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THIRTY-FIRST MEETING

Tuesday, 26 March 1963, at 3.15 p.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

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

Article 48 (Exemption from taxation) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of article 48 and the amendments submitted.¹

2. Mr. SMITH (Canada) introduced his amendment (L.193). The words "and duties on transfers" in paragraph 1 (c) of article 48, empowering the receiving State to levy duties on transfers by members of the consulate, constituted a provision not contained in the Convention on Diplomatic Relations and, in the Canadian view, not really essential to the draft convention on consular relations. In any case, the wording lacked precision. The Canadian amendment was designed to make it clear that the duties in question concerned transfer of property at death or any transfer that was deemed to be transferred at death for tax purposes under the receiving State's laws, and that the receiving State would not be able to levy tax on transfers such as gifts made between living members of the consul's family. There was adequate provision for the receiving State to levy transfer duties under paragraph 1 (b) in respect of immovable property, 1 (d) in respect of investments and 1 (f) by stamp duty on property. It was a complicated subject and he hoped the Committee would give it very serious consideration.

3. He fully supported the South African amendment (L.170) and agreed in general with the Australian amendment (L.197) and with the Swiss amendment (L.158), which gave a more precise definition of indirect taxes of particular interest to Canada. He also agreed with the French amendment (L.195) and supported the South African representative's suggestion at the previous meeting.

4. Mr. HEUMAN (France) said that his delegation's amendment to paragraph 1 (a) had been submitted because a similar provision proposed in the Convention on Diplomatic Relations had given rise to difficulties, as the term "indirect taxes" was liable to varying interpretations in different countries. The matter had been raised by the United States representative at the 1961 Conference and it had been agreed that the tax in question was the kind normally referred to as purchase tax. He therefore considered that it would be wise in the present case to use the wording adopted in article 34 of the Convention on Diplomatic Relations. Although the Swiss amendment (L.158) was similar to his own, he could not support it because it introduced an additional proviso which would have the undesirable effect of implying wider latitude for consular than for diplomatic officials.

¹ For the list of amendments to article 48, see the summary record of the thirtieth meeting, footnote to para. 30.

5. With regard to his amendment to paragraph 1 (b) he greatly appreciated the support of the representatives of Canada and South Africa. The South African representative's suggestion at the previous meeting would improve his amendment and he would be glad to incorporate it. The reference to the head of post would thus be deleted and the last part of the amendment would read: "...immovable property owned or leased on behalf of the sending State".

6. He supported the Belgian amendment (L.133) though its purpose might be achieved more easily by amending article 56 (Special provisions applicable to career consular officials who carry on a private gainful occupation). He opposed the amendments by India (L.177), Japan (L.84/Rev.1) and the Netherlands (L.18/Rev.1). He would abstain on the Canadian amendment (L.193), which did not seem logical. The amendment of Thailand (L.67) might more properly be dealt with under article 69 (Members of the consulate, members of their families and members of the private staff who are nationals of the receiving State).

7. Mr. JESTAEDT (Federal Republic of Germany) said that he would vote for the amendment of the Ukrainian SSR (L.142) since it conferred the same rights on members of the consulate and the service staff. His country had followed that policy since the nineteenth century and was strongly against discrimination between embassy and consulate personnel. Every person sent abroad by a government should enjoy the same privileges and immunities and he regretted that the Conference on Diplomatic Relations had not accepted that principle. Many States had supported the principle and he was glad to see it introduced into the Conference on Consular Relations. The Ukrainian amendment was a contribution to the progressive development of consular law.

8. Mr. KAMEL (United Arab Republic) said that he was in favour of maintaining the International Law Commission's draft; its adoption would give members of the consulate almost the same tax exemptions as diplomats enjoyed under the diplomatic convention. He therefore opposed the drastic amendments of Belgium and the Netherlands. He would, however, support the Canadian, Japanese, Indian and Swiss amendments to paragraph 1 and the amendments of Japan and Thailand to paragraph 2.

