United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

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21st meeting of the Plenary

Extract from the
Official Records of the United Nations Conference on Consular Relations, vol. I
(Summary records of plenary meetings and of meetings of
the First and Second Committees)

Abstaining: Morocco, Philippines, San Marino, Saudi Arabia, South Africa, Spain, Tunisia, Cuba, Czechoslovakia, Ethiopia, Indonesia, Japan, Libya.

The United Kingdom amendment (A/CONF.25/L.50) was adopted by 65 votes to 2, with 13 abstentions.

109. The PRESIDENT invited the Conference to vote on the joint amendment (A/CONF.25/L.49).

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

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

In favour: Liberia, Liechtenstein, Luxembourg, Mali, Mexico, Morocco, Netherlands, New Zealand, Pakistan, Panama, Peru, Philippines, San Marino, Sierra Leone, South Africa, Sweden, Switzerland, Syria, Thailand, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela, Republic of Viet-Nam, Argentina, Australia, Austria, Brazil, Cambodia, Canada, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Leopoldville), Costa Rica, Denmark, Dominican Republic, El Salvador, Ethiopia, Federation of Malaya, France, Federal Republic of Germany, Ghana, Guinea, Holy See, India, Indonesia, Iran, Ireland, Japan, Republic of Korea.

Against: Lebanon, Mongolia, Norway, Poland, Portugal, Romania, Spain, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Albania, Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Finland, Hungary, Italy.

Abstaining: Libya, Saudi Arabia, Turkey, Belgium, Greece.

The joint amendment (A/CONF.25/L.49) was adopted by 55 votes to 20, with 5 abstentions.

110. Mr. PETRŽELKA (Czechoslovakia) moved that a separate vote be taken on the last sentence of paragraph 1 (*c*) of the seventeen-power proposal.

111. Mr. CAMERON (United States of America) opposed the Czechoslovak motion.

112. Mr. USTOR (Hungary) supported the motion.

The Czechoslovak motion was defeated by 58 votes to 12, with 9 abstentions.

The seventeen-power proposal (A/CONF.25/L.41), as amended, was adopted by 64 votes to 13, with 3 abstentions.

113. Mr. DEJANY (Saudi Arabia) said he had abstained from voting on all the proposals. His delegation accepted the principle in article 36 as adopted, but reserved its position with regard to paragraph 1 (*b*). His country would conform to that provision, but in the time which was practicable in the particular circumstances.

114. Mr. AVILOV (Union of Soviet Socialist Republics) said he had voted against the seventeen-power proposal, since article 36 in that form was absolutely unacceptable to his delegation for reasons which he had explained in the course of the discussion.

115. Mr. PETRŽELKA (Czechoslovakia) said he had voted against the revised text of article 36 because it did not provide a sound basis for the development of customary international law. He had abstained from voting on the United Kingdom amendment — although it proposed a perfectly reasonable provision — because the priority given to the vote on that amendment was contrary to rule 41 of the rules of procedure.

116. Mr. CRISTESCU (Romania), Mr. NESHO (Albania), Mr. KONSTANTINOV (Bulgaria), Mr. AVAKOV (Byelorussian Soviet Socialist Republic) and Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that they had voted against the article as revised because it was totally unacceptable to their delegations.

The meeting rose at 7.45 p.m.

TWENTY-FIRST PLENARY MEETING

Monday, 22 April 1963, at 10.45 a.m.

President: Mr. VEROSTA (Austria)

Consideration of the question of consular relations in accordance with resolution 1685 (XVI) adopted by the General Assembly on 18 December 1961 (*continued*)

[Agenda item 10]

DRAFT CONVENTION

Article 72 (Settlement of disputes)

Proposal for an Optional Protocol concerning the Compulsory Settlement of Disputes

1. The PRESIDENT invited the Conference to consider article 72 (Settlement of disputes). No amendments had been proposed to that article but the Conference had before it a joint proposal (A/CONF.25/L.46) put forward by twenty delegations for an optional protocol concerning the compulsory settlement of disputes, as an alternative to the inclusion of article 72.

2. Mr. KRISHNA RAO (India), introducing the joint proposal on behalf of its sponsors, said that in the First Committee a sort of public opinion poll had been conducted by means of a roll-call vote on article 72.[1] The result of that vote had been described by some as a victory of the ideals of justice. The vote in question had placed in an awkward and embarrassing position many countries which had accepted the jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Court's statute.

3. The impression had been created that the Court was a perfect instrument for the purpose of deciding all legal disputes and that any criticism of the Court should not be tolerated. He could fully understand the attitude of some European countries which genuinely placed their faith in the Court. However, he could not accept

[1] For the discussion of this question in the First Committee, see the summary records of the twenty-ninth, thirtieth, and thirty-first meetings of that committee.

that great concern for the Court should be expressed by States which, in their declarations under article 36, paragraph 2, of the Statute, denied the Court the right to decide its own jurisdiction, as set forth in paragraph 6 of the same article 36. The record of India in that respect was much better than that of the latter group of countries. In that connexion, it was not inappropriate to cite the dictum of English law that " those who come to equity should come with clean hands ". He agreed that every endeavour should be made to encourage as many States as possible to accept the jurisdiction of the Court. At the same time, however, an effort should be made to ascertain the reasons why so many States did not accept that jurisdiction and to remedy any defects which might thus be revealed.

4. While he agreed that the subject of the discussion came within the scope of paragraphs 1 and 2 of Article 36 of the Court's statute, he thought it essential to face the problem of the reasons for the reluctance of States to submit their disputes to the Court. Some of those reasons were apparent and some were concealed. He would not attempt an exhaustive analysis of those reasons but would confine his remarks to some of the more important ones.

