

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

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## **15th meeting of the Committee of the Whole**

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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.<sup>1</sup>

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

<sup>1</sup> 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.

but diplomatic offices, and should not otherwise be construed. The second amendment, which might be referred to the Drafting Committee, was proposed because the word "towns" had a somewhat restrictive connotation.

3. He was not in favour of the Mexican amendment (L.56), for it would constrain the sending State to establish its mission at the place where the government of the receiving State was established. It was undesirable to tie the site of the mission to the site of the government headquarters, since to do so could give rise to difficulties in certain circumstances. The Chinese amendment (L.67) could be referred to the Drafting Committee. The amendment of Switzerland (L.107) was open to the same objection as that of Mexico. He agreed that it was customary for diplomatic missions to be established at the seat of government of the receiving State and that the practice had obvious advantages, but it might not be advisable to prescribe it formally in a convention.

4. Mr. HU (China) said that his delegation's amendment (L.67) was based on the principle that prevention was better than cure. It would not be conducive to cordial relations between States concerned if the desired consent were withheld after an office of the mission had been established. He did not object to his amendment being referred to the Drafting Committee, even though it was substantive in nature.

5. Mr. AMAN (Switzerland) said that his delegation's amendment (L.107) simply confirmed not only a universal practice but also a recognized principle of international law. The principle was mentioned in the commentary to the draft article (A/3859), but Switzerland considered it so important that it should be included in the article. In addition, the amendment improved the terminology.

6. Mr. DEJANY (Saudi Arabia) pointed out that the amendments of Switzerland and Mexico would have unfortunate political implications of great importance and consequence for certain countries, including his own, because of the situation in Jerusalem.

7. Mr. LINTON (Israel), speaking on a point of order, questioned the propriety of raising specific political issues at a conference called to codify general principles of international law.

8. The CHAIRMAN said it was inevitable that during the Conference questions should arise which, because of historical and existing circumstances, would have political implications involving very strong feelings. He had no wish to suppress thoughts, feelings and ideas that were entirely understandable; he respected the feelings of the representative of Saudi Arabia and was aware that he was merely citing an example, as had been done on other occasions during the discussions. For the good working of the Conference, however, he appealed to delegations to avoid matters not directly concerned with the convention.

9. Mr. DEJANY (Saudi Arabia) said that he had felt impelled to speak because of the introduction of the Mexican and Swiss amendments, which would change

the intent of article 11. One of the most important resolutions adopted by the General Assembly on the Palestine problem was the one calling for the internationalization of the city of Jerusalem and the establishment of an international régime to administer it. Despite that resolution of the General Assembly, which was still valid, Israel had established its seat of government in that city. As a result many States having diplomatic relations with Israel in view of that resolution had been unwilling to transfer their missions from Tel-Aviv; some had done so, and others had made protests. Acceptance of the Swiss and Mexican amendments would deny to the States having diplomatic relations with Israel the right to establish their missions anywhere else than in Jerusalem without the consent of Israel. That in effect would encourage violations of the General Assembly resolution, which should be avoided by a conference convened by the same General Assembly of the United Nations. His government (and others not represented at the Conference) would then find it difficult to become parties to the convention.

10. Mr. MATINE-DAFTARY (Iran) said that he could have supported some of the amendments. However, since difficulties might result in certain cases, he thought it preferable to retain the article as drafted by the International Law Commission. In practice missions were usually established in the capital of the receiving State. There were exceptions, however, and the Commission had devised a formula which provided for existing practice but avoided possible difficulties. Though the addition proposed by the United Kingdom seemed at first sight to clarify the text, the question arose, what kind of office could the sending State establish that was not part of a mission?

11. Mr. ASIROGLU (Turkey) said he had no fundamental objection to article 11 but thought it might be improved by some of the amendments. The United Kingdom amendment would make the article more precise. All offices should be part of, and enjoy the protection afforded to, diplomatic missions. The Spanish amendment (L.93) was also an improvement. The amendments of Switzerland and Mexico, though in essence somewhat similar to those of the United Kingdom and Spain, were less satisfactory and he would not support them. He agreed with the Chinese amendment, and also with the suggestion that it should be referred to the Drafting Committee.

