

**United Nations Conference on the Representation of States
in Their Relations with International Organizations**

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20th meeting of the Committee of the Whole

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favoured retention of the ILC text because it took into account the principle of functional necessity and safeguarded the interests of the victims of accidents caused by members of the diplomatic staff of missions. It would not be opposed to any drafting changes which might improve the text of paragraph 1, subparagraph (d).

89. Mr. MOLINA LANDAETA (Venezuela) recalled that a similar discussion had been held in connexion with the Convention on Special Missions. He agreed with the International Law Commission's text of article 30 and could not support the Spanish and Pakistan proposal (A/CONF.67/C.1/L.56 and L.69) to delete subparagraph (d) of paragraph 1. He would however welcome a definition by the Expert Consultant of the term "vehicle" used in that subparagraph.

90. Mr. EL-ERIAN (Expert Consultant) said that it had been the intention of the ILC that vehicles should be construed in a broad sense to cover not only automobiles but other types of conveyance.

91. Mr. RAOELINA (Madagascar) said that in view of the definition just given of the word "vehicle", he would withdraw his oral amendment to paragraph 1, subparagraph (d) and would leave the matter to the Drafting Committee.

92. Sir Vincent EVANS (United Kingdom) asked whether, in line with his suggestion, the Peruvian representative would like to move, as a formal subamendment, the addition of the words "used or owned by a member of the mission" at the end of the United Kingdom amendment (A/CONF.67/C.1/L.61).

93. Mr. CALLE Y CALLE (Peru) said that he had some reservation about the Spanish word "*utilizado*", which was rather vague and might not cover the act of driving a vehicle.

94. Mr. MOLINA LANDAETA (Venezuela), agreeing with the Peruvian representative, asked for the views of the Expert Consultant.

95. Mr. DORON (Israel) said that in English the

word "used" was most suitable since it included both the act of driving and the state of being driven, whether the person concerned owned the vehicle or not.

96. Mr. EL-ERIAN (Expert Consultant) said that the ILC had thought it would be undesirable to enter into the intricacies of the rules relating to liability which existed in all legal systems. It was better to confine the matter to the basic concept of owner and user. For the purposes of interpretation of the provision, it was important to distinguish between criminal and civil liability: it was civil liability which was at issue in article 30.

97. Mr. CALLE Y CALLE (Peru) said that in the light of the explanation just given, he would propose, as a subamendment, the addition of the words "used or owned by a member of the mission" at the end of the United Kingdom amendment (A/CONF.67/C.1/L.61).

98. The CHAIRMAN, after indicating the order of voting on article 30 and the amendments thereto, put to the vote the Spanish and Pakistan proposal to delete paragraph 1 (d) (A/CONF.67/C.1/L.56 and L.69).

The proposal was rejected by 30 votes to 13, with 17 abstentions.

99. The CHAIRMAN put to the vote the Peruvian oral subamendment to the United Kingdom amendment.

The subamendment was adopted by 27 votes to 3, with 23 abstentions.

100. The CHAIRMAN put to the vote the United Kingdom amendment (A/CONF.67/C.1/L.61), as amended.

The United Kingdom amendment, as amended, was adopted by 29 votes to 15, with 16 abstentions.

Article 30, as a whole, as amended, was adopted by 36 votes to 1, with 23 abstentions.

The meeting rose at 6.45 p.m.

20th meeting

Wednesday, 19 February 1975, at 10.50 a.m.

Chairman: Mr. NETTEL (Austria).

In the absence of the Chairman, Mr. Wershof (Canada), Vice-Chairman, took the Chair.

Consideration of the question of the representation of States in their relations with international organizations in accordance with resolutions 2966 (XXVII), 3072 (XXVIII) and 3247 (XXIX) adopted by the General Assembly on 14 December 1972, 30 November 1973 and 29 November 1974 (continued)

Article 31 (Waiver of immunity) (A/CONF.67/4, A/CONF.67/C.1/L.59, L.60)

1. Sir Vincent EVANS (United Kingdom), introducing the amendment by Japan, Nigeria and the United Kingdom (A/CONF.67/C.1/L.60) to article 31 proposed by the International Law Commission (ILC) (see A/CONF.67/4), said that the sponsors proposed

inserting between paragraphs 4 and 5 a paragraph whose wording was modelled on article IV, section 14, of the Convention on the Privileges and Immunities of the United Nations¹ and on article V, section 16, of the Convention on the Privileges and Immunities of the Specialized Agencies.² That new paragraph would indicate that the purpose of immunity from jurisdiction was to safeguard the independent exercise by the persons mentioned in article 31 of their functions in connexion with the organization; it would also specify that the sending State was under a duty to waive the immunity of such persons in certain circumstances.

