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Report of the Committee of the Whole

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REPORTS

DOCUMENT A/CONF.20/L.2 Report of the Committee of the Whole¹

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I. — OFFICERS OF THE COMMITTEE

1. At its second plenary meeting, on 3 March 1961, the Conference elected Mr. A. S. Lall (India) as Chairman of the Committee of the Whole. At its first meeting, on 6 March 1961, the Committee of the Whole elected as Vice-Chairman Mr. H. Birecki (Poland) and Mr. N. Iriniz Casas (Uruguay) and as Rapporteur Mr. W. Riphagen (Netherlands).

II. — TERMS OF REFERENCE OF THE COMMITTEE

2. At its second plenary meeting, on 3 March 1961, the Conference decided to refer to the Committee of the Whole items 10 and 11 of its agenda — namely :

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959.

Consideration of draft articles on special missions in accordance with resolution 1504 (XV) adopted by the General Assembly on 12 December 1960.

III. — ORGANIZATION OF THE WORK OF THE COMMITTEE

3. The Committee held forty-one meetings during the period from 6 March to 5 April 1961.

4. The first of the two items referred to the Committee — namely, the question of diplomatic intercourse and immunities — was considered at all the meetings of the Committee.

5. In dealing with this item, the Committee had before it the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4). In accordance with rule 29 of the rules of procedure of the Conference (A/CONF.20/9), these draft articles were taken as the basic proposal for discussion. Amendments to the draft articles and proposals for title, preamble and additional articles were submitted by delegations and considered as related below in this report.

6. The Committee had also before it the commentary of the International Law Commission to its draft articles, as contained in chapter III of the Commission's report on its tenth session (A/3859). In order to facilitate the work of the Conference, the Secretariat had prepared a guide to the draft articles (A/CONF.20/8). Available to the Committee were further the text of the Final Report of the Asian-African Legal Consultative Committee on Func-

tions, Privileges and Immunities of Diplomatic Envoys or Agents, adopted at that Committee's third session, in 1960 (A/CONF.20/6), and the text of the Convention regarding Diplomatic Officers, adopted by the Sixth International American Conference and signed at Havana 20 February 1928 (A/CONF.20/7).

7. The Committee devoted its first five meetings to a more general discussion of draft articles 1 to 10; thereafter, at the sixth meeting, it began a consideration of the draft article by article.

8. An exceptional procedure was adopted with regard to article 1 on definitions. As this article defined terms used in the other articles, it was thought advisable to give those definitions a preliminary examination, refer them to the drafting committee of the conference, and return to them at a later stage without application of rule 33 of the rules of procedure regarding reconsideration of proposals. After a second reading, the article was again referred to the Drafting Committee for re-drafting, in accordance with the decisions taken by the Committee of the Whole.

9. The other articles with the amendments and proposals relating thereto were considered on one reading.

10. The deliberations of the Committee are recorded in the summary records of its meetings (see vol. I).

11. The decisions taken by the Committee of the Whole were referred to the drafting committee, which was entrusted with the task of preparing the text of the draft convention to be submitted for consideration by the Conference in plenary meeting.

12. The text of the draft convention as prepared by the drafting committee is reproduced in annex I to the present report. In addition, annex 2 reproduces the protocol prepared by the drafting committee in pursuance of the decision taken by the Committee of the Whole at its 38th meeting (see below, under article 45).

13. The second item referred to the Committee of the Whole — namely, the question of special missions — was considered by the Committee at its 23rd and 39th meetings, on the basis of the draft articles on special missions prepared by the International Law Commission at its twelfth session (A/CONF.20/5). The Committee also had before it the commentary of the International Law Commission on these draft articles, set out in chapter III of the Commission's report on its twelfth session (A/4425).

14. At its 23rd meeting the Committee of the Whole referred this item, for study and report, to a sub-committee on special missions composed of the following States : Ecuador, Iraq, Italy, Japan, Senegal, Union of Soviet Socialist Republics, United Kingdom, United States of America and Yugoslavia.

15. At its 39th meeting, the Committee of the Whole considered the report submitted by the sub-committee (A/CONF.20/C.1/L.315). The Committee, without a vote, decided to adopt the sub-committee's recommendation included in paragraph 13 of that report — namely, to propose to the Conference that the subject of special missions should be referred back to the General Assembly

¹ Incorporating document A/CONF.20/L.2/Corr.1, L.2/Add.1 and Corr. 3, L.2/Add.2 and L.2/Add.3.

of the United Nations with the suggestion that the Assembly entrust to the International Law Commission the task of further study of the topic. The Committee of the Whole also decided to request the drafting committee to formulate a draft resolution on the matter to be submitted to the Conference for its consideration.

16. The draft resolution prepared by the drafting committee is reproduced in annex 3 to this report.

IV. — CONSIDERATION AND VOTING UPON THE DRAFT ARTICLES AND THE AMENDMENTS AND PROPOSALS RELATING THERETO

Title

17. Proposals regarding the title of the proposed convention were submitted by Poland and Czechoslovakia (A/CONF.20/C.1/L.175), Italy, Liberia, Mexico, Peru, Philippines, Turkey and the United States of America (A/CONF.20/C.1/L.289), Nigeria (A/CONF.20/C.1/L.311), Ghana (A/CONF.20/C.1/L.313), and Ecuador and Venezuela (A/CONF.20/C.1/L.332). The representative of Poland suggested orally that the title of the convention should be "Vienna Convention on Diplomatic Relations".

18. At its 41st meeting the committee decided to refer these proposals to the drafting committee for its consideration.

Preamble

19. The draft articles prepared by the International Law Commission contained no preamble. There was, however, a general feeling in the Committee that a preamble would be desirable and several texts were submitted by delegations for consideration by the Committee.

20. In the course of the discussion the proposals submitted by Romania (A/CONF.20/C.1/L.29), by Hungary (A/CONF.20/C.1/L.148), jointly by Brazil, Colombia, Japan, Mexico, Nigeria, Norway, Pakistan, Senegal, Spain, Turkey, United Kingdom and United States of America (A/CONF.20/C.1/L.318) and by Ghana (A/CONF.20/C.1/L.323) were withdrawn. Also withdrawn were proposals by Czechoslovakia (A/CONF.20/C.1/L.6) and Mexico (A/CONF.20/C.1/L.127), which had been referred for consideration in connexion with the preamble.

21. The Committee took as a basis for its discussion, at its 39th meeting, a proposal submitted by Burma, Ceylon, India, Indonesia and the United Arab Republic (A/CONF.20/C.1/L.329), reading as follows:

"The States parties to the present convention,

"Recalling that peoples of all nations from ancient times have in practice and by conviction respected the status of diplomatic agents;

"Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of states, the maintenance of international peace and security, and the promotion of friendly relations among nations,

"Believing that an international convention on diplomatic intercourse and immunities would contribute to the development of friendly relations between nations, irrespective of their differing constitutional and social systems;

"Realizing that the purpose of such immunities and privileges is to ensure the efficient performance of the

functions of diplomatic missions and not for the personal benefit of the members of such missions;

"Have agreed on the following provisions :"

22. Switzerland, while withdrawing the rest of its proposal (A/CONF.20/C.1/L.322), suggested that the first part of the fifth paragraph of its proposal should be included in the five-power proposal (A/CONF.20/C.1/L.329). This paragraph reads as follows:

"Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the articles of this convention;"

When put to the vote, this proposal was adopted by 38 votes to 11, with 19 abstentions.

23. The representative of the Soviet Union orally proposed that the fourth paragraph of the five-power proposal (A/CONF.20/C.1/L.329) should be amended by inserting after the words "functions of diplomatic missions" the words "as representatives of States". This amendment was adopted in principle by 39 votes to 5, with 23 abstentions, and the drafting committee was requested to prepare an appropriate formulation thereof.

24. At the proposal of Australia and Hungary, the Committee, by 35 votes to 19, with 18 abstentions, decided to delete at the end of the fourth paragraph the words "and not for the personal benefit of the members of such missions". The Committee thereafter, at the request of the United Kingdom, took a separate vote on the fourth paragraph as amended and adopted it by 45 votes to 9, with 14 abstentions.

25. Oral suggestions by Tunisia that the words "in practice and by conviction" in the first paragraph should read "by conviction and in practice", and by the Union of Soviet Socialist Republics that the word "respected" in the same paragraph should be replaced by "recognized", were referred to the Drafting Committee.

26. The preamble, as submitted in the five-power proposal (A/CONF.20/C.1/L.329) and as amended by the above-mentioned decisions of the Committee, was adopted as a whole by 66 votes to none, with 4 abstentions.

DEFINITIONS

Article 1

27. As mentioned above, the Committee decided to examine article 1 in two stages. After a provisional vote had been taken on the definitions contained in the article, it decided that the article would be referred to the drafting committee and considered again by the Committee of the Whole without application of rule 33 of the rules of procedure.

28. In the course of the first reading, at the 1st, 2nd, 5th, 6th and 7th meetings, the following amendments were withdrawn: Colombia and Spain (A/CONF.20/C.1/L.5), Guatemala (A/CONF.20/C.1/L.8 and A/CONF.20/C.1/L.35), Ireland (A/CONF.20/C.1/L.16), Switzerland (A/CONF.20/C.1/L.23, paragraphs 2 and 3), Congo (Leopoldville) (A/CONF.20/C.1/L.73), Cuba (A/CONF.20/C.1/L.81), Ghana (A/CONF.20/C.1/L.89), India (A/CONF.20/C.1/L.90), Ceylon (A/CONF.20/C.1/L.91).

29. The Committee thereafter took the following decisions:

Sub-paragraph (a). — An amendment submitted by Switzerland (A/CONF.20/C.1/L.23, paragraph 1) replacing the words "the person charged by the sending State with the duty of acting in that capacity" by the words "the person accredited as such" was referred to the drafting committee. Subject to this decision, sub-paragraph (a) was provisionally adopted.

Sub-paragraphs (b), (c), (d), (e), (f) and (g) were provisionally adopted without change.

Sub-paragraph (h). — An amendment submitted by the United States of America (A/CONF.20/C.1/L.17) adding at the end of the sub-paragraph the words "and who is not an employee of the sending State" was adopted. As so amended the sub-paragraph was provisionally adopted with the proviso that the drafting committee was requested to examine whether the words "of the head or" should be retained or not in the sub-paragraph.

New sub-paragraph (i). — The Committee provisionally adopted the following additional sub-paragraph (i) proposed by Bulgaria and the Byelorussian Soviet Socialist Republic (A/CONF.20/C.1/L.25) :

"The 'premises of the mission' are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission."

A proposal by Czechoslovakia (A/CONF.20/C.1/L.34) that a definition of the term "diplomatic mission" should be added was defeated by 27 votes to 14, with 21 abstentions. Proposals by the United States of America (A/CONF.20/C.1/L.17) and by Argentina and Spain (A/CONF.20/C.1/L.105) for the addition of a definition of "member of the family" were deferred.

30. The article was thereafter referred to the drafting committee for its consideration.

31. A terminological amendment submitted by Switzerland (A/CONF.20/C.1/L.24) seeking to replace, throughout the draft, the term "receiving State" by the term "State of residence" was also referred to the drafting committee.

32. At its 38th and 39th meetings, the Committee of the Whole considered article 1 on second reading on the basis of a redraft submitted by the drafting committee (A/CONF.20/C.1/L.324) reading as follows :

"For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them :

- (a) The "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;
- (b) The "members of the mission" are the head of the mission and the members of the staff of the mission;
- (c) The "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
- (d) The "diplomatic staff" consists of the members of the staff of the mission having diplomatic rank;
- (e) A "diplomatic agent" is the head of a mission or a member of the diplomatic staff of the mission;
- (f) The "administrative and technical staff" consists of the members of the staff of the mission employed in the administrative and technical service of the mission;

- (g) The "service staff" consists of the members of the staff of the mission in the domestic service of the mission;
- (h) A "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;
- (i) The "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission."

33. The Committee also had before it four amendments, of which two, both on the definition of family, submitted respectively by the United States (A/CONF.20/C.1/L.312) and by Argentina, Ghana, Guatemala, India, Malaya, Mexico, Spain and the United Arab Republic (A/CONF.20/C.1/L.326) were withdrawn. An amendment by Ceylon (A/CONF.20/C.1/L.91) also relating to the definition of the family was withdrawn, but reintroduced by Tunisia.

34. At its 38th meeting the Committee, by 52 votes to none, with 11 abstentions, adopted an amendment by Japan (A/CONF.20/C.1/L.305) adding at the end of sub-paragraph (i) the words "and for the residence of the head of the mission".

35. At its 39th meeting the Committee, by 34 votes to 3, with 26 abstentions, rejected the above-mentioned amendment reintroduced by Tunisia (A/CONF.20/C.1/L.91) which would have added a new paragraph reading as follows :

"By the family of a member of a mission is meant his spouse, if any, unmarried children and such other immediate relative of himself and his spouse, who are part of his household."

36. By a vote of 67 to none, with no abstentions, the Committee finally adopted article 1 as redrafted by the drafting committee with the addition at the end of sub-paragraph (i) of the words proposed by Japan and adopted by the Committee.

*Proposal by Czechoslovakia for a new article
to be inserted between articles 1 and 2*

37. A proposal by Czechoslovakia (A/CONF.20/C.1/L.7) for the addition of an article on the right of legation was subsequently withdrawn.

**SECTION I. — DIPLOMATIC INTERCOURSE
IN GENERAL**

Establishment of diplomatic relations and missions

Article 2

38. Three amendments were submitted to article 2. The amendment submitted by Ecuador and Spain (A/CONF.20/C.1/L.15) was withdrawn. An amendment submitted by Belgium (A/CONF.20/C.1/L.61) deleting from the French text the word "mutuel" was referred to the drafting committee. An amendment by Czechoslovakia (A/CONF.20/C.1/L.6) adding a second paragraph to article 2 was deferred to be considered in connexion with the preamble. Article 2 was thereafter, at the 8th meeting of the Committee, adopted without change.

*Functions of a diplomatic mission**Article 3*

39. Ten amendments were submitted to this article. One amendment, submitted by Liberia and the Philippines (A/CONF.20/C.1/L.14), proposed a rearrangement of the sub-paragraphs of the article; this amendment was referred to the drafting committee. Another amendment, submitted by Italy (A/CONF.20/C.1/L.26), suggested a terminological change in the English text of the introductory phrase; this was also referred to the drafting committee.