9. Mr. STRUDWICK (United Kingdom) said that he supported the Netherlands amendment (L.18), especially as it did not offer exemption from taxation to families or private servants — the two categories which had caused most concern in the International Law Commission's draft. His only objection to the amendment was the exemption from duty on the purchase of a motor vehicle (paragraph 2 (c)). Although he would prefer to see families and private staff entirely excluded from exemption, he supported the Belgian amendment (L.133) because it was mainly concerned with the question of gainful private occupation. The subject could be dealt with equally well under articles 48 or 56 and it might be advisable to refer it to the drafting committee. He strongly supported the Japanese amendment, which was

the most far-reaching, because English law did not permit tax exemption for members of families and no such exemption appeared in any of its bilateral consular agreements. It was not necessary to apply the same provisions as for diplomats since consular officials did not enjoy the same immunities: they could be required by the receiving State to give information about their income, and their families could be obliged to comply with the normal conditions laid down by the tax authorities in the receiving State regarding information and could even be compelled to pay tax. The question of private staff — staff employed not by the sending State but by individual members of the consulate — was a new element, because they were normally not taxed by the sending State, being outside its jurisdiction. If they were given exemption by the receiving State as well, they would be in the abnormally privileged position of not paying tax to any State. The only category at present in that position was that of employees of international organizations, and many of the organizations (including the United Nations, the specialized agencies, the Western European Union and the OECD) thought the situation undesirable and were remedying it by imposing their own internal tax.

10. He could not support the Ukrainian amendment because it was too liberal. He was not sure that the amendment by Thailand would be covered by article 69, as had been suggested, for article 69 excluded from privileges consular officials who were nationals of the receiving State, but, unlike the corresponding provision in the diplomatic convention, it did not mention residents of the receiving State. The amendment by Thailand was a solution only in respect of the private and service staff. He hoped that permanent residents in the receiving State would be included in article 69; otherwise consular staff would receive better treatment than diplomats. He supported the Australian amendment, although it was a minor point, because it would bring the consular convention into line with the diplomatic convention. He also supported the Canadian amendment, though he did not consider it essential. He would support the French amendment, but suggested that the English text of paragraph 1 (b) might be improved if the words "subject, however," were replaced by the words "without prejudice". The new paragraph proposed in the Netherlands amendment (L.110) was a valuable addition because in certain circumstances the employer had to deduct tax from employees and make payment to the revenue authorities, and also because he had to inform the revenue authorities of the names and addresses of the persons he employed. He strongly supported the amendments by India and Japan.

11. Mr. PETRENKO (Union of Soviet Socialist Republics) said that on the whole he found the International Law Commission's draft satisfactory. It had been produced in the face of difficulties due to variations in the practice and legislation of different countries and the Commission had endeavoured to make it as widely acceptable as possible so as to provide a good basis for the Final Act. Those variations, however, had given rise to a large number of amendments and it was only right that they should be examined and that argu-

ments for and against them should be listened to so that the best possible compromise could be adopted.

12. The Ukrainian amendment (L.142) sought to include the service staff in the exemption from taxation and he agreed with the representative of the Federal Republic of Germany that the proposal was in conformity with the policy followed by some countries since the beginning of the nineteenth century. Most Soviet consular conventions included a similar provision, one example being article 9 of the Convention between the Soviet Union and Yugoslavia which provided that the consular personnel, their wives and minor children should be free from direct taxation, if the corresponding categories of diplomatic persons were also exempted. The provision was worth considering for the present convention as it reflected a liberal approach to the matter. It would safeguard the interests of the receiving and the sending State and promote the progressive development of international law. He therefore considered the Ukrainian amendment preferable to the amendments of Belgium (L.133), Japan (L.184/Rev.1) and the Netherlands (L.18/Rev.1). The Netherlands amendment came closest to covering all the consular personnel but it omitted the members of the family.