2. During the discussion in the Committee, some dele-

¹ General Assembly resolution 22 A (I).

² General Assembly resolution 179 (II).

gations had referred to article 105, paragraph 2, of the Charter of the United Nations, according to which representatives of the Members of the United Nations enjoyed such privileges and immunities "as are necessary for the independent exercise of their functions in connexion with the Organization". It followed from that principle that immunity from jurisdiction should only be invoked when it was necessary for the independent exercise by those concerned of their functions in connexion with the organization. Immunity from jurisdiction constituted a departure from the application of the law of the host State and it would interfere with the normal course of justice. It was not in the interests of justice that the sending State should insist on the maintenance of immunity from jurisdiction, when that was not necessary for the independent exercise by those concerned of their functions.

3. That was why the sponsors of the amendment, on the basis of the precedents of the two Conventions he had mentioned earlier, proposed stipulating that the sending State not only had the right but was also under a duty to waive immunity in any case where in its opinion such immunity would impede the course of justice and it could be waived without prejudice to the purpose for which it had been accorded.

4. Mrs. SLÁMOVÁ (Czechoslovakia) introduced the amendment by her delegation to article 31 (A/CONF.67/C.1/L.59), proposing the deletion of paragraph 5. The issue dealt with in that provision had already been discussed at the Vienna Conference on Diplomatic Relations and in the Sixth Committee of the General Assembly during consideration of the draft convention on special missions. In both cases, it had been decided not to include a provision on that subject but to address a recommendation to States. Those recommendations were contained respectively in resolution II adopted on 14 April 1961 by the United Nations Conference on Diplomatic Intercourse and Immunities³ and in resolution 2531 (XXIV) adopted by the General Assembly on 8 December 1969.

5. The Czechoslovak delegation noted that the sending State was not legally bound to waive the immunity from jurisdiction, but that sometimes it had a moral obligation to do so, where there was a case in which immunity from jurisdiction did not protect the person concerned in the exercise of his official functions. If the sending States acknowledged that moral obligation, it should be possible for cases of that kind to be settled through the ordinary channels of diplomacy. She wondered how, under the provisions of paragraph 5 of the article, the sending State would be able to "use its best endeavours to bring about a just settlement of the case" when it did not waive immunity from jurisdiction. It was out of question, for example, that it would be able to influence the Courts, which were independent. The Czechoslovak delegation therefore proposed that paragraph 5 of article 31 should be deleted.

6. Mrs. THAKORE (India) observed that the purpose of the amendment in document A/CONF.67/C.1/L.60 was to require the sending State to waive immunity from jurisdiction in certain cases. It would have the effect of weakening the principle of absolute immunity from jurisdiction. Neither the Vienna Convention on Diplomatic Relations⁴ nor the Convention on Special Missions⁵ contained a similar provision, as various States had been opposed to it. That opposition still existed, and the ILC had rightly decided, at the second reading, to delete from its provisional draft articles, a provision requiring the sending State to waive immunity from jurisdiction in certain circumstances. The Indian delegation considered that waiving such immunity was a serious act of sovereignty; it was an option which appertained only to the sending State or to the head of mission, acting on the instructions of that State. When the ILC had considered that issue in 1971, one of its members, Mr. Ago, had observed that it was not easy to transform into an article what in the case of two previous Conventions had become a recommendation. Mr. Ago had added that such a transformation would not be an example of the progressive development of international law, since the law was not being developed every time there was a departure from the law in force; and that to provide that the sending State should waive immunity "when that could be done without impeding the performance of the functions of the permanent mission" would be dangerous, for it would be easy to claim that such was the case. In Mr. Ago's view, such a solution would, in practice, have meant the end of immunity from jurisdiction.⁶

7. The Indian delegation considered that the International Law Commission's article 31 was realistic: it protected the interests of the host State and of the other parties and it safeguarded the independent exercise by those concerned of their functions. Paragraph 5 of that provision was very important, because it imposed on the sending State a duty to use its best endeavours to bring about a just settlement, when it did not waive the immunity from jurisdiction. That clause, which was in conformity with practice, was an advance and should be maintained.