5. The first reason was a general fear arising from the insufficiency and uncertainty of the rules of international law for the purpose of dealing with all the situations arising between States. Owing to the recent origin of many rules of international law, to the fact that they were few in number and uncertain in character, and to the constitutional difficulty of creating new rules and of amending obsolete ones, international law, more than any other system of law, suffered from considerable gaps and deficiencies. As a result, a decision in accordance with the law was frequently impossible to obtain.

6. Secondly, it had been stressed by many leading authorities that, in order to make reference to a court compulsory, the law of nations first had to be defined with greater precision. The late Mr. John Foster Dulles had pointed out that resort to alleged custom and to the teachings of publicists in order to fill the gaps in international law would inevitably lead the International Court into the path of judicial legislation and political expediency.

7. Another fundamental objection was that not all conflicts of interest were capable of being terminated by judicial techniques within the existing legal framework. The absence of any effective machinery for the execution of the Court's judgements was another important point to be borne in mind.

8. But perhaps the most important reason for the rejection by some States of the jurisdiction of the Court was a lack of confidence in the impartiality of its judgements. The composition of the Court did not, as the Statute desired, represent equally the different legal systems of the world. The American continent was represented by five members, whereas there were only two judges from Asia and one from Africa. In the circumstances, a new country of Asia of Africa could hardly be criticized for hesitating to accept the jurisdiction of the Court in any matter. The General Assembly had been endeavouring to remedy the defects of the Court for a number of years but had met with no success whatsoever.

9. The element of confidence had been and remained the most important factor in determining the extent to which States were prepared to accept the jurisdiction of the Court. It was therefore the duty of all lawyers to strengthen that confidence and to remedy the deficiencies of the Court, while at the same time encouraging States to accept its jurisdiction.

10. Article 72 as drafted would create political and also legal difficulties. It would mean that reservations to other articles would be formulated. In any case, it made illogical reading because what was contained in paragraph 1 was, in fact, taken away by paragraph 2. Accordingly, the sponsors of the joint proposal (A/CONF.25/L.46) considered that article 72 should be replaced by an optional protocol on the compulsory settlement of disputes. He recalled, in that connexion, that the United States representative at the San Francisco Conference in 1945 had stressed the advantages of an optional provision which would enable States favouring compulsory jurisdiction to remain consistent with their principles while permitting other States to maintain their views.

11. The sponsors of the joint proposal would, at the appropriate stage, request that it should be voted upon before article 72.

12. Mr. RUEGGER (Switzerland) said that article 72 should be adopted as it stood. Paragraph 1 of the article set forth in clear and simple terms the principle of the compulsory jurisdiction of the International Court of Justice, in accordance with the practice of a large number of States in connexion with the settlement of disputes concerning the interpretation or application of bilateral and multilateral treaties.

13. He had noted with great satisfaction that many States, including a number of newly independent States, had shown by their votes that they favoured the principle of compulsory jurisdiction, at least with respect to a technical convention like that on consular relations and with respect to disputes which were legal and not political in character. He hoped that the number of such States would increase when the next codification conferences were held and that still more States would realize, as Switzerland had done as the result of its long and fruitful experience, that the principle of the judicial settlement of legal disputes at the request of any of the parties constituted a most valuable safeguard, especially for small States. That form of settlement of legal disputes removed them from the realm of political pressures and ensured that they would be settled in accordance with law.

14. He pointed out that in at least one other sphere — one that was undoubtedly more important than that which formed the subject of the Conference — a provision similar to article 72 had already been universally accepted. That provision was contained in the Constitution of the International Labour Organisation. Nearly all the States represented at the Conference were members of that Organisation and, in order to become members,

they had had to subscribe to its Constitution, which contained an absolute jurisdiction clause.

15. Nevertheless, it had to be recognized that not all of the States which wished to codify consular law were ready at the moment to subscribe to an absolute jurisdiction clause. It had been for that reason that the Swiss delegation had proposed the escape clause which had become paragraph 2 of article 72. That formula represented a definite advance by comparison with an optional protocol, which should remain in the background as a solution to be adopted in the last resort. He recalled that it had been his own delegation which had proposed the latter formula at the first Conference on the Law of the Sea, held at Geneva in 1958.

16. He did not believe that reservations under paragraph 2 would weaken the convention on consular relations in any way. Many treaties admitted reservations regarding the application of those treaties to certain territories or regarding certain special clauses. Above all, article 72 in its existing form established an effective link between the principle of compulsory jurisdiction and the convention, and it did not embody that principle in a separate document which several States might fail to sign, as experience since 1958 had shown.

17. Mr. CAMERON (United States of America) said that his delegation had voted in favour of article 72 when it had been considered by the First Committee. The adoption of that article indicated that some progress, albeit small, had been made towards the ultimate objective of ensuring that all legal disputes were disposed of by judicial settlement. The adoption of an optional protocol would be an admission that no progress had been made in the matter since the 1958 Conference on the Law of the Sea.

18. In the debate in the First Committee, he had pointed out the difference between the acceptance of the jurisdiction of the International Court of Justice with regard to the interpretation and application of a particular treaty, and the general acceptance of the jurisdiction of the Court under article 36, paragraph 1, of the Statute of the Court. The scope and range of Article 36, paragraph 1, of the Statute of the Court was very wide indeed, but a clause for the settlement of disputes such as article 72 constituted a provision on judicial settlement limited to the subject matter of the treaty. It would only affect the interpretation and application of the convention on consular relations. For that reason, his delegation had hoped that certain States which could not accept the jurisdiction of the Court under article 36, paragraph 2, of the Statute would nevertheless be prepared to accept that jurisdiction with regard to a purely technical convention having very modest political implications. His delegation had also hoped that all States which proclaimed their faith in the principle of the peaceful settlement of disputes would join in urging other delegations to accept article 72.

