

# **United Nations Conference on Diplomatic Intercourse and Immunities**

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## **13th meeting of the Committee of the Whole**

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clearly that one and the same person could be accredited by several States, and left no room for doubt on that point.

*Article 8 (Persons declared persona non grata)*

75. The CHAIRMAN invited debate on article 8 of the International Law Commission's draft and drew attention to the amendments which had been submitted to that article.<sup>1</sup>

76. Mr. BOLLINI SHAW (Argentina) stated that his delegation withdrew its amendment (L.39) and would support the French delegation's amendment (L.3).

77. Mr. CAMERON (United States of America) withdrew his delegation's amendment (L.21).

The meeting rose at 6 p.m.

<sup>1</sup> The following amendments had been submitted: France, A/CONF.20/C.1/L.3; United States of America, A/CONF.20/C.1/L.21; Argentina, A/CONF.20/C.1/L.39; United Kingdom, A/CONF.20/C.1/L.52; Belgium, A/CONF.20/C.1/L.63; India, A/CONF.20/C.1/L.64; Spain, A/CONF.20/C.1/L.78; Italy, A/CONF.20/C.1/L.85; Indonesia, A/CONF.20/C.1/L.134.

### THIRTEENTH MEETING

*Tuesday, 14 March 1961, at 10.30 a.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)*

*Article 8 (Persons declared persona non grata) (continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 8 and the amendments thereto. In consequence of the withdrawal of two of the amendments (L.21 and L.39), seven remained to be considered (L.3, L.52, L.63, L.64, L.78, L.85 and L.134). In connexion with the French delegation's amendment (L.3) he said that the Committee, when voting on other articles of the draft, had sometimes decided to include and sometimes to omit references to the right of the receiving State not to give reasons for action affecting foreign diplomats; in its vote on the French amendment the Committee would therefore have to consider the implications of including that reference in some articles and excluding it in others.

2. Of the other amendments, that proposed by the United Kingdom (L.52) seemed to relate mainly to drafting. The Belgian amendment (L.63), intended to cover the case in which a diplomat was declared persona non grata before his arrival in the receiving State, seemed to be covered by the first words of article 8, paragraph 1: "The receiving State may at any time . . ."

The Indian amendment (L.64) appeared to be already covered by the relevant definition and by the sense of the whole draft. The purpose of the Indonesian amendment (L.134) seemed to be already fulfilled by article 8, which left the receiving State free to determine what constituted a "reasonable period".

3. Mr. KRISHNA RAO (India) said that, in view of the changes which had been made in article 4, and of the other provisions in article 8, his delegation would withdraw its amendment (L.64).

4. Mr. BOLLINI SHAW (Argentina) said that he had withdrawn his amendment (L.39) in order to support the French amendment (L.3), which covered the same point. If, however, the French amendment were not put to the vote, he would re-introduce his own.

5. Mr. de VAUCELLES (France) insisted on a vote on his delegation's amendment. A reference to the right of the receiving State not to give reasons for its action had been included in article 4; if no such reference were included in article 8 it might be thought that article 4 was an exception and that the right did not exist in the circumstances contemplated by article 8.

6. Mr. GLASSE (United Kingdom) agreed that the United Kingdom amendment related chiefly to drafting, and withdrew it in favour of the Belgian amendment.

7. Mr. MATINE-DAFTARY (Iran) said that none of the amendments departed in any way from the spirit of the draft; they could all therefore be conveniently referred to the Drafting Committee. In particular, he thought that the right of the receiving State not to state reasons, provided for in the French amendment, was a matter of course. However, if the French delegation pressed the amendment he would not oppose it.

8. Mr. de ROMREE (Belgium) said that the Belgian amendment affected substance and should therefore be voted upon. Article 8 dealt mainly with persons already in the receiving State, and his delegation therefore considered that an express provision was needed to cover the case of a person declared persona non grata before his arrival.

9. Mr. CAMERON (United States of America) supported the Belgian amendment. Since, however, article 8, paragraph 1, referred to "any member of the staff of the mission" and therefore covered not only diplomatic staff but also administrative and technical staff (defined in article 1 (f)) and service staff (defined in article 1 (g)), and since the term "persona non grata" applied technically only to diplomatic staff, he suggested that the words "or not acceptable", which were the words applicable to the other types of staff, be introduced into the Belgian amendment.

10. Mr. de ROMREE (Belgium) accepted that suggestion.

11. Mr. CARMONA (Venezuela) expressed support for the French amendment, which dealt with substance.

12. Mr. MAMELI (Italy), introducing his delegation's amendment (L.85), said that it was not common for a

diplomat recalled by his sending State to remain in the receiving State. Those cases, however, though infrequent, were extremely unpleasant, and the purpose of the Italian amendment was to set forth clearly the right of the receiving State to expel the diplomat.