8. Consequently, the Indian delegation supported the International Law Commission's article 31 and considered as unacceptable the two amendments that had been submitted.

9. Mr. MEISSNER (German Democratic Republic) said he supported the amendment in document A/CONF.67/C.1/L.59 which proposed the deletion of paragraph 5 of the article under consideration. That provision seemed to him to open the door to subjective considerations. In particular, the expression "just settlement" was too ambiguous and smacked of unwritten law.

10. The delegation of the German Democratic Republic could agree that the first sentence of the amend-

³ See United Nations Conference on Diplomatic Intercourse and Immunities, *Official Records*, vol. II (United Nations publication, Sales No. 62.X.1), document A/CONF.20/10/Add.1, p. 90.

⁴ United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

⁵ General Assembly resolution 2530 (XXIV), annex.

⁶ See *Yearbook of the International Law Commission, 1971*, vol. I, 1095th meeting, paras. 71 and 72.

ment in document A/CONF.67/C.1/L.60 should be included in the preamble of the future convention, but it considered the second sentence of the amendment unacceptable, because the rule it laid down depended to an over large extent on the internal law of the host State.

11. Mr. DO NASCIMENTO E SILVA (Brazil) said that he, too, thought that the first sentence of the draft amendment in document A/CONF.67/C.1/L.60, which was taken up from the preamble of the Vienna Convention on Diplomatic Relations, might be placed in the preamble of the future convention and in that way apply to the whole of that instrument. With regard to the second sentence, it did not have the character of a legal provision but rather that of a recommendation. Its proper place was not in the convention being prepared, but in a recommendation providing that the sending State was under a duty to allow justice to take its course and also that the persons mentioned in article 31 should be fairly and impartially tried in the host State. It was not infrequent, even in States which were proud of their legal system, that diplomats or members of missions were not tried impartially, after the sending State had waived their immunity from jurisdiction. There were cases where such persons came up against narrow-mindedness or xenophobia on the part of judges and where they were not prepared for defending themselves when procedures to which they were not accustomed, for instance, that of cross-examination, were applied to them. It was for that reason that some States sometimes hesitated to waive the immunity from jurisdiction.

12. He reminded the Committee that at the previous meeting it had adopted paragraph 4 of article 30, from which it followed that when the persons who benefited from immunity from jurisdiction in the host State were guilty of violating an internal law of that State, they could be tried in their own country. That was what was said in article 31, paragraph 5 of the Convention on Special Missions. In his view, it was desirable that all States should adapt their internal legislation accordingly. That was what Brazil had done, and its Courts could try Brazilian diplomats for infringements abroad of the law of the host State. The system of law to which such persons were subjected was thus familiar to them. It was therefore desirable that the sending State should be able to recall such diplomats and punish them in accordance with its laws. It should not be forgotten, moreover, that when a State agreed to receive an international organization in its territory, it knew in advance that it would have to accord privileges and immunities—that is to say, to waive, in part, the application of its internal law to enable the heads of mission and the diplomatic staff to perform their functions effectively.

13. Mr. SOGBETUN (Nigeria), saying that his delegation was a sponsor of the amendment in document A/CONF.67/C.1/L.60, stressed that the proposed new paragraph was in keeping with article 31, paragraph 4. The new provision specified the purpose of the privileges and immunities accorded and indicated that, in the interests of justice, the sending State could waive

the immunity when that could be done without prejudice to the purpose for which the immunity was accorded. The amendment should not give rise to controversy. It was logical and in conformity with the International Law Commission's commentary to article 31 (see A/CONF.67/4). It was only fair that the sending State should waive immunity from jurisdiction when it was convinced that such immunity would impede the course of justice and when it felt that it could be waived without prejudice to the purpose for which the immunity was accorded.

