United Nations Conference on Diplomatic Intercourse and Immunities

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14th 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)*

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.[1]

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.

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[1] For the list of amendments, see thirteenth meeting, para. 39.

15. Mr. VALLAT (United Kingdom) proposed that the Australian amendment should be re-drafted so as to provide for the addition of the following sentence after the clauses just adopted: " Where possible, prior notice of arrival and departure should also be given."

16. Mr. KEVIN (Australia) agreed to that re-draft.

The Australian amendment, as so revised, was adopted by 54 votes to none, with 12 abstentions.

17. The CHAIRMAN put to the vote the revised Czechoslovak amendment as a whole, subject to those further amendments.

The provision as a whole, as so amended, was adopted by 65 votes to 1, with 4 abstentions.

Article 10 (Size of staff)

18. The CHAIRMAN invited debate on article 10 and drew attention to the amendments thereto.[1]

19. Mr. OJEDA (Mexico) observed that, especially since the Second World War, many States had tended to enlarge the staff of diplomatic missions considerably and that the number of attachés, in particular, was continually increasing. As, however, the receiving State should be free not to agree to the sending State's appointing an excessive number of diplomatic staff, Mexico would vote in favour of the Argentine amendment (L.119).

20. Mr. NGO-DINH-LUYEN (Viet-Nam) explained that his delegation's amendment (L.88) stressed two ideas. The first was the " extent " of relations between the sending State and the receiving State, and the second was the need to fix a definite number for the staff of the mission, pending specific agreement between the two governments. It could hardly be left to the sending State alone to judge " circumstances and conditions in the receiving State ". If the idea of the extent of relations were adopted, the two States could assess the situation bilaterally. The second rule his delegation proposed would permit the immediate establishment of diplomatic relations on the basis of equal size of the two missions, without prejudice to subsequent agreement.

21. The receiving State, which might be a newly independent State, should be protected not only against encroachment by the sending State, but also against its own apprehensions: the fear, for instance, of having to accord hospitality to a mission of unspecified size. Article 10 as it stood might provide sufficient safeguards for States with long experience of international intercourse, but not for young States only beginning to make their voice heard in the concert of nations.

22. Mr. de ERICE y O'SHEA (Spain) announced that his delegation was withdrawing paragraph 1 of its amendment (L.80), since the text proposed by Argentina (L.119) was based on the same idea.

23. In paragraph 2 the word " functions " had been substituted for " category "; but that was merely a drafting change. On the other hand, the principle of reciprocity called for some comment. The smaller countries, including his own, were not happy about the large size of foreign diplomatic missions. Spain did not presume to maintain as many diplomatic missions abroad as those it received; accordingly, it supported, not the principle of numerical, but that of functional reciprocity. Reciprocity would then apply to function: a specific field of interest to both States, for which they considered it useful to appoint specially qualified diplomats.

24. While recognizing the merits of the Viet-Namese amendment, his delegation had decided to support the Argentine amendment, which more closely met its views.

25. Mr. MAMELI (Italy) said that article 10 as it stood dealt only with one aspect of the problem. Why should only the circumstances and conditions in the receiving State be decisive ? The criterion should be more objective, and the extent of the relations between the States should be taken into account.

26. Mr. BOUZIRI (Tunisia) announced that, to facilitate the proceedings, his delegation withdrew its amendment. It was dissatisfied with article 6, and he insisted on the need for leaving the final decision on the size of the mission to the receiving State. He supported the Argentine amendment (L.119).

27. Mr. BOLLINI SHAW (Argentina) thanked the Spanish and Tunisian delegations for their support of the Argentine amendment.

28. For paragraph 2, his delegation supported the wording submitted by Spain (L.80).

29. Mr. VALLAT (United Kingdom) thought that article 10, which had been drafted after careful reflection, would maintain a just balance between possibly conflicting interests. The receiving State might not wish to receive too large a diplomatic mission, whereas the sending State might wish to increase its mission's staff. The International Law Commission had not ignored that possible source of dispute, and had carefully considered the comments made by governments. On the other hand, it had — a notable fact — adopted the draft articles without opposition. Hence the United Kingdom delegation somewhat hesitated to amend the draft, and, although it had listened with interest to the arguments, thought it wiser to retain the original text.

30. The Argentina amendment, for instance, would leave the receiving State a discretion unlimited by any legal provision. Article 10, as it stood, however, laid down an objective criterion, and the United Kingdom would vote for it. Some slight drafting changes might be made, as suggested by Ceylon (L.76), but should not affect the substance.

31. Mr. KRISHNA RAO (India) said that the new amendments introduced new criteria. He doubted whether acceptance of the principle of numerical equality of missions would be useful in practice. The Commission's text was the best that had been proposed: it left the receiving State reasonably free to refuse. Hence India supported article 10 as it stood.