12. Mr. de ERICE y O'SHEA (Spain) said that in general article 11 was satisfactory; but it could be improved. It was often necessary (for example, in Spain and other countries with a similar climate) for a mission to set up a summer residence away from the capital. Such premises should be covered by the convention, and for that reason his delegation proposed its amendment. With regard to the "express or tacit consent", he would agree to omit the words "or tacit" on the understanding that express consent could be given verbally or by telephone and not necessarily in a formal letter. The amendment was not intended to make any fundamental change in article 11: it was rather an amplification of the article,

and also stated it in a positive rather than a negative form. He believed that it also fulfilled the purpose of the Mexican amendment.

13. Mr. OJEDA (Mexico) withdrew his delegation's amendment (L.56), which did not affect the basic principles of article 11.

14. Mr. NAFEH ZADE (United Arab Republic) said that article 11 recognized two important principles: that diplomatic missions must be established at the site of government of the receiving State; and that a sending State might need to have a commercial attaché or a naval attaché elsewhere—for example, at a port. It did not, however, cover the case where climatic conditions made it desirable for a mission to establish a summer residence away from the capital. He preferred the idea of having sub-offices depending on the mission, and also favoured the right to a summer residence for the head of the mission.

15. Mr. MELO LECAROS (Chile) said that the amendment proposed by Switzerland introduced a new idea irrelevant to the article. His delegation supported the view of the United Kingdom, and could not vote for the Swiss amendment.

16. It would support the amendment proposed by Spain, which expressed the Commission's intention in positive terms and reflected current practice in regard, for example, to the commercial and migration sections of diplomatic missions. He suggested, however, that the representative of Spain might withdraw the amendment to the title of article 11. The titles of articles were merely guides for the reader.

17. Mr. de ERICE y O'SHEA (Spain) accepted that suggestion.

18. Mr. CARMONA (Venezuela) said he preferred the Swiss amendment to article 11 as it stood. The rule laid down in the article, which was affirmed by the Swiss amendment, did not mean that the seat of the mission or its offices could normally be established in towns other than the seat of government; that was possible only in exceptional cases and with the consent of the government. That principle should remain unchanged. To allow some freedom to missions to set up offices in other towns might create some very undesirable situations. It would enable States to camouflage consular or commercial activities as diplomatic missions in ports or towns away from the capital. The Constitution of Venezuela laid down that a diplomatic mission must be established at the seat of government. If the sending State had a valid reason for setting up an office in a port, for example, there was nothing to prevent the receiving State from giving special permission. The principle that the offices of a diplomatic mission should as a general rule be in the seat of government of the receiving State was in fact supported by the reference of the representative of Spain to the practice in his country by which diplomatic missions established summer residences away from Madrid. They were then following the Government of Spain when it changed its seat.

19. Mr. GOLEMANOV (Bulgaria), approving the principle expressed in article 11, said that his delegation would support the amendment proposed by the United Kingdom, which made the text more precise. It could not, however, support the amendments proposed by Switzerland or by Spain. The latter did not improve the text, but rather complicated it.

20. Mr. KERLEY (United States of America) said that since the words "or tacit" in the Spanish delegation's amendment had been deleted, the United States delegation would be able to support that amendment. He noted the view expressed by the representative of Spain that the "express consent" required need not necessarily be very formal. The amendment proposed by China seemed compatible with the spirit of the Spanish amendment. He suggested, therefore, that the representative of Spain might agree to incorporate that amendment in his own.

21. Mr. de ERICE y O'SHEA (Spain) accepted that suggestion. His amendment would therefore read "...with the prior express consent of the receiving State..."

22. Mr. MAMELI (Italy) and Mr. AGUDELO (Colombia) supported the Spanish proposal, as amended.

23. Mr. NGO-DINH-LUYEN (Viet-Nam) asked whether the scope of article 11 was not restricted by the absence of any reference to the case of multiple accreditation, covered by article 5.

24. Mr. AMAN (Switzerland) said that the amendment proposed by his delegation was based on legal considerations. To facilitate the proceedings, however, he would not press it to a vote, and would vote for article 11 as it stood.

25. Mr. DEJANY (Saudi Arabia), thanking the representative of Switzerland for withdrawing his amendment, assured him that he had at no time doubted the excellent motives of the Swiss delegation.

26. Mr. ROMANOV (Union of Soviet Socialist Republics) said that the amendments remaining after the withdrawal of the Swiss amendment did not alter the substance of the draft article. The amendment proposed by Spain, however, used a term "diplomatic premises" which was not used elsewhere in the draft articles and was not defined in article 1. As the representative of Spain had said, it was intended to refer to the residences of heads of mission and their staff as well as to the offices of the mission. It seemed inadvisable to revise the existing terminology in that way. The delegation of the Soviet Union would support the existing text of article 11, with any drafting improvements.