19. Article 72 had been adopted by the First Committee by a simple majority. The vote had clearly shown that the provision did not have the support of two-thirds of the delegations. Thorough and recent consultations had confirmed that the article would not obtain that two-thirds majority. In that event, the Conference had before it an alternative proposal for an optional protocol along the lines of that adopted at the 1958 Conference on the Law of the Sea and the 1961 Conference on Diplomatic Relations. His delegation would be prepared to accept such an optional protocol as an alternative to article 72, but regretted the indication that little progress had been made during the past five years towards a system of compulsory judicial settlement of legal disputes.

20. His delegation would not oppose a motion by the sponsors of the joint proposal that that proposal should be put to the vote first.

21. Mr. WESTRUP (Sweden) paid a tribute to the United States delegation, whose attitude had made it possible to adopt in the First Committee the provision on settlement of disputes embodied in paragraph 1 of article 72. He also paid a tribute to the Yugoslav delegation which, by reintroducing during the discussion in the First Committee the proposal for what was now paragraph 2, had enabled that committee to adopt a disputes clause which represented some progress from the formula of the optional protocol.

22. The advantage of the formula embodied in article 72 lay in the fact that a State which did not wish paragraph 1 of that article to apply would have to make an express declaration under paragraph 2. Silence would be construed as signifying support for the principle of judicial settlement. The position would be exactly the reverse if article 72 were to be replaced by an optional protocol.

23. He regretted that a move should have been made for putting the proposed optional protocol to the vote first. That procedural move would have the result of avoiding a vote on the substance of the question. However, Sweden had always bowed to the will of the majority in such procedural matters and would not adopt an intransigent attitude regarding the motion for priority.

24. His delegation saw grounds for satisfaction in the results of the work of the First Committee. The adoption of article 72 by that committee represented some progress towards the ideal of judicial settlement of international disputes to which Sweden had always been faithful. The votes cast in that committee had shown increasing support for that ideal.

25. Mr. RUEGGER (Switzerland) said that his delegation would not oppose the motion that the proposed optional protocol should be put to the vote first. It had decided on that course in the light of the special circumstances prevailing at the close of the Conference and more particularly in the light of the attitude adopted by the delegations of the United States and Sweden and the fact that opinion in the Conference was clearly divided. His delegation had also taken into account the fact that the roll-call vote in the First Committee had shown that satisfactory progress had been made towards the idea of a genuinely compulsory clause for judicial settlement. He was convinced that the idea put forward by his delegation would continue to gain ground and that as a result of a wider measure of agreement, future conventions codifying international law

would contain watertight clauses for the judicial settlement or arbitration of disputes. He earnestly appealed to all States which had signified by their votes their support for the idea of compulsory jurisdiction to sign the protocol and to render it a living and effective instrument, thus contributing to the establishment of a link between international legislation and compulsory jurisdiction.

26. Mr. MAMELI (Italy) said that the Italian school of public law had consistently upheld the principle that all disputes, however important, could and should be settled by the International Court of Justice or alternatively by arbitration. Accordingly, his delegation had voted in favour of article 72 in the First Committee. His delegation would also have been prepared to accept an arbitration clause, if one had been proposed. If, however, article 72 was not included in the convention finally adopted by the plenary and if no arbitration clause was suggested, his delegation would accept an optional protocol as a second best, or perhaps even a third best, solution. The adoption of such a protocol would mean that something would remain of the principle of the judicial settlement of disputes.

27. Mr. QUINTANA (Argentina) said that his delegation had fully explained its views in the First Committee. His government was in favour of the pacific settlement of international disputes and it had always been its policy to resort to arbitration in disputes with another country. Many important problems had been solved by that method, but in each case his government had accepted arbitration only for the particular matter in question: the only exceptions made by his government concerned certain humanitarian conventions. He would therefore be unable to accept any article which did not provide for consent in each case where a dispute was to be submitted to the International Court of Justice.

28. For the reasons stated, he considered that the convention under consideration should follow the precedent set by the Convention on Diplomatic Relations and be accompanied by an optional protocol. Such a solution would meet the wishes of most delegations and remove the risk of reservations to the convention. He therefore supported the joint proposal.

29. Mr. USTOR (Hungary) endorsed the statement of the representative of India. The peaceful settlement of disputes was one of the most important problems of international law. There were numerous methods for peaceful settlement, ranging from direct negotiation between the States concerned to compulsory submission to the International Court of Justice. Although he preferred the method of direct negotiation, he would not oppose other methods, such as recourse to the International Court of Justice; but his government, like most other governments, would not wish to commit itself irrevocably under the convention to accept the jurisdiction of the Court.

30. The question facing the Conference was really a procedural and not a substantive one — namely, how to deal with a situation in which some States were ready to submit disputes to the International Court and some were not. There were two solutions: to adopt article 72, which did not correspond with existing practice and would therefore cause difficulty to many States which would have to make reservations, or to adopt the proposal for an optional protocol, which in his opinion fully met the requirements of the situation. He would therefore vote against article 72 and in favour of the joint proposal. He would also support the motion that the proposal be put to the vote first.

31. Mr. de ERICE y O'SEA (Spain) said he had sponsored the joint proposal in a spirit of co-operation with friendly States and also because the Convention on Diplomatic Relations had an optional protocol. He reaffirmed his belief in international justice and in the peaceful settlement of disputes, the value of which had been amply demonstrated in practice. Nevertheless, he agreed with the views of the representatives of Argentina, Sweden, Switzerland and the United States of America and recognized that an optional protocol would be better than an article which might attract reservations. He therefore supported the proposal for an optional protocol and the Indian motion that it be voted on first.