13. His delegation supported the Belgian amendment.

14. Mr. TUNKIN (Union of Soviet Socialist Republics) said that none of the amendments altered the substance of article 8, and it already covered all the questions raised in them. Nevertheless, the United Kingdom amendment improved the text and his delegation regretted its withdrawal. It would have filled a small gap in article 8, paragraph 1. The first sentence of that paragraph, by its use of the words "at any time", covered the case not only of a person already in the receiving State, but also that of a person who had not yet arrived. The second sentence, however, referred to recall or termination of functions, expressions which could apply only to a person already in the receiving State. In order to cover in that sentence also the case of a person who had not yet arrived, it would be useful to introduce, as originally proposed by the United Kingdom delegation, a reference to the termination of that person's appointment.

15. With regard to the Indonesian amendment, he agreed with the Chairman that article 8, paragraph 2, already adequately covered the point. The provisions of that paragraph implied that it was for the receiving State to determine what constituted a reasonable period, but those provisions should also be considered to have an objective meaning. Clearly, the receiving State could not claim that two hours was a reasonable period within which to leave the country.

16. His delegation could not support the Spanish amendment (L.78), which upset the whole structure of article 8 without actually meeting all the points covered by the draft. It was correct in distinguishing between the declaration of *persona non grata*, which applied to a member of the diplomatic staff, and the declaration that a person was "not acceptable", which applied to other members of the staff of the mission. The amendment, however, appeared to suggest that the receiving State's right to request the departure of the person applied only to administrative and technical staff and to service staff. In practice the receiving State could also invite a diplomatic officer to leave its territory.

17. The Italian amendment contained a statement which was correct but which, if introduced into article 8, might prove harmful. It was true that the receiving State could ask the person concerned to leave its territory, but equally truly it could take other steps against him. Once a person was no longer recognized as a member of a diplomatic mission, he became an ordinary alien; and it was unnecessary to state that he could be invited to leave the territory of the receiving State, because under the general rules of international law it could treat him as an alien and order him out of the country.

18. Mr. de ERICE y O'SHEA (Spain) emphasized that his delegation wished to maintain article 8, paragraph 2, as it stood. The effect of the Spanish amendment was merely to draw a distinction between diplomatic staff,

to whom the procedure of declaration of *persona non grata* applied, and other member of the staff of the mission, in respect of whom the head of mission could be asked to terminate their services and arrange for their departure from the territory of the receiving State.

19. As it stood, article 8 seemed to suggest that the terms "*persona non grata*" and "not acceptable" were interchangeable. In fact a declaration of *persona non grata*, which in some countries required a decision by the full Council of Ministers, was too formal, too solemn and too complicated a procedure to be applied to a member of the administrative or technical staff or of the service staff of the mission. Those persons were often locally recruited; they had resided in the receiving State before their engagement and would continue to do so after it ended. A declaration that such a person was not acceptable might well result from some minor incident which justified the termination of his services — and indeed, if he were a foreigner, his expulsion — but should not be inflated into a diplomatic incident. The purpose of the Spanish amendment was to enable incidents of that type to be settled by the head of mission himself, without spoiling the good relations between the two States.

20. Mr. YASSEEN (Iraq) remarked that a diplomat who was no longer regarded as such was just an ordinary alien. In accordance with international law aliens could be expelled. Also, by the domestic law of most countries, expulsion was an executive act and, even where administrative courts existed, was regarded as an act of sovereignty outside the authority of those courts.

21. He hoped that the Italian amendment would not be put to the vote because a negative vote — on the ground that its provisions were technically superfluous — could be misinterpreted to mean that the Committee questioned the undeniable right of the receiving State to expel a former diplomat under article 8 of the International Law Commission's draft.

22. Mr. KRISHNA RAO (India) regretted the withdrawal of the United Kingdom amendment, which would have clarified the text and covered the point raised in the Belgian amendment.

23. With regard to the French amendment, which his delegation did not support, he recalled that the Committee had not adopted a similar amendment (L.38) to article 6.

24. The Italian amendment would not add anything to article 8. A person who was no longer recognized by the receiving State as a member of a diplomatic mission became a person to whom the whole of the draft articles had ceased to apply. His functions would be terminated, as stated in article 41 (c).

25. He could not support the Spanish amendment (L.78), which implied that members of the mission staff other than the diplomatic staff could be expelled otherwise than "within a reasonable period". The comprehensive wording of article 8 was preferable. In addition, the Spanish amendment seemed to suggest that a member of the staff of the mission who was a national of the receiving State might be expelled from that State.

