

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

Vienna, Austria  
2 March - 14 April 1961

Document:-  
**A/CONF.20/C.1/SR.19**

## **19th 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)*

71. Mr. SCHROEDER (Denmark) said that the rule laid down in article 17 was very inflexible; countries with a relatively small diplomatic staff should be permitted to appoint as *chargés des affaires* staff members not of diplomatic rank. The object of Denmark's amendment was to allow for that practice.

72. Mr. TUNKIN (Union of Soviet Socialist Republics) said that in its comments (A/3859, annex) Denmark had made a proposal similar to that under discussion, but the International Law Commission had not adopted it (453rd meeting of the ILC, paras. 51 to 82). The phrase "a member of the staff not of diplomatic rank" was too broad. The practice in such cases was to request a diplomat of another State to take charge of the affairs of a mission when its head could not act. The Soviet delegation was ready to accept the "*chargé des affaires*" system if that deputy were appointed by the head of the mission with the consent of the receiving State.

The meeting rose at 6.10 p.m.

## NINETEENTH MEETING

Friday, 17 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 17 (*Chargé d'affaires ad interim*) (continued)

1. The CHAIRMAN invited the Committee to continue its debate on article 17 and the amendments thereto.<sup>1</sup>
2. He announced that two of the amendments to article 17 had been re-drafted to take into account suggestions made during the discussion. The Italian amendment, as revised, would replace the passage "to the Ministry for Foreign Affairs of the receiving State" by: "either by the head of the mission or, in case he is unable to do so, by the Minister for Foreign Affairs of the sending State to the Minister for Foreign Affairs of the receiving State or any other ministry designated for this purpose." In that form the Italian amendment incorporated the substance of the second part of the United Kingdom amendment (L.12) and also the change proposed by Australia (18th meeting, para. 64).
3. The additional paragraph proposed by Denmark (L.170) had been revised to read: "In cases where no diplomatic member of a mission is present in the receiving State, a member of the chancery staff not of diplomatic rank may, with the consent of the receiving State, be

<sup>1</sup> For list of amendments to article 17, see 18th meeting, footnote to para. 58. At that meeting, the United Kingdom withdrew the first part of its amendments (L.12), Spain withdrew the first of its amendments (L.96), and Mexico, Switzerland, Australia and Federation of Malaya withdrew their respective amendments (L.58, L.109, L.110, L.112).

designated by the sending State to be in charge of the current affairs of the mission in the capacity of *chargé des affaires*."

4. Mr. MATINE-DAFTARY (Iran) said that the amendments still before the Committee seemed to relate mostly to drafting, and could conveniently be referred to the drafting committee. The objection put forward by the Soviet Union representative to the Danish amendment at the eighteenth meeting could perhaps be met by specifying that the person designated to be in charge of the current affairs of the mission would be a member of the administrative staff.

5. Mr. CARMONA (Venezuela) supported the Italian amendment, which improved draft article 17 considerably, and also seemed to cover the point raised in the amendment submitted by China (L.70).

6. He also supported the Spanish amendment (L.172), which dealt with a point which could otherwise give rise to difficulties.

7. He opposed the Danish amendment, because his government could not accept the suggestion that a subordinate official of the administrative and technical staff of a mission could be placed officially in charge of the mission. In Venezuela, as in many other countries, even a diplomatic officer of the rank of *attaché* or third secretary could not be left in charge of a mission, and, by reason of reciprocity, a diplomatic officer of that rank was not accepted as a *chargé d'affaires ad interim*. In the circumstances, it was even less permissible to leave in charge of a mission a person who was not even a diplomatic officer.

8. The current practice was that when no diplomatic officer was present to act as head of the mission, a subordinate official was designated to take care of the office and archives. That official, however, had no representative character and could not maintain any official contacts. His position was one of fact, not of law. It was his duty to act as caretaker of the premises and archives, and to inform his government of any developments, until a diplomatic officer arrived to act as head of mission.

9. The Soviet Union representative had said that, in a case where no diplomatic officer was present, the representative of a friendly country could be designated as *chargé d'affaires ad interim* (18th meeting, para. 72). In Venezuela, in a similar case, the sending State had designated as *chargé d'affaires ad interim* one of its diplomatic officers accredited to a neighbouring country. The subordinate official who looked after the mission concerned would advise him when his presence was needed and, in a matter of hours, he would arrive by plane.