32. Mr. VAZ PINTO (Portugal) said that he was in general agreement with the statements made by the representatives of Switzerland, United States of America, Sweden and Italy. The question of the settlement of disputes raised serious issues of principle. His delegation would not oppose the joint proposal for an optional protocol on the subject, but wished to make it clear that it accepted the protocol as a mere political expedient. The Portuguese delegation in no wise accepted the reasons which had been put forward in favour of that proposal. It considered it as a compromise solution and as such, as one based not on legal grounds but on grounds of policy.

33. Professor Kelsen had once referred to the three key figures in an organized society: the legislator, the judge and the policeman. He had said that, in international society, it was the judge who was needed most. The work of the legislator was useless without a judge to apply it, and the policeman could not perform his task unless the judge was there to lay down the law. International law was greatly in need of a judiciary capable of performing the role fulfilled by the Praetor in Roman law and by the judge in countries where English and American law prevailed. It had been suggested that international justice was imperfect because of the imperfection of international law. In fact, the position was quite the reverse: it was the deficiency of international justice which accounted for the imperfections of international law.

34. Mr. BARTOŠ (Yugoslavia) recalled that, in the First Committee, his delegation had reintroduced that part of the Swiss amendment which had since become paragraph 2 of article 72. Accordingly, his delegation had a duty to make its position clear on that article and on the proposal for an optional protocol in lieu thereof.

35. The United Nations Charter embodied the ideal of the compulsory jurisdiction of the International Court of Justice; that jurisdiction would not only provide

international law with a sanction but would also make for the certainty of international law. In that connexion, he was in agreement with the valuable remarks made by the representative of Portugal. However, the Charter did not impose a legal obligation upon States Members to accept judicial settlement. The Charter had thus accepted the idea that, for a variety of reasons, States might not be able to subscribe to a clause on the compulsory settlement of disputes by the Court. It would therefore not be appropriate to impose at the present Conference an obligation which, according to the Charter, did not constitute a general obligation under international law. It was necessary to take into account the reasons for which compulsory jurisdiction might have been rejected or accepted by States Members in pursuance of the right given to them by the Charter to subscribe to that compulsory jurisdiction or not, at their choice.

36. His delegation could support any solution which was consistent with the foregoing principles. It would therefore vote in favour of the joint proposal for an optional protocol when that proposal was put to the vote. In that connexion, he stated that, of all the countries of Europe and America, Yugoslavia alone had deposited its instrument of ratification of the Optional Protocol concerning the Compulsory Settlement of Disputes attached to the Convention on Diplomatic Relations, 1961.

37. He fully understood, however, the reluctance of some States to accept an obligation which was not imposed by the Charter but which was presented by the Charter as an ideal. It would not serve the cause of the development of international justice, nor would it strengthen the authority of the International Court of Justice, to insist on a vote on the text of article 72, which had no prospect of obtaining the two-thirds majority required for adoption. The failure to obtain the required majority might even be interpreted as a rejection of the idea of the judicial settlement of international disputes.

38. After the adoption of paragraph 1 of article 72, his delegation had sponsored the introduction of paragraph 2, although it believed that the resulting formula would be less elegant than an optional protocol on the settlement of disputes. A declaration under paragraph 2 would mean that the State making the reservation wished to depart from the general principle of international justice. With the formula of an optional protocol, however, States would instead be invited to affirm their faith in international justice by subscribing to the protocol. The adoption of paragraph 1 of article 72, however, had left his delegation no option but to propose the adoption of the somewhat inelegant formula of inserting paragraph 2 but he still preferred an optional protocol and would vote in favour of the joint proposal to that effect.

39. His delegation would agree to the optional protocol being voted upon first.

40. Mr. CRISTESCU (Romania) said that he had fully explained in the First Committee the reasons why his delegation could not accept article 72, which provided for the settlement of disputes arising out of the convention by the International Court of Justice. When the Statute of the Court had been drafted, most States had taken the view that its jurisdiction should not be compulsory but that the consent of all parties to a dispute concerning the interpretation of any article of an international convention should be required before the dispute could be submitted to the Court. In other words, the majority of States had recognized that the procedure should be optional and not compulsory; of the few which had recognized compulsory jurisdiction, some had made extensive reservations. Article 36, paragraph 1, of the Statute should accordingly be applied subject to the proviso that States were free to decide in each specific case whether they would accept the Court's jurisdiction; otherwise the sovereign rights of States would be infringed. The principle of freedom of recourse to the Court was the basis of international justice. National sovereignty was of paramount importance to countries which had acquired it through hard struggle and at the cost of many sacrifices. The introduction in the convention of an article imposing a compulsory obligation would be at variance with the practice observed at other United Nations codification conferences, such as the Conference on the Law of the Sea and the Conference on Diplomatic Relations, where separate optional protocols had been adopted. Even the provision for reservations under article 72, paragraph 2, would be unacceptable to many delegations. It was true that every sovereign State had the right to make reservations to multilateral conventions in order to protect their special interests, but paragraph 2 would open the door to arbitrary interpretations of the convention. In his opinion a provision for the compulsory settlement of disputes on the interpretation and application of the convention by the International Court of Justice would be out of place in an instrument codifying the international law on consular relations. There were many modes of peaceful settlement, such as those mentioned in Article 33 of the Charter. The best method was negotiation. Recourse to the International Court of Justice was the most difficult and the most costly. For those reasons he would vote against article 72 and would support the proposed optional protocol.