26. For those reasons he supported the International Law Commission's text, with the drafting change proposed by the United Kingdom.

27. Mr. SUBARDJO (Indonesia) said that, in the light of the Chairman's remarks and of the interpretation by the Soviet Union representative, his delegation withdrew its amendment (L.134).

28. Mr. MAMELI (Italy) said that, in view of the discussion, he would not press for a vote on his delegation's amendment (L.85).

29. Mr. de ERICE y O'SHEA (Spain) said that, since there appeared to be general support for the principle embodied in the Spanish amendment (L.78) that a distinction should be made between the diplomatic staff and the other staff of the mission, he would be content if that principle alone were put to the vote. The form could be left to the Drafting Committee.

30. The CHAIRMAN observed that the Committee had, on other occasions when it had had before it several amendments embodying the same principle, voted only on the principle and left the wording to the Drafting Committee. On the present occasion the two concepts of "persona non grata" and "not acceptable" were already contained in the article, and the Committee had before it only one amendment, proposed by Spain, which raised a new aspect of the matter.

31. Mr. TUNKIN (Union of Soviet Socialist Republics) said that article 8, paragraph 1, might indeed be improved by making a separate reference to diplomatic staff, who could be declared persona non grata, and other staff, who could be declared not acceptable. He would agree to a vote on the principle of such an amendment, on the understanding that the Drafting Committee would be instructed to prepare a draft in accordance with that principle but not with the Spanish amendment (L.78), and would abide by the Commission's text.

32. Mr. de ERICE y O'SHEA (Spain) said he would not insist on the actual wording of his amendment. He was willing that the principle should be adopted on the understanding expressed by the Soviet Union representative.

33. Mr. BOUZIRI (Tunisia) was in favour of the United Kingdom amendment (L.52), and wished to re-introduce it in the name of his own delegation.

34. Mr. KRISHNA RAO (India) commended the action of the representative of Tunisia. With regard to the proposed vote on the principle as opposed to the text of the Spanish amendment, he was uncertain of its implications, for it was not clear how article 8 would be applied once a distinction had been established between diplomatic and non-diplomatic staff.

35. The CHAIRMAN put to the vote the principle of the Spanish delegation's amendment (L.78).

*The principle of the amendment was adopted by 35 votes to 15, with 16 abstentions.*

36. The CHAIRMAN suggested that the Drafting Committee be instructed to re-draft article 8 in terms which distinguished between the categories of diplomatic and non-diplomatic staff.

*It was so agreed.*

*The French delegation's amendment (L.3) was adopted by 28 votes to 16, with 26 abstentions.*

37. The CHAIRMAN put to the vote the Belgian delegation's amendment (L.63) (as amended by the United States delegation by insertion of the words "or not acceptable" after the words "non grata").

*The amendment, as amended, was adopted by 35 votes to 21, with 15 abstentions.*

38. Mr. BOUZIRI (Tunisia) withdrew the former United Kingdom amendment, since its purpose was served by the adoption of the Belgian amendment.

*Article 8, as amended, was adopted by 65 votes to none, with 6 abstentions.*

*Article 9 (Notification of arrival and departure)*

39. The CHAIRMAN invited debate on article 9 and on the amendments thereto.<sup>1</sup>

40. Mr. SUCHARITAKUL (Thailand) withdrew his amendment (L.51) in favour of the United Kingdom amendment (L.9), but reserved the right to re-submit it if the United Kingdom amendment did not reach the voting stage. He asked that the paragraphs of the United Kingdom amendment should be voted on separately.

41. The purpose of his delegation's amendment was to make article 9 applicable to the head of a mission as well as to the staff: under the definition in article 1 the "members of the staff of the mission" did not include the head of the mission.

42. Mr. VALLAT (United Kingdom), introducing his delegation's amendments, explained that the first would provide for notification of the arrival and departure of the members of the mission, their families and servants. The second was intended to take into account differences of practice: in some countries (his own, for example) notification was not necessarily made to the Ministry of Foreign Affairs. The third amendment was intended to reduce the number of notifications; the receiving State would hardly wish to be notified of the arrival and departure of persons not entitled to diplomatic privileges and immunities.