14. Mr. EUSTATHIADES (Greece) said he thought that the amendment in document A/CONF.67/C.1/L.60 had the merit of stating for what purpose the privileges and immunities under consideration were accorded. In view of the precedents constituted by the relevant provisions of the Convention on the Privileges and Immunities of the United Nations and of the Convention on the Privileges and Immunities of the Specialized Agencies, that statement, which was contained in the first sentence of the proposed new paragraph, might be placed at the head of article 31. Thus, after having indicated for what purpose the privileges and immunities were accorded, article 31 would mention the option for the sending State to waive the immunity from jurisdiction, precisely in the light of that purpose; it would then set forth a further consequence of the purpose, namely that the sending State was under a duty to waive immunity when that immunity would impede the course of justice or when it could be waived without prejudice to the purpose for which the immunity had been accorded. That modification of article 31 should not give rise to difficulties. There was not so much difference between the text prepared by the ILC and the draft amendment in document A/CONF.67/C.1/L.60, since, according to that amendment, the sending State would, in the last analysis, take the decision to waive immunity for its own free will. To be sure, that provision would impose a "duty" on it, but the presence of the words "in the opinion of the sending State" would leave it to be judge of when that duty arose.

15. Mr. OSMAN (Egypt) said he shared the views expressed by the representative of India and supported the International Law Commission's text.

16. Mr. KUZNETSOV (Union of Soviet Socialist Republics) observed that, in adopting the United Kingdom's amendment to article 30 in document A/CONF.67/C.1/L.61, the Committee had already given proof of goodwill but that, in the circumstances, the amendment in document A/CONF.67/C.1/L.60 went too far. He wondered, moreover, how the provision which laid upon the sending State a duty to waive the immunity of the persons mentioned in paragraph 1 could be linked to the provision which specified that a waiving of immunity should not prejudice the purpose for which the immunity was accorded. He did not see, either, on what criterion the sending State would base itself for judging that the waiver of immunity was liable to prejudice the purpose for which the immunity was accorded. For that reason the Soviet delegation could not accept that amendment, but it had no objection to the suggestion made by the representatives of the Ger-

man Democratic Republic and of Greece that the first sentence of the amendment be inserted in the preamble to the convention.

17. With regard to the amendment in document A/CONF.67/C.1/L.59, the Soviet delegation supported it, but that did not imply that it was against the idea of seeking a fair settlement of the case referred to in article 31, paragraph 5.

18. Mr. JELIĆ (Yugoslavia) said he approved of the suggestion made by several delegations to include the first sentence of the amendment in document A/CONF.67/C.1/L.60 in the preamble of the convention. His delegation did not dispute the principle underlying the second sentence of that amendment but thought that waiver of immunity in certain circumstances was a moral, and not a legal, obligation. When the same question had arisen at the time of the elaboration of the Convention on Diplomatic Relations and the Convention on Special Missions, it had been decided to formulate a recommendation on that subject to the sending State. His delegation saw no reason why the same course should not be adopted in the present case and why the ideas set forth in paragraph 5 of article 31 and in the amendment in document A/CONF.67/C.1/L.60 should not be expressed in a recommendation by the Conference. It was in that spirit that his delegation supported the amendment in document A/CONF.67/C.1/L.59.

19. Mr. MOLINA LANDAETA (Venezuela) pointed out that, in addition to certain legal arguments, the advocates of the amendment in document A/CONF.67/C.1/L.60 had invoked two precedents in support of that text. On the other hand, a far greater number of instruments could be quoted in favour of the International Law Commission's text, including article 45 of the Vienna Convention on Consular Relations,⁷ article 41 of the Convention on Special Missions, resolution II of the United Nations Conference on Diplomatic Intercourse and Immunities, and finally, the preambles of the Vienna Convention on Diplomatic Relations and the Convention on Special Missions. His delegation was therefore opposed to the amendment in document A/CONF.67/C.1/L.60.

20. It was also opposed to the amendment in document A/CONF.67/C.1/L.59, because paragraph 5 of the Commission's text, which was based on the idea expressed in General Assembly resolution 2531 (XXIV) concerning the settlement of civil claims in connexion with the Convention on Special Missions, would have more weight, as a rule of positive law, than would a simple resolution. His delegation was therefore in favour of maintaining that paragraph.