41. Mr. LETTS (Peru) supported the joint proposal for an optional protocol concerning the settlement of disputes and also the motion that it should be voted on first. The optional protocol would be consistent with practice; it would promote acceptance and ratification of the convention; and it followed an established precedent. The adoption of article 72 would undoubtedly cause difficulties. He would vote for the optional protocol and, if it were adopted, would sign it.

42. Mr. MUÑOZ MORATORIO (Uruguay) said he would support article 72 if it were put to the vote, for its provisions were in keeping with his government's traditional policy, though he would have preferred the article without paragraph 2, which gave States the possibility of making reservations. If, however, the Conference adopted the joint proposal for an optional protocol, he would sign the protocol. He would abstain

from voting on the motion that it be put to the vote first, for in his opinion the optional protocol and article 72 were of equal importance.

43. Mr. EVANS (United Kingdom) said that his government fully supported the International Court of Justice and regarded it as the appropriate body to adjudicate on disputes arising from the convention. He would have preferred the article on the settlement of disputes as approved by the First Committee, for it represented a step forward; but he would vote for the optional protocol if the Conference preferred it and decided to vote on it first. He would abstain from voting on the motion for giving the protocol priority.

44. Mr. PETRŽELKA (Czechoslovakia) said that he had opposed article 72 in the First Committee. A convention on consular relations should become part of general international law and it should not contain a provision making it compulsory for States to refer disputes arising out of the convention to the International Court of Justice. Such a provision would violate the principle of the sovereignty and equality of States. He fully supported the optional protocol, which represented a serious effort to reach a compromise acceptable to all the States represented at the Conference. He also supported the motion that the protocol be put to the vote first.

45. Mr. HENAO-HENAO (Colombia) said that his delegation had voted in favour of article 72 in the First Committee and recalled that the Colombian delegation had proposed the compulsory settlement of disputes at the Conference on the Law of the Sea in 1958.[2] At the Conference on Diplomatic Relations in 1961, the Colombian delegation had voted in favour of the optional protocol because, like the other countries of Latin America, Colombia's traditional policy was to seek the peaceful settlement of international disputes.

46. Of the many efforts made in the past to promote methods of peaceful settlement of disputes, he would mention only the treaties of conciliation and peaceful settlement known as the Gondra and Saavedra Lamas treaties which, between 1923 and 1931, had started the codification of such methods. The most far-reaching effort had been made by the Latin American countries at the Ninth Pan-American Conference at Bogotá, which had adopted a treaty known as the Pact of Bogotá or Inter-American Treaty on Pacific Settlement, whose fundamental article provided that States parties to the treaty recognized, in relation to other American States, as compulsory *ipso facto*, without the necessity of any special agreement, the jurisdiction of the International Court of Justice in all disputes of a juridical nature arising between them concerning, among other things, the interpretation of a treaty.[3]

47. That treaty had been ratified by Colombia, in keeping with his country's traditional policy, shared with other Latin American countries, of endeavouring to secure the settlement of international disputes by judicial process.

48. He supported the views of the representatives of Switzerland, Italy and Portugal. Although the compromise of an optional protocol was not the ideal solution, nor fully satisfactory, he was prepared to accept it as the best obtainable in the circumstances and because it maintained the position of the International Court of Justice.

49. Mr. CABRERA-MACIA (Mexico) said that article 72 had been produced after prolonged debate in the First Committee as a compromise between representatives who wanted a provision for compulsory jurisdiction and those who did not. To that extent the result was a good one, but it was made less satisfactory by the escape clause in paragraph 2. The proposed optional protocol was also a compromise solution, and it would be better to have a convention with an optional protocol than a convention which invited reservations. He would therefore vote for the proposed optional protocol.

50. Mr. MARAMBIO (Chile) confirmed the views of his delegation as stated in the First Committee. He was anxious that the convention should contain a provision concerning the settlement of disputes. He would support the proposal for an optional protocol because such a protocol would satisfy the majority of delegations and enable their governments to accept the convention.

51. The PRESIDENT invited the Conference to vote on the motion of the representative of India that the proposal for an optional protocol should be put to the vote first.

The motion was carried by 48 votes to 1, with 28 abstentions.

The proposal for an optional protocol (A/CONF.25/L.46) was adopted by 79 votes to none, with 3 abstentions.[4]

52. Mr. de MENTHON (France) said he had supported article 72 in the First Committee because it was realistic. Although he was in favour of compulsory jurisdiction, he had voted for the optional protocol and would sign it when he signed the convention.

53. Miss LAGERS (Netherlands) said that as representative of the host country of the International Court of Justice, which had accepted the Court's compulsory jurisdiction, she was disappointed at the rejection of article 72. She had not, however, wished to vote against the wishes of the majority and had therefore abstained from voting on the motion for priority and on the optional protocol itself. She shared the views of the representative of Switzerland and hoped that as many countries as possible would sign the optional protocol.

54. Mr. SHU (China) said that his government was a strong supporter of the compulsory jurisdiction of the International Court of Justice. He would have preferred article 72 as approved by the First Committee for the reason stated by the representative of Switzerland, and had therefore voted against the motion for priority. In a spirit of co-operation, however, he had voted in favour of the optional protocol as the second best solution.

[2] See *United Nations Conference on the Law of the Sea, 1958, Official Records*, vol. II (United Nations publication, Sales No. 58.V.4, vol. II), p. 111.

[3] See United Nations, *Treaty Series*, vol. 30, No. 449, p. 94.

[4] In consequence of this decision, it was unnecessary to vote on article 72. The text of the optional protocol will be found in document A/CONF.25/15.

FINAL PROVISIONS

Article 73 (Signature)

55. The PRESIDENT invited debate on the final provisions (articles 73 to 78) as prepared by the drafting committee (A/CONF.25/L.11).

56. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he would like to outline his delegation's attitude to the final provisions. The task of the Conference had been to draw up a convention governing consular relations between all States. The Convention dealt with a wide range of questions concerning consular services, and he hoped that it would be used by many States. It should consequently be open to accession by the largest possible number of States. Such broad participation would enhance the authority of the Convention and would be a favourable omen for its effective application in practice. Since ancient times, States had established consular relations; to restrict the number of possible parties was therefore historically unjustifiable and contrary to the spirit of the convention and the principle of international co-operation. One of the objects of consular relations was to foster amicable relations between States; the greater the number of States which could become parties to the Convention, the more widely would friendly relations be developed. Consequently, it was wrong to include in article 73 provisions limiting the number of potential parties.

57. In the First Committee, the Soviet Union delegation had introduced an amendment (A/CONF.25/L.158) to enable all States to become parties to the convention. It deeply regretted that the Committee had not seen its way to support that proposal. His delegation would vote against article 73 as drafted on account of the unjustified restrictions it contained and would also vote against the other articles (articles 75, 77 and 78) which contained like restrictions.

58. Mr. PETRŽELKA (Czechoslovakia) said the Czechoslovak delegation had always been firmly of the opinion that important international conventions covering general subjects of international life should be open to all States of the world without any discrimination and not only to limited groups of States. Accordingly, the Czechoslovak delegation could not consider articles 73, 75 and 77 acceptable, for those articles debarred a group of States, which for unfounded and unjustified political reasons had been prevented from participating in the Conference and from becoming parties to the Convention on Consular Relations. His delegation's attitude would be reflected in the vote on the articles in question.

59. Mr. MEYER LINDENBERG (Federal Republic of Germany) said that he supported the final provisions as drafted. He had previously pointed out in the First Committee that his country agreed that the convention, which codified international law, should be governed by the principle of universality. But that principle only applied to States, and not to other entities which did not possess the character of States. The Convention should be open to all States which were duly recognized as such but it could not be open to entities which were regarded by the majority of the international community as lacking the character of States. Article 73 as drafted did not discriminate against any States. It enabled any new and truly sovereign State to accede to the Convention provided that the General Assembly of the United Nations invited it to become a party to it. The text submitted was satisfactory and his delegation would vote for it.

60. Mr. KRISHNA RAO (India) said that agreements between States were a necessary element of international intercourse; the increase in their number and variety as international intercourse expanded produced a consciousness of mutual dependency. The scope and design of such agreements had reflected the changing needs of international society and the trend from isolation to intimate association with other nations. The treaties which a State concluded marked the progress of its relations with the outside world and the direction it had chosen. The increasing readiness of States to enter into agreements reflected their awareness of the common advantages to be derived from reciprocal undertakings to limit their individual freedom of action and their increasing confidence in the efficacy of international compacts.

61. The same considerations had played their part in encouraging States to conclude numerous multilateral conventions such as that under discussion. Since the beginning of the century, States had shown increasing readiness to conclude multilateral agreements that laid down rules of conduct binding on the parties thereto; those agreements had created a conventional international law. The fact that certain unscrupulous States had shown contempt for their compacts was no argument against the generally established trend towards the acceptance of international obligations.

62. Those considerations suggested that all States should be permitted to become parties to a multilateral convention which was non-political and utilitarian. The accession to the Convention of a State which was not recognized by all States would have no effect on international law or on the international recognition or representation of that State. The provisions of the convention were applicable between two States which had agreed to establish consular relations. If his delegation voted for the limitations to the accession of States as laid down in the article his government would not be able to appeal to the Convention or to apply its terms, if a dispute arose with a State which had been excluded from becoming a party to it. To do so would be illegal, illogical, unpractical and indefensible.

63. On the other hand, he thought that the Convention, which had been drawn up with such great labour, should not be endangered by a negative vote on the final provisions. His delegation would therefore abstain in the vote on article 73. If that article were adopted, it would vote in favour of articles 74 to 78.

64. Mr. BARTOŠ (Yugoslavia) said that the Convention should be regarded both as a treaty and as a law-making treaty [traité-loi] and should therefore be applied by all States. International law was tending to become universal and therefore despite its contractual

form, a traité-loi should be acceptable to all States, and all States should be obliged to respect it. Consequently he could not agree with the restrictions laid down in articles 73 and 75 and his delegation would abstain from voting on these articles.

65. His delegation hoped and desired that the General Assembly would take account of the principle of universality and would show itself sufficiently liberal to allow all States in the world to accede to the Convention.

66. Mr. USTOR (Hungary) protested against the overt discrimination contained in the final provisions. The provisions debarring certain States from becoming parties to the Convention violated the rules of contemporary international law and the requirements of the Convention itself. The Convention contained rules for universal application to all States, irrespective of their social system. The final provisions discriminated against certain socialist States, a discrimination introduced for political reasons. The German Democratic Republic, the Democratic Republic of Viet-Nam and the Democratic People's Republic of Korea had the same right to be parties to the Convention as any other States, not only in the interest of those States but in the interest of the international community as a whole. His delegation considered that the final provisions did not in any way affect the People's Republic of China because that State was a rightful member of the United Nations and of the Security Council.

67. Mr. DADZIE (Ghana) said that in view of the wide scope of consular relations, his delegation would have preferred participation in the Convention to be open to all States, even though General Assembly resolution 1685 (XVI) had denied to certain States the right to participate in the Conference. His delegation had stated its position quite clearly at the beginning of the Conference and he did not wish to add to that statement. He regretted that by debarring certain States from becoming parties to the Convention the final provisions would infringe the principle of universality which was preached in the Charter, but which certain nations did not find it convenient to practise. That discrimination would adversely affect the efficacy of the Convention. His delegation would therefore abstain in the vote on article 73.