40. Four amendments related to sub-paragraph (b). Of these, the amendments submitted by India (A/CONF.20/C.1/L.13) and Cuba (A/CONF.20/C.1/L.82) were withdrawn by their sponsors. An amendment by Mexico (A/CONF.20/C.1/L.33) sought to add after the words "Protecting in the receiving State the interests of the sending State and of its nationals" the words "within the limits permitted by international law", while an amendment by Ceylon (A/CONF.20/C.1/L.27, para. 1) proposed that sub-paragraph (b) be replaced by the words "Safeguarding by all lawful means the interests of the sending State and of its nationals in the receiving State". At its 8th meeting, the Committee of the Whole decided to adopt sub-paragraph (b) with the addition of a proviso including the sense of the Mexican amendment, and requested the drafting committee to formulate the sub-paragraph taking into account also the amendment submitted by Ceylon.

41. In the discussion on this sub-paragraph it was stated by the representative of the Secretary-General, without any dissenting opinion being expressed in the Committee, that the term "nationals" used in the sub-paragraph included also juridical persons; that would conform to the general usage of the term "nationals" in international law.

42. Spain submitted an amendment (A/CONF.20/C.1/L.30, para. 1) adding after sub-paragraph (c) a new sub-paragraph specifying that a diplomatic mission could perform consular functions if the receiving State did not expressly object. The Committee, at its 9th meeting, adopted the substance of this amendment, and requested the drafting committee to formulate the new sub-paragraph in the light of the discussion which had taken place.

43. An amendment submitted by Ceylon (A/CONF.20/C.1/L.27, para. 2) to sub-paragraph (d) was considered by the Committee to be largely a matter of drafting, and was therefore referred to the drafting committee.

44. Two amendments to sub-paragraph (e), one by Spain (A/CONF.20/C.1/L.30, para. 3) and one by Belgium (A/CONF.20/C.1/L.31) were withdrawn.

45. Subject to the above-mentioned decisions, the Committee at its 9th meeting adopted article 3.

Proposal by Colombia, Guatemala, India and Spain for the addition of a new article between articles 3 and 4

46. The Committee, at its 37th meeting, by 44 votes to none, with 23 abstentions, adopted a proposal by Colombia, Guatemala, India and Spain (A/CONF.20/C.1/L.103/Rev.1) that the following new article be added:

"A sending State may with the prior consent of a receiving State, and upon the express request of a third State not represented in the receiving State, authorize

its diplomatic mission to undertake the temporary or occasional protection of the interests of the third State."

Appointment of the head of the mission : Agrément
Article 4

47. Five amendments were originally submitted to article 4. The amendments of the United States (A/CONF.20/C.1/L.18) and of Spain (A/CONF.20/C.1/L.42) were withdrawn in view of the opinions expressed at the 9th meeting of the Committee on the meaning of the text as drafted by the International Law Commission.

48. An amendment of Ceylon (A/CONF.20/C.1/L.28) and a joint amendment of Italy and the Philippines (A/CONF.20/C.1/L.43) were subsequently withdrawn.

49. An amendment by Argentina (A/CONF.20/C.1/L.37), adding at the end of the article the words "The receiving State need not state reasons for a refusal", was adopted by the Committee, at its 9th meeting, by 31 votes to 9, with 28 abstentions.

50. The Committee thereafter, at the same meeting, adopted without a vote article 4 as thus amended.

*Appointment to more than one State**Article 5*

51. The Committee discussed this article and related amendments at its 2nd and 10th meetings.

52. At the 10th meeting, the Committee first voted on the principle included in the amendments of Ceylon (A/CONF.20/C.1/L.71), Finland (A/CONF.20/C.1/L.75) and the Ukrainian SSR (A/CONF.20/C.1/L.83), which all tended to reduce the scope of the introductory phrase of the article; the substance of these amendments was rejected by 36 votes to 19, with 12 abstentions.

53. The Committee thereafter approved by 39 votes to 14, with 13 abstentions the substance of the amendments submitted by the United States (A/CONF.20/C.1/L.19), Italy (A/CONF.20/C.1/L.40) and the Federation of Malaya (A/CONF.20/C.1/L.44 and Corr.1) and referred the formulation of an appropriate text to the Drafting Committee.

54. The Committee of the Whole also approved in principle, by 30 votes to 13, and 24 abstentions, and referred to the drafting committee, an amendment submitted by Colombia (A/CONF.20/C.1/L.36) proposing to add the following sentence:

"A head of mission may likewise act as his country's representative to international organizations having their headquarters in the receiving State."

55. Further, the Committee adopted, by 32 votes to 11, with 26 abstentions, an amendment by Czechoslovakia (A/CONF.20/C.1/L.41) adding a second paragraph reading:

"If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission provisionally headed by a chargé d'affaires ad interim in each State where the head of mission has not his permanent seat."

56. As thus amended article 5 was adopted without a vote.

57. The delegations of the Netherlands and Spain had submitted a joint amendment (A/CONF.20/C.1/L.22) to article 5, proposing to add a paragraph reading as follows :

“ Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.”

The Committee at its 10th meeting postponed the voting on this amendment. Later, at the 12th meeting, the amendment was adopted without vote, as a separate article. The question of the place of this new article was referred to the drafting committee.

Appointment of the staff of the mission

Article 6

58. Of the amendments submitted to article 6, the amendments of the United States (A/CONF.20/C.1/L.20), Argentina (A/CONF.20/C.1/L.38), Malaya (A/CONF.20/C.1/L.45), Spain (A/CONF.20/C.1/L.46), Libya (A/CONF.20/C.1/L.47), Congo (Leopoldville) (A/CONF.20/C.1/L.74) and the joint amendment of Chile and Ecuador (A/CONF.20/C.1/L.104) were withdrawn. Other amendments were submitted by France (A/CONF.20/C.1/L.1), Mexico (A/CONF.20/C.1/L.32/Rev.1) and Italy (A/CONF.20/C.1/L.48 and Rev.1). The first of the French amendments, relating to the diplomatic list (A/CONF.20/C.1/L.1, para. 1), to which a sub-amendment was introduced by Spain and Tunisia (A/CONF.20/C.1/L.92), was deferred for consideration in connexion with article 38. The first point of the Mexican amendment (A/CONF.20/C.1/L.32/Rev.1, para. 1) was later withdrawn.

59. At its 12th meeting the Committee of the Whole, at the proposal of Ghana, decided by 49 votes to 13, with 14 abstentions, to vote first on the text of Article 6 as drafted by the International Law Commission (A/CONF.20/4). This text was adopted by 54 votes to 10, with 6 abstentions.

Appointment of nationals of the receiving State

Article 7

60. Nine amendments and one sub-amendment were submitted to this article. The amendments of France (A/CONF.20/C.1/L.2), Thailand (A/CONF.20/C.1/L.50), Tunisia (A/CONF.20/C.1/L.62), Indonesia (A/CONF.20/C.1/L.66), Switzerland (A/CONF.20/C.1/L.84) and Republic of Korea (A/CONF.20/C.1/L.106) were withdrawn.

61. Mexico submitted an amendment (A/CONF.20/C.1/L.54) proposing to add at the end of the article the words “ and on the conditions it may lay down ”.

62. Brazil, Chile and Ireland submitted a joint amendment (A/CONF.20/C.1/L.77) modifying article 7 to read :

“ 1. Members of the diplomatic staff of the mission should be of the nationality of the sending State.

“ 2. Such members who are not nationals of the sending State may only be appointed with the express consent of the receiving State.”

To this amendment China (A/CONF.20/C.1/L.121) submitted a sub-amendment changing the wording of paragraph 2 to read :

“ Any of such members who is not a national of the sending State, or who may be claimed as a national of

the receiving State, or who is a national of a third State may be appointed only with the prior consent of the receiving State, which may be withdrawn at any time.”

63. In the light of the discussion the United Kingdom later submitted a compromise text (A/CONF.20/C.1/L.137) proposing to replace article 7 by the following :

“ 1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.

“ 2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State which may be withdrawn at any time.

“ 3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.”

The sponsor subsequently accepted a suggestion that the word “ express ” before the word “ consent ” in paragraph 2 should be omitted.

64. The United Kingdom amendment, as so amended, was, at the Committee's 12th meeting, voted upon first with the following result :

Paragraph 2 was adopted by 61 votes to 4, with 7 abstentions;

Paragraph 3 was adopted by 62 votes to 3, with 8 abstentions;

The amendment as a whole was adopted by 62 votes to none, with 10 abstentions.

The question of the correct translation into French of the word “ should ” in the first paragraph was referred to the drafting committee.

65. In view of the outcome of the vote on the United Kingdom amendment, the remaining amendments were not put to the vote.

Persons declared persona non grata

Article 8

66. Nine amendments were introduced to this article. The amendments of the United States (A/CONF.20/C.1/L.21), Argentina (A/CONF.20/C.1/L.39), United Kingdom (A/CONF.20/C.1/L.52), India (A/CONF.20/C.1/L.64), Italy (A/CONF.20/C.1/L.85) and Indonesia (A/CONF.20/C.1/L.134) were subsequently withdrawn.

67. At its 13th meeting the Committee of the Whole decided as follows with respect to the remaining amendments :

(1) An amendment by France (A/CONF.20/C.1/L.3) inserting in paragraph 1 after the words “ at any time ” the words “ and without having to explain its decision ” was adopted by 28 votes to 16, with 26 abstentions;

(2) An amendment by Belgium (A/CONF.20/C.1/L.63) which, after the sponsor had accepted a suggestion by the United States to insert the words “ or not acceptable ” proposed to add at the end of paragraph 1 the sentence : “ A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State ” was adopted by 35 votes to 21, with 15 abstentions;

(3) The principle of a proposal by Spain (A/CONF.20/C.1/L.78) that article 8 should be revised so as to

differentiate more clearly between the head of the mission and the diplomatic staff of the mission, on the one hand, and other staff of the mission on the other hand, as regards the appropriate procedures for declaring them *persona non grata* or not acceptable, was adopted by 35 votes to 15, with 16 abstentions. The article was referred to the drafting committee for revision.

68. As so amended article 8 was adopted by 65 votes to none, with 6 abstentions.

Notification of arrival and departure

Article 9

69. Of the amendments submitted to article 9, those of France (A/CONF.20/C.1/L.4), Thailand (A/CONF.20/C.1/L.51), Mexico (A/CONF.20/C.1/L.55), Ceylon (A/CONF.20/C.1/L.72) and Spain (A/CONF.20/C.1/L.79) were subsequently withdrawn. Paragraph 1 of the United Kingdom amendment (A/CONF.20/C.1/L.9) was included in the amendment of Czechoslovakia referred to below.

70. The Committee, at its 14th meeting, decided to take as the basis of its discussion an amendment of Czechoslovakia (A/CONF.20/C.1/L.49) which, after having been modified by its sponsor in the light of the debate, read as follows :

"1. The Ministry of Foreign Affairs of the receiving State shall be notified of :

"(a) The arrival of members of the mission after their appointment to the mission, and their final departure or the termination of their functions with the mission;

"(b) The arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person joins the family or leaves the household of a member of the mission;

"(c) The arrival and final departure of private servants in the employ of persons referred to in sub-paragraph (a) of this article and, where appropriate, the fact that they are leaving the employ of such persons.

"2. A similar notification shall be given whenever members of the mission and private servants are locally engaged or discharged from among persons resident in the receiving State."

71. This amendment was put to the vote in parts and adopted, paragraph 1 (a) by 63 votes to none, with 3 abstentions, paragraph 1 (b) with 64 votes to none, with 3 abstentions, paragraph 1 (c) with 61 votes to 1, with 7 abstentions, and paragraph 2 by 60 votes to 2, with 5 abstentions.

72. The Committee also adopted three amendments to article 9 as prepared by the International Law Commission and asked the drafting committee to incorporate these amendments into the article.

These three amendments were :

- (1) An amendment by the United Kingdom (A/CONF.20/C.1/L.9, para. 2) adding in the first sentence after the words "private servants, shall" the words "unless otherwise agreed"; this amendment was adopted by 54 votes to 2 with 10 abstentions;
- (2) An amendment by the United Kingdom (A/CONF.20/C.1/L.9, para. 3) adding in the second sentence after the words "private servants" the words "who are entitled to privileges and immunities"; this

amendment was adopted by 40 votes to 4 with 25 abstentions;

- (3) An amendment by Australia (A/CONF.20/C.1/L.60) which, after having been modified by its sponsor at the suggestion of the United Kingdom, added at the end of the first sentence the sentence : "Where possible prior notice of arrival and departure should also be given." This amendment was adopted by 65 votes to 1 with 4 abstentions.

73. With these amendments article 9 was adopted as a whole by 65 votes to 1, with 4 abstentions.

74. A question raised by Chile and Spain and by France relating to the Spanish and French translation of the words "who are entitled to privileges and immunities" in the above-mentioned United Kingdom amendment was referred to the drafting committee.

Size of staff

Article 10

75. Six amendments were submitted to article 10. The amendments submitted by Tunisia (A/CONF.20/C.1/L.65), Italy (A/CONF.20/C.1/L.86) and the Republic of Viet-Nam (A/CONF.20/C.1/L.88) were subsequently withdrawn, as was also the first part of the amendment submitted by Spain (A/CONF.20/C.1/L.80, para 1).

76. At its fourteenth meeting, the Committee voted on the article and the remaining amendments as follows :

- (1) An amendment by Argentina (A/CONF.20/C.1/L.119) replacing in paragraph 1 the words "what is" by the words "what it considers" was adopted by 33 votes to 26, with 7 abstentions;
- (2) An amendment by Spain (A/CONF.20/C.1/L.80, para. 2) replacing paragraph 2 by the words : "The receiving State may equally, both in general and subject to reciprocity, refuse to accept members of the mission having certain specific functions" was defeated by 30 votes to 18, with 18 abstentions;
- (3) Paragraph 2 of article 10 as drafted by the International Law Commission was adopted by 38 votes to 17, with 17 abstentions;
- (4) Article 10 as a whole, as amended, was adopted by 48 votes to 11, with 8 abstentions.

77. A suggestion by Ceylon (A/CONF.20/C.1/L.76) that the words "refuse to accept a size exceeding what" in paragraph 1 of the article be replaced by words such as "require that the size of a mission be kept within definitive limits commensurate with" was referred to the drafting committee.

Offices away from the seat of the mission

Article 11

78. Of the seven amendments submitted to this article, those of Mexico (A/CONF.20/C.1/L.56) and Switzerland (A/CONF.20/C.1/L.107) were withdrawn, as was also one of the two amendments proposed by Spain (A/CONF.20/C.1/L.93, para. 1).

79. The other three amendments — namely, two by the United Kingdom (A/CONF.20/C.1/L.53), one by China (A/CONF.20/C.1/L.67) and one by Spain (A/CONF.20/C.1/L.93, para. 2) — were superseded by a compromise draft suggested by the United States and reading :

"The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the diplomatic mission in localities other than those in which the mission itself is established."