10. Mr. YASSEEN (Iraq) said that the intention of the Danish amendment was the commendable one of ensuring the continuity of the diplomatic service; but the machinery it suggested was unsatisfactory. The diplomatic function was an extremely delicate one, too serious to be performed by members of the administrative and technical staff. They were not infrequently nationals of the receiving State, sometimes appointed even without

its consent, and the qualifications required of them were less exacting than those of the diplomatic staff.

11. The Danish amendment dealt with an exceptional case, for which it was unnecessary to provide in the convention, and which should be left to States to settle by agreement.

12. Mr. WESTRUP (Sweden) was surprised at the unfavourable reaction to the Danish proposal, which did not introduce a novel or bizarre concept. Its purpose was simply to ensure continuity in the management of the current affairs of the mission and to avoid any interruption due to absence of the diplomatic staff. The system of leaving a member of the chancery staff in charge was perhaps not sufficiently well known in the larger States with numerous diplomatic staffs. Likewise, most of the foreign diplomatic missions accredited in the larger capitals had sufficient diplomatic staff. In reply to the Soviet Union representative he stressed that, in the vast majority of cases, the person left in charge would be the chancellor; it would be unimaginable for the head of a diplomatic mission to leave it in charge of a member of the service staff.

13. It had been suggested that the possibility of leaving a member of the chancery staff in charge of the mission by agreement between the two States was obvious. He believed in making that possibility perfectly clear by an express provision. The position of those countries which did not wish to accept the system was amply safeguarded by the proviso that a member of the chancery staff could only be left in charge of the current affairs of the mission "with the consent of the receiving State".

14. Mr. PONCE MIRANDA (Ecuador) supported the Spanish amendment, which embodied a generally accepted practice. A chargé d'affaires ad interim, though his position was provisional, was none the less the head of the diplomatic mission and should enjoy all the appropriate prerogatives. The Spanish amendment would make that position clear in article 17. Since the chargé d'affaires ad interim was a head of mission, he should be included in the list of heads of mission given in article 13, paragraph 1. That result could be achieved by amending sub-paragraph (c) to cover not only permanent chargés d'affaires but also chargés d'affaires ad interim. In its commentary 1 to article 17 (A/3859), the International Law Commission had indicated that the permanent chargé d'affaires or chargé d'affaires en pied "is appointed on a more or less permanent footing." It would have been more appropriate to say that all chargés d'affaires, whether permanent or ad interim, were more or less temporary. Accordingly the most appropriate course was to drop all qualifications and to refer in article 13, paragraph 1 (c), to chargés d'affaires generally, so as to cover both the new extremely rare cases where a chargé d'affaires en pied was duly accredited by lettres de cabinet, and the frequent case of the designation of a chargé d'affaires ad interim.

15. Mr. MELO LECAROS (Chile) said that, as far as his country was concerned, there existed only one category of chargé d'affaires. That was true not only of Chilean chargés d'affaires abroad but also of foreign chargés

d'affaires accredited to Chile. He understood that a great many countries had arrived at the same conclusion as Chile. The adoption everywhere in the articles of the simple term "chargé d'affaires" would make it possible to drop all the anachronistic distinctions to which reference had been made in the discussion.

16. He supported the Spanish amendment, the purpose of which was to recognize the chargé d'affaires as head of mission; he therefore considered it essential that not only in article 17, but also in article 13, paragraph 1 (c), the reference should be purely and simply to chargé d'affaires. Since a chargé d'affaires temporarily in charge of a mission was recognized as the head of that mission, his status should not be diminished in any way. That was all the more true since there had been general recognition, during the discussion on article 13, that all heads of mission should rank equally.