68. Mr. TSHIMBALANGA (Congo, Leopoldville) agreed with the remarks of the representative of the Federal Republic of Germany and said that he would vote for article 73 and the other articles of the final provisions.

69. Mr. CHIN (Republic of Korea) said that the final provisions as drafted by the drafting committee were analogous to the corresponding clauses of the 1961 Convention on Diplomatic Relations. They were based on the principle of universality and contained no discrimination. Moreover, they were in conformity with General Assembly resolution 1685 (XVI) under which the Conference had been convened. The North Korean group was nothing but an illegal occupant against the will of the Korean people. The Government of the Republic of Korea was the only lawful government of the Korean peninsula recognized by the United Nations. In the First Committee, the Soviet Union amendment (A/CONF.25/C.1/L.158) had been rejected and the text before the Conference had been approved by more than a two-thirds majority. He fully supported the text as it stood.

70. Mr. OSIECKI (Poland) said that the final provisions as drafted were not acceptable to his delegation. The Polish Government had always been a firm supporter of the principle of universality to which it attached great importance and had defended it at a number of international conferences. The development of international relations showed that increasing importance was attached to the principle of universality, a tendency which was expressed in numerous important international conventions, notably in the four Geneva conventions of 12 August 1949 on the protection of war victims, which were open to all States. A convention of a general character could not be closed to any State wishing to accede to it. To prevent certain States from becoming parties to a convention of fundamental importance was contrary to international law. The desire of those States to accede to the Convention was perfectly legitimate, as it was in the interests of the Convention and of all States without distinction. His delegation would vote against articles 73, 75, 77 and 78.

71. Mr. NESHO (Albania) said that the Convention on Consular Relations was a universal instrument and should be open to all countries, including those which had not been able to participate in the Conference. Those countries included more than one-third of the world's population. His delegation would vote against articles 73, 75, 77 and 78.

72. Mr. CRISTESCU (Romania) said that his delegation would vote against article 73 because it was discriminatory and contrary to the principle of universality. The final provisions as drafted were contrary to contemporary international law and hindered the codification and progressive development of international law. He would vote against the articles.

73. Mr. RODRIGUEZ (Cuba) said that articles 73, 75, 77 and 78 were discriminatory and implied the negation of the principle of universality which should inform the Convention. He would vote against them.

74. Mr. ISMAIL bin AMBIA (Federation of Malaya) said that, at the 1961 Conference on Diplomatic Intercourse and Immunities (11th plenary meeting), the Malayan delegation had urged that all nations in the world should be given the opportunity of acceding to the Convention on Diplomatic Relations, but unfortunately its arguments had not found acceptance. In view of that, his delegation would abstain from voting on the final provisions.

75. Mr. CAMERON (United States of America) said that the United States delegation whole-heartedly supported the final provisions as prepared by the drafting committee because they followed the traditional pattern laid down in earlier conventions negotiated under the auspices of the United Nations. The deletion of the limitations in articles 73, 75, 77 and 78 would raise serious political questions which would make it difficult

for a number of States to sign the Convention. The responsibility for deciding which entities constituted States qualified to sign the Convention would be placed on the Secretary-General and on the Government of Austria. For those reasons, he considered articles 73 to 78 entirely acceptable and would vote for them.

76. Mr. PUREVJAL (Mongolia) said his delegation opposed articles 73, 75, 77 and 78 because they infringed one of the principles of the United Nations Charter; the principle of universality in international relations. All States, regardless of their form of political organization, should be free to accede to such fundamental international instruments as the convention under discussion. To deprive certain States of that right for political reasons was a continuation of the policy of discrimination practised against certain States. The Convention should be universal and without discrimination of any kind.

77. The PRESIDENT put article 73 to the vote.

At the request of the representative of the Federal Republic of Germany, a vote was taken by roll-call.

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

In favour: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Congo (Brazzaville), Congo (Leopoldville), Costa Rica, Denmark, Dominican Republic, El Salvador, Finland, France, Federal Republic of Germany, Greece, Holy See, Honduras, Iran, Ireland, Israel, Italy, Japan, Republic of Korea, Lebanon, Liberia, Liechtenstein, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Portugal, San Marino, Sierra Leone, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela, Republic of Viet-Nam.

Against: Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Hungary, Mongolia, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania.

Abstaining: Algeria, Cambodia, Ceylon, Federation of Malaya, Ghana, Guinea, India, Indonesia, Libya, Mali, Morocco, Saudi Arabia, Syria, Tunisia, United Arab Republic, Yugoslavia.

Article 73 was adopted by 54 votes to 11, with 16 abstentions.

78. Mr. SHU (China) said that his delegation had voted for article 73, because it considered that its provisions were adequate and in conformity with the letter and the spirit of the resolution of the General Assembly under which the Conference had been convened. The remarks made by certain representatives of communist countries concerning his country were out of order.

79. Mr. KIRCHSCHLAEGER (Austria) thanked the Conference for the confidence it had shown in his government by providing in article 73 that until 31 October 1963 the Convention would be open for signature at the Federal Ministry for Foreign Affairs in Vienna. He recognized the honour done to his country and assured the Conference that his government would fulfil the task entrusted to it in close co-operation with the General Assembly of the United Nations.

Article 74 (Ratification)

80. Mr. BARUNI (Libya) suggested that, since they were only general rules and did not raise any question of principle, the subsequent articles should be voted on together.

81. Mr. KHLESTOV (Union of Soviet Socialist Republics) opposed the suggestion. The articles in question should be put to the vote one by one in keeping with custom.