21. Mr. JALICHANDRA (Thailand) said he supported the amendment in document A/CONF.67/C.1/L.60, by reason of the precedents created by the corresponding articles of the Convention on the Privileges and Immunities of the United Nations and of the Convention on the Privileges and Immunities of the Specialized Agencies. The adoption of that amendment would contribute to the progressive development of international law.

22. It had been said that diplomats constituted the sole and last category of privileged persons still remaining in the world, but it was clear that they would not be able to justify their existence much longer if they did not show moderation in regard to privileges and immunities. It was in that spirit that his delegation supported the amendment in document A/CONF.67/C.1/L.60, which had its place in article 31.

23. Mr. GÜNEY (Turkey) recalled that paragraph 5 of article 31 was based on resolution II of the United Nations Conference on Diplomatic Intercourse and Immunities and on General Assembly resolution 2531 (XXIV) concerning the settlement of civil claims in connexion with the Convention on Special Missions. His delegation was therefore in favour of retaining that paragraph which, without imposing any obligation on the sending State, nevertheless prescribed that it should serve the interests of justice.

24. On the other hand, he thought that the text proposed in the amendment in document A/CONF.67/C.1/L.60 should appear in the preamble of the convention, and not in article 31 itself.

25. Mr. GOLDKLANG (United States of America) starting from the idea that the Committee should be careful in excluding certain persons from the normal course of justice, said that, according to the amendment in A/CONF.67/C.1/L.60, the sending State must assume its responsibilities by considering whether the invocation of immunity would impede the course of justice or whether it could be waived without prejudice to the purpose for which the immunity was accorded. It was a basic principle that privilege implied responsibility, and the responsibility provided for in the amendment in document A/CONF.67/C.1/L.60 was precisely that which any mission should be willing to assume.

26. He regretted that the ILC had eliminated, in its final draft, the article concerning the obligation of the sending State to waive immunity and had merely provided that if the sending State did not waive immunity, it should use its best endeavours to bring about a just settlement of the case. That provision, however inadequate, should be retained, which was why his delegation was opposed to the amendment in document A/CONF.67/C.1/L.59.

27. Reverting to the amendment in document A/CONF.67/C.1/L.60, he recognized that it would be difficult for the host State to enforce the obligation to waive immunity and that it depended for that purpose on the goodwill of the sending State. Moreover, the provision proposed in the said amendment was contained in the Convention on the Privileges and Immunities of the United Nations and in the Convention on the Privileges and Immunities of the Specialized Agencies. His delegation would therefore urge the Committee to adopt that amendment, which could not be relegated to the preamble of the Convention, where it would not have the same value as in the operative part of the instrument.

28. On the subject of the allegation that members of the permanent missions to international organizations

⁷ United Nations, *Treaty Series*, vol. 596, No. 8638, p. 261.

might not receive a fair trial in the territory of the host States, he said that there was no proof that such was the case. On the contrary, it would seem that the host State would tend to be all the more scrupulous when it was the centre of attention of the international community.

29. Mr. CALLE Y CALLE (Peru) pointed out that the question dealt with in article 31 had been given lengthy consideration and had been the subject of numerous court decisions. That being so, it might be said that norms now existed which were accepted and applied by States and that, in dealing with privileges and immunities, Article 105 of the Charter of the United Nations was concerned with an institution whose fundamental principles were defined by customary international law and had been reproduced in the Vienna Convention on Diplomatic Relations. In a study on diplomatic relations, the Secretariat of the United Nations had come to the conclusion that diplomatic agents should, in the interests of their mission, enjoy complete independence guaranteed by the inviolability of their person and their residence, and that they should consequently enjoy immunity from jurisdiction in respect of both civil and criminal proceedings. Accordingly, the right to immunity was absolute and the waiver of immunity was an option inherent in the sovereignty of the State. It was not possible to modify without due reflection the Commission's text as proposed in the amendment in document A/CONF.67/C.1/L.60, which would transform into a legal rule a concept which should have its place in the preamble of the convention. There was, moreover, a discrepancy between that amendment and the Commission's text, in that paragraph 1 of article 31 provided for an option open to the State whereas the amendment referred to an obligation. His delegation fully understood the purpose of that amendment, but would prefer to see it included either in the preamble of the convention or in a separate recommendation as in the case of the Convention on Special Missions. It was therefore opposed to the amendment on the grounds that it might be prejudicial to the institution of immunity from jurisdiction.

