, Liberia, Liechtenstein, Luxembourg, Netherlands, New Zealand, Nigeria, Norway, Philippines, Portugal, San Marino, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Australia, Austria, Belgium, Canada, China, Colombia, Costa Rica, Denmark, France, Federal Republic of Germany, Ireland, Israel, Italy, Japan.

Against: Mali, Mexico, Mongolia, Morocco, Panama, Poland, Romania, Thailand, Tunisia, Ukrainian, Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Algeria, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Chile, Cuba, Czechoslovakia, Ecuador, Ghana, Guinea, Hungary, India.

Abstaining: Republic of Korea, Kuwait, South Africa, Spain, Upper Volta, Republic of Viet-Nam, Congo (Leopoldville), Ethiopia, Federation of Malaya, Finland, Greece, Holy See, Iran.

The proposal was adopted by 31 votes to 28, with 13 abstentions.

25. The CHAIRMAN said that, in consequence of that decision, the first paragraph of the Swiss proposal (A/CONF.25/C.1/L.161), the proposal by Belgium (A/CONF.25/C.1/L.162) and the joint proposal by Ghana and India (A/CONF.25/C.1/L.163) would not be put to the vote. The Committee had still to deal with paragraph 2 of the Swiss proposal, if the Swiss representative wished that paragraph to be voten on.

26. Mr. RUEGGER (Switzerland) said that he did not wish paragraph 2 of his proposal to be put to the vote. The Committee had taken a decision in favour of the United States proposal, which his delegation supported. He had introduced his proposal, in two paragraphs, as a subsidiary text to meet the situation that would arise if the United States proposal were not adopted. He realized that the United States proposal was not likely to obtain the necessary two-thirds majority in a plenary meeting of the Conference, and his delegation would be glad to reintroduce paragraph 2 of its proposal in plenary if necessary.

27. Mr. BARTOŠ (Yugoslavia) re-submitted paragraph 2 of the Swiss proposal on behalf of the Yugoslav delegation. The Committee's decision on the United States proposal covered paragraph 1 of the Swiss proposal; but no decision had been taken on paragraph 2, and he thought it was desirable to put that paragraph to the vote, as its provisions would be welcomed by many delegations.

28. Mr. CAMERON (United States of America) pointed out that the Swiss representative, in introducing his proposal, had stressed its subsidiary character and had specifically requested that a vote should be taken on the United States proposal first. Paragraph 2 of the Swiss amendment was quite incompatible with the United States proposal and consideration of that paragraph

would reopen a question which the Committee had already disposed of.

29. Mr. EVANS (United Kingdom) said that it would be out of order for the Committee to take a vote on paragraph 2 of the Swiss proposal at that stage. Paragraph 2 of the Swiss proposal, as reintroduced by the Yugoslav delegation, could only be regarded as an amendment to the United States proposal. Consequently, if it were to be voted on at all, it should have been voted on before the United States proposal itself.

30. Mr. KRISHNA RAO (India) recalled that the Swiss delegation had agreed to replace paragraph 1 of its proposal by the United States proposal. No objection had been made at the time, so that it could not now be suggested that the two texts were incompatible. The Committee had adopted a disputes clause. It would be perfectly in order for the Committee to consider the Yugoslav amendment to attach to that disputes clause a provision enabling the parties to contract out. His delegation accordingly supported the Yugoslav amendment.

31. Mr. RUEGGER (Switzerland) emphasized the fact that, as he had repeatedly said, his proposal had been introduced as a subsidiary proposal to that of the United States. Now that the United States proposal had been adopted, there was no occasion for the Committee to deal with any part of the Swiss proposal, which was complete in itself. Of course, if the United States proposal did not receive the necessary two-thirds majority in the plenary meeting, paragraph 2 of the Swiss proposal could be discussed and voted on.

32. The CHAIRMAN noted the objection made by the United Kingdom representative. In fact, throughout the debate, both the United States text and the Swiss text had been treated as proposals and not as amendments. Many delegations had said that, if the United States proposal were defeated, they would vote in favour of the Swiss proposal. The fact that the United States proposal had been adopted did not alter the position in any way; the Swiss proposal was still a proposal and not an amendment to the United States proposal. The Swiss delegation not having pressed for a vote on paragraph 2, that paragraph had been reintroduced by the Yugoslav delegation and he would call upon the Committee to vote on it.