27. Mr. DADZIE (Ghana) said that his delegation would support the Commission's draft with the amendments proposed by the United Kingdom and China. It could not, however, accept the Spanish amendment, which stated the rights of the sending State in positive terms.

There was an important distinction between that positive statement and the provision in the draft that the sending State could not establish offices away from the seat of the mission without the consent of the receiving State.

28. Mr. REGALA (Philippines) said that the term "diplomatic premises" used in the Spanish amendment was not in current diplomatic usage. He would propose that it should be replaced by the words "offices forming part of the diplomatic mission", which were used in the United Kingdom amendment.

29. Mr. BOUZIRI (Tunisia) said that his delegation would support the Spanish amendment if its sponsor would agree to the deletion of the word "ordinarily".

30. Mr. de ERICE y O'SHEA (Spain) agreed to omit the word in question. In reply to the representatives of the Soviet Union and the Philippines, however, he said that his delegation considered it important to retain the term "premises", which also appeared in article 20.

31. Mr. GLASSE (United Kingdom) said that the Spanish amendment as revised embodied the same principle as the draft. If the amendments proposed by the United Kingdom could be taken into account by the Drafting Committee, his delegation would not press them to a vote.

32. Mr. TUNKIN (Union of Soviet Socialist Republics) pointed out that the amendment proposed by Spain, even as revised, differed in substance from draft article 11. The two texts dealt with completely different points. The intention of the International Law Commission had been to regulate the establishment of offices away from the seat of the mission, which should not be permitted without the consent of the receiving State. The Spanish amendment, however, referred to "premises". The question whether the living accommodation of the head of mission or his staff was away from the seat of the mission did not require to be regulated or dealt with in the convention.

33. Mr. REGALA (Philippines) supported that view. Article 20, to which the representative of Spain had referred, concerned the inviolability of the mission premises. In article 11 the expression "offices forming part of the diplomatic mission" was the correct one.

34. The CHAIRMAN agreed that a point of substance had been raised which the Committee should settle before proceeding to a vote.

35. Mr. GLASER (Romania) supported the views expressed by the representative of the Union of Soviet Socialist Republics. It was neither essential nor desirable that the convention should refer to the place of residence of the head of mission or members of his staff. They should not be restricted from living, for example, in a village outside a large capital city, if they so preferred. His delegation would support the United Kingdom amendment, which did not change the substance of article 11, and he would ask the United Kingdom delegation to maintain it.

36. Mr. KEVIN (Australia) said that his delegation could not consider itself bound by any definition of "premises" reached before article 20 was considered.

37. Mr. BOUZIRI (Tunisia) said that he had at first considered supporting the Spanish amendment, on the understanding that the expression "diplomatic premises" therein used meant offices and did not include the residence of a diplomatic officer, which might well be situated elsewhere than in the city where the mission was established. In view of the uncertainty over the interpretation of that expression, however, he now had doubts regarding the amendment.

38. Mr. DONATO (Lebanon) suggested that the reference to the establishment of "offices" be expanded to cover "diplomatic offices or premises".

39. Mr. KAHAMBA (Congo: Léopoldville) pointed out that the Committee had provisionally adopted in article 1 (i) a definition of the "premises of the mission".

40. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the phrase "diplomatic offices or premises" could be taken to cover a residence as well as an office.

41. Mr. CAMERON (United States of America) said that his delegation supported both the United Kingdom and the Spanish amendments, and suggested the following composite text:

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

42. Mr. de ERICE y O'SHEA (Spain) accepted the suggested text.

43. Mr. REGALA (Philippines) asked the United States representative to explain the meaning of the expression "other diplomatic installations", which introduced a new complication.

44. Mr. KRISHNA RAO (India) said that "installations" could be variously interpreted and that the introduction of the term would only obscure the meaning without satisfying any of the points of view which had been expressed. After a lengthy debate the Committee had returned to the International Law Commission's text, which he would support, with the United Kingdom's useful drafting amendments.

45. Mr. CAMERON (United States of America) said that his own government would find it no more difficult to interpret the expression "diplomatic installations" than the word "offices". Subsidiary offices established by the various diplomatic missions accredited at Washington were extremely varied. With regard to article 11, the overriding consideration should be to provide that nothing could be established without the prior express consent of the receiving State.

46. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the doubts expressed by the representatives of the Philippines and India, and the explanation given by the United States representative, suggested that the use of the expression "diplomatic installations" would be very dangerous. If the adoption of the amendment meant that "nothing" could be established without the prior express consent of the receiving State, diplomatic agents would not be able to reside outside the limits of the capital city.

47. He supported the United Kingdom amendment which clarified the text by specifying that the offices referred to formed part of the diplomatic mission.

48. Mr. TAWO MBU (Nigeria) said that article 11 was quite clear as it stood and that the Committee, by discussing points of drafting, was in danger of confusing the situation.

49. Mr. SUCHARITAKUL (Thailand) likewise considered that the expression "diplomatic installations" would obscure the meaning of the article. He supported the Commission's text, with the amendments by China and the United Kingdom.

50. Mr. GLASER (Romania) supported the United Kingdom amendment, which clarified the original text by specifying that what required the consent of the receiving State was the establishment of subsidiary offices of the diplomatic mission. It was the task of the Conference to render the existing rules broader and more flexible, rather than to create new sources of conflict by establishing new and rigid provisions, like those of the Spanish amendment and the text suggested by the United States.

51. Mr. de VAUELLES (France) said that he had originally intended to support the Spanish amendment, believing it to be more flexible than the wording of draft article 11. However, because of the various changes, the Spanish text now appeared more rigid than the draft. He would therefore support the Commission's text with the United Kingdom amendments.

52. Mr. VALLAT (United Kingdom) noted that there appeared to be substantial support for the formula suggested by the United States of America, but that some representatives had doubts about the words "or other diplomatic installations". He suggested that a separate vote should be taken on those words.

53. Mr. de ERICE y O'SHEA (Spain) withdrew the words "or other diplomatic installations".

54. Mr. BESADA RAMOS (Cuba) supported article 11 as drafted by the International Law Commission.

55. The United Kingdom amendment complicated the text and rendered it unacceptable to the Cuban delegation, by applying the provision to "offices forming part of the diplomatic mission". All offices established by a foreign diplomatic mission, whether they formed part of the mission or not, required for their establishment the consent of the receiving State.

56. The CHAIRMAN said that the Committee had before it only one text, which incorporated all the amendments still standing:

"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."

57. He put to the vote the text of article 11 as thus amended.

*Article 11, as amended, was adopted by 63 votes to 2, with 7 abstentions.*

*Article 12 (Commencement of the functions of the head of the mission)*

58. The CHAIRMAN invited comments on article 12 and the amendments thereto.<sup>1</sup>

59. Mr. PECHOTA (Czechoslovakia), introducing his delegation's amendment (L.117), said that, in accordance with the practice of the majority of States, the head of the mission was deemed to have taken up his functions in the receiving State when he had presented his letters of credence. The adoption of that majority practice as a standard formula would clarify the status of diplomatic representatives.

60. In their comments on article 12 a number of governments, including that of Czechoslovakia, had urged that a uniform rule should be established concerning the commencement of functions of the head of the mission, in the form of the second of the two alternatives in article 12 (A/4164). Nevertheless, if the idea contained in his delegation's proposal did not prove generally acceptable, he would not press for a vote upon it.

61. Mr. VALLAT (United Kingdom), introducing his delegation's amendment (L.10), said that it was a consequential amendment to the adoption (fourteenth meeting, para. 14) of an amendment to article 9 (L.9, paragraph 2) which allowed notification to be made to an agreed ministry other than the Ministry of Foreign Affairs.

62. The CHAIRMAN said that, since the Committee had adopted article 9 in that form, the United Kingdom amendment seemed consequential and necessary.

63. Mr. HU (China), introducing his delegation's amendment (L.68), said that its purpose was to simplify formalities and to enable the head of mission to assume his duties as soon as possible. Should the amendment, however, not be acceptable to the majority of the Committee, his delegation would not insist on a vote.

The meeting rose at 1 p.m.

<sup>1</sup> The following amendments had been submitted: United Kingdom, A/CONF.20/C.1/L.10; China, A/CONF.20/C.1/L.68; Italy, Brazil and Venezuela, A/CONF.20/C.1/L.87 and Add.1; Czechoslovakia, A/CONF.20/C.1/L.117.