30. In view of the fact that the ILC had had some doubts regarding the advisability of including paragraph 5 of article 31 in the draft convention, his delegation saw no objection to its deletion, and it supported the amendment in document A/CONF.67/C.1/L.59.

31. Mr. TAKEUCHI (Japan) said that the amendment in document A/CONF.67/C.1/L.60, of which his delegation was one of the sponsors, merely proclaimed the principle contained in Article 105 of the Charter of the United Nations, to which no member of the Committee had objected. Considering that the convention would be applicable to international organizations of universal character, it was right that it should not depart from existing practice which derived, in the present instance, from the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies. He asked members of the Committee to consider the amendment from that angle and to give it their support.

32. Mr. TOUHAMI-CHAHDI (Morocco) asked the

Expert Consultant whether the provisions of article 31 were peremptory rules of law or whether they had a purely moral significance. He pointed out that that problem arose throughout the convention.

33. Mr. EL-ERIAN (Expert Consultant), replying to the Moroccan representative's question, said that the ILC, in preparing the draft convention, had aimed at providing for all possible situations, and hence to make the draft as comprehensive as possible by including provisions of a peremptory character and others which were purely descriptive. He pointed out that, in general, the provisions of the draft convention were legally binding, but that paragraph 5 of article 31 did not, strictly speaking, impose on the sending State an obligation to waive immunity.

34. Sir Vincent EVANS (United Kingdom) said he wished to make it clear that the amendment in document A/CONF.67/C.1/L.60 was entirely independent of paragraph 5 of article 31 and that it in no way depended on the retention or rejection of that paragraph, since it dealt with a separate aspect of the question. Also, some members of the Committee, while agreeing in principle with the provisions of the amendment in document A/CONF.67/C.1/L.60, had wondered whether they should not have their place in the preamble of the convention or in a separate resolution of the Conference, in that way they related to a duty of the sending State and not to a legal obligation. His delegation thought, however, that it would be appropriate to incorporate that important provision in the actual body of the convention.

35. Mrs. SLÁMOVÁ (Czechoslovakia) explained that, in submitting its amendment in document A/CONF.67/C.1/L.59, her delegation had merely intended to draw the Committee's attention to the practical implications of paragraph 5 of article 31. Consequently, in view of the statements made on the subject her delegation would withdraw its amendment in favour of the International Law Commission's text. She thanked those delegations which had supported the amendment.

36. The CHAIRMAN invited the Committee to vote on the amendment in document A/CONF.67/C.1/L.60 and then to take a decision on the International Law Commission's text.

37. Mr. KUZNETSOV (Union of Soviet Socialist Republics), speaking on a point of procedure, asked the Chairman whether, in the light of the statements made by the representatives of the German Democratic Republic and Greece, it would not be advisable to put the first and second sentences of the amendment in document A/CONF.67/C.1/L.60 to a separate vote, since those representatives had proposed placing the first sentence in the preamble of the convention.

38. The CHAIRMAN asked the Greek representative whether he had submitted any formal proposal as to where the first sentence of the amendment in document A/CONF.67/C.1/L.60 should be placed. He pointed out also that the Committee could not, at that stage, take a decision on the preamble of the convention and that, once the vote had been taken on article 31, the members of the Committee could submit writ-

ten proposals on the former subject, either in plenary or in the Drafting Committee.

39. Mr. EUSTATHIADES (Greece) said that he had merely made a simple suggestion concerning the place of the amendment in document A/CONF.67/C.1/L.60 in article 31, and that that question could be settled by the Drafting Committee after the vote had been taken.

40. Mr. TANKOUA (United Republic of Cameroon) asked for a separate vote by roll-call on the second sentence of the amendment in document A/CONF.67/C.1/L.60.

41. Sir Vincent EVANS (United Kingdom) pointed out that the two sentences of the amendment in document A/CONF.67/C.1/L.60 were inseparable as the second sentence should be read in the light of the first, of which it was the logical consequence. It therefore seemed to him preferable to vote on the amendment as a whole.