80. At its fifteenth meeting the Committee decided, by 63 votes to 2, with 7 abstentions, to adopt this draft as the text of article 11.

*Commencement of the functions
of the head of the mission*

Article 12

81. Five amendments were submitted to this article. The amendments of China (A/CONF.20/C.1/L.68) and Czechoslovakia (A/CONF.20/C.1/L.117) were later withdrawn; Brazil also withdrew its amendment (A/CONF.20/C.1/L.115) and, together with Venezuela, became a co-sponsor of an amendment originally submitted by Italy (A/CONF.20/C.1/L.87 and Add.1).

82. At its sixteenth meeting the Committee voted on the remaining amendments as follows :

(1) By a roll-call vote of 47 to 11, with 15 abstentions, the Committee adopted the substance of an amendment by the United Kingdom (A/CONF.20/C.1/L.10) to the effect that in the article after the words "Ministry of Foreign Affairs" should be added the words "or other appropriate ministry".

(2) By 64 votes to none, with 10 abstentions, the Committee adopted paragraph 1 of the amendment sponsored by Brazil, Italy and Venezuela (A/CONF.20/C.1/L.87) reading as follows :

"1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his letters of credence or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, according to the practice prevailing in the receiving State, which shall be applied in a uniform manner."

(3) By 40 votes to 11, with 21 abstentions, the Committee adopted paragraph 2 of the amendment sponsored by Brazil, Italy and Venezuela (A/CONF.20/C.1/L.87), which, after a drafting change accepted by the sponsors, read :

"2. The order of presentation of the letters of credence or of a true copy of them will be determined by the date and the time of the arrival of the head of the mission."

(4) The Committee thereafter adopted article 12 as a whole, as amended, by 66 votes to none, with 9 abstentions.

Classes of heads of mission

Article 13

83. The Committee considered this article at its 16th, 17th and 23rd meetings. Of the amendments submitted to this article, those of the United Kingdom (A/CONF.20/L.11), China (A/CONF.20/C.1/L.69), Spain (A/CONF.20/C.1/L.94), and Guatemala (A/CONF.20/C.1/L.155) were withdrawn.

84. The United Kingdom amendment to sub-paragraph 1 (a) (A/CONF.20/C.1/L.11, para. 1), which proposed that after the words "Heads of State" the words

"or High Commissioners of the Commonwealth countries" be added and the amendment of France (A/CONF.20/C.1/L.98), which proposed that after the word "nuncios" the words "or High Representatives in the States of the community" be added, were withdrawn after Ghana had introduced a compromise text (A/CONF.20/C.1/L.177) adding after the words "Heads of State" the words "and other Heads of Mission of equivalent rank".

85. At its 23rd meeting the Committee adopted the amendment by Ghana (A/CONF.20/C.1/L.177) by 71 votes to none, with 5 abstentions.

86. At the same meeting, the Committee also voted on the substance of two amendments submitted by Mexico and Sweden (A/CONF.20/C.1/L.57 and Add.1) and by Switzerland (A/CONF.20/C.1/L.108), respectively, both of which proposed the deletion of sub-paragraph 1 (b) and hence the omission of a reference to the second class of heads of mission namely, that of envoys, ministers and internuncios. The principle of these amendments was, however, rejected by 45 votes to 12, with 15 abstentions.

87. Article 13, as amended by the adoption of the Ghana amendment (A/CONF.20/C.1/L.177) was thereafter adopted as a whole by 68 votes to none, with 5 abstentions.

Article 14

88. As no amendment had been submitted to article 14, the article was adopted without change at the Committee's 18th meeting.

Precedence

Article 15

89. Six delegations submitted amendments to this article. The amendments of Brazil (A/CONF.20/C.1/L.97), Italy (A/CONF.20/C.1/L.99) and Czechoslovakia (A/CONF.20/C.1/L.118) were subsequently withdrawn. Spain withdrew its amendment to paragraphs 1 and 2 of the article (A/CONF.20/C.1/L.95, para. 1), but maintained another amendment (A/CONF.20/C.1/L.95, para. 2), proposing the addition of a new paragraph to the article.

90. At its 18th meeting, the Committee voted as follows on the article and the remaining amendments :

(1) The Committee adopted without a vote an amendment by Malaya (A/CONF.20/C.1/L.111), co-sponsored also by Brazil and Italy, proposing that paragraph 1 of the article be replaced by the following (verbally amended) text :

"Heads of mission shall take precedence in their respective classes in the order of the date and time of their having taken up their functions in accordance with article 12."

(2) Paragraph 2 of the article, as drafted by the International Law Commission, was adopted without a vote.

(3) The Committee adopted, by 59 votes to 1, with 17 abstentions, an amendment by the Holy See (A/CONF.20/C.1/L.120) which, after a drafting change, proposed that paragraph 3 be replaced by the following text :

"The present article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See."

(4) The Committee decided, by 61 votes to none, with 9 abstentions, to adopt the substance of the above-mentioned Spanish amendment (A/CONF.20/C.1/L.95, para. 2) adding a new paragraph in the following terms :

"The precedence of other diplomatic staff of any mission shall be determined by the head of the mission and notified to the Ministry of Foreign Affairs."

The formulation of this new paragraph was entrusted to the drafting committee, which was requested to take into consideration also the amendment submitted by the United Kingdom (A/CONF.20/C.1/L.10) to article 12, which amendment had been, in substance, approved by the Committee of the Whole.

(5) The Committee finally adopted article 15, as thus amended, as a whole by 71 votes to none, with 2 abstentions.

*Article proposed by Italy
on the diplomatic corps*

91. Italy submitted a proposal (A/CONF.20/C.1/L.102) that between articles 15 and 16 a new article be inserted reading as follows :

"1. The heads of mission accredited to the same State form the diplomatic corps.

"2. The diplomatic corps fulfils the functions which are recognized by international custom and is represented for any purpose by its doyen."

92. After discussion the Commission decided, at its 18th meeting, to refer the proposal to a working group for consideration.

93. The working group, consisting of Brazil, Czechoslovakia, Federation of Malaya, Iran and Italy, submitted a report (A/CONF.20/C.1/L.281) proposing the following text :

"The heads of mission accredited to the same State, together with the members of the diplomatic staff, form the Diplomatic Corps, which shall be presided over by its doyen."

The representative of Czechoslovakia stated that, while he had no objection to the text formulated in the report, his delegation did not consider an article on the diplomatic corps necessary or desirable.

94. At its 27th meeting, the Committee voted on the text submitted by the working group. By 23 votes to 15, with 27 abstentions, the text was rejected.

Mode of reception

Article 16

95. No amendment was submitted to article 16, which at the Committee's 18th meeting was adopted without change.

Chargé d'affaires ad interim

Article 17

96. Eleven amendments were submitted to article 17. The first of two amendments submitted by the United Kingdom (A/CONF.20/C.1/L.12, para. 1) was withdrawn, as were amendments submitted by Mexico (A/CONF.20/C.1/L.58), Spain (A/CONF.20/C.1/L.96), Switzerland (A/CONF.20/C.1/L.109), Australia (A/CONF.20/C.1/L.110) and the Federation of Malaya (A/CONF.20/C.1/L.112).

97. In regard to the remaining amendments the Committee, at its 19th meeting, decided as follows :

(1) By 24 votes to 10, with 36 abstentions, the Committee rejected an amendment submitted by China (A/CONF.20/C.1/L.70) whereby the words "absent from the receiving State or" would have been inserted between the words "if the head of the mission is" and the words "unable to perform his functions".

(2) By 36 votes to 1, with 33 abstentions, the Committee adopted an amendment submitted by Spain (A/CONF.20/C.1/L.172) which provided that the words "the affairs of the mission shall be conducted by" would be deleted and the words "shall act provisionally as head of the mission", referring to the chargé d'affaires, would be inserted at an appropriate point in the text. The drafting committee was asked to incorporate this amendment in the article.

(3) By 69 votes to 1, with 3 abstentions, the Committee adopted the substance of an amendment submitted by Italy (A/CONF.20/C.1/L.100) whereby at the end of the article the words "notified to the Ministry for Foreign Affairs of the receiving State" would be replaced by : "notified either by the head of the mission or, in case of his inability, by the Minister for Foreign Affairs of the sending State to the Minister for Foreign Affairs of the receiving State". The formulation of the text was referred to the drafting committee with a request to take into consideration : (a) an oral suggestion made by the representative of the Soviet Union that, the words "by the head of the mission or, in case of his inability" be replaced by the words "by the mission"; (b) an oral suggestion by the same representative that the word "Minister" be replaced by the word "Ministry"; and to incorporate : (c) the substance of the second United Kingdom amendment (A/CONF.20/C.1/L.12, para. 2), which added after the words (in the article as drafted by the International Law Commission) "Ministry for Foreign Affairs" the words "or other appropriate ministry".

(4) By 61 votes to 2 with 9 abstentions, the Committee adopted the substance of an amendment submitted by Denmark (A/CONF.20/C.1/L.170) which, after having been modified in the course of the debate, proposed to add to the article a second paragraph in these terms :

"In cases where no diplomatic member of a mission is present in the receiving State, a member of the chancery (administrative and technical) staff not of diplomatic rank may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission (in the capacity of chargé d'affaires)."

The formulation of this new paragraph was referred to the drafting committee.

98. Subject to the above-mentioned decisions, article 17 was thereafter adopted by 68 votes to none, with 2 abstentions.

Use of flag and emblem

Article 18

99. Amendments to this article were submitted by Mexico (A/CONF.20/C.1/L.59), Italy (A/CONF.20/C.1/L.101) and the Philippines (A/CONF.20/C.1/L.136), but were all later withdrawn by their sponsors in view of the discussion at the Committee's 19th and 20th meetings, in

which it was brought out that the substance of the amendments was covered by article 40.

100. The Committee thereupon adopted without a vote article 18 as drafted by the International Law Commission.

New article between articles 18 and 19

101. A proposal by Mexico (A/CONF.20/C.1/L.127) that after article 18 a new article be inserted referring to the basis on which privileges and immunities are granted, was discussed by the Committee at its 20th meeting. With the agreement of the sponsor it was decided to deal with the matter in connexion with the preamble.

SUB-SECTION A. — MISSION PREMISES AND ARCHIVES

Accommodation

Article 19

102. Of the seven amendments submitted to this article, those of the Federation of Malaya (A/CONF.20/C.1/L.113), China (A/CONF.20/C.1/L.122), Mexico (A/CONF.20/C.1/L.128), Switzerland (A/CONF.20/C.1/L.157) and the Republic of Viet-Nam (A/CONF.20/C.1/L.169) were subsequently withdrawn; Venezuela also withdrew its amendment (A/CONF.20/C.1/L.142) after the substance of the second paragraph thereof had been incorporated in the amendment of India (A/CONF.20/C.1/L.160/Rev.1) referred to below.

103. India submitted an amendment which was subsequently revised (A/CONF.20/C.1/L.160/Rev.1) and, by the incorporation of proposals of other delegations, modified to read :

“1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its legislation, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

“2. It shall also, where necessary, assist diplomatic missions accredited in its territory to obtain suitable accommodation for their members.”

104. At its 21st meeting, the Committee voted on the Indian amendment as follows :

(1) Paragraph 1 was adopted by 64 votes to 1, with 4 abstentions;

(2) Paragraph 2 was adopted by 36 votes to 14, with 21 abstentions;

(3) The amendment as a whole, replacing article 19 as drafted by the International Law Commission, was adopted by 63 votes to 1, with 6 abstentions.

Inviolability of the mission premises

Article 20

105. When the Committee, at its 21st meeting, began its consideration of this article, the Chairman stated that it would not be desirable to deal with the right of asylum in connexion with the inviolability of the mission premises. The United Nations General Assembly, by its resolution 1400 (XIV) of 21 November 1959, had requested the International Law Commission to undertake the codification of the principles and rules of international law relating to the right of asylum. It would therefore be preferable (he said) to await the outcome of the Commission's work before embarking upon the task of regulating the matter.

106. Of the amendments to article 20, those submitted by China (A/CONF.20/C.1/L.123), Mexico (A/CONF.20/C.1/L.129), Japan (A/CONF.20/C.1/L.146), India (A/CONF.20/C.1/L.161), jointly by Ireland and Japan (A/CONF.20/C.1/L.163) and by Spain (A/CONF.20/C.1/L.168) were subsequently withdrawn.

107. The Committee, at its 22nd meeting, referred to the drafting committee an amendment submitted by the Federation of Malaya (A/CONF.20/C.1/L.114), replacing in paragraph 2 of the article the word “to” between “special duty” and “take all appropriate” by the words “and shall”.

108. The Ukrainian Soviet Socialist Republic submitted an amendment (A/CONF.20/C.1/L.132) replacing, in paragraph 3, the words “the premises of the mission and their furnishings” by the words “the premises of the mission, their furnishings, and other property”. In the course of the debate the sponsor of this amendment explained that “other property” referred to property within the premises of the mission.

109. On that understanding the Committee, at its 22nd meeting, adopted the amendment by 60 votes to none, with 10 abstentions.

110. The Committee thereafter adopted the article as a whole, as amended, by 68 votes to none, with 2 abstentions.

Exemption of mission premises from tax

Article 21

111. Of the amendments to article 21, those submitted by Venezuela (A/CONF.20/C.1/L.143), jointly by Burma and Ceylon (A/CONF.20/C.1/L.159) and jointly by Spain and Austria (A/CONF.20/C.1/L.166) were withdrawn.

112. An amendment by Belgium (A/CONF.20/C.1/L.164) inserting after the words “head of mission” the words “acting as such” was, at the 23rd meeting of the Committee, referred to the drafting committee.

113. At the same meeting the Committee, by 44 votes to 2, with 27 abstentions, adopted the substance of an amendment submitted by Mexico (A/CONF.20/C.1/L.130), sponsored also by Austria and Spain, adding a second paragraph reading as follows :

“The exemption from taxation referred to in this article shall not apply to taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.”

The formulation of this second paragraph was referred to the Drafting Committee.

114. The Committee thereafter adopted article 21, as amended, by 72 votes to none, with 1 abstention.

Inviolability of the archives

Article 22

115. Three amendments were submitted to this article, of which that of the United States (A/CONF.20/C.1/L.153) was subsequently withdrawn.

116. France and Italy submitted a joint amendment (A/CONF.20/C.1/L.149) reading :

“The archives and documents of the mission are inviolable at any time and anywhere they may be.

Outside the premises of the mission they must be identified by visible official signs."