33. Mr. van SANTEN (Netherlands) disagreed with the Chairman's ruling. If a vote were now to be taken on paragraph 2 of the Swiss proposal, the Committee would in effect be acting as if it had not adopted the United States proposal. His delegation would vote against the paragraph, because it could not retract its vote for the United States proposal.

34. He thought that a clear victory had been won on the United States proposal, contrary to the expectations of some delegations, and he hoped that the disputes clause adopted by the Committee would obtain the necessary two-thirds majority in plenary.

35. The CHAIRMAN said that the Committee was new discussing paragraph 2 of the Swiss proposal, reintroduced by the Yugoslav delegation. The Netherlands representative seemed to have been speaking of the original Swiss proposal, disregarding the fact that the Committee was now discussing the Yugoslav proposal.

36. Mr. BARTOŠ (Yugoslavia) saw no contradiction between the disputes clause adopted by the Committee and the paragraph 2 resubmitted by the Yugoslav delegation. The Committee had not yet discussed the question of reservations to the Convention. He had no great liking for reservations in general, but in the case under consideration he thought it advisable to include a reservations clause in order to accommodate the many delegations which could not subscribe to the disputes clause.

37. Mr. KRISHNA RAO (India) said he regretted that the Netherlands representative should have used the word " victory ".

38. Mr. BOUZIRI (Tunisia) shared those feelings and strongly supported the Chairman's ruling.

39. Mr. GUNAWARDENE (Ceylon) also expressed great regret at the term used by the Netherlands representative.

40. Mr. van SANTEN (Netherlands) said that the fact that a delegation disagreed with a Chairman's ruling in no way detracted from its respect and esteem for the Chairman. He was sorry if anything he had said had been misunderstood and had hurt the feelings of any delegation; in speaking of " victory " he had been referring to the triumph of the ideals of justice, not to the victory of one side over another.

41. The CHAIRMAN called for a vote on the Yugoslav proposal to attach to the disputes clause a second paragraph with the same wording as paragraph 2 of the Swiss proposal (A/CONF.25/C.1/L.161).

The Yugoslav proposal was adopted by 27 votes to 24, with 18 abstentions.

42. Mr. MUÑOZ MORATORIO (Uruguay), explaining his vote, said that he had voted in favour of the United States proposal for the compulsory judicial settlement of disputes in accordance with the traditional policy of Uruguay, which had been embodied in that country's constitution.

43. The CHAIRMAN called for a vote on the new article on the settlement of disputes as a whole.

At the request of the representative of the United States of America, a vote was taken by roll call.

The Ukrainian Soviet Socialist Republic, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Republic of Viet-Nam, Yugoslavia, Australia, Austria, Belgium, Canada, China, Colombia, Denmark, Ethiopia, Federation of Malaya, Finland, France, Federal Republic of Germany, India, Iran, Ireland, Israel, Italy, Japan, Republic of Korea,

Kuwait, Lebanon, Liberia, Liechtenstein, Luxembourg, Netherlands, Nigeria, Norway, Panama, Portugal, Sweden, Switzerland, Thailand, Turkey.

Against: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Ghana, Guinea, Hungary, Mongolia, Poland, Romania, Tunisia.

Abstentions: Argentina, Brazil, Cambodia, Ceylon, Chile, Congo (Leopoldville), Ecuador, Greece, Holy See, Mali, Mexico, Morocco, Philippines, South Africa, Spain.

The article as a whole was adopted by 39 votes to 14, with 15 abstentions.

44. Mr. ABDELMAGID (United Arab Republic) explained that his delegation had voted in favour of the article as a whole because, as the two paragraphs were interconnected, the resulting new text would have the effect of an optional protocol, a formula which would have been preferable to the text thus adopted. However, his delegation wished expressly to reserve its position regarding paragraph 1 of the article.

45. Mr. WESTRUP (Sweden) said he had voted for the article as a whole, but against paragraph 2 of the original Swiss proposal. The idea of a paragraph which would in fact take the place of an optional protocol had originally been introduced by the Swiss delegation at the First Conference on the Law of the Sea, when it had proved extremely useful. Since then, however, it had been used as a kind of escape clause by countries which did not wish to submit to the compulsory jurisdiction of the International Court of Justice.

46. His delegation had voted for the article as a whole, because it saw some reason for optimism in the fact that, throughout the long debate on the disputes clause, the opponents of the compulsory jurisdiction of the Court had utterly failed to refute the basis arguments of those who were in favour of recognizing that jurisdiction for the purely technical provisions of the convention. It was also encouraging to note that many delegations which had argued against the Court's compulsory jurisdiction had made it plain that they did not want to confirm their negative attitude by a vote.