13. The Swiss amendment (L.158) was more suited to a small group of States or to a single State, whereas the International Law Commission's draft had a more general scope and covered all national circumstances more adequately. The French representative's suggestion for bringing the text into line with the corresponding text of the Diplomatic Convention was a good one and he saw no objection to it. He also agreed with the French proposal to make a specific reference in paragraph 1 (b) to article 31, adopted by the Committee. The Canadian amendment (L.193) to paragraph 1 (c) was an attempt to limit the scope of the International Law Commission's text. In reality it tended to exclude the duties on transfers, levied by the receiving State, from the exemption provided for in that article, or to reduce their importance. As the exemption from taxation of the duties on transfers was also of importance both from the legal and practical points of view, the Soviet delegation objected to the Canadian proposal and was in favour of adopting paragraph 1 (c) of the International Law Commission's text.

14. Mr. CAMPORA (Argentina) said that there were two sides to the question of tax exemption: the category of person to be exempted, and what exemptions should be granted. Argentina was in favour of members of the consulate having the same tax exemptions as members of diplomatic missions. Under article 48, therefore, the persons to whom exemptions should apply should be members of the consulate as defined in article 1 of the draft convention; and the exemptions themselves should in principle be the same as those granted to members of the diplomatic mission. He would vote in favour of any amendments with that end in view. The definitions given in article 1 served as the working basis for the Conference and any later modifications to those definitions might affect the attitude of representatives on the various questions discussed. He therefore reserved his position

in case an amendment to any definition in article 1 should affect any of the matters discussed in the Committee.

15. Mr. SAYED MOHAMMED HOSNI (Kuwait) said that the amendment proposed by Thailand (L.67) was a valuable addition to the International Law Commission draft. Unless it was provided that only those members of the service staff and members of the private staff who were "not nationals of the receiving State nor locally recruited" should be exempt, not only would better treatment be accorded to consular staff than to the staff of a diplomatic mission, but a privileged group would be created among the nationals of the receiving State with the resulting possibility of difficulties in the application of the national legislation. In regard to the question of whether it would be more appropriate to specify the exception in article 48 or in article 69, he would remind the Committee that it had on previous occasions been found desirable to include similar provisions in an article without awaiting the decision on a subsequent related article. He suggested that it would increase support for the amendment by Thailand if, in view of the comments which had been made, the words "nor permanent residents thereof" were to be substituted for the words "nor locally recruited" in the second line of the proposed amendment.

16. Mr. ANGHEL (Romania) said that, in the interests of their activities, members of the consulate should be exempt from income tax and other forms of taxation; there should not be a distinction between consular officials and consular employees. His delegation supported the International Law Commission's text and would vote in favour of amendments tending to maintain, to widen or to clarify it, for example, the amendment of the Ukrainian Soviet Socialist Republic (L.142). It could not, however, accept the exclusion from exemption of any category mentioned in paragraph 1. Members of the family should also enjoy exemption from taxation, as otherwise the salaries of members of the consulate might be subject to taxation. His delegation would therefore vote against the amendments submitted, for example, by Japan (L.84/Rev.1) and the Netherlands (L.18/Rev.1). His delegation considered that the Netherlands proposal (L.110) for the addition of a new paragraph was superfluous and might be subject to misinterpretation; the Committee had already rejected a similar proposal in connexion with article 47. The Romanian delegation would also vote against the Belgian proposal (L.133) which was restrictive and not clearly drafted. Details such as those covered by the Swiss amendment (L.158) should not be included in the convention. The subject of the Thailand amendment would be dealt with in article 69.

17. Mr. SILVEIRA-BARRIOS (Venezuela) said that under the legislation of his country foreign consular officials were exempted from income tax on income paid by the sending State. His delegation could accept further exemption for high consular officials such as the head of post, but not for other members of the consular staff, and still less for service staff and members of their families. His delegation would therefore give its general support to paragraph 1 in the International Law Com-

mission's draft. It could not, however, accept paragraph 2 since in Venezuela the category of persons mentioned in that paragraph were subject to income tax like other residents of the country.