[1] The following amendments had been submitted: Tunisia, A/CONF.20/C.1/L.65; Ceylon, L. 76; Spain, L.80; Italy, L.86; Viet-Nam, L.88; Argentina, L.119.

32. Mr. MENDIS (Ceylon) was not entirely satisfied with article 10; and in putting forward its amendment his delegation wished to clarify two points. It deleted the phrase " what is reasonable and normal ", which it considered dangerously vague; and substituted the words " may require " for " may refuse ". The size of the mission should be determined by friendly negotiation, in accordance with the spirit of article 10.

33. Mr. CAMERON (United States of America) said that the object of article 10 was to settle conflicts of interest between the sending and the receiving States. Paragraph 1 entitled the receiving State to decide, but only in the absence of a specific agreement. His delegation did not quarrel with the idea that the receiving State should decide, but felt bound to point out that if a dispute arose, there would be no authority for considering a complaint by the sending State.

34. The United States delegation accepted in principle article 10 as drafted, but considered the Argentine amendment well founded and would vote for it.

35. He would like paragraph 2 to be clarified, and asked for a separate vote on it.

36. Mr. de VAUCELLES (France) shared the United States representative's doubts of the exact meaning of paragraph 2. Perhaps those of the representatives who had been members of the International Law Commission would explain what was meant by " officials of a particular category ", and by " circumstances and conditions in the receiving State ".

37. Mr. CARMONA (Venezuela) said that his delegation agreed entirely with the Argentine delegation.

38. Mr. EL-ERIAN (United Arab Republic) agreed with the representatives of India and the United Kingdom that article 10 maintained a happy balance between the interests of the sending and of the receiving State. The International Law Commission had settled article 10 after carefully considering the comments of governments and making every allowance for the various trends expressed in its discussions. It first recommended a specific agreement, and then mentioned the bounds within which the receiving State could exercise its right of refusal. Some delegations would have preferred a more precise wording, but it should be recognized that greater precision was hardly possible in that matter. His delegation was therefore generally in favour of the Commission's text, but considered that the Argentine proposal, which was very closely in line with it, deserved after all to be adopted.

39. Mr. DANKWORT (Federal Republic of Germany) associated himself with the views of the United Kingdom and India, and said he would vote for article 10 as it stood.

40. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the International Law Commission had carefully considered the governments' comments. It had established objective criteria limiting the right of the receiving State.

41. Certain amendments, such as that of Italy, proposed new criteria. But the situation would then be like that which the first Congress of Vienna had ended: a hierarchy within the diplomatic corps, based on the comparative importance of the various countries. If that proposal were adopted, the door would be opened to arbitrary decision.

42. The Argentine amendment left the receiving State free to determine the limits within which it would exercise its right of refusal, and therefore did not permit any negotiation. Article 10 would thus practically lose its legal character. The right of the sending State to be represented should not be overlooked, and the Soviet delegation, like the United Kingdom delegation, would vote in favour of article 10, while accepting Ceylon's amendment.

43. The Commission had not wished to draft paragraph 2 too rigidly. It had included the expression " on a non-discriminatory basis " because it had wished to avoid abuse of right and had been thinking of the specialized attachés mentioned for the first time.

44. Mr. WESTRUP (Sweden) agreed with the comments of the representatives of the United Kingdom and the USSR. He was nevertheless surprised that no previous speaker had referred to the Commission's illuminating commentaries on article 10 (A/3859). The Commission had not disputed that the interested parties were in the best position to settle differences concerning the size of the staff, and therefore had suggested that such differences should, where possible, be settled by agreement between them. But it had also stated that criteria should be laid down for the guidance of the parties or, where necessary, for application in any necessary arbitral or judicial decisions. Those criteria were necessarily vague, as often happened where a compromise between conflicting interests was necessary. The Swedish delegation would in any case vote for article 10 as drafted by the Commission.

45. Mr. BARTOŠ (Yugoslavia) said that he, too, would vote for the Commission's draft. As the Commission had said, the reason why the provisions of article 10 did not form part of existing international law was that the problem was new. By accepting the principle of limitation of the size of missions, the great majority of governments had made an innovation and taken a step forward. The Conference should endorse that principle.

46. Mr. AGUDELO (Colombia) considered that, by substituting " what it considers reasonable and normal " for " what is reasonable and normal ", the Argentine amendment (L.119) toned down the Commission's article 10, paragraph 1, and made it more flexible and acceptable. Article 10, paragraph 2, did not specify in what circumstances the receiving State could refuse to accept officials of a particular category; and the Colombian delegation preferred the Spanish amendment to that paragraph. Hence the Colombian delegation would vote for article 10, paragraph 1, as amended by Argentina, and for paragraph 2 as it appeared in the Spanish amendment.