47. Mr. BARTOŠ (Yugoslavia) explained that he had voted for the article as a whole because, although Yugoslavia would not exercise the right to make reservations under paragraph 2, he had thought it advisable to enable delegations which wished to make such reservations to do so. His government could not accept the compulsory jurisdiction of the International Court of Justice, which was not provided for in the Charter; nevertheless, Yugoslavia had accepted the compulsory jurisdiction of the Court in some twenty multilateral conventions. Those were the reasons why his delegation had taken up paragraph 2 of the Swiss proposal; while it would have preferred an optional protocol, it had wished to record its appreciation of the manner in which the Swiss delegation had continued in its tradition of seeking a just and wise solution acceptable to the majority.

48. Mr. RUDA (Argentina) said he had abstained from voting on the article as a whole because paragraph 2 admitted reservations to the Convention; in his delegation's opinion, reservations to a codification convention were most undesirable. The purpose of the Argentine oral amendment to the United States proposal had been to exclude reservations, but as the article stood, every State would be free to decide for itself whether it accepted the compulsory jurisdiction of the Court or not.

49. Mr. JAYANAMA (Thailand) said his government had hoped that compulsory jurisdiction would be dealt with in an optional protocol, as in the case of the Conventions of the Law of the Sea and the Vienna Convention on Diplomatic Relations. Since the United States proposal had been adopted, however, his delegation had voted for paragraph 2 of the original Swiss proposal, and would exercise its right under that paragraph to reject compulsory jurisdiction.

50. Mr. AVILOV (Union of Soviet Socialist Republics) said that the results of the vote on the United States amendment clearly showed that neither side in the argument could claim the " victory " referred to by the Netherlands representative. His delegation reserved the right to raise the question again in the plenary conference.

51. Mr. KRISHNA RAO (India) said he had voted in favour of the article as a whole because the effect of paragraph 2 would be the same as that of the optional protocol, which his delegation had favoured. Delegations should carefully consider whether an article in the convention providing for the compulsory jurisdiction of the Court, with a reservation clause, or an optional protocol annexed to the Convention would lead to the largest number of accessions. He hoped that point would be considered seriously before delegations cast their votes in the plenary conference.

52. Mr. CRISTESCU (Romania) said he had voted against the article as a whole because his delegation opposed the introduction of such an article into the convention, and wished to make a reservation forthwith concerning it.

53. Mr. PETRŽELKA (Czechoslovakia) said he was still convinced that such a controversial clause had no place in the convention. He reserved his delegation's right to raise the matter again in the plenary conference.

54. Mr. USTOR (Hungary) said he had voted against the United States proposal, but in favour of paragraph 2 of the original Swiss proposal, because it seemed to mitigate the rigidity of the United States text. He had voted against the article as a whole, because that was not the proper way of dealing with possible disputes. He thought that the majority of the Conference was really in favour of the formula adopted for the 1961 Vienna Convention and hoped that that trend would become evident in the plenary meetings.

55. Mr. OSIECKI (Poland) said he had voted against the article as a whole for the reasons he had given during the debate.

Article 52 (Question of the acquisition of the nationality of the receiving State)

56. The CHAIRMAN announced that the Committee had concluded consideration of the articles originally allocated to it. In order to expedite the work of the Conference, articles 52, 53, 54 and 55, originally allocated to the Second Committee, had been transferred to the First Committee for consideration.[2]

57. He invited debate on article 52 and the amendments thereto.[3]

58. Mr. LEE (Canada), introducing the five-power amendment (A/CONF.25/C.2/L.123/Rev.1), said that the Commission's draft of article 52 was open to the same objections as the corresponding draft article of the Vienna Convention. The idea it expressed was too-far-reaching and its inclusion in the convention would cause difficulties for many countries, particularly those whose nationality laws were based on the *jus soli*. He therefore believed that the matter should be dealt with in an optional protocol, as it had been at the 1961 Conference.

59. Mr. NASCIMENTO e SILVA (Brazil) said that article 52 as drafted by the International Law Commission did not conflict with the Brazilian Constitution, but his delegation realized the difficulty which many other countries would have in accepting such a clause. The Brazilian delegation believed that adoption of the article would prevent a number of countries from ratifying the convention; moreover, adoption of the five-power amendment would considerably expedite the work of the Conference by avoiding a detailed examination of domestic nationality laws such as had taken place in 1961.