117. The Committee, at its 24th meeting, voted on this amendment as follows :

(1) The second sentence of the amendment was rejected by 26 votes to 15, with 27 abstentions;

(2) The words "at any time" in the first sentence were voted upon separately and adopted by 24 votes to 19, with 26 abstentions;

(3) The first sentence was adopted, in replacement of article 22 as drafted by the International Law Commission, by 45 votes to 5, with 18 abstentions.

118. An amendment submitted by Bulgaria (A/CONF.20/C.1/L.126) inserting after the word "mission" the words "wherever they may be" was not voted upon as it was in substance included in the amendment already adopted by the Committee.

SUB-SECTION B. — FACILITATION OF THE WORK
OF THE MISSION, FREEDOM OF MOVEMENT
AND COMMUNICATION

Facilities

Article 23

119. No amendments were submitted to this article. The Committee, therefore, at its 24th meeting, adopted, without change, the article as prepared by the International Law Commission.

*Proposal by Spain for the addition
of a new article after article 23*

120. Spain submitted a proposal (A/CONF.20/C.1/L.192) that after article 23 a new article be added in these terms :

" Public civil deeds and documents officially executed or issued on the premises of the mission in accordance with the law of the sending State shall have in the receiving State the same effect at law as public civil deeds and documents executed or issued in the territory of the sending State have under the laws and regulations of the receiving State."

121. This proposal was, at the 24th meeting of the Committee, ruled out of order as it was considered to fall outside the terms of reference of the Conference.

Free movement

Article 24

122. The three amendments submitted to this article by the Philippines (A/CONF.20/C.1/L.141), Venezuela (A/CONF.20/C.1/L.144) and Italy (A/CONF.20/C.1/L.150/Rev.1) were subsequently withdrawn.

123. At its 24th meeting, the Committee adopted this article as drafted by the International Law Commission.

Freedom of communication

Article 25

124. In the course of the debate on this article, amendments submitted by China (A/CONF.20/C.1/L.124), France (A/CONF.20/C.1/L.125), Mexico (A/CONF.20/C.1/L.131), Liberia (A/CONF.20/C.1/L.135), Argentina (A/CONF.20/C.1/L.138), United Arab Republic (A/CONF.20/C.1/L.140), Venezuela (A/CONF.20/C.1/L.

145), Indonesia (A/CONF.20/C.1/L.147), Federation of Malaya (A/CONF.20/C.1/L.152), Czechoslovakia (A/CONF.20/C.1/L.162), India (A/CONF.20/C.1/L.165) and Spain (A/CONF.20/C.1/L.167) were withdrawn. The United States also withdrew paragraphs 1 (a), 1 (c), 2, 3, 4 and 5 of its amendments (A/CONF.20/C.1/L.154); paragraph 2 was later resubmitted by Australia. An amendment by the United Arab Republic (A/CONF.20/C.1/L.151/Rev.2) was likewise withdrawn by its sponsor and resubmitted by the United Kingdom. Switzerland withdrew paragraphs 3 and 4 of its amendments (A/CONF.20/C.1/L.158) as well as the addendum thereto (A/CONF.20/C.1/L.158/Add.1).

125. After a prolonged discussion at its 24th, 25th, 26th and 29th meetings, dealing in particular with the right of missions to install and use wireless transmitters, and with the diplomatic courier and bag, the Committee, at its 29th meeting, proceeded to vote, with the following result :

Paragraph 1. — (1) By 57 votes to 3, with 7 abstentions, the Committee rejected an amendment by Switzerland (A/CONF.20/C.1/L.158, para. 1) which would have deleted the words "and consulates" in the second sentence of paragraph 1;

(2) By 19 votes to 19, with 28 abstentions, the Committee rejected an amendment by the United States (A/CONF.20/C.1/L.154, para. 1 (b)) which would have added, after the words "wherever situated", in the second sentence of paragraph 1, the words "as well as with officials of the sending State in the receiving State, and in third States, ";

(3) By a roll-call vote of 41 votes to 20, with 9 abstentions, the Committee adopted an amendment by Argentina, India, Indonesia, Mexico, United Arab Republic and Venezuela (A/CONF.20/C.1/L.264) which, after having been orally modified, added at the end of paragraph 1 the following : " However, the mission may install and use a wireless transmitter only with the consent of the receiving State and after obtaining authorization in accordance with the laws of the receiving State and international regulations." As a result of this vote, the amendments relating to the same subject, submitted by Switzerland (A/CONF.20/C.1/L.158, para. 2) and the United Kingdom (A/CONF.20/C.1/L.291) were not voted upon.

Paragraph 2. — (4) By 22 votes to 18, with 28 abstentions, the Committee adopted paragraph 2 of the United States amendments (A/CONF.20/C.1/L.154, para. 2), resubmitted by Australia, adding the following definition : " Official correspondence means all correspondence relating to the mission and its functions."

Paragraph 3. — (5) By 43 votes to 8, with 14 abstentions, the Committee rejected an amendment by Ghana (A/CONF.20/C.1/L.294) regarding the diplomatic bag, reading as follows : " In case of reasonable suspicion of misuse of any particular bag, the sending State shall have the right to withdraw such bag unopened."

(6) By 37 votes to 22, with 6 abstentions, the Committee rejected the amendment of the United Arab Republic (A/CONF.20/C.1/L.151/Rev.2), withdrawn by its sponsor and resubmitted by the United Kingdom, also regarding the diplomatic bag, and reading as follows : " The diplomatic bag shall be exempt from inspection. However, if

in an exceptional case the receiving State has serious grounds for suspecting that the diplomatic bag contains articles other than those mentioned in paragraph 4, the sending State may be required to withdraw the said bag."

(7) By 24 votes to 24, with 15 abstentions, the Committee rejected paragraph 1 of an amendment by France and Switzerland (A/CONF.20/C.1/L.286), likewise regarding the diplomatic bag, reading: "3. The diplomatic bag, which must bear visible external marks of its character, may only contain diplomatic documents or articles of an official nature necessary for the performance of the functions of the mission. It shall not be opened or detained."

Paragraph 5. — (8) By 33 votes to 22, with 10 abstentions, the Committee adopted paragraph 2 of the amendments submitted by France and Switzerland (A/CONF.20/C.1/L.286) replacing paragraph 5 by the following text: "The diplomatic courier, who shall be provided with an official document attesting his rank and the number of packages making up the bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention."

(9) By 36 votes to 8, with 17 abstentions, the Committee rejected paragraph 6 of the United States amendments (A/CONF.20/C.1/L.154) which would have replaced the words "and shall not be liable to any form of arrest or detention" by the words "to the same extent as a member of the administrative and technical staff of the mission".

Additional paragraphs. — (10) By 53 votes to 3, with 10 abstentions, the Committee adopted an amendment submitted by Chile (A/CONF.20/C.1/L.133), and sponsored also by Liberia, adding the following new paragraph: "The sending State or the head of the mission, as the case may be, may accredit diplomatic couriers *ad hoc*; but these shall enjoy the inviolability provided in the preceding paragraph only until they have delivered to the consignee the diplomatic bag or correspondence in their charge." The question of the correct translation into the other official languages of the Spanish term "accreditar" was referred to the drafting committee.

(11) After having decided, by 48 votes to 7, with 7 abstentions, to vote also on paragraph 3 of the amendments submitted by France and Switzerland (A/CONF.20/C.1/L.286) the Committee adopted, by 34 votes to 20 with 8 abstentions, this paragraph, which added a new paragraph reading as follows: "The mission may entrust the diplomatic bag to the captain of a commercial aircraft, who shall not then be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft."

126. The Committee thereafter, by 50 votes to 12, with 3 abstentions, adopted article 25 as amended by the above-mentioned decisions.

Article 26

127. No amendment was submitted to this article. The Committee, at its 24th meeting, adopted, without a vote, the article as drafted by the International Law Commission.

SUB-SECTION C. — PERSONAL PRIVILEGES AND IMMUNITIES

Personal inviolability

Article 27

128. Amendments to this article were submitted by China (A/CONF.20/C.1/L.209) and Belgium (A/CONF.20/C.1/L.214).

129. The Committee, at its 25th meeting, by 27 votes to 6, with 34 abstentions, rejected the Chinese amendment which would have added a new paragraph reading:

"Nothing in this article excludes in respect of the diplomatic agent either measures of self-defence or, in exceptional circumstances, measures to prevent him committing crimes or offences."

130. The Committee, at the same meeting, by 22 votes to 21, with 23 abstentions, adopted the Belgian amendment deleting the word "reasonable" in the third sentence of the article.

131. By a vote of 69 to none, with 1 abstention, the Committee decided, however, to reconsider its decision and thereafter by the same vote decided to insert the word "appropriate" in the place of the deleted word "reasonable".

132. As thus amended the article as a whole was adopted by 70 votes to none, with no abstentions.

Inviolability of residence and property

Article 28

133. Two amendments submitted, respectively, by Spain (A/CONF.20/C.1/L.220) and the United States (A/CONF.20/C.1/L.259), were not pressed to a vote.

134. The Committee, at its 27th meeting, adopted article 28 as drafted by the International Law Commission.

Immunity from jurisdiction

Article 29

135. Of the amendments submitted to this article, those submitted by Guatemala (A/CONF.20/C.1/L.156), Colombia (A/CONF.20/C.1/L.173), Union of Soviet Socialist Republics (A/CONF.20/C.1/L.176), Mexico (A/CONF.20/C.1/L.178), Italy (A/CONF.20/C.1/L.195), China (A/CONF.20/C.1/L.210), Venezuela (A/CONF.20/C.1/L.229) and the United States (A/CONF.20/C.1/L.260), were subsequently withdrawn. Spain also withdrew three of its amendments (A/CONF.20/C.1/L.221, paras. 2, 4 and 5), but maintained those referring to paragraphs 1(b) and 2 (A/CONF.20/C.1/L.221, paras. 1 and 3).

136. At its 28th meeting, the Committee voted on the article, and on the remaining amendments, as follows:

Paragraph 1. — (1) The Committee, by 31 votes to 13, with 26 abstentions, adopted an amendment by Spain (A/CONF.20/C.1/L.221, para. 1) adding at the end of sub-paragraph (b) the words: "as a private person and not on behalf of his Government".

(2) The Committee, by a roll-call vote of 37 votes to 9, with 25 abstentions, rejected an amendment by the Netherlands (A/CONF.20/C.1/L.186/Rev.1) which would have added the following passage at the end of paragraph 1: "The immunity from civil jurisdiction, in so far as it

concerns an action for damages relating to a traffic accident in the receiving State in which the diplomatic agent is involved, is subject to the condition that such action can be brought directly against an insurance company before a court of the receiving State."

(3) The Committee, by 38 votes to 4, with 28 abstentions, rejected an amendment by Switzerland (A/CONF.20/C.1/L.215) adding a new sub-paragraph reading: "An administrative procedure for the issue or withdrawal of a driving licence."

4) The Committee, by 17 votes to 11, with 39 abstentions, adopted an amendment by Australia (A/CONF.20/C.1/L.288) adding a new sub-paragraph reading: "An action relating to the recovery of tax on private income having its source in the receiving State."

An amendment by Libya, Morocco and Tunisia (A/CONF.20/C.1/L.208) replacing the words "the criminal jurisdiction" by the words "the jurisdiction of the criminal courts" was referred to the Drafting Committee, as was an oral suggestion by the Federal Republic of Germany that the two opening sentences of paragraph 1 should be revised to read: "A diplomatic agent shall enjoy immunity from the jurisdiction of the receiving State. Nevertheless, he shall not enjoy immunity from its civil and administrative jurisdiction in the case of:"

Paragraph 2. — (5) The Committee, by 40 votes to 5, with 22 abstentions, rejected an amendment by Spain (A/CONF.20/C.1/L.221, para. 3) adding at the end of the paragraph the following: "before a local court; but shall do so on instruction from his government."

Paragraph 3. — As a consequence of the adoption of the amendment of Australia (A/CONF.20/C.1/L.288) adding a sub-paragraph (d) to paragraph 1, it was decided to mention in paragraph 3 sub-paragraph (d) together with sub-paragraphs (a), (b) and (c). However, after the completion of the vote, a question was raised by the United Kingdom as to whether the reference to sub-paragraph (d) in paragraph 3 was in fact of a consequential nature. It was suggested that it was of a substantive character, as measures of execution were now permitted by this amendment only in cases relating to tax on private income although other articles in the draft articles, such as article 32, indicated that this was not the only form of tax to which a diplomatic agent might be subject in the receiving State.

Paragraph 4. — (6) The Committee, by 35 votes to 11, with 21 abstentions, rejected an amendment by the Netherlands (A/CONF.20/C.1/L.186) which sought to add the following sentence to paragraph 4: "The sending State shall designate a competent court for hearing cases against members of their diplomatic missions abroad."

137. The Committee thereafter, by 60 votes to none, with 9 abstentions, adopted article 29, as amended.

Waiver of immunity

Article 30

138. Amendments submitted to this article by France (A/CONF.20/C.1/L.217), the United States (A/CONF.20/C.1/L.261), jointly by Chile and Spain (A/CONF.20/C.1/L.267 and Add.1) and by the Holy See (A/CONF.20/C.1/L.292) were withdrawn, as was paragraph 1 of

the amendments submitted jointly by Libya, Morocco and Tunisia (A/CONF.20/C.1/L.200 with Rev.1 and Rev.2).

139. At its 29th meeting, the Committee proceeded to vote on the article and the remaining amendments, with the following result:

Paragraph 1

(1) By a vote 65 to 1, with 1 abstention, the Committee adopted an amendment by Belgium, Brazil, Chile, Colombia and Spain (A/CONF.20/C.1/L.283) to paragraph 1 in these terms: "The immunity from jurisdiction of persons enjoying immunity under article 36 may be waived by the sending State." A question raised by Austria as to whether the wording of this provision was wide enough to cover waivers in respect of the matters contained in articles 27 and 28, was referred to the Drafting Committee, as was a suggestion by the United States that after the words "jurisdiction of" the words "diplomatic agents and of" be inserted; it was the intention of the Committee that the paragraph should cover all persons entitled to immunity in terms of the articles.

Paragraph 2

(2) By 42 votes to 9, with 12 abstentions, the Committee adopted an amendment by Poland (A/CONF.20/C.1/L.171, para. 1) deleting from paragraph 2 the words "In criminal proceedings".

Paragraph 3

(3) By 43 votes to 11, with 15 abstentions, the Committee adopted an amendment by Poland (A/CONF.20/C.1/L.171, para. 2) deleting the first two sentences of paragraph 3. In this connexion the Committee referred to the drafting committee an amendment by Libya, Morocco and Tunisia (A/CONF.20/C.1/L.200/Rev.2, para. 2) redrafting the remaining sentence of the paragraph as follows: "If a diplomatic agent initiates proceedings, he shall no longer be entitled to invoke immunity of jurisdiction in respect of counter-claims directly connected with the principal claim."