82. Mr. PETRŽELKA (Czechoslovakia) said that his delegation opposed some of the final provisions and wished to signify its disapproval by voting on them individually. He objected to the suggestion that the articles should be voted on together.

Article 74 was adopted unanimously.

Article 75 (Accession)

Article 75 was adopted by 60 votes to 11, with 9 abstentions.

Article 76 (Entry into force)

Article 76 was adopted unanimously.

Article 77
(Notifications by the Secretary-General)

83. Mr. KRISHNA RAO (India), chairman of the drafting committee, pointed out that sub-paragraph (*c*) should no longer appear in article 77 because article 72 had been replaced by an optional protocol.

Article 77 was adopted by 65 votes to 11, with 6 abstentions

Article 78 (Authentic texts)

Article 78 was adopted by 63 votes to 11, with 5 abstentions.

The final paragraphs, beginning " In witness whereof . . ." were adopted unanimously.

84. Mr. DADZIE (Ghana) said that his delegation had abstained from voting on articles 75, 77 and 78 in view of their close connexion with article 73.

85. Mr. KALENZAGA (Upper Volta) said that his delegation had been given full powers to sign the document on behalf, not only of his country, but of other countries of the African and Malagasy Union — namely, the Governments of Congo (Brazzaville), Cameroun, Niger, and Dahomey. Although those States would have signed the Convention by delegation, their governments would be glad to receive copies.

STATEMENT BY THE REPRESENTATIVE OF ITALY

86. The PRESIDENT said that the representative of Italy had asked to make a statement.

87. Mr. MARESCA (Italy) said that as he had stated in the First Committee, he considered that paragraph 2 of article 2 introduced in the Convention a contradictory element which was both specific and general. Specifically it conflicted with paragraph 3 and established a rule which was completely opposed to the spirit of the Convention which was based on the idea of the independence of consular from diplomatic relations. Like many other representatives, he had hoped that the paragraph would be deleted, but it had been retained. He therefore wished to state that paragraph 2 should not be interpreted to mean that consular relations were subsidiary or accessory to diplomatic relations or that the consent to the establishment of diplomatic relations necessarily implied a consent to the establishment of consular relations. Article 2, paragraph 2, did no more than raise a bare presumption — neither an irrebuttable nor even a rebuttable presumption within the meaning of the law, but a bare presumption which was, consequently, subject to severe qualification and which could be overridden by the slightest evidence to the contrary. Accordingly, the provision should be interpreted strictly in accordance with the rules of international courtesy and prudence, under which a country should take all necessary steps beforehand and not expose another country to the embarrassment of a refusal.

The meeting rose at 1.20 p.m.

TWENTY-SECOND PLENARY MEETING

Monday, 22 April 1963, at 4.53 p.m.

President: Mr. VEROSTA (Austria)

Consideration of the question of consular relations in accordance with resolution 1685 (XVI) adopted by the General Assembly on 18 December 1961 (*continued*)

[Agenda item 10]

OPTIONAL PROTOCOL CONCERNING ACQUISITION OF NATIONALITY

1. The PRESIDENT invited the Conference to comment on the optional protocol concerning the acquisition of nationality.

The protocol was adopted unanimously.[1]

DRAFT RESOLUTION ON REFUGEES

2. The PRESIDENT invited the Conference to consider the draft resolution on refugees.

3. Mr. RUEGGER (Switzerland) said that he would not oppose the draft resolution submitted to the Conference by the First Committee. Nevertheless, he did not think it really necessary to transmit to the organs of the United Nations, and more particularly to the High Commissioner for Refugees, the records of debates which had taken place under the auspices of the United Nations and which would shortly be available to everyone. The adoption of such a course might lead people to suppose that there was some problem, whereas in his view no real problem existed. Nothing in the Convention as adopted could affect the provisions of other international instruments in favour of refugees; such provisions constituted a *lex specialis*. In that connexion, the text of the Convention was confirmed by the statements of several delegations regarding their interpretation of certain clauses and the practice followed in their countries. It might perhaps have been useful to include an actual provision to that effect in the final clauses; but, even in the absence of such a provision, the legal position was perfectly clear. A convention of a technical nature on consular relations could not invalidate rules that were established by custom, like the rules dealing with the right of asylum, which was part of a State's sovereign rights. Reference could also be made in that connexion to the last paragraph of the preamble, which gave international customary law its rightful place.

4. For those reasons his delegation would not oppose the text of the resolution, but would abstain when it was put to the vote.

5. Mr. DADZIE (Ghana) thought that the very interesting debate in the Conference on the question of refugees which had led to the draft resolution before the Conference was a clear sign of the importance of the refugee question. Ghana was the most recent State to have ratified the Convention on the Status of Refugees, to which forty States were now parties, and he hoped that States which had not yet ratified the Convention would do so without delay, thus contributing to the rapid solution of the question.

6. Mr. EVANS (United Kingdom) said that the effect of the resolution was that the Conference would take no decision on the questions concerning refugees referred to in the memorandum of the United Nations High Commissioner for Refugees. Those questions therefore remained as they had been before the Conference began and if disputes arose, they would have to be settled outside the Convention. The Convention therefore in no way prejudiced the special status of refugees or their international protection.

7. Mr. MARESCA (Italy) agreed that the question of refugees remained open. But the answer lay in the old axiom *lex generalis non derogat priori speciali*; the relationship between the Convention on Consular Relations and the Convention relating to the Status of Refugees was the same as that between a subsequent general law and a pre-existing special law. The Italian delegation agreed with the statement by the Swiss representative and would also abstain from voting on the resolution.

8. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that he would vote for the draft resolution on refugees on the understanding that the Conven-

[1] The text will be found in document A/CONF.25/14.