

United Nations Conference on Diplomatic Intercourse and Immunities

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1st meeting of the Committee of the Whole

Extract from Volume I of the *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

SUMMARY RECORDS OF THE COMMITTEE OF THE WHOLE

FIRST MEETING

Monday, 6 March 1961, at 10.55 a.m.

Chairman: Mr. LALL (India)

Election of vice-chairmen

1. The CHAIRMAN invited nominations for the office of vice-chairman. The Committee was to elect two vice-chairmen.

2. Mr. NAFEH ZADE (United Arab Republic) proposed Mr. Birecki (Poland).

3. Mr. de ERICE y O'SHEA (Spain) proposed Mr. Iriniz Casas (Uruguay).

Mr. Birecki (Poland) and Mr. Iriniz Casas (Uruguay) were elected vice-chairmen by acclamation.

Election of rapporteur

4. Mr. RUEGGER (Switzerland) proposed Mr. Riphagen (Netherlands).

5. Mr. MELO LECAROS (Chile) and Mr. de ROMREE (Belgium) seconded that proposal.

Mr. Riphagen (Netherlands) was elected rapporteur by acclamation.

Organization of work

6. The CHAIRMAN said that the Conference at its second plenary meeting (para. 12) had referred to the Committee agenda item 10 (Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959) and agenda item 11 (Consideration of draft articles on special missions in accordance with resolution 1504 (XV) adopted by the General Assembly on 12 December 1960).

7. He suggested that, for the sake of the orderly conduct of proceedings, the Committee should first take up the first of those two items. Since it had very little time, the best method seemed to be to consider the draft prepared by the International Law Commission (A/CONF.20/4) article by article. That would not, of course, preclude speakers, when discussing any one article, from referring to other related or pertinent articles.

It was so agreed.

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4)

Article 1 (Definitions)

8. The CHAIRMAN said that article 1 should be studied with special care for it defined the terms used

in the subsequent articles of the draft. He suggested that the definitions should form the subject of a preliminary debate and be approved provisionally, subject to later review. In that way, rule 33 of the rules of procedure would not have to be applied.

9. Mr. USTOR (Hungary) remarked that the draft of a Convention concerning Diplomatic Immunities and Privileges (A/CONF.20/6) adopted at Colombo in 1960, and the Convention regarding Diplomatic Officers (A/CONF.20/7) signed at Havana in 1928, were both preceded by a preamble. He suggested that the draft being considered by the Committee should likewise be preceded by a preamble, for it might facilitate interpretation of the articles.

10. The CHAIRMAN said that the question of inserting a preamble would be for the Committee to decide, but it must first have a text before it. For the time being, it should merely take note of the Hungarian representative's suggestion.

It was so agreed.

11. Mr. de ERICE y O'SHEA (Spain) also considered that the draft articles should be preceded by a preamble, and supported the Hungarian representative's suggestion. He thought it would be best to consider each subparagraph of article 1 separately.

12. The CHAIRMAN said that article 1 would be put to the vote sub-paragraph by sub-paragraph at a later stage. At the first reading, however, members of the Committee could comment on the article as a whole or on particular sub-paragraphs.

13. Mr. AMAN (Switzerland) said that the terminology to be used in the convention should be clear and in conformity with usage. The expressions "Etat accréditant" and "Etat accréditaire", for instance, which were used in the French text of the International Law Commission's draft, did not appear in law dictionaries such as Capitant & Sirey, or in general dictionaries such as the new Littré or Robert. Hence, they should be replaced by the expressions "Etat d'envoi" and "Etat de résidence", which were used in the Commission's draft articles on consular intercourse and immunities (A/4425, chapter II). Furthermore, the expression "administrative and technical staff" was not a very happy one; it would be better to say "chancery staff".

14. Mr. de ROMREE (Belgium) thought that none of the governments represented at the Conference would deny that, far from being of secondary importance in international life, diplomatic immunity and inviolability were essentials without which relations between States would be impracticable. In that connexion, his delegation could not forbear to refer to recent events of which Belgian diplomatic representatives abroad had been victims. In one country the Belgian Embassy building had been ransacked and set on fire. The head of mission and his assistants had barely escaped serious maltreatment. The indispensable precautions had not been taken

and, in fact, the guards at the entrances who should have protected the Embassy had disappeared. At Brussels, on the contrary, the precautions taken by the Belgian Government had been so exceptional as to cause dissatisfaction among the public.