43. Mr. de VAUCELLES (France) had the impression that his delegation's amendment had been criticized for seeming to involve the internal authorities of the receiving State in questions regarding the status of members of the mission of a sending State. Whereas, however, persons with diplomatic status were dealt with by the Ministry of Foreign Affairs, persons such as

<sup>1</sup> The following amendments had been submitted: France, A/CONF.20/C.1/L.4; United Kingdom, A/CONF.20/C.1/L.9; Czechoslovakia, A/CONF.20/C.1/L.49; Thailand, A/CONF.20/C.1/L.51; Mexico, A/CONF.20/C.1/L.55; Australia, A/CONF.20/C.1/L.60; Ceylon, A/CONF.20/C.1/L.72; Spain, A/CONF.20/C.1/L.79.

private servants were in a different position. In France, they required residence permits from the department responsible, which by courtesy were provided free of charge through the Ministry of Foreign Affairs. Article 9 referred only to notification to the Ministry of Foreign Affairs, and therefore provided no guarantee that the appropriate department would be kept informed of the movements of such persons. His government was concerned at the possibility that, if they left the mission and were no longer entitled to a courtesy permit, they might remain in the country without complying with the regulations governing aliens.

44. Mr. JEZEK (Czechoslovakia) said there was no doubt of the validity of the principle of article 9. It would, however, be desirable to state more clearly whether it referred only to arrivals to take up appointment and to final departures or also, for example, to leave and departure on mission. The amendment submitted by his delegation was intended to clarify that point, and added a provision concerning notification of the arrival and final departure of members of the private staff. It was based *mutatis mutandis* on article 24 of the draft articles on consular intercourse and immunities prepared by the International Law Commission (A/4425).

45. The delegation of Czechoslovakia would accept the proposal by the United Kingdom and Thailand that the words "of the staff" in the first sentence of article 9 should be deleted and was ready to make corresponding changes in its own amendment (L.49).

46. Mr. de ERICE y O'SHEA (Spain) withdrew the first paragraph of his delegation's amendment (L.79) in favour of the corresponding provision proposed by Mexico (L.55). He also withdrew the second paragraph of his delegation's amendment in favour of the third of the United Kingdom amendments (L.9).

47. Mr. MARISCAL (Mexico) agreed to the deletion of the words "of the staff" in paragraph 1 of his delegation's amendment (L.55).

48. Mr. GUNWARDENE (Ceylon) withdrew his delegation's amendment (L.72) in favour of the Australian amendment (L.60).

49. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the paragraph proposed by France (L.4) would be out of place in the draft articles. It was an internal question which authorities should be notified by the Ministry of Foreign Affairs, and the question should not be mentioned in an international convention. The draft articles dealt with diplomatic representatives, not ordinary citizens. It was normal, therefore, that their arrival and departure should be notified directly to the Ministry of Foreign Affairs. In that respect the difference between members of the diplomatic mission and ordinary citizens was precisely that the former did not, for example, have to apply for police permits.

50. His delegation would accept the proposal by the United Kingdom and Thailand that the requirement for the notification of arrival and departure should be extended to the head of mission. The intention of the

third of the United Kingdom amendments was not clear. The receiving State should be informed of the recruitment and dismissal of private servants even if, as nationals of the receiving State, they did not enjoy privileges and immunities. His delegation would therefore oppose that particular amendment.

51. The re-draft of article 9 proposed by Mexico (L.55) contained a number of unacceptable provisions. Paragraph 2, for example, was not in accordance with current practice and seemed unnecessary: the interval distribution of duties was entirely within the competence of the diplomatic mission. The same applied to paragraph 3; it was difficult to see how changes in functions or duties could affect the position of the persons concerned vis-à-vis the receiving State. The inclusion of those provisions, which were superfluous and went beyond existing practice, could lead only to confusion and unnecessary complications.

52. His delegation would support the re-draft proposed by Czechoslovakia (L.49), which was an improvement on the existing draft. As the representative of Czechoslovakia had explained, it was based on a more recent draft prepared by the International Law Commission.

53. Mr. UCHIDA (Japan) supported the view expressed by the representative of Czechoslovakia. His delegation interpreted "arrival" to mean first arrival, and "departure" to mean final departure. The article could hardly cover every arrival and departure in the case of travel or leave. The point might be considered by the Drafting Committee.

54. Mr. TAWO MBU (Nigeria) supported the deletion of the words "of the staff," which seemed superfluous. He would also vote for the other amendments proposed by the United Kingdom, which seemed to cover all the points necessary in article 9. He could not accept, however, the re-draft proposed by Mexico, which was too far-reaching, or the proposal by France (L.4), which introduced a reference to local practice and was not of universal application. His delegation would also vote against the Australian amendment, which did not appear to add anything of substance to the original.

55. Mr. NAFEH ZADE (United Arab Republic) said that the article did not cover the head of the mission. The Commission's commentary to the article mentioned persons recently appointed to a mission and those finally leaving their posts. The article referred to notification of arrival and departure of the members of the mission, without mentioning the head of the mission.