42. Mr. TANKOUA (United Republic of Cameroon) pressed for a separate vote on the second sentence of the amendment in document A/CONF.67/C.1/L.60 which, in his opinion, was at variance with paragraph 1 of article 31.

43. The CHAIRMAN invited the Committee to vote on the second sentence of the amendment to article 31 (A/CONF.67/C.1/L.60), in conformity with rule 40 of the rules of procedure of the Conference.

At the request of the representative of the United Republic of Cameroon a vote was taken by roll-call.

Romania, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Romania, Sweden, Switzerland, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany (Federal Republic of), Greece, Ireland, Israel, Italy, Japan, Netherlands, Nigeria, Norway, Republic of Korea.

Against: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Republic of Tanzania, Venezuela, Yugoslavia, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Egypt, El Salvador, German Democratic Republic, Guatemala, Hungary, India, Iraq, Kuwait, Lebanon, Liberia, Libyan Arab Republic, Mexico, Mongolia, Morocco, Niger, Peru, Poland, Qatar.

Abstentions: Tunisia, Turkey, United Republic of Cameroon, Holy See, Indonesia, Ivory Coast, Khmer Republic, Madagascar, Malaysia, Mali, Philippines, Republic of Viet-Nam.

The second sentence was rejected by 29 votes to 23, with 12 abstentions.

44. The CHAIRMAN invited the Committee to vote on the first sentence of the amendment to article 31 (A/CONF.67/C.1/L.60)

The first sentence was adopted by 44 votes to 1, with 17 abstentions.

45. The CHAIRMAN suggested that it be left to the Drafting Committee to decide where the first sentence

of the amendment in document A/CONF.67/C.1/L.60 should have its place.

It was so decided.

46. The CHAIRMAN put to the vote article 31 as a whole, as amended.

Article 31 as a whole, as amended, was adopted by 59 votes to none, with 3 abstentions.

47. Mr. CALLE y CALLE (Peru) said that he had voted against the amendment in document A/CONF.67/C.1/L.60 not because he disapproved of the principle it proclaimed but because he considered that article 31 was not the proper place for it. In his opinion the Committee, after voting against the second sentence of the amendment, could not vote for the first which was linked with the second.

Article 32 (Exemption from social security legislation) (A/CONF.67/4)

48. The CHAIRMAN said that, if there were no objections, he would take it that the Committee decided to adopt draft article 32 of the ILC and to refer it to the Drafting Committee.

It was so decided.

Article 33 (Exemption from dues and taxes) (A/CONF.67/4, A/CONF.67/C.1/L.65)

49. Mr. MUSEUX (France) said that the amendment to subparagraph (b) of article 33 (A/CONF.67/C.1/L.65) submitted by his delegation followed logically from the amendment that it had submitted to paragraphs 1 and 2 of article 24 (A/CONF.67/C.1/L.65). However, as it seemed that the deletion of the phrase "unless the person concerned holds it on behalf of the sending State for the purposes of the mission" would create difficulties for a number of delegations, it would withdraw its amendment to article 33 (b), as it had done in the case of article 24.

50. The French amendment to article 33 (f), which consisted in the addition of the words "movable and", was not of great practical importance but would serve to obviate difficulties which the French financial services would have if that addition were not made. Likewise, there had been no mention of movable property in the Vienna Conventions on Diplomatic Relations and on Consular Relations, and as a result ratification of those conventions by France, which had had to make a reservation on that point, had been delayed until 1971. The inclusion of movable property was justified in that a number of transactions carried out by members of missions and diplomats were a part of everyday life, for which the French tax authorities would find it very difficult to grant exemption. He was referring, for example, to dues levied at public auctions for the purchase of works of art or collections, dues levied on insurance policies, whether third party insurance or personal annuities, the stamp duty on notarized documents, from which not even embassies were exempt, taxes on gifts or bequests received by members of missions in their private capacity, or registration fees in connexion with any commercial activity carried on by a member of the family. The inclusion of movable

property in the provision was justified by the fact that entirely private and personal matters were involved. It provided a safeguard against the possibility that a member of a mission might act as a "front" for the parties to a transaction—in the case, for example, of the acquisition of real property for the account of a French national or of concealing assets in an inheritance by means of gifts of immovable property. The amounts involved were not exorbitant, and they were not levied on all goods or transactions. There was no question, for example, of requiring customs duties or value-added tax to be paid on a motor vehicle. The proposal referred solely to registration, court or record fees, mortgage dues and stamp duty, which did not affect movable property; mortgage dues were only levied on immovable property, and court or record fees were only levied on judgements, which rarely had to do with movable property. Thus, the French amendment was purely practical in nature.