60. Mr. DADZIE (Ghana) referred to the heated debates on the question of acquisition of nationality which had taken place at the 1961 Conference owing to the great difficulty experienced by *jus soli* countries in accepting a rule which was diametrically contrary to their domestic law. In the interests of general goodwill and to satisfy both *jus soli* and *jus sanguinis* countries, it would be advisable to follow the precedent of the 1961 Conference and adopt an optional protocol.

61. Mr. VAN HEERSWIJNGHELS (Belgium) said that his delegation had co-sponsored the tree-power amendment (A/CONF.25/C.1/L.164) because an optional protocol seemed to be the best solution, in view of the great diversity of municipal laws on the acquisition of nationality. Moreover, the question was so delicate that it would be better to settle it in *ad hoc* bilateral agreements. He suggested that the three-power amendment might be combined with the joint amendment in document A/CONF.25/C.2/L.123/Rev.1.

62. Mr. van SANTEN (Netherlands) said that his delegation was in favour of deleting the article; it had only submitted its amendment (A/CONF.25/C.2/L.19) because, if the majority of the Committee was in favour of retaining the article, the wording should be improved.

63. Mr. OSIECKI (Poland) observed that the purpose of the convention was to develop and clarify the privileges and immunities of consular officials with a view to facilitating consular relations — not to restrict or delete provisions that were already a part of customary international law. If the children of a consular official were to acquire the nationality of the receiving State solely by reason of their place of birth, such an official's family might consist of children with several different nationalities. Nationality laws based on the *jus soli* were of course useful to certain countries of immigration, but it would be unjust to apply them in the exceptional case of the children of consular officials. It had been argued that the question was governed by private international law; that was true in most cases of acquisition of nationality, but his delegation held that consuls and members of their families were governed by public international law in that matter. He therefore objected to the deletion of the article and to the relegation of the subject to an optional protocol.

64. Mr. ABDELMAGID (United Arab Republic) said his delegation was in favour of the Commission's draft, which did not differentiate between nationality laws based on *jus soli* or *jus sanguinis*, but merely stated that the law of the receiving State could not be imposed on consular officials and their families. Moreover, the draft made it clear that the persons concerned could opt for the nationality of the receiving State if its law permitted. He was therefore opposed to the deletion of the article and the drafting of an optional protocol on the subject.

65. Mr. de MENTHON (France) said he could not support the Commission's draft of article 52, which conflicted with his country's nationality laws. If the article were adopted, France would be obliged to enter a reservation on it. He therefore fully supported the proposals to draft an optional protocol.

66. Mr. MARAMBIO (Chile) also supported the two joint amendments. In view of the differences in municipal law on the subject, the article should be omitted from the convention. His delegation could accept an optional protocol, especially as that method had already been followed at the 1961 Conference.

67. Mr. BARTOŠ (Yugoslavia) said that his delegation preferred the Commission's text, since Yugoslav nationality law was based on *jus sanguinis*. The Netherland's proposal to add the words " without their consent " was acceptable, but he did not think that that delegation's somewhat restrictive re-wording of the Commission's text was appropriate. Out of consideration for a number of delegations, and in order to secure the highest possible number of ratifications of the convention, however, his delegation would be prepared to sacrifice article 52 in favour of an optional protocol on the lines of the one adopted by the Vienna confer-

[2] This decision was taken at the third plenary meeting.

[3] The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.19; Brazil, Canada, Ghana, Japan and the United States of America, A/CONF.25/C.2/L.123/Rev.1; Belgium, Portugal and Spain, A/CONF.25/C.1/L.164. Separate amendments by the United States of America (A/CONF.25/C.2/L.8), Japan (A/CONF.25/C.2/L.86), Canada (A/CONF.25/C.2/L.123) and Brazil (A/CONF.25/C.2/L.164) had been withdrawn in favour of the joint proposal in document A/CONF.25/C.2/L.123/Rev.1.

ence in 1961 and contained in document A/CONF.20/11. Of the two proposals for a protocol, he preferred the three-nation proposal, which specifically stated that the protocol should be similar to the one attached to the 1961 Vienna Convention.

68. Mr. TSHIMBALANGA (Congo, Leopoldville) supported the three-power amendment. Every country was entitled to its own nationality laws and a provision which in any way infringed that right might prevent some States from ratifying the convention.