56. If the term "the members of the mission", and not "the members of the staff of the mission" were used, the word "first" should be inserted before "arrival" and the word "final" before "departure".

57. Mr. WICK KOUN (Cambodia) did not think it necessary to add the words "who are entitled to privileges and immunities" after "private servants". In his country, Cambodian citizens locally engaged as servants in a foreign mission did not benefit from privileges and immunities in Cambodian territory.

58. Mr. CAMERON (United States of America) supported amendments proposed by the United Kingdom. Referring to the first sentence of article 37, paragraph 2, he said the United Kingdom amendment would make it unnecessary for the sending State to notify the engagement of any staff for whom it was not requesting diplomatic privileges and immunities.

The meeting rose at 12.55 p.m.

#### FOURTEENTH MEETING

Tuesday, 14 March 1961, at 3.15 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)

#### Article 9 (Notification of arrival and departure) (continued)

1. The CHAIRMAN invited continued debate on article 9 of the International Law Commission's draft (A/CONF.20/4) and on the amendments to the article.<sup>1</sup>
2. Mr. VALLAT (United Kingdom) said that the convention being prepared should be in harmony with the Commission's recent draft on consular intercourse and immunities (A/4425). That would not be the case if the Committee were to approve article 9 as it stood. It would be better, he suggested, to take as a basis the Czechoslovak amendment (L.49), subject to the omission of the words "of the staff", as proposed by the United Kingdom (L.9) and Thailand (L.51), and to the addition of a provision corresponding to the second sentence of draft article 9.
3. Mr. de VAUCELLES (France) agreed and considered that the second and third of the United Kingdom amendments should be embodied in the re-draft of article 9. For the sake of facilitating debate, the French delegation withdrew its amendment (L.4).
4. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the United Kingdom representative's suggestion.
5. Mr. JEZEK (Czechoslovakia) agreed to the procedure suggested by the United Kingdom and proposed the following additional clause to the Czechoslovak amendment: "(d) 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."
6. Mr. CAMERON (United States of America) said that the additional clause did not really reflect the intention of the third of the United Kingdom amendments.
7. Mr. TALJAARD (Union of South Africa) said that his country did not grant privileges and immunities to the private servants of members of foreign diplomatic missions. Accordingly he preferred the Czechoslovak text to that drafted by the International Law Commission and could not support the third of the United Kingdom amendments.
8. Mr. BOUZIRI (Tunisia) thought the procedure provided for in sub-paragraph (c) of the Czechoslovak amendment too complicated. Moreover, as the United States representative had pointed out, the new paragraph (d) did not specify that notification was required only for those private servants who were entitled to privileges and immunities.
9. Mr. CARMONA (Venezuela) said that his country did not grant privileges and immunities to the private servants of foreign missions and, like the representative of Tunisia, he considered the procedure provided for in sub-paragraph (c) of the amendment too complicated. He would therefore ask for a separate vote on that paragraph and would oppose it. He would also vote against the Mexican amendment (L.55), which had the serious defect of treating private servants in the same way as members of the families of the mission staff. On the other hand, he would vote in favour of the third of the United Kingdom amendments.
10. Mr. MARISCAL (Mexico) announced that, to simplify proceedings, his delegation would withdraw its amendment and vote for the revised Czechoslovak amendment.
11. Mr. MELO LECAROS (Chile) and Mr. de ERICE y O'SHEA (Spain) supported the revised Czechoslovak amendment and the third of the United Kingdom amendments. They suggested, however, that in that paragraph the words "who are entitled" be replaced by "if they are entitled".
12. Mr. de VAUCELLES (France) supported that suggestion.
13. The CHAIRMAN put to the vote, sub-paragraph by sub-paragraph, the Czechoslovak amendment (L.49), as revised.
  - Sub-paragraph (a) was adopted by 63 votes to none, with 3 abstentions.*
  - Sub-paragraph (b) was adopted by 64 votes to none, with 3 abstentions.*
  - Sub-paragraph (c) was adopted by 61 votes to 1, with 7 abstentions.*
  - Sub-paragraph (d) was adopted by 60 votes to 2, with 5 abstentions.*
14. The CHAIRMAN put to the vote, successively, the United Kingdom amendments (L.9), pointing out that the first, which had been included in the revised Czechoslovak text, had been adopted with that text.
  - The second amendment was adopted by 54 votes to 2, with 10 abstentions.*
  - The third amendment was adopted by 40 votes to 4, with 25 abstentions.*

<sup>1</sup> For the list of amendments, see thirteenth meeting, para. 39.