18. Mr. BLANKINSHIP (United States of America) said that his delegation was in favour of maintaining, as far as possible, the International Law Commission's draft, which was similar to the corresponding article in the Vienna Convention on Diplomatic Relations. From the administrative point of view it would be helpful to the tax authorities and the Treasury if the texts were similar, and to that extent his delegation would tend to equate diplomatic and consular immunities. It would not wish to see tax exemption lessened to any significant extent, although it would perhaps favour the withdrawal of exemption privileges from permanent residents in the receiving State. It was therefore hoped that paragraph 4 (b) of the International Law Commission's commentary could be taken into account with respect to permanent residents of the receiving State in addition to the formal inclusion in article 69 of a provision concerning such residents.

19. His delegation's position in regard to the various amendments would be generally in accordance with the views just outlined. His delegation agreed with the amendment submitted by Thailand (L.67), but was inclined to the view that the matter should be dealt with in article 69. In regard to the Belgian amendment (L.133) his delegation agreed that members of consular employees' families who were gainfully employed should not be granted exemption, but it might be more convenient to cover the point in article 56. In regard to the amendment presented by the Ukrainian Soviet Socialist Republic, his delegation felt that it might be preferable to adhere to the International Law Commission's draft in that instance. His delegation would support the French amendment to paragraph 1 (a) (L.195, part 1), which would bring the language into exact conformity with article 34 of the Vienna Convention. His delegation could support the Canadian amendment (L.193) although its full implication and substance were not entirely clear.

20. The attention of the drafting committee should be drawn to several points in the text where changes might be made to ensure conformity with the text of article 34 of the Vienna Convention; for example, the substitution of "except" for "save" in paragraph 1.

21. Mr. MARESCA (Italy) said that in view of the existing customary law, and the national legislation which had developed from it, it was impossible to accept such comprehensive exemption from taxation as was granted by the International Law Commission's draft of article 48. Consular employees (or, as they were now termed, "service staff") could be given the same exemption as consular officials only in respect of any official emoluments or salary received by them as compensation for their services. It should be remembered that the corresponding article in the 1961 Convention (article 34) was governed by article 37 of that convention, under which exemption was not automatically granted to those who were not nationals of the sending State or who were permanently resident in the receiving State. Since

there was no similar qualifying provision in the draft articles on consular relations, there was no restriction on the exemption granted by article 48. The Netherlands proposal for the re-draft of the article (L.18/Rev.1) made a clear distinction between consular officials and members of the consulate and would allow exemption from taxation to be granted in accordance with the established and acceptable practice. It would be in the interests of all States if the Netherlands proposal were allowed priority in voting, and were approved by the Committee. If the criterion of equal treatment for all members of the consulate were maintained, it would be necessary at least to introduce some limitation in regard to members of families who were carrying on a gainful private occupation in the receiving State.

22. Mr. von NUMERS (Finland) said that the extent of the privileges and immunities granted under article 48 was less than in most other articles in that section. The article contained provisions of limited scope for the avoidance of double taxation. Under Finnish law, persons in the employment of a consulate in any capacity, including the private staff, were exempted from taxation, but only if they were not citizens of Finland. His delegation hoped that the text of article 69 would make satisfactory provision on that point.

23. The CHAIRMAN said that he would invite the sponsors of amendments to reply, should they consider it necessary to do so, to points made in the discussion of the article as a whole. He would then propose to put to the vote, paragraph by paragraph, the International Law Commission's draft of article 48 and the amendments relating to it. In his view, the Netherlands text and the Belgian text were new proposals in accordance with rule 42 of the rules of procedure, and not amendments within the definition in rule 41. The amendments to the International Law Commission text and the text itself should therefore be voted on first. If they were adopted, the new proposals would automatically lapse.

24. Baron van BOETZELAER (Netherlands) said that his delegation would have preferred its proposal to be considered before the International Law Commission draft.