Paragraph 4

(4) By 42 votes to 13, with 13 abstentions, the Committee rejected identical amendments by Chile, Mexico and Spain (A/CONF.20/C.1/L.179 and Add.1), and by Chile and Venezuela (A/CONF.20/C.1/L.230 and Add.1) which would have deleted paragraph 4.

(5) By 25 votes to 23, with 20 abstentions, the Committee also rejected an amendment by Libya, Morocco and Tunisia (A/CONF.20/C.1/L.200/Rev.2, para. 3) which would have added the following sentence at the end of paragraph 4: "Nevertheless, if there is no waiver of immunity in respect of execution, the sending State shall, in case of need, consult with the receiving State on suitable means of enforcing execution of the judgment."

Proposed new paragraph

By 34 votes to 16, with 20 abstentions, the Committee rejected an amendment by Chile, Colombia, Ecuador and Guatemala (A/CONF.20/C.1/L.290 and Add.1) adding the following paragraph (as orally amended): "If it is intended to take proceedings against a diplomatic agent, the judge shall notify the Ministry of Foreign Affairs

which, after hearing the diplomatic mission concerned, shall inform the judge whether or not immunity is waived."

140. Article 30 as a whole, as amended by the above-mentioned decisions, was thereafter adopted by 60 votes to none, with 8 abstentions.

Exemption from social security legislation

Article 31

141. Amendments to article 31 were submitted by the Netherlands (A/CONF.20/C.1/L.187), Italy (A/CONF.20/C.1/L.196), the United Kingdom (A/CONF.20/C.1/L.201), France (A/CONF.20/C.1/L.218), Australia (A/CONF.20/C.1/L.226), Switzerland (A/CONF.20/C.1/L.238), India (A/CONF.20/C.1/L.254), the United States (A/CONF.20/C.1/L.262), Austria (A/CONF.20/C.1/L.265) and Spain (A/CONF.20/C.1/L.268).

142. Mr. C. Wilfred Jenks, Assistant Director-General of the International Labour Office, speaking at the invitation of the Chairman, made a statement on the subject matter of this article at the 25th meeting of the Committee.

143. After further discussion at the 30th meeting, the Committee appointed a working party, consisting of Austria, India, Switzerland, Union of Soviet Socialist Republics and the United States, to prepare, in the light of the discussion, a new text based on the Austrian amendment (A/CONF.20/C.1/L.265) which was essentially an adaptation of the corresponding article prepared by the International Law Commission with respect to consulates and their personnel. (See chapter II of the International Law Commission's report on its twelfth session [A/4425].)

144. The working party proposed to the Committee the following text (A/CONF.20/C.1/L.310) :

Exemption from social security provisions

1. Subject to the provisions of paragraph 3 of this article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition

(a) That they are not nationals of or not permanently resident in the receiving State; and

(b) That they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system, provided that such participation is permitted by the receiving State.

5. The provisions of the present article shall not affect bilateral or multilateral agreements concerning social security concluded previously between the Contracting Parties, and shall not prevent the conclusion of such conventions in the future.

145. At its 32nd meeting, the Committee, by 53 votes to none, with 14 abstentions, this text for article 31.

Exemption from taxation

Article 32

146. In dealing with this article and the numerous amendments submitted to it, the Committee, at its 30th, 31st and 35th meetings, considered first the opening phrase and the amendments thereto and thereafter the successive sub-paragraphs with corresponding amendments.

Opening phrase

147. The amendments submitted to the opening phrase by Switzerland (A/CONF.20/C.1/L.239, para. 1) and Australia (A/CONF.20/C.1/L.282) were withdrawn.

148. The Committee thereafter, by 35 votes to 16, with 19 abstentions, adopted an amendment by Nigeria (A/CONF.20/C.1/L.244) inserting after the words "diplomatic agent" the words "who is not a national of the receiving State".

149. The question raised by Iran and the Union of Soviet Socialist Republics as to whether the words thus added were redundant in the context was referred to the drafting committee.

150. In consequence of the vote taken, an amendment by France (A/CONF.20/C.1/L.219, para. 1) was not submitted to a vote.

Sub-paragraph (a)

151. Amendments submitted to this sub-paragraph by Venezuela (A/CONF.20/C.1/L.231), Austria (A/CONF.20/C.1/L.235), Switzerland (A/CONF.20/C.1/L.239, para. 2) and Canada (A/CONF.20/C.1/L.257, para. 1) were withdrawn. The United Kingdom also withdrew the second of its two amendments (A/CONF.20/C.1/L.202, para. 2).

152. The Committee, by 42 votes to 7, with 23 abstentions, rejected an amendment by Japan (A/CONF.20/C.1/L.247) which would have replaced the sub-paragraph by the words "Excise taxes, including sales taxes;".

153. Thereafter the Committee, by 27 votes to 18, with 26 abstentions, adopted the United Kingdom's first amendment (A/CONF.20/C.1/L.202, para. 1) inserting between "indirect taxes" and "incorporated" the words "of a kind which are normally".

Sub-paragraph (b)

154. Amendments submitted by the Netherlands (A/CONF.20/C.1/L.188, para. 1) and by Canada (A/CONF.20/C.1/L.257, para. 2) were withdrawn.

155. The Committee, by 26 votes to 18, with 25 abstentions, rejected an amendment by France (A/CONF.20/C.1/L.219, para. 2 (b)) which would have modified the sub-paragraph to read as follows :

"Dues and taxes on private immovable property situated in the territory of the receiving State, subject, however, to the application of the provisions of article 21 to immovable property owned by the diplomatic agent on behalf of the sending State for the purposes of the mission;"

Sub-paragraph (c)

156. Amendments by the Netherlands (A/CONF.20/C.1/L.188, para. 2) and Spain (A/CONF.20/C.1/L.269, para. 1) were withdrawn.

157. Other amendments were submitted by France (A/CONF.20/C.1/L.219, para. 2 (c)), Canada (A/CONF.20/C.1/L.257, para. 4) and the United States (A/CONF.20/C.1/L.263, para. 1).

158. As the French amendment was connected with an amendment submitted by France (A/CONF.20/C.1/L.225) to paragraph 3 of article 38, further consideration of sub-paragraph (c) and the amendments thereto was at the 30th meeting postponed until the Committee had dealt with article 38.

159. In view of the result of the vote on article 38, the above-mentioned amendments of France, Canada and the United States were withdrawn at the 35th meeting of the Committee.

Sub-paragraph (d)

160. The Committee adopted, by 25 votes to 15, with 31 abstentions, an amendment by Switzerland (A/CONF.20/C.1/L.239, para. 3) which at the end of the sub-paragraph added the words: "and capital taxes on investments made in commercial undertakings in the receiving State".

161. A suggestion by Ghana that the word "private" should be inserted before the word "income" in the sub-paragraph was referred to the drafting committee for consideration.

162. An amendment by the United States (A/CONF.20/C.1/L.263, para. 2), which was withdrawn by its sponsor and reintroduced by Canada, was rejected by 28 votes to 21, with 22 abstentions. It would have added at the end of the sub-paragraph: "it being understood that income representing salary, expenses and allowances received from the sending State is not included within the meaning of income having its source in the receiving State;"

Sub-paragraph (f)

163. An amendment submitted by Spain (A/CONF.20/C.1/L.269, para. 2) was withdrawn.

164. The Committee adopted without a vote, an amendment by the United States (A/CONF.20/C.1/L.263, para. 3) adding at the end of the sub-paragraph the words "with respect to immovable property".

Proposed new sub-paragraphs

165. Two proposals for new sub-paragraphs submitted by Canada (A/CONF.20/C.1/L.257, paras. 2 and 3) were withdrawn.

166. A proposal by France (A/CONF.20/C.1/L.219, para. 3) for the addition of a new sub-paragraph reading: "Dues and taxes payable by reason of occupation in the territory of the receiving State of residence other than the official residence" was rejected by 31 votes to 9, with 25 abstentions.

Proposed second paragraph

167. A proposal by the United States (A/CONF.20/C.1/L.263, para. 4) for the addition of a second paragraph was withdrawn.

168. The Committee adopted article 32 as a whole, as amended, without a vote.

Proposal by Spain for a new article after article 32

169. A proposal by Spain (A/CONF.20/C.1/L.280) that after article 32 a new article should be added regarding certain aspects of leases signed by a diplomatic agent was withdrawn by its sponsor.

Exemption from personal services and contributions

Article 33

170. Of the two amendments to this article, that submitted by Spain (A/CONF.20/C.1/L.270) was withdrawn.

171. The other amendment, submitted by Belgium (A/CONF.20/C.1/L.266), was adopted, without a vote, at the 31st meeting, after having been modified to read as follows:

"The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting."

172. This text was consequently accepted in replacement of article 33 as drafted by the International Law Commission.

Exemption from customs duties and inspection

Article 34

173. At its 31st meeting the Committee considered this article with the relevant amendments.

Title of the article

174. An amendment by Australia (A/CONF.20/C.1/L.277, para. 1) adding in the title the word "excise" was not pressed in view of the decision taken by the Committee regarding the wording of the opening phrase of the article.

Proposal relating to the drafting of the article as a whole

175. An amendment by Australia (A/CONF.20/C.1/L.277, para. 1) replacing the word "articles" by the word "chattels" to cover animals was referred to the drafting committee.

Paragraph 1

176. An amendment by the United States (A/CONF.20/C.1/L.272) to the whole paragraph was withdrawn except for the part of the amendment relating to the opening phrase.

177. An amendment by the United Kingdom (A/CONF.20/C.1/L.203) also to the whole paragraph was withdrawn as far as it related to the opening phrase.

Opening phrase

178. Amendments by Japan (A/CONF.20/C.1/L.248, para. 1) and Australia (A/CONF.20/C.1/L.277, para. 2) to the opening phrase were withdrawn.

(1) The Committee rejected by 38 votes to 11, with 21 abstentions, an amendment by France (A/CONF.20/C.1/L.222, para. 1) modifying the opening phrase to read:

"The receiving State shall, in accordance with the regulations established by its legislation and subject to reciprocity, grant exemption from customs duties and from import and export taxes levied on:"

(2) The Committee rejected by 40 votes to 5, with 23 abstentions, an amendment by Switzerland (A/CONF.20/C.1/L.240, para. 1) inserting after the words "exemption from customs duties", the words: "and from all import or export prohibitions or restrictions of an economic or financial nature".

(3) The Committee, by 29 votes to 7, with 34 abstentions, rejected an amendment by Denmark (A/CONF.20/C.1/L.212/Rev.1, para. 1) reading as follows:

"The receiving State shall, in accordance with the provisions of its legislation, grant to a diplomatic agent who does not carry on any gainful private activity, exemption from customs duties, and from all other charges and taxes chargeable at the time of customs clearance on:"

(4) The Committee, by 40 votes to 4, with 23 abstentions, adopted an amendment by the United States (A/CONF.20/C.1/L.272, para. 1 (1)) modifying the opening phrase to read:

"1. The receiving States shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than service charges for storage, cartage, etc., on:"

In view of this last decision no vote was taken on an amendment submitted by the Union of Soviet Socialist Republics (A/CONF.20/C.1/L.194, para. 1) as it was in substance covered by the amendment adopted.

179. *Sub-paragraphs (a) and (b)*. — These sub-paragraphs were considered together. Amendments by the United States (A/CONF.20/C.1/L.272) to these sub-paragraphs were withdrawn, as was an amendment by Denmark (A/CONF.20/C.1/L.212/Rev.1, para. 2) to sub-paragraph (b) and an amendment by Japan (A/CONF.20/C.1/L.248, para. 2) to sub-paragraph (b).

(5) The Committee, by 27 votes to 16, with 26 abstentions, rejected an amendment by Venezuela (A/CONF.20/C.1/L.232) which would have merged sub-paragraphs (a) and (b) in the following text:

"Articles for the use of a mission or its diplomatic staff, or of members of their families belonging to their households, at the request of the head of the mission."

(6) The Committee, by 38 votes to 4, with 26 abstentions, rejected an amendment by the United Kingdom (A/CONF.20/C.1/L.203) which sought to replace sub-paragraphs (a) and (b) by the following:

"(a) Articles originating outside the receiving State which are imported for the use of a diplomatic mission;

"(b) Articles originating outside the receiving State which are imported for the personal use of a diplomatic agent or for his household use."

(7) The Committee, by 36 votes to 13, with 19 abstentions, rejected an amendment by Italy (A/CONF.20/C.1/L.197) which sought to replace the words "members of his family belonging to his household" in sub-paragraph (b), by the words "the members of his immediate family".

(8) The Committee, by 32 votes to 17, with 19 abstentions, adopted an amendment by France (A/CONF.20/C.1/L.222, para. 2) inserting the word "official" after the word "use" in sub-paragraph (a).

Proposals for a new paragraph between paragraphs 1 and 2

180. Proposals by Switzerland (A/CONF.20/C.1/L.240, para. 2) and the United States (A/CONF.20/C.1/L.272, para. 2) were subsequently withdrawn.

Paragraph 2

181. An amendment by Denmark (A/CONF.20/C.1/L.212/Rev.1, para. 3) was withdrawn. An amendment by the Federation of Malaya (A/CONF.20/C.1/L.252) was also withdrawn by its sponsor, but later reintroduced by Spain.

(9) The Committee, by 42 votes to 14, with 9 abstentions, rejected the latter amendment (A/CONF.20/C.1/L.252), which sought to reword paragraph 2 as follows: "2. The personal baggage of a diplomatic agent shall be exempt from search and examination."

(10) The Committee, by 31 votes to 26, with 12 abstentions, rejected an amendment by the Union of Soviet Socialist Republics (A/CONF.20/C.1/L.194, para. 2) inserting the words "accompanying him" after the words "the personal baggage of a diplomatic agent".

(11) The Committee, by 31 votes to 17, with 24 abstentions, rejected an amendment by Guatemala (A/CONF.20/C.1/L.184) adding at the end of paragraph 2 the words "and of an official of the Ministry for Foreign Affairs of the receiving State".

(12) The Committee, by 44 votes to 3, with 21 abstentions, adopted an amendment by Australia (A/CONF.20/C.1/L.227, para. 2) inserting after the words "the law", the words "or controlled by the quarantine regulations".

(13) The Committee, by 25 votes to 12, with 31 abstentions, rejected an amendment by Austria (A/CONF.20/C.1/L.236 (i)) inserting the words "presenting his passport" between the words "diplomatic agent" and "shall be exempt".

(14) The Committee, by 26 votes to 23, with 17 abstentions, adopted an amendment by Austria (A/CONF.20/C.1/L.236 (ii)) deleting the word "very" before the words "serious grounds".