69. Mr. AVILOV (Union of Soviet Socialist Republics) said he was in favour of the Commission's draft which did not conflict with his country's nationality laws. Nevertheless, in a spirit of co-operation, he would not object to the three-power amendment. He would oppose the Netherlands amendment in principle, however, because it would make the acquisition of nationality subject ot the consent of the receiving State.

70. Mr. DONOWAKI (Japan) said that the Commission's draft conflicted with Japanese nationality laws. To take only one minor example, if a consular employee on the service staff of a consulate in Japan married a Japanese husband and had a child in that country, under the Commission's article that child would not acquire Japanese nationality. His delegation had therefore been in favour of deleting the article, but in a spirit of co-operation it had agreed to sponsor a proposal for an optional protocol similar to the one adopted at the 1961 Vienna Conference.

71. Miss WILLIAMS (Australia) said that, under her country's nationality laws, a child born in Australia automatically acquired Australian nationality, except when the father was the envoy of another State. Since a consular official was not the envoy of a State, his children were subject to Australian nationality laws. Her delegation was therefore in favour of an optional protocol on the subject.

72. Mr. PETRŽELKA (Czechoslovakia) said that his delegation would prefer to retain the Commission's draft of article 52, because the principle it stated was accepted in customary international law. Nevertheless, his delegation realized the difficulties with which some countries were faced and it would not oppose the adoption of an optional protocol similar to that annexed to the 1961 Convention.

73. Mr. van SANTEN (Netherlands) said that his delegation would have preferred to delete the article and to have no optional protocol, because the subject of nationality should not be dealt with in a consular convention. If the majority of the Committee was against deletion, however, and thought that something should be said on the matter, the Netherlands delegation would prefer to take as a basis the Commission's draft with the amendments it had proposed (A/CONF.25/C.2/L.19). The purpose of the first part of his delegation's amendment was to clarify the International Law Commission's draft by referring only to the special cases of residence or birth within the territory of the receiving State, so as to exclude marriage; if that were adopted, the case referred to by the Japanese representative would not arise. The addition of the words " without their consent " had been proposed to emphasize a self-evident rule. The USSR representative seemed to have misunderstood the purpose of that second amendment.

74. Mr. MARESCA (Italy) considered that article 52 had a natural place in a consular convention, since the legal situations of children and spouses of consuls were elements of the general status of those officials; that status would be hopelessly confused if the matter were not settled precisely. A number of practical difficulties could arise if no suitable provision were included in the convention: for instance, if a woman consul in a State whose nationality law was based on the principle that a married woman followed her husband's nationality married a national of the receiving State, she would automatically become a national of that State, and her position on return to her country would be difficult. He thought that article 52 should be retained, but he would support the Netherlands amendment, which clarified the text.

75. On the other hand, some countries might find it difficult to accept the International Law Commission's text, and every effort should be made to avoid compelling countries to make reservations. If it became evident that article 52 had no chance of being adopted, his delegation would take a realistic view and accept the solution of an optional protocol; it would do so without enthusiasm, however, because it considered that such optional instruments were merely destined for oblivion.

76. Mr. HART (United Kingdom) said that his country's nationality laws made it very difficult for it to accept article 52. Although he admitted that both in theory and in practice there was a case in respect of the children of diplomatic agents for asserting the existence of a rule of customary international law on the lines of article 52, there was no similar rule applicable to the children of consular officials. Furthermore, it would indeed be curious to include such an article in the consular convention when it had been omitted from the Convention on Diplomatic Relations. Moreover, the 1961 Conference had shown the great practical difficulty of drafting a suitable article, owing to the wide differences in municipal laws on nationality. His delegation would support the proposals for an optional protocol.

77. Mr. AVILOV (Union of Soviet Socialist Republics) thanked the Netherlands representative for drawing his attention to a misunderstanding which had been due to a translation error in the Russian text of the Netherlands amendment. He could withdraw his objection of principle to the amendment, but still preferred the article as drafted by the Commission.

78. Mr. KEITA (Mali) said that, in view of the delicate nature of the whole question of nationality, the inclusion of article 52 in the convention would delay its ratification. He was therefore in favour of an optional protocol on the subject.

79. The CHAIRMAN invited the Committee to vote on the amendment by Brazil, Canada, Ghana, Japan

and the United States (A/CONF.25/C.2/L.123/Rev.1) in conjunction with the amendment by Belgium, Portugal and Spain (A/CONF.25/C.1/L.164).

The amendments were adopted by 52 votes to 4, with 4 abstentions.