25. Mr. SPACIL (Czechoslovakia) endorsed the Chairman's view that the Netherlands and Belgian texts were new proposals under the rules of procedure.

26. The CHAIRMAN recognized that it was not an easy question to decide and that the conclusion he had reached after very careful consideration might not be accepted by all members of the Committee. Although he did not consider that his view of the matter was being challenged, he would ask the Committee to decide by a vote whether the Netherlands and Belgian texts should be considered as new proposals.

The Committee decided that the Netherlands text (A/CONF.25/C.2/L.18/Rev.1) should be considered as a new proposal by 47 votes to 6, with 8 abstentions.

The Committee decided that the Belgian text (A/CONF.25/C.2/L.133) should be considered as a new proposal by 39 votes to 9, with 12 abstentions.

27. Mr. SRESHTHAPUTRA (Thailand) said that his delegation considered that article 69 of the International Law Commission's draft covered only the case of nationals of the receiving State and not that of persons who had taken up residence there. His delegation therefore thought it preferable to deal with both cases — namely, the nationals and the permanent residents of the receiving State in the article under consideration — because it was not known what decision the Committee might take in regard to article 69. His delegation would readily accept the sub-amendment proposed by the representative of Kuwait.

28. Mr. HEUMAN (France) said that his delegation would accept the drafting change suggested by the representative of the United States, to the effect that the word "except" should be substituted for "save" in paragraph 1. It would abstain from voting on the amendments submitted by the Ukrainian Soviet Socialist Republic (L.142) and by Australia (L.197) and would vote in favour of the Netherlands proposal to add a new paragraph (L.110).

29. Mr. DRAKE (South Africa) said that after consultation with the Canadian delegation he would suggest that the text of the French amendment to paragraph 1 (b) should end with the words "subject, however, to the application of the provisions of article 31."

30. Mr. HEUMAN (France) agreed that the French amendment should be revised in accordance with that suggestion.

31. Baron van BOETZELAER (Netherlands) said that his delegation was prepared to accept the rejection of the part of its proposal (L.109) considered in connection with article 47 as implying that the first part of that proposal would be unacceptable to the Committee in connexion with article 48. The other new paragraph proposed by his delegation (L.110) was a complement to paragraph 3 of article 47.

32. The CHAIRMAN asked if the Netherlands proposal (L.110) replaced the first article in document L.109.

33. Baron van BOETZELAER (Netherlands) pointed out that the proposal in L.109 had referred to "the consulate" but the text of L.110 referred to "members of the consulate".

The amendment to the opening sentence of paragraph 1 submitted by the Ukrainian Soviet Socialist Republic (A/CONF.25/C.2/L.142) was rejected by 32 votes to 15, with 14 abstentions.

The amendment to the opening sentence of paragraph 1 submitted by Japan (A/CONF.25/C.2/L.84/Rev.1) was rejected by 30 votes to 23, with 8 abstentions.

The opening sentence of paragraph 1 of the International Law Commission's text was adopted by 54 votes to 1, with 6 abstentions.

The French amendment to paragraph 1 (a) (A/CONF.25/C.2/L.195) was adopted by 42 votes to 1, with 17 abstentions.

The Swiss amendment to paragraph 1 (a) (A/CONF.25/C.2/L.158) was rejected by 20 votes to 17, with 27 abstentions.

34. The CHAIRMAN invited the Committee to vote on the French amendment to paragraph 1 (b) which, as revised, would read: "(b) Dues or taxes on private immovable property situated in the territory of the receiving State, subject, however, to the application of the provisions of article 31."

The French amendment to paragraph 1 (b) (A/CONF.25/C.2/L.195), as revised, was adopted by 49 votes to 2, with 11 abstentions.

The Canadian amendment to paragraph 1 (c) (A/CONF.25/C.2/L.193) was rejected by 19 votes to 12, with 31 abstentions.