(15) An amendment by India (A/CONF.20/C.1/L.255) replacing paragraph 2 by the following text:

"2. The exemption granted under paragraph 1 is without prejudice to the right of the receiving State, under uniform rules and regulations:

- (a) To restrict the quantity of goods imported;
- (b) To designate the period during which the import of articles for the establishment of the diplomatic agent must take place;
- (c) And to specify a period within which goods imported duty free must not be re-sold."

was rejected by the following votes:

Sub-paragraph (a), by 32 votes to 20, with 17 abstentions;

Sub-paragraph (b), by 33 votes to 17, with 18 abstentions;

Sub-paragraph (c), by 28 votes to 22, with 19 abstentions.

182. Article 34 as a whole, as amended, was adopted by 66 votes to none, with 5 abstentions.

*Acquisition of nationality**Article 35*

183. Six amendments were submitted to this article. Of these, one amendment submitted by Italy (A/CONF.20/C.1/L.198) was subsequently withdrawn.

184. After discussion, the Committee, at its 31st meeting, appointed a Working Group consisting of France, Guatemala, the Philippines, Spain, the Union of Soviet Socialist Republics, the United Arab Republic and the United Kingdom, to consider the amendments and submit its recommendations to the Committee.

185. At the 34th meeting the Working Group submitted a report (A/CONF.20/C.1/L.314) in which the following text was put forward for examination by the Committee of the Whole as an alternative to article 35 as drafted by the International Law Commission :

"Children born on the territory of the receiving State to parents, members of the mission, neither being nationals of the receiving State [nor having their private domicile in the receiving State according to the law of that State] shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State."

The report stated that objections to the text had been presented by the United Kingdom and Guatemala.

186. The Committee, at the 34th meeting, voted on article 35, the text submitted by the Working Group and the amendments submitted by various delegations, with the following result :

(1) An amendment by the United Kingdom (A/CONF.20/C.1/L.204) which would have deleted the whole article was rejected by 41 votes to 20, with 8 abstentions.

(2) The Committee took a separate vote on the words within brackets in the text submitted by the working group. By 37 votes to 7, with 24 abstentions, the words within brackets were rejected.

(3) The Committee thereafter voted on the remaining part of the text submitted by the working group and rejected it by 47 votes to 13, with 9 abstentions.

(4) The Committee thereafter, by 44 votes to 10, with 12 abstentions, rejected an amendment by France (A/CONF.20/C.1/L.223) replacing the article by the following text :

"No law of the receiving State conferring its nationality, in virtue of the principle of *jus soli*, upon children born in its territory shall apply to children of members of the mission unless they voluntarily request the application of that law in accordance with its provisions."

(5) The Committee then, by 44 votes to 6, with 15 abstentions, rejected an amendment by Guatemala (A/CONF.20/C.1/L.185) to redraft the article to read :

"Members of the mission, not being nationals of the receiving State, shall not acquire the nationality of that State merely by birth in its territory or by marriage to one of its nationals."

(6) The Committee, by 48 votes to 8, with 11 abstentions, rejected an amendment by Switzerland (A/CONF.20/C.1/L.241) which sought to add at the end of the article the following : "This provision shall not affect

acquisition of nationality by marriage under the law of the receiving State."

(7) The Committee, by 36 votes to 10, with 20 abstentions, rejected an amendment by Australia (A/CONF.20/C.1/L.245), as orally amended, inserting between the words "members of the mission" and "not being nationals" the words "likewise entitled to immunity from jurisdiction in accordance with article 29 or the first two paragraphs of article 36 and".

(8) Finally the Committee, by 46 votes to 12, with 12 abstentions, adopted article 35 as drafted by the International Law Commission.

187. A question raised by Iran as to the correct formulation in the French text of the words "solely by the operation of the law of the receiving State" was referred to the Drafting Committee.

*Persons entitled to privileges and immunities**Article 36*

188. The amendments submitted to this article by the United Kingdom (A/CONF.20/C.1/L.205), Denmark (A/CONF.20/C.1/L.213), Belgium (A/CONF.20/C.1/L.216), Venezuela (A/CONF.20/C.1/L.233) and India (A/CONF.20/C.1/L.256) were withdrawn. Other sponsors withdrew their amendments in part, namely Italy (A/CONF.20/C.1/L.199, para. 1 (a)), Libya, Morocco and Tunisia (A/CONF.20/C.1/L.211/Rev.1, paras 3 and 4), Burma, Ceylon, and Malaya (A/CONF.20/C.1/L.288/Rev.1, paras. 1, 2 (2) and 3), Japan (A/CONF.20/C.1/L.249, para. 2), the United States (A/CONF.20/C.1/L.273/Rev.1), Australia (A/CONF.20/C.1/L.278, paras. 2 and 3, and Add. 1), the Republic of Vietnam (A/CONF.20/C.1/L.285/Rev.1, para. 3), Brazil (A/CONF.20/C.1/L.295, paras. 2, 3, 4 and 5), Sweden (A/CONF.20/C.1/L.308, para. 1 (i) and 2).

189. At its 33rd meeting, the Committee voted on article 36 and the remaining amendments as follows :

Paragraphs 1 and 2

(1) The Committee, by 58 votes to 3, with 9 abstentions, rejected an amendment by the United States (A/CONF.20/C.1/L.273, para. 1) which sought to replace paragraphs 1 and 2 by the following text, as orally revised :

"The members of the family of a diplomatic agent who is not himself a national or permanent resident of the receiving State, and members of the administrative and technical staff who are not nationals or permanent residents of the receiving State, shall enjoy the privileges and immunities specified in articles 27 to 34."

(2) The Committee, by 35 votes to 5, with 31 abstentions, rejected an amendment by Sweden (A/CONF.20/C.1/L.308, para. 1 (ii)) which would have added at the end of paragraph 1 the following : "exemption from taxation, however, shall be granted only to members of the family being wives or minor children."

(3) By 35 votes to 24, with 10 abstentions, the Committee rejected an amendment to paragraphs 1 and 2 by Libya, Morocco and Tunisia (A/CONF.20/C.1/L.211/Rev.1, paras. 1 and 2) — (a) deleting in paragraph 1 the words : "and likewise the administrative and technical staff of a mission, together with the members of their

families forming part of their respective households," and (b) replacing paragraph 2 by the following: "Members of the administrative, technical and service staff of the mission, provided that they are not nationals of the receiving State, shall enjoy immunity in respect of acts performed in the course of their duties, and exemption from dues and taxes on the emoluments or wages they receive by reason of their employment."

(4) The Committee, by 24 votes to 9, with 33 abstentions, rejected an amendment by Japan (A/CONF.20/C.1/L.278, para. 1) inserting in paragraph 1 after the words "receiving State" the words "or persons who have entered the receiving State for permanent residence".

(5) The Committee, by 17 votes to 5, with 42 abstentions, rejected an amendment by Japan (A/CONF.20/C.1/L.249, para. 1) — (i) deleting the words: "and likewise the administrative and technical staff of a mission, together with the members of their families forming part of their respective households." and (ii) adding at the end of paragraph 1 the following sentence: "The administrative and technical staff of a mission, together with the members of their families forming part of their respective households shall, if they are nationals of the sending State and not of the receiving State, enjoy the same privileges and immunities."

(6) The Committee, by 28 votes to 19 with 21 abstentions, rejected an amendment by the Netherlands (A/CONF.20/C.1/L.189) adding at the end of paragraph 1 the following:

"Persons who exercise in the receiving State private professional or commercial activities may enjoy the privileges and immunities specified in articles 31 to 34 only to the extent admitted by the receiving State. However, the receiving State shall exercise its jurisdiction over such persons in such a manner as not to interfere unduly with the conduct of the business of the mission."

(7) The Committee, by 18 votes to 18, with 27 abstentions, rejected an amendment by Burma, Ceylon and Malaya (A/CONF.20/C.1/L.228/Rev.1, para. 2 (3)), which would have replaced paragraph 2 by the following:

"Members of the service staff of the mission who are not nationals or permanent residents of the receiving State shall enjoy immunity in respect of acts done by them in their official capacity and within the limits of their authority, and exemption from dues and taxes on the emoluments they receive by reason of their employment."

(8) The Committee, by 47 votes to 7, with 13 abstentions, adopted a revised amendment to paragraphs 1 and 2 submitted by Canada (A/CONF.20/C.1/L.258/Rev.1, paras. 1 and 4, as further revised) also sponsored by Australia, Brazil, Burma, Ceylon, Federation of Malaya and Sweden, whereby (a) in paragraph 1 the words "and likewise the administrative and technical staff of a mission, together with the members of their families forming part of their respective households" were deleted, and (b) paragraph 2 was amended to read: "The administrative and technical staff of a mission together with members of their families forming part of their respective households shall, if they are not nationals or permanent residents of the receiving State, enjoy the privileges and immunities specified in articles 27 to 33 and the privileges specified in article 34, paragraph 1, in respect of articles imported at

the time of first installation." In view of the adoption of this amendment, amendments submitted by Switzerland (A/CONF.20/C.1/L.242) and by the Republic of Viet-Nam (A/CONF.20/C.1/L.285/Rev.1, paras. 1 and 2) were not put to the vote.

(9) The Committee, by 54 votes to 2, with 12 abstentions, adopted an amendment by Canada (A/CONF.20/C.1/L.258/Rev.1, para. 2) which, as orally modified, inserted before the words "receiving State" the words "or permanently resident in".

(10) The Committee, by 59 votes to none, with 7 abstentions, adopted paragraph 2 as thus amended.

Paragraph 3

(11) The Committee, by 56 votes to 1, with 8 abstentions, adopted an amendment by Canada (A/CONF.20/C.1/L.258/Rev.1, para. 3) which, as orally modified, inserted before the words "receiving State" the words "or permanently resident in".

Article 36, as amended, was adopted by a roll-call vote of 54 to 10, with 7 abstentions.

Diplomatic agents who are nationals of the receiving State

Article 37

190. The amendments to this article submitted by the United Kingdom (A/CONF.20/C.1/L.206), and Japan (A/CONF.20/C.1/L.250) were withdrawn.

191. At its 34th meeting the Committee voted on the article and the remaining amendments with the following result:

(1) The Committee rejected an amendment by Venezuela (A/CONF.20/C.1/L.234) deleting article 37, by 43 votes to 12, with 12 abstentions, on the deletion of paragraph 1 and by 46 votes to 12, with 11 abstentions, on the deletion of paragraph 2.

(2) The Committee, by 26 votes to 14, with 30 abstentions, rejected an amendment by Mexico (A/CONF.20/C.1/L.180) deleting the last sentence of paragraph 1.

(3) The Committee voted as follows on an amendment by the United States (A/CONF.20/C.1/L.274) replacing paragraphs 1 and 2 by a single paragraph reading:

"A diplomatic agent who is a national or permanent resident of the receiving State shall enjoy inviolability. He and other members of the mission who are nationals or permanent residents of the receiving State shall also enjoy immunity from jurisdiction in respect of acts performed by them in their official capacity and within the scope of their functions."

(a) The first sentence of this text was rejected by 35 votes to 12, with 23 abstentions;

(b) The second sentence was rejected by 36 votes to 11, with 23 abstentions.

(4) The Committee, by 43 votes to 7, with 17 abstentions, adopted an amendment by France (A/CONF.20/C.1/L.224) replacing the first sentence of paragraph 1 by the following provision:

"A diplomatic agent who is a national of the receiving State shall enjoy, in respect of official acts performed in the exercise of his functions, inviolability and immunity from jurisdiction."

(5) The Committee, by 27 votes to 8, with 32 abstentions, adopted an amendment by Australia (A/CONF.20/C.1/L.279) which, as orally amended, inserted in both paragraphs of the article the words "or permanent resident(s)" after the word "national(s)".

192. In view of the decisions taken, two amendments by Canada (A/CONF.20/C.1/L.246/Rev.1) were not voted upon.

193. Article 37, as amended, was adopted by 52 votes to 3, with 13 abstentions.

Duration of privileges and immunities

Article 38

194. The amendments submitted to this article by the Netherlands (A/CONF.20/C.1/L.190) and Spain (A/CONF.20/C.1/L.271) were withdrawn. The United States withdrew its amendment to paragraph 1 of the article (A/CONF.20/C.1/L.275, para. 1). Sweden withdrew its amendment (A/CONF.20/C.1/L.293).

195. At its 35th meeting, the Committee voted on the article and the remaining amendments as follows:

Paragraph 1

(1) The Committee, by 29 votes to 12, with 22 abstentions, rejected an amendment by France and Italy (A/CONF.20/C.1/L.251) which would have replaced paragraph 1 by the following two paragraphs:

"1. Every person entitled to diplomatic privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post, provided that:

"(a) If he is a head of mission, he has previously obtained the agrément of the receiving State;

"(b) If he is a military, naval or air attaché, the receiving State has given its prior consent to his appointment, where such consent is required;

"(c) If he is another member of a mission, he has previously received a visa from the receiving State where a visa is required, or, in all other cases, that notice of appointment has been formally acknowledged by the receiving State or his appointment has been expressly or implicitly accepted in some other way.

"1 bis. If already on the territory of the receiving State, he shall enjoy those privileges and immunities as soon as the requirements of paragraph 1 hereof have been satisfied."

(2) The Committee, by 31 votes to 7, with 28 abstentions, rejected the following amendment by Switzerland (A/CONF.20/C.1/L.243) to paragraph 1:

"1. The head of the mission shall enjoy diplomatic privileges and immunities from the moment he enters the territory of the receiving State on proceeding to take up his post. Any other person entitled to diplomatic privileges and immunities shall enjoy them from the moment his appointment, duly notified, is approved by the Ministry of Foreign Affairs."

Paragraph 2

(3) The Committee, by a roll-call vote of 28 to 13, with 28 abstentions, rejected the following amendment

submitted by the United States (A/CONF.20/C.1/L.275, para. 2 (2)) to paragraph 2:

"2. When the functions of a person enjoying privileges and immunities have come to an end, exemption from customs duties, taxes and related charges on imports, as provided in Article 34, shall cease. Except as provided in paragraph 3, other privileges and immunities enjoyed by him and members of his family shall cease at the moment he leaves the country, or on expiry of a reasonable period in which to do so. However, with respect to acts performed by such person in his official capacity and within the scope of his functions, immunity shall continue to subsist."