47. Mr. PONCE MIRANDA (Ecuador) considered that the interested States should agree upon the size of staff, as provided in the Commission's draft. But, failing such

agreement, who was to define what was reasonable and normal ? Certainly not the sending State. Nor for that matter could the decision be left to the receiving State. Consequently, the receiving State should retain the right to judge whether, in view of circumstances and conditions in the receiving State and to the needs of the mission, the size of the staff was reasonable. That was the object of the Spanish amendment, which the Ecuadorian delegation would support.

48. Mr. ZLITNI (Libya) stressed that the question of the size of the staff raised a conflict of interest. The Argentine amendment to paragraph 1 of article 10 was reasonable and calculated to prevent that conflict. He would therefore vote for that amendment.

49. Mr. GLASER (Romania) said he was more and more convinced that the Conference should adhere to the text which the International Law Commission had drafted with so much wisdom. However, there must be a negotiated agreement between the parties. No dispute was incapable of solution by negotiation. But it was also necessary to create a climate favourable to negotiation, and that could not be done by deciding that one of the parties should have the last word. The Argentine amendment entitling the receiving State to impose its decision conformed neither to modern international law nor to diplomatic law.

50. Mr. BOUZIRI (Tunisia) said that the Argentine amendment did not close the door to negotiation. It was precisely in order to avoid a dispute between the receiving and sending States over reasonable and normal size of a mission staff that the Tunisian delegation had submitted its amendment (L.65) to article 10, paragraph 1. It had eventually associated itself with the Argentine amendment, but on the clear understanding that only the receiving State could determine its own circumstances and conditions. If the sending State challenged that right it would be interfering in the internal affairs of the receiving State.

51. Mr. NGO-DINH-LUYEN (Viet-Nam) pointed out that draft article 10 was open to several interpretations. The delegation of the United Arab Republic had said, in effect, that in principle his delegation favoured the International Law Commission's draft, but felt that the Argentine amendment, couched in very similar terms, should be adopted. On the other hand the United Kingdom representative and others who were members of the Commission had felt that the Argentine amendment gave the receiving State discretion to determine the size of the staff. The point had to be settled. It had also been said that " reasonable " had a clearly defined and accepted legal meaning. That was doubtless true, but particularly in internal civil law where disputes were submitted to a court for final decision. The Asian-African Legal Consultative Committee had decided (A/CONF.20/6) to make no recommendation regarding the method to be adopted for the settlement of disputes between States in the matter of diplomatic immunities, and had not considered it appropriate to adopt the International Law Commission's draft article 45, since the governments held divergent views on the matter. Therefore, if " reasonable " were retained in the draft, it should be expressly defined. For those reasons, his delegation held that article 10 should be amended, and that its own amendment was largely covered by that of Argentina. It was therefore prepared to withdraw it in favour of the Argentine amendment.

52. The CHAIRMAN said that the Committee had before it only two amendments to paragraph 1 of article 10: that of Italy (L.86) and that of Argentina (L.119). The Ceylonese amendment (L.76) would be referred to the Drafting Committee. On paragraph 2 of article 10, the Committee had before it the Spanish amendment (L.80). The Committee should first vote on the Argentine amendment, which in substance was further from the original proposal.

The Argentine amendment (L.119) was adopted by 33 votes to 26 with 7 abstentions.

53. Mr. MAMELI (Italy) said that, since the Argentine amendment had been adopted, he would not press his amendment to a vote.

54. The CHAIRMAN put to the vote the Spanish amendment to paragraph 2 of article 10.

The amendment was rejected by 30 votes to 18, with 18 abstentions.

Paragraph 2 of article 10 was adopted by 38 votes to 17, with 7 abstentions.

Article 10 as a whole, as amended, was adopted by 48 votes to 11, with 8 abstentions.

The meeting rose at 6.10 p.m.

FIFTEENTH MEETING

Wednesday, 15 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 11 (Offices away from the seat of the mission)

1. The CHAIRMAN invited debate on article 11 of the International Law Commission's draft and on the amendments to the article.[1]

2. Mr. GLASSE (United Kingdom), introducing his delegation's amendments (L.53), said that the first would mean that branch offices were considered part of a mission: article 11 was not intended to refer to anything

[1] The following amendments had been submitted: United Kingdom, A/CONF.20/C.1/L.53; Mexico, A/CONF.20/C.1/L.56; China, A/CONF.20/C.1/L.67; Spain, A/CONF.20/C.1/L.93; Switzerland, A/CONF.20/C.1/L.107.