80. The CHAIRMAN said that in consequence of that decision the amendment by the Netherlands (A/CONF.25/C.2/L.19) would not be put to the vote. The drafting committee would be instructed to prepare the optional protocol on acquisition of nationality.

The meeting rose at 12.55 p.m.

THIRTY-SECOND MEETING

Thursday, 28 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 53 (Beginning and end of consular privileges and immunities)

1. The CHAIRMAN invited the Committee to consider article 53 and the amendments to it.[1]

2. Mr. CAMERON (United States of America) introduced his delegation's amendment (A/CONF.25/C.2/L.9) to paragraph 4 of article 53, calling for the deletion from that paragraph of the words " his personal inviolability and ". He said that the meaning of personal inviolability was not clear in the context of paragraph 4. Quoting from the corresponding provision in the Vienna Convention of 1961 (article 39, paragraph 2, last sentence), he noted that it contained no such phrase. Paragraph 4 of article 53 should conform to the 1961 Convention in that regard.

3. Mr. HEPPEL (United Kingdom) withdrew the first of his delegation's amendments (A/CONF.25/C.2/L.137) to article 53. The purpose of the second amendment was to provide that members of the family of a consular official and the members of his private staff should not be eligible for the benefit of privileges and immunities before the consular official himself had become entitled to them as otherwise an absurd situation would arise. The United Kingdom delegation would vote for the United States amendment, but against the Japanese amendment, for it thought that the words which Japan proposed to delete from paragraph 2 should be retained. The United Kingdom delegation considered the Cambodian amendment inadvisable, for it introduced the question of the nationality of the members of the family of a consular official, a point which ought to be dealt with in article 69.

[1] The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.9; Japan, A/CONF.25/C.2/L.87; Cambodia, A/CONF.25/C.2/L.128; United Kingdom, A/CONF.25/C.2/L.137; Greece, A/CONF.25/C.2/L.162/Rev.1; South Africa, A/CONF.25/C.1/L.165.

4. Mr. PLANG (Cambodia) said that the sole purpose of his delegation's amendment (A/CONF.25/C.2/L.128) was to specify that the provisions of paragraph 2 were not applicable to persons who were locally recruited.

5. Mr. DONOWAKI (Japan) said that the purpose of his delegation's amendment (A/CONF.25/C.2/L.87) was to exclude the members of a consular official's private staff from consular privileges and immunities; but since article 48 granted them exemption from dues and taxes on the wages which they received for their services, the Japanese delegation would not press its amendment. It could not vote for the Cambodian amendment, for which article 53 was not the right context.

6. Mr. PAPAS (Greece) said that one could not speak of privileges and immunities in connexion with the members of the family of a member of a consulate, but only of advantages granted to those persons. That also applied to the private staff. The third of the Greek delegation's amendments (A/CONF.25/C.2/L.162/Rev.1), which might be referred to the drafting committee, made that point clear. The second of these amendments was designed to delete words which did not fit into the structure of the convention.

7. Mr. ENDEMANN (South Africa), introducing his delegation's amendment (A/CONF.25/C.1/L.165) to paragraph 3 of article 53, said that it dealt with the case where persons referred to in paragraph 2, having ceased to be members of the household or in the service of a member of a consulate, remained for some time longer in the territory of the receiving State. In that case they would continue to enjoy their privileges and immunities until their departure. In other respects, article 53, as amended by the United States proposal, seemed satisfactory, and the South African delegation would therefore vote against the other amendments.

8. Mr. MARESCA (Italy) said that it was important to note that a member of a diplomatic mission or of a consulate acquired his status from the fact of his admission. Hence, in order that the head of a consular post or a member of a consulate should be able to act in his official capacity, he must have been admitted, definitively or provisionally, on entering the territory of the receiving State. The Italian delegation would therefore have been ready to support the first of the United Kingdom's amendments; it regretted that the United Kingdom delegation had withdrawn that part of its proposal, which the Italian delegation wished to resubmit in its own name.

9. Mr. ALVARADO GARAICOA (Ecuador) said that he supported the Italian representative's views.

10. Mr. BOUZIRI (Tunisia) agreed with the Italian representative that it would be anomalous if a potential consul, on arriving in the receiving State, should be able to enjoy consular privileges and immunities before being admitted by the receiving State. He gathered that the Italian delegation, in resubmitting the first of the United Kingdom's amendments in its own name, intended to retain only the phrase specifying as the time as from which consular privileges and immunities should