15. The receiving State had not only failed to pay due compensation, but had not even apologized. Nor was there any evidence that it had proceeded against the offenders. All protests had been rejected and all responsibility declined. In the circumstances, the Belgian Government had been forced to conclude that its representatives could no longer be considered safe. Hence it earnestly hoped that the Conference would succeed.

16. Mr. EL-ERIAN (United Arab Republic), speaking on a point of order, protested against the Belgian representative's statements on the ground that he had attempted to introduce a political question into the discussion for purposes of political propaganda. He reserved the right to reply later to the allegations made.

17. Mr. REGALA (Philippines), referring to article 1, sub-paragraph (g), noted that the draft articles nowhere required service staff to register. In practice, however, members of service staff had to register before they could enjoy privileges of any kind. Accordingly, article 36, paragraph 2, which dealt with the position of service staff, should contain a more specific provision.

18. The practice of the courts in the matter varied widely. In one United States case, for instance, the court had refused to admit that service staff were entitled to privileges because they were not duly registered; in another, a federal court had held that such privileges existed by virtue of international law, even in the absence of registration.

19. Mr. LINTIB (Israel) considered that a unified convention should be adopted dealing both with permanent and with special missions. Consequently, a definition of "special missions" should perhaps be included in article 1.

20. Sub-paragraphs (f) and (g) did not draw a sufficiently clear distinction between "administrative and technical staff" and "service staff". Such a distinction was particularly important for the purpose of the application of article 36. The categories of staff to which those two sub-paragraphs referred should therefore be defined in greater detail.

21. The CHAIRMAN said that the drafting committee would revise the definitions in the light of the decisions taken by the Committee of the Whole. With reference to the remarks of the representative of Israel, he said that the International Law Commission had considered the possibility of combining the draft on permanent missions with that on special missions (A/4425, chapter III).

22. Mr. WALDERON (Ireland) said that the categories of diplomats covered by article 1, sub-paragraph (d), should be defined in more specific terms, if only because — unlike the Commission's draft — the convention to be prepared by the Conference would not be accompanied by a commentary.

23. Mr. BOLLINI SHAW (Argentina) said that the convention should be introduced by a preamble, as were the regional conventions prepared by the American States.

24. In sub-paragraph (f), he thought the words "administrative and" should be retained, but "administrative" categories should be defined. In sub-paragraphs (g) and (h), a clearer distinction should be made between the categories referred to, in order to avoid any difference in interpretation.

25. He agreed with the representative of Israel that article 1 should contain a definition of special missions.

26. Mr. SUBARDJO (Indonesia) said that persons holding diplomatic passports too often claimed diplomatic privileges even though they were not diplomats approved by the receiving State. It should therefore be specified that only members of staff listed at the Ministry of Foreign Affairs of that State could enjoy the privileges provided for in the convention. He therefore proposed the addition, at the end of sub-paragraph (d), of the words: "and whose names are on the list of the Ministry of Foreign Affairs of the receiving State."

27. Mr. LINARES (Guatemala) pointed out that the definition of "diplomatic staff" in sub-paragraph (d) contravened the rule of logic that the term to be defined must not be used in the definition. To remedy the defect he proposed that "diplomatic staff" should be defined as meaning the head of the mission, ministers, minister-counsellors, counsellors, secretaries and attachés.

28. Mr. OJEDA (Mexico) agreed that the definition in sub-paragraph (d) was tautological. It should specify that the diplomatic staff meant the members of the mission authorized by the receiving State to exercise diplomatic functions properly so called.

29. In sub-paragraph (g) it was hardly possible to give a clearer definition of "service staff", for the expression was interpreted differently in different countries. The general criterion applied by the International Law Commission was the nature of the functions performed by all the categories of staff covered by the convention. While that criterion was sufficient for the sending State, the receiving State should know the exact status of the person who was to enjoy the privileges granted.

30. Mr. de ERICE y O'SHEA (Spain) said that the definition in sub-paragraph (a) did not bring out the official status of the head of the mission. There were some officials having duties of an internal character who were accredited by the head of the mission himself. The term "head of the mission" should accordingly be replaced by the expression "official representative of one State to another".

31. Mr. KRISHNA RAO (India) referred to the timely suggestion made by the Netherlands Government which had led the International Law Commission to include the definitions in article 1. He considered that the Committee should follow the method of the Commission and should not adopt definitions until after it had studied the draft as a whole, particularly article 36.