51. Mr. TAKEUCHI (Japan) noted that article 33 was modelled on article 34 of the Vienna Convention on Diplomatic Relations, and the ILC had rightly stated in paragraph 4 of its commentary to article 33 (see A/CONF.67/4) that "except in the case of nationals of the host State, representatives enjoy extensive exemptions from taxation". As his delegation had pointed out in connexion with article 24 (18th meeting), taxation systems varied from country to country and it was extremely difficult to formulate a text which would satisfy all countries, as was shown by the lengthy deliberations on the text of article 35 of the Vienna Convention on Diplomatic Relations.

52. Referring to subparagraph (a) of article 33, dealing with indirect taxes, he said that under the Japanese system there were taxes which were normally incorporated in the price of goods or services and were collected by so-called special collectors. For example, under the law concerning the travel tax, the travel tax was collected by the railway, shipping or airline company and was included in the price of the ticket paid by the passenger who was legally liable to pay that tax. Accordingly, such taxes were regarded as "indirect taxes normally incorporated in the price of goods or services". He added that such taxes as securities transaction tax, admission tax, liquor tax, sugar excise tax, gasoline tax, local road tax, playing card tax, and liquified petroleum tax were included in the indirect taxes referred to in subparagraph (a). The amendment submitted by France (A/CONF.67/C.1/L.65) was acceptable to his delegation.

53. Mr. MOLINA LANDAETA (Venezuela) said that, while he respected the right of every State to defend its taxation system, he was unable to support the French amendment.

54. The CHAIRMAN invited the Committee to vote on the French amendment to article 33 (f) (A/CONF.67/C.1/L.65).

The amendment was rejected by 23 votes to 18, with 19 abstentions.

Article 33 was adopted by 57 votes to none, with 1 abstention.

The meeting rose at 1.05 p.m.

21st meeting

Wednesday, 19 February 1975, at 3.25 p.m.

Chairman: Mr. NETTEL (Austria).

Consideration of the question of the representation of States in their relations with international organizations in accordance with resolutions 2966 (XXVII), 3072 (XXVIII) and 3247 (XXIX) adopted by the General Assembly on 14 December 1972, 30 November 1973 and 29 November 1974 (continued)

Article 34 (Exemption from personal services) (A/CONF.67/4)

1. The CHAIRMAN observed that no amendments had been submitted to article 34 proposed by the International Law Commission (ILC) (see A/CONF.67/4).
2. Mr. SKALLI (Morocco) suggested that the Committee should invite the Drafting Committee to review the text proposed by the ILC for article 34 with a view to improving it.
3. He proposed the following wording:
"The head of mission and the members of the diplomatic staff of the mission shall be exempted in the host State from all personal services . . .".
4. The CHAIRMAN said that the suggestion made

by the representative of Morocco would be referred to the Drafting Committee. If he heard no objection, he would take it that the Committee could agree to adopt article 34.

It was so decided.

Article 35 (Exemption from customs duties and inspection) (A/CONF.67/4, A/CONF.67/C.1/L.66)

5. Mr. MUSEUX (France), introducing his delegation's amendment to paragraph 1 (b) of article 35 (A/CONF.67/C.1/L.66), said that it was intended to prevent any misinterpretations of that provision and to avoid any abuses of privileges and immunities. His delegation could, however, agree to withdraw the amendment, provided that paragraph 1 (b) was interpreted to mean that the articles intended for consumption would not exceed the quantities necessary for direct utilization by the persons concerned.
6. Mr. MOLINA LANDAETA (Venezuela) said that his delegation would vote in favour of article 35 and that it could have supported the amendment to