Paragraph 1 (c) of the International Law Commission's text was adopted unanimously.

35. The CHAIRMAN said that as no amendments had been submitted to sub-paragraphs (d), (e) and (f) of paragraph 1 it would be unnecessary to take separate votes on them. He would therefore put to the vote paragraph 1, as amended.

Paragraph 1 as a whole, as amended, was adopted by 60 votes to none, with 3 abstentions.

36. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) withdrew his amendment to paragraph 2 (L.142) since it had been related to his delegation's amendment to paragraph 1, which had been rejected by the Committee.

The Japanese amendment to paragraph 2 (A/CONF.25/C.2/L.84/Rev.1) was rejected by 31 votes to 17, with 12 abstentions.

37. The CHAIRMAN invited the Committee to vote on the amendment submitted by Thailand which, as revised, would mean the insertion after the words "Members of the service staff and members of the private staff who are" of the words "not nationals of the receiving State nor permanent residents thereof but are..."

The amendment submitted by Thailand to paragraph 2 (A/CONF.25/C.2/L.67), as revised, was adopted by 31 votes to 9, with 22 abstentions.

The Australian amendment to paragraph 2 (A/CONF.25/C.2/L.197) was rejected by 22 votes to 6, with 32 abstentions.

38. The CHAIRMAN invited the Committee to vote on the Netherlands proposal to add a new paragraph to article 48.

The Netherlands proposal (A/CONF.25/C.2/L.110) for the addition of a new paragraph was adopted by 26 votes to 8, with 27 abstentions.

Article 48, as a whole, as amended, was adopted by 60 votes to none, with 3 abstentions.

39. Mr. SPACIL (Czechoslovakia) noted that the amendment to paragraph 2 submitted by Thailand, as sub-amended and approved by the Committee, referred to members of the service staff and members of the private staff who were not "permanent residents" of the receiving State. His delegation wished it to be understood that it should be the receiving State which should determine whether or not such persons were permanent residents.

40. Mr. VRANKEN (Belgium) said that his delegation had abstained from voting on the text of article 48 as approved by the Committee because his government could not agree that members of the families of consular officials or members of a consulate who were carrying on a gainful private occupation should enjoy the exemptions granted in paragraph 1 of the article.

The meeting rose at 6 p.m.

THIRTY-SECOND MEETING

Wednesday, 27 March 1963, at 10.50 a.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

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

Article 46 (Exemption from obligations in the matter of registration of aliens and residence and work permits) (continued)¹

1. The CHAIRMAN drew attention to the Chinese amendment (L.124) for the insertion of a new paragraph in article 46.

2. Mr. SHU (China) said that as he had introduced his amendment at the 28th meeting he only wished to add that he would accept the amendment proposed by the representative of France to replace the list at the beginning of his text by the words "The persons referred to in paragraph 1".

The Chinese amendment (A/CONF.25/C.2/L.124) was rejected by 18 votes to 17, with 23 abstentions.

Article 46 A (Exemption from obligations in the matter of work permits)

3. The CHAIRMAN recalled that, at its 30th meeting, the Committee had decided that paragraph 2 of article 46 of the International Law Commission's draft should become article 46 A, to read provisionally as follows:

"Members of the consulate, members of their families forming part of their households and their private staff shall be exempt from all obligations under the laws and regulations of the receiving State in regard to work permits imposed either on employers or on employees by the laws and regulations of the receiving State concerning the employment of foreign labour."

4. He drew attention to the six amendments to that text which had been submitted.²

5. Mr. HART (United Kingdom) said that if the joint amendment submitted by Greece, New Zealand

¹ Resumed from the thirtieth meeting.

² The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.198; France, A/CONF.25/C.2/L.199; Finland, A/CONF.25/C.2/L.203; Switzerland, A/CONF.25/C.2/L.204; Belgium, A/CONF.25/C.2/L.205; Greece, New Zealand and the United Kingdom, A/CONF.25/C.2/L.206.