32. The definitions themselves should be sufficiently detailed to preclude all misunderstanding. For example, the expression "head of the mission" should be clarified. Another instance was the meaning of the term "family". The implied definition in article 36, paragraph 1, was flexible enough to cover various family systems in different parts of the world; consequently there was no need to define "family". "Private servant" did not require a separate definition, but the category could be covered by sub-paragraph (g) relating to service staff.

33. Since the final text would not be followed by a commentary, the articles should be sufficiently explicit in themselves.

34. Mr. BARTOŠ (Yugoslavia) said that the International Law Commission had not defined the terms used in the draft articles until after it had finished the drafting. The Committee was, of course, free to discuss the definitions provisionally and point out their shortcomings; but for reasons of method it would be better if delegations submitted amendments, not to the definitions in article 1, but to the other articles. Once the text of the articles had been settled, the Committee could decide how the definitions were affected.

35. Mr. MAMELI (Italy) agreed with the speakers who had suggested the addition of a preamble.

36. He said the Committee should beware of making excessively radical amendments or additions to the definitions: *omnis definitio in jure periculosa est*. Some expressions, such as "technical staff", might indeed need explanation later, but generally speaking the Committee should proceed very cautiously in the matter.

The meeting rose at 12.30 p.m.

SECOND MEETING

Monday, 6 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (continued)

1. The CHAIRMAN invited the Committee to continue its debate on the International Law Commission's draft.

2. Mr. NAFEH ZADE (United Arab Republic) said that the statement made by the representative of Belgium at the previous meeting (paragraphs 14 and 15) concerning the treatment of a Belgian diplomatic mission had obviously referred to recent events at Cairo. He felt bound to refer in reply to certain facts, from which delegations could draw their own conclusions.

3. The Government and people of the United Arab Republic respected international law and knew their duties in that regard. The events to which the representative of Belgium had referred, however, had been a demonstration of indignation at the policy adopted

by certain powers in Africa. The anger of young Africans at Cairo — which had become a focal point for hopes of independence and freedom — had been aroused by the barbarous acts in the province of Katanga and the brutal murder of Mr. Lumumba, head of the lawful Congolese government, who had invited the United Nations to come to the Congo.

4. The authorities at Cairo had been taken unawares by the demonstrations. In fact, they could not have foreseen them, since at the time of the Suez crisis in 1956 there had been no similar demonstrations against the embassies of the United Kingdom and France.

5. The United Arab Republic had refused to accept the Belgian notes of protest not only for reasons of form, but also because they had been presented at a time when the Embassy of the United Arab Republic at Brussels was being subjected to repeated and organized attacks, even though the Ambassador, who had known exactly for what time each of the three demonstrations was planned, had alerted the Belgian authorities. It was also significant that, although demonstrations similar to those at Cairo had taken place against Belgian embassies in other capitals, there had been no demonstrations at Brussels against the embassies or missions of any other country.

6. In conclusion, he would merely point out that the Conference, which had met to consider general principles of international law and not particular issues, was not the proper place for the airing of grievances, still less for accusations and propaganda.

7. Mr. SEID (Chad) said that while codification, which was the purpose of the Conference, was obviously desirable, to be effective — especially in the rather delicate field of diplomatic relations — it should allow some freedom to individual States. Experience showed that the excessive rigidity of an instrument discouraged ratifications: for instance, the Convention regarding Diplomatic Officers adopted by the Sixth International American Conference at Havana in 1928 had been ratified by only fifteen States, two of which had made reservations. Moreover, the new States, which were the prospective signatories of the convention to be prepared by the Conference, might find themselves bound by rules which they had not helped to draft and which they could not hope to improve or develop in the future as society evolved.

8. He had been much impressed by the statement made by the President of the Conference on his election (1st plenary meeting), and hoped that the President's wishes for the outcome would be fulfilled.

Article 1 (Definitions) (continued)

9. Mr. BARUNI (Libya) proposed that in sub-paragraph (c) the technical staff should be divided into two categories: (1) military, and (2) technical, comprising social, cultural, economic and commercial staff. Such a division would have a bearing on article 6.

Article 2 (Establishment of diplomatic relations and missions)

10. Mr. CAMERON (United States of America) strongly favoured the conclusion of a convention on diplomatic