Proposals for new paragraphs after paragraph 2

(4) The Committee, by a roll-call vote of 38 to 6, with 26 abstentions, rejected an amendment by the United States (A/CONF.20/C.1/L.275/Rev.1) inserting a new paragraph 3 reading:

"3. Notwithstanding provisions of this or any other Article, in case of national emergency, civil strife, or armed conflict, the receiving State may institute appropriate measures of control with respect to mission funds and persons enjoying privileges and immunities, and their property, including protective custody of persons to ensure their safety pending completion of arrangements for their departure. Any control system established shall provide for the release from controls of funds in reasonable amounts for the maintenance of the mission and its personnel."

(5) The Committee, by a vote of 63 to none, with 5 abstentions, adopted a proposal by Mexico (A/CONF.20/C.1/L.181, para. 1) inserting after paragraph 2 a new paragraph reading:

"In case of the death of a member of the mission, his family shall continue to enjoy the privileges and immunities to which it is entitled for a reasonable time, until it leaves the country."

Paragraph 3

(6) The Committee, by 34 votes to 9, with 26 abstentions, rejected the following amendment submitted by the United States (A/CONF.20/C.1/L.275, para. 4) to paragraph 3:

"In the event of the death of a member of the mission who was not a national or permanent resident of the receiving State, the receiving State shall permit, after payment of his just debts, the withdrawal free of export duties of the movable property of the deceased, with the exception of property acquired in the receiving State the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall be levied only on property situated in the receiving State which was not used by him in the conduct of his mission and reasonably required for such purpose. Similar treatment shall be accorded property left by a deceased member of his family, provided such person enjoyed privileges and immunities at the time of his death, and was not a national or permanent resident of the receiving State."

(7) The Committee, without a vote, adopted an amendment by the United Kingdom (A/CONF.20/C.1/L.207/Rev.1, para.1) adding in the first sentence of para-

graph 3 after the word "national" the words "or permanent resident".

(8) The Committee, by 32 votes to 22, with 15 abstentions, rejected an amendment by the Federation of Malaya (A/CONF.20/C.1/L.253) deleting at the end of the first sentence of paragraph 3 the words: "with the exception of any property acquired in the country, and the export of which was prohibited at the time of his death".

(9) The Committee, by 40 votes to 9, with 18 abstentions, rejected an amendment by France (A/CONF.20/C.1/L.225) deleting the last sentence of paragraph 3.

(10) The Committee, by 24 votes to 9, with 36 abstentions rejected an amendment by Mexico (A/CONF.20/C.1/L.181, para 2) replacing the last sentence of paragraph 3 by the following text:

"Estate, succession and inheritance duties on movable and immovable property situated in the receiving State may be levied, in the case of movable property, only if the heirs or legatees are nationals of the receiving State."

(11) The Committee by 30 votes to 22, with 16 abstentions, adopted an amendment by the United Kingdom (A/CONF.20/C.1/L.207/Rev.1, para. 2) replacing the second sentence of paragraph 3 by the following:

"Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission."

196. Article 38, as amended, was adopted by 66 votes to none, with 5 abstentions.

Duties of third States

Article 39

197. The United States withdrew one (A/CONF.20/C.1/L.276, para. 2) of its two amendments to this article.

198. At its 35th meeting, the Committee voted on the article and the remaining amendments with the following result:

(1) The Committee, by 29 votes to 3, with 34 abstentions, rejected the following amendment submitted by the United States (A/CONF.20/C.1/L.276, para. 1) to paragraph 1:

"If a diplomatic agent, while in immediate and continuous transit on official duty, passes through or is in the territory of a third State while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him freedom from any form of arrest or detention, except as provided in paragraph 4, and such other immunities as may be required to ensure his transit or return. The same shall apply in case of any members of his family enjoying diplomatic privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country, and who are in immediate and continuous transit."

(2) The Committee, by 27 votes to 11, with 26 abstentions, adopted an amendment by Spain (A/CONF.20/C.1/L.319) inserting in paragraph 1, after the words "the third State", the words "which has granted him a passport visa if such a visa is necessary".

(3) The Committee, by 30 votes to 22, with 16 abstentions, rejected an amendment by Bulgaria and the Ukrainian SSR (A/CONF.20/C.1/L.183, para. 1) which, as orally amended at the suggestion of the representative of Spain, would have inserted after the word "inviolability" in paragraph 1, the words "immunity from jurisdiction and customs privileges".

(4) The Committee, by 56 votes to none, with 14 abstentions, adopted an amendment by Bulgaria and the Ukrainian SSR (A/CONF.20/C.1/L.183, para. 2) inserting after the words "diplomatic couriers in transit", in paragraph 3 the words "and diplomatic bags carried by them".

(5) The Committee, by 59 votes to none, with 10 abstentions, adopted an amendment originally submitted by the Netherlands (A/CONF.20/C.1/L.191) of which the words "whose entry or transit has been authorized by the third State or" had been withdrawn by its sponsor in view of the adoption of the Spanish amendment (A/CONF.20/C.1/L.319) but reintroduced by Portugal, adding to the article the following new paragraph:

"The foregoing paragraphs shall apply to persons whose entry or transit has been authorized by the third State or whose presence in the territory of the third State is due to *force majeure*".

199. Article 39, as amended, was adopted by 69 votes to none, with 1 abstention.

SECTION III. — CONDUCT OF THE MISSION AND OF ITS MEMBERS TOWARDS THE RECEIVING STATE

Article 40

200. Two amendments were submitted to this article. At its 35th meeting, the Committee, by 37 votes to 12, with 20 abstentions, adopted an amendment submitted by Albania and Czechoslovakia (A/CONF.20/C.1/L.303) which, after having been orally amended at the suggestion of the representative of the United Kingdom, deleted at the beginning of paragraph 2 of the article the words "Unless otherwise agreed", and added at the end of the paragraph the words "or with other departments and institutions to the extent compatible with existing rules or established practice in the receiving State".

201. An amendment submitted by Japan (A/CONF.20/C.1/L.306) was not voted upon.

202. Article 40, as amended, was adopted by 61 votes to none, with 6 abstentions.

Proposal by Colombia for a new article between articles 40 and 41

203. At its 36th meeting, the Committee, by 63 votes to none, with 2 abstentions, adopted in principle a proposal by Colombia (A/CONF.20/C.1/L.174) that a new article be inserted between articles 40 and 41 in the following terms:

"The staff of a diplomatic mission may not practise any lucrative profession or commercial activity otherwise than in the performance of their official duties."

The drafting committee was asked to work out appropriate wording for the new article.

204. In the debate in the Committee of the Whole it was made clear that it was not the intention to prevent the head or the staff of diplomatic missions from pursuing literary or artistic activities or from undertaking teaching assignments at educational institutions.

SECTION IV. — END OF THE FUNCTION OF A DIPLOMATIC AGENT

Modes of termination

Article 41

205. At its 36th meeting the Committee adopted, by 54 votes to 1, with 10 abstentions, an amendment submitted by Brazil (A/CONF.20/C.1/L.116) deleting subparagraph (a) of the article.

206. Article 41, as amended, was adopted by 65 votes to none, with 2 abstentions.

Facilitation of departure

Article 42

207. Of the six amendments submitted to article 42, those of Belgium (A/CONF.20/C.1/L.287), the United Kingdom (A/CONF.20/C.1/L.300), Canada (A/CONF.20/C.1/L.309) and Spain (A/CONF.20/C.1/L.321) were withdrawn.

208. At its 37th meeting the Committee, by 19 votes to 19, with 24 abstentions, rejected an amendment by Australia and the Federation of Malaya (A/CONF.20/C.1/L.328) which would have inserted after the words "persons enjoying privileges and immunities" the words "and having the nationality of the sending State".

209. At the same meeting, the Committee, by 35 votes to 4, with 27 abstentions, adopted an amendment by the Federal Republic of Germany (A/CONF.20/C.1/L.327) which inserted after the words "persons enjoying privileges and immunities" the words "other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality".

210. A suggestion by Ghana that the words "personal effects" might be more exact than the word "property" at the end of the article, was referred to the drafting committee.

211. The article, as amended, was adopted by 60 votes to none, with 4 abstentions.

Protection of premises, archives and interests

Article 43

212. An amendment by Mexico (A/CONF.20/C.1/L.182) to this article was not pressed to a vote.

213. The Committee, at its 37th meeting, adopted article 43 without change.

SECTION V. — NON-DISCRIMINATION

Article 44

214. Three amendments were submitted to article 44. Of these the amendment of the United States (A/CONF.20/C.1/L.298) was subsequently withdrawn.

215. At its 37th meeting, the Committee, by a roll-call vote of 30 votes to 20, with 19 abstentions, rejected an amendment by Bulgaria and Czechoslovakia (A/CONF.

20/C.1/L.304) which sought to delete subparagraph (a) of paragraph 2 of the article.

216. At the same meeting, the Committee, by 45 votes to 4 with 19 abstentions, adopted an amendment by the United Kingdom (A/CONF.20/C.1/L.301) replacing subparagraph (b) of paragraph 2 by the following text: "(b) Where by custom or agreement States extend to each other more favourable treatment than is required by the present rules."

217. Article 44, as amended, was adopted by 55 votes to 1, with 13 abstentions.

Proposal by Indonesia for the addition of a new article after article 44

218. A proposal by Indonesia (A/CONF.20/C.1/L.297) that after article 44 a new article be added referring to the principle of reciprocity was subsequently withdrawn.

Proposal by Belgium for the inclusion of a new article

219. The delegation of Belgium proposed (A/CONF.20/C.1/L.284) the adoption of a new article reading as follows: "A contracting State may not avail itself of such provisions of the present Convention as it has not itself accepted." At its 37th meeting the Committee rejected the proposed article by 18 votes to 12, with 35 abstentions.

SECTION VI. — SETTLEMENT OF DISPUTES

Article 45

220. Article 45 was discussed at the 37th and 38th meetings of the Committee. Of the amendments submitted to this article, those of Bulgaria (A/CONF.20/C.1/L.296) and the United States (A/CONF.20/C.1/L.299) were withdrawn.

221. At its 38th meeting the Committee, by 49 votes to 7, with 16 abstentions, adopted an amendment submitted by Iraq, Italy, Poland and the United Arab Republic (A/CONF.20/C.1/L.316 and Add.1) deleting article 45 and replacing it by a special protocol along the lines of the Optional Protocol of Signature concerning the Compulsory Settlement of Disputes, signed at Geneva on 29 April 1958 at the time of the first United Nations Conference on the Law of the Sea. The Committee also decided to request the drafting committee to formulate the above-mentioned special protocol.

222. In view of the decision taken by the Committee, the amendments submitted by Argentina and Guatemala (A/CONF.20/C.1/L.139 and Rev.1) and the sub-amendment thereto submitted by Belgium (A/CONF.20/C.1/L.325), the amendment submitted by China (A/CONF.20/C.1/L.302 and Corr.1) and the amendment submitted by Japan (A/CONF.20/C.1/L.307 and Rev.1) were not put to the vote.

Final clauses

223. Two main proposals for final clauses were submitted; one by Poland and Czechoslovakia (A/CONF.20/C.1/L.175), the other by Italy, Liberia, Mexico, Peru, Philippines, Turkey and United States of America (A/CONF.20/C.1/L.289 and Add.1). A proposal by Ecuador

and Venezuela (A/CONF.20/C.1/L.332) for a final clause was subsequently withdrawn.

224. Iran submitted an amendment (A/CONF.20/C.1/L.317) to article 1 of the seven-power proposal and the Netherlands submitted a sub-amendment (A/CONF.20/C.1/L.330/Rev.1) to the Iranian amendment. The sponsors of the seven-power proposal accepted the amendment submitted by Iran, as amended by the Netherlands sub-amendment.

225. For the text of the proposal of Poland and Czechoslovakia (A/CONF.20/C.1/L.175) see p. 25.

226. For the text of the proposal submitted by Italy, Liberia, Mexico, Peru, the Philippines, Turkey and the United States of America (A/CONF.20/C.1/L.289 and Add.1 and 3) see p. 39.

227. On the proposal of the United Kingdom, the Committee decided, at its 41st meeting, by 46 votes to 16, with 9 abstentions, to vote first on the seven-Power proposal (A/CONF.20/C.1/L.289 and Add.1), as amended.

228. The Committee thereafter voted on that proposal as follows :

(1) At the proposal of Tunisia, a separate vote was taken on the following words in article 1 : "invited by the General Assembly of the United Nations to become a party to the Convention". These words were adopted by a roll-call vote of 47 to 26, with 1 abstention.

(2) At the proposal of Burma, the Committee thereafter took a separate vote on the following words in article 3 : "belonging to any of the categories mentioned in article 1". These words were adopted by 42 votes to 24, with 8 abstentions.

(3) The seven-power proposal, as amended, was thereafter adopted by 48 votes to 12, with 14 abstentions.

229. As a consequence of this decision the proposal submitted by Poland and Czechoslovakia (A/CONF.20/C.1/L.175) was not put to the vote.

Proposal concerning the custody of the Final Act

230. A proposal was submitted by Ireland and Sweden (A/CONF.20/C.1/L.331) that the Committee of the Whole should recommend to the Conference that the Final Act of the Conference should remain in the archives of the Government of Austria and that a provision to this effect should be included in the Final Act.

231. At the 41st meeting of the Committee this proposal was adopted by 59 votes to none, with 12 abstentions.

Annex I

Text prepared by the drafting committee in accordance with the decisions of the Committee of the Whole

Draft Vienna Convention on Diplomatic Relations

The States parties to the present convention,

Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents;

Having in mind the purpose and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations;

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems;

Realising that the purpose of such privileges and immunities is to ensure the efficient performance of the functions of diplomatic missions as representing States;

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention;

Have agreed as follows :

Article 1

For the purpose of the present convention, the following expressions shall have the meanings hereunder assigned to them :

(a) The "head of the mission" is the person charged by the sending State with the duty of acting in that capacity;

(b) The "members of the mission" are the head of the mission and the members of the staff of the mission;

(c) The "members of the staff of the mission" are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

(d) The "diplomatic staff" consists of the members of the staff of the mission having diplomatic rank;

(e) A "diplomatic agent" is the head of a mission or a member of the diplomatic staff of the mission;

(f) The "administrative and technical staff" consists of the members of the staff of the mission employed in the administrative and technical service of the mission;

(g) The "service staff" consists of the members of the staff of the mission in the domestic service of the mission;

(h) A "private servant" is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;

(i) The "premises of the mission" are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

Article 2

The establishment of diplomatic relations between States, and of permanent diplomatic missions, takes place by mutual consent.

Article 3

1. The functions of a diplomatic mission consist, *inter alia*, in :

(a) Representing the sending State in the receiving State;

(b) Protecting in the receiving State the interests of the sending State and of its nationals within the limits permitted by international law;

(c) Negotiating with the government of the receiving State;

(d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the government of the sending State;

(e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.

2. Nothing in the present convention shall be construed as preventing the performance of consular functions by a diplomatic mission.

Article 4

1. The sending State must make certain that the agreement of the receiving State has been given for the person it proposes to accredit as head of the mission to that State.

2. The receiving State is not obliged to give reasons to the sending State for a refusal of agreement.

Article 5

1. The sending State may, after it has given due notification to the receiving States concerned, accredit a head of mission or

assign any member of the diplomatic staff, as the case may be, to more than one State, unless there is express objection by any of the receiving States.

2. If the sending State accredits a head of mission to one or more other States it may establish a diplomatic mission headed by a chargé d'affaires ad interim in each State where the head of mission has not his permanent seat.

3. A head of mission or any member of the diplomatic staff of the mission may act as representative of the sending State to any international organization.

Article 5 (bis)

Two or more States may accredit the same person as head of mission to another State, unless objection is offered by the receiving State.

Article 6

Subject to the provisions of articles 5, 7, 8 and 10, the sending State may freely appoint the members of the staff of the mission. In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval.

Article 7

1. Members of the diplomatic staff of the mission should in principle be of the nationality of the sending State.

2. Members of the diplomatic staff of the mission may not be appointed from among persons having the nationality of the receiving State, except with the consent of that State which may be withdrawn at any time.

3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 8

1. The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* or that any other member of the staff of the mission is not acceptable. In any such case, the sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission. A person may be declared *non grata* or not acceptable before arriving in the territory of the receiving State.

2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the mission.

Article 9

1. The Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, shall be notified of :

(a) The arrival of members of the mission after their appointment to the mission, and their final departure or the termination of their functions with the mission;

(b) The arrival and final departure of a person belonging to the family of a member of the mission and, where appropriate, the fact that a person becomes or ceases to be a member of the family of a member of the mission;

(c) The arrival and final departure of private servants in the employ of persons referred to in sub-paragraph (a) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons;

(d) The engagement and discharge of persons resident in the receiving State as members of the mission or private servants entitled to privileges and immunities.

2. Where possible, prior notification of arrival and final departure shall also be given.

Article 10

1. In the absence of specific agreement as to the size of the mission, the receiving State may require that the size of a mission be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the receiving State and to the needs of the particular mission.

2. The receiving State may equally, within similar bounds and on a non-discriminatory basis, refuse to accept officials of a particular category.

Article 11

The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the mission in localities other than those in which the mission itself is established.

Article 12

1. The head of the mission is considered as having taken up his functions in the receiving State either when he has presented his credentials or when he has notified his arrival and a true copy of his credentials has been presented to the Ministry for Foreign Affairs of the receiving State, or such other ministry as may be agreed, in accordance with the practice prevailing in the receiving State which shall be applied in a uniform manner.

2. The order of presentation of credentials or of a true copy thereof will be determined by the date and the time of the arrival of the head of the mission.

Article 13

1. Heads of mission are divided into three classes — namely :
- That of ambassadors or nuncios accredited to Heads of State, and other heads of mission of equivalent rank;
 - That of envoys, ministers and internuncios accredited to Heads of State;
 - That of chargé d'affaires accredited to Ministers for Foreign Affairs.

2. Except as concerns precedence and etiquette, there shall be no differentiation between heads of mission by reason of their class.

Article 14

The class to which the heads of their missions are to be assigned shall be agreed between States.

Article 15

1. Heads of mission shall take precedence in their respective classes in the order of the date and the time of taking up their functions in accordance with article 12.

2. Alterations in the credentials of a head of mission not involving any change of class shall not affect his precedence.

3. This article is without prejudice to any practice accepted by the receiving State regarding the precedence of the representative of the Holy See.

Article 15 (bis)

The precedence of the members of the diplomatic staff of the mission shall be notified by the head of the mission to the Ministry for Foreign Affairs or such other ministry as may be agreed.

Article 16

The procedure to be observed in each State for the reception of heads of mission shall be uniform in respect of each class.

Article 17

1. If the post of head of the mission is vacant, or if the head of the mission is unable to perform his functions, a chargé d'affaires ad interim shall act provisionally as head of the mission. The name of the chargé d'affaires ad interim shall be notified, either by the head of the mission or, in case he is unable to do so, by the Ministry for Foreign Affairs of the sending State

to the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed.

2. In cases where no member of the diplomatic staff of the mission is present in the receiving State, a member of the administrative and technical staff may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the mission.

Article 18

The mission and its head shall have the right to use the flag and emblem of the sending State on the premises of the mission, including the residence of the head of the mission, and on his means of transport.

Article 19

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist missions in obtaining suitable accommodation for their members.

Article 20

1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

3. The premises of the mission, their furnishings and other property thereon shall be immune from search, requisition, attachment or execution.

Article 21

1. The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in this article shall not apply to such dues and taxes payable under the law of the receiving State by persons contracting with the sending State or the head of the mission.

Article 22

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

Article 23

The receiving State shall accord full facilities for the performance of the functions of the mission.

Article 24

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the mission freedom of movement and travel in its territory.

Article 25

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the government and the other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State and after obtaining authorization in accordance with the laws of the receiving State and international regulations.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.

3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may only contain diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State or the mission may designate diplomatic couriers *ad hoc*. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

Article 26

The fees and charges levied by the mission in the course of its official duties shall be exempt from all dues and taxes.

Article 27

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 28

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of article 29, his property, shall likewise enjoy inviolability.

Article 29

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of :

(a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(c) An action relating to the recovery of tax on private income having its source in the receiving State;

(d) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b), (c) and (d) of paragraph 1 of this article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

Article 30

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 36 may be waived by the sending State.

2. Waiver must always be express.

3. The initiation of proceedings by a diplomatic agent shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment for which a separate waiver shall be necessary.

Article 31

1. Subject to the provisions of paragraph 3 of this article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition

(a) That they are not nationals of or permanently resident in the receiving State; and

(b) That they are covered by the social security provisions which may be in force in the sending State or a third State.

3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

Article 32

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except :

(a) Indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) Dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;

(c) Estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of article 38;

(d) Dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;

(e) Charges levied for specific services rendered;

(f) Registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of article 21.

Article 33

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 34

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on :

(a) Articles for the official use of the mission;

(b) Articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.

Article 35

Members of the mission, not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

Article 36

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in articles 27 to 34.

2. Members of the administrative and technical staff of the mission together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 27 to 33, and the privileges specified in article 34, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in article 31.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 37

1. Except in so far as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

Article 38

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already

in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in the country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

Article 39

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to *force majeure*.

Article 40

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry for Foreign Affairs of the receiving State or such other ministry as may be agreed and also with other departments and agencies to the extent compatible with existing rules or established practice in the receiving State.

3. The premises of the mission must not be used in any manner incompatible with the functions of the mission as laid down in the present Convention or by other rules of general international law or by any special agreements in force between the sending and the receiving State.

Article 40 (bis)

In principle a diplomatic agent shall not in the receiving State practise for personal profit any professional or commercial activity.

Article 41

The function of a diplomatic agent comes to an end, *inter alia* : (a) on notification by the sending State to the receiving State that the function of the diplomatic agent has come to an end; (b) on notification by the receiving State to the sending State that, in accordance with paragraph 2 of article 8, it refuses to recognize the diplomatic agent as a member of the mission.

Article 42

The receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities, other than nationals of the receiving State, and members of the families of such persons irrespective of their nationality, to leave at the earliest possible moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and their property.

Article 43

If diplomatic relations are broken off between two States, or if a mission is permanently or temporarily recalled :

(a) The receiving State must, even in case of armed conflict, respect and protect the premises of the mission, together with its property and archives;

(b) The sending State may entrust the custody of the premises of the mission, together with its property and archives, to a third State acceptable to the receiving State;

(c) The sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.

Article 43 (bis)

A sending State may with the prior consent of a receiving State, and at the request of a third State not represented in the receiving State, undertake the temporary protection of the interests of the third State and of its nationals.

Article 44

1. In the application of the provisions of the present Convention, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place :

(a) Where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State;

(b) Where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present convention.

Article 45

The present convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows : until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently, until 31 March 1962, at the United Nations Headquarters in New York.

Article 46

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 47

The present convention shall remain open for accession by any State belonging to any of the four categories mentioned in

article 45. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 48

1. The present convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the convention after the deposit of the twenty-second instrument of ratification or accession, the convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 49

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in article 45 : (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with articles 45, 46 and 47; (b) of the date on which the present Convention will enter into force, in accordance with Article 48.

Article 50

The original of the present convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in article 45.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present convention.

DONE AT VIENNA, this day of April one thousand nine hundred and sixty-one.

Annex 2

Text prepared by the drafting committee in accordance with the decisions of the Committee of the Whole

DRAFT OPTIONAL PROTOCOL CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES

The States parties to the present Protocol and to the Vienna Convention on Diplomatic Relations, hereinafter referred to as "the Convention", adopted by the United Nations Conference held at Vienna from 2 March to April 1961.

Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period,

Have agreed as follows :

Article I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

Article II

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

Article III

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

Article IV

The present protocol shall be open for signature by all States which may become parties to the Convention, as follows : until 31 October 1961 at the Federal Ministry for Foreign Affairs of Austria and subsequently until 31 March 1962 at the United Nations Headquarters in New York.

Article V

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article VI

The present protocol shall remain open for accession by all States which may become parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VII

1. The present protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever day is the later.

2. For each State ratifying or acceding to the present protocol after its entry into force in accordance with paragraph 1 of this article, the protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article VIII

The Secretary-General of the United Nations shall inform all States which may become parties to the Convention : (a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with articles IV, V and VI; (b) of the date on which the present Protocol will enter into force, in accordance with article VII.

Article IX

The original of the present protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article IV.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present protocol.

DONE AT VIENNA, this day of April one thousand nine hundred and sixty-one.

Annex 3

Text prepared by the drafting committee in accordance with the decisions of the Committee of the Whole

DRAFT RESOLUTION ON SPECIAL MISSIONS

The United Nations Conference on Diplomatic Intercourse and Immunities,

Recalling that the General Assembly of the United Nations, by its resolution 1504 (XV) of 12 December 1960, referred to the

Conference the draft articles on special missions contained in chapter III of the report of the International Law Commission covering the work of its twelfth session (A/4425);

Recognising the importance of the subject of special missions;

Taking note of the comments of the International Law Commission that the draft articles on special missions constituted only a preliminary survey and that the time at its disposal had not permitted the Commission to undertake a thorough study of the matter;

Considering the limited time available to the Conference to study the subject in full :

Recommends to the General Assembly of the United Nations that it refer further study of the subject of special missions to the International Law Commission in the light of the Vienna Convention on Diplomatic Relations adopted at the present conference.

DOCUMENT A/CONF.20/L.14

Report of the Credentials Committee

[Original : English]
[12 April 1961]

1. At its second plenary meeting, held on 3 March 1961, the Conference appointed a credentials committee consisting of the following States : Australia, El Salvador, Haiti, Mali, Philippines, Spain, Union of Soviet Socialist Republics, United Arab Republic and the United States of America.

2. The credentials committee met on 7 April 1961. The meeting was attended by representatives of the following States : Australia (Mr. J. C. G. Kevin), El Salvador (Mr. Juan Contreras Chaves), the Philippines (Mr. Roberto Regala), Spain (Mr. José Sebastián de Erice y O'Shea), the Union of Soviet Socialist Republics (Mr. A. P. Movchan), the United Arab Republic (Mr. Abd-El-Hamid Nafeh Zade) and the United States of America (Mr. Warde M. Cameron). The Committee unanimously elected Mr. J. C. G. Kevin (Australia) as Chairman.

3. The Secretariat reported to the committee as follows :

(a) Out of the eighty-one delegations attending the Conference, full powers in respect of the representatives of seventy-eight delegations had been received, duly issued by the Head of State or government or by the Minister for Foreign Affairs in accordance with rule 3 of the rules of procedure.

(b) In the case of the three remaining delegations — namely Haiti, Senegal and Uruguay — credentials in the form of cablegrams issued by the Minister for Foreign Affairs had been received.

4. The representative of the Union of Soviet Socialist Republics raised the question of the representation of China, and asserted that only the Government of the People's Republic of China was entitled to represent China at the Conference.

5. The Chairman ruled as follows : As the Secretary-General of the United Nations had, pursuant to General Assembly resolution 1450 (XIV), invited the Government of the Republic of China to attend the Conference, which government was also represented at the current session of the General Assembly, the only question within the competence of the credentials committee was whether the credentials issued by the Government of the Republic of China were in proper order; and therefore the proposal

of the representative of the Union of Soviet Socialist Republics was out of order.

6. The representative of the Union of Soviet Socialist Republics challenged the Chairman's ruling. The Committee accepted the Chairman's ruling by 5 votes to 2. The representative of the United Arab Republic explained that he had voted against the Chairman's ruling as, in the view of his delegation, valid credentials to represent China at the Conference could only be issued by the appropriate authorities of the Central People's Government of the People's Republic of China.

7. The representative of the United States introduced a motion " that the credentials committee, bearing in mind the resolutions of the General Assembly in regard to the Hungarian question, takes no decision regarding the credentials submitted on behalf of the representative of Hungary."

8. The representative of the Union of Soviet Socialist Republics stated that there was no reason to raise the question of the validity of the credentials issued by the lawful government of the Hungarian People's Republic in accordance with its constitution. The representative of the United Arab Republic opposed the motion introduced by the United States as contrary to rule 4 of the rules of procedure and stated that, in his view no problem could arise with regard to the validity of the credentials of the delegation of Hungary.

9. The United States motion was adopted by 5 votes to 2.

10. The representative of the United Arab Republic stated that his delegation could not recognize credentials for representatives of the Republic of the Congo (Leopoldville) other than those issued by the legal government of that State headed by Mr. Gizenga. The representative of the Union of Soviet Socialist Republics supported the statement made by the representative of the United Arab Republic.

11. The representative of the United States declared that the question of the representation of the Republic of the Congo (Leopoldville) had been decided by the General Assembly, which had expressly approved at its current session the credentials for representatives issued by the Head of State, President Kasavubu. The present conference must abide by that decision.

12. A proposal was submitted by the Chairman that, subject to the Committee's decision relating to Hungary, the credentials committee should find the credentials of all representatives in order and recommend that the Conference approve its report.

13. This proposal was adopted unanimously.

14. The representative of the Union of Soviet Socialist Republics stated that his vote in favour of the report of the credentials committee should not be interpreted as a modification of his position on the question of the representation of China, or of the Republic of the Congo (Leopoldville), and that he was in favour of the validity of the credentials of the Government of the Hungarian People's Republic. The representative of the United Arab Republic made a statement to the same effect.