17. His delegation had supported provisions which met requirements of other delegations, but were not only of no interest, but possibly somewhat unattractive to Chile. It had done so in order to contribute to the drafting of an instrument which would receive the widest possible measure of acceptance. In the present instance, if the qualifications "accredited to Ministers for Foreign Affairs", "en pied" and "ad interim" were everywhere dropped from the term "chargé d'affaires", the position of all delegations would be safeguarded. The delegations representing countries which did not draw any distinction between two classes of chargé d'affaires would be satisfied, and the position of the countries which still practised that distinction would not be affected in any way. Drafted in that manner, the text could attract general support. If, however, any reference were made to the permanent or other character of the appointment of a chargé d'affaires, the text would be unacceptable to those countries which, like his own, did not recognize two types of chargés d'affaires.

18. Mr. KAHAMBA (Congo: Léopoldville) supported article 17 as it stood. It said all that was necessary to say: that in the absence of the head of the mission the affairs of the mission would be conducted by a chargé d'affaires and that the name of that chargé d'affaires should be notified to the Ministry for Foreign Affairs of the receiving State. There was no need to specify, as suggested in the Italian amendment, the procedure for that notification: its details differed from State to State. To enter into those details in the draft articles would be an interference in domestic affairs. A statute of 8 February 1961 on the organization of the diplomatic corps of the Congo laid down that the chargé d'affaires ad interim should be designated by the head of the mission, who should advise the Ministry for Foreign Affairs at Léopoldville and notify the receiving State. If the head of the mission could not perform his functions, the diplomatic officer next in rank took over his duties, and the mission advised the Ministry for Foreign Affairs of the receiving State.

19. As an example of the difficulties that would be created if an attempt were made to regulate the procedure, he mentioned the recent death of the Ambassador of the Federal Republic of Germany at Léopoldville. The

embassy had immediately notified the Ministry for Foreign Affairs of the Congo that the diplomatic officer next in rank would act as chargé d'affaires ad interim. If, as suggested in the Italian amendment, it has been necessary for the Minister for Foreign Affairs of the Federal Republic of Germany to notify the Minister for Foreign Affairs of the Congo, there could have been considerable delay in making the designation.

20. For those reasons, his delegation felt it sufficient to specify in article 17 that the name of the chargé d'affaires ad interim must be notified to the Ministry for Foreign Affairs of the receiving State. His delegation supported article 17 without amendment.

21. Mr. HU (China), introducing his delegation's amendment (L.70), said that it was not covered by the Italian amendment, which dealt with procedure, whereas his amendment deal with the causes of vacancy. It filled a gap in article 17 by providing for the absence of the head of the mission from the receiving State. If it were agreed that the expression "unable to perform those functions" was also intended to cover absence, the question could be left to the drafting committee.

22. Mr. NAFEH ZADE (United Arab Republic) said that his delegation could not support the Danish amendment unless it was brought into line with practice by the deletion of the words "be designated by the sending State." In practice, a head of mission could notify the Ministry of Foreign Affairs of the receiving State that, having no diplomatic colleague to take his place, he had entrusted current administrative affairs to a chargé des affaires who was not a diplomatic officer. A notification from the sending State might otherwise give the receiving State the impression that a chargé d'affaires was being appointed.

23. Mr. BOUZIRI (Tunisia) supported the Danish amendment in principle. Many smaller States might find themselves in the position of wishing to establish diplomatic relations with a number of other States but not having adequate diplomatic personnel to do so. The Danish amendment would help those States to solve that minor but not infrequent problem, which would become even more frequent in the future.

24. It was difficult to define the extent of "current affairs". Although the Danish text already safeguarded the rights of the receiving State to some extent, by providing that the designation would need its consent, his delegation would suggest that a further safeguard be added by providing that in certain cases the scope of "current affairs" might be determined by agreement between the sending State and the receiving State.

25. Mr. CAMERON (United States of America) thought that the word "affairs" in the Danish amendment was the cause of considerable difficulty. It has been established that a chargé des affaires could not act for his government in a diplomatic capacity either for representation or negotiation. His delegation would therefore suggest that the expression "current affairs" should be replaced by "current administrative affairs", which probably corresponded to the original intention of the Danish delegation.

26. Mr. KRISHNA RAO (India) said that there were two substantive amendments before the Committee: the Italian amendment and the revised Danish amendment. A strict interpretation of draft article 17 would not exclude the appointment of a member of the chancery staff as chargé d'affaires ad interim. The term "chancery staff" was new to the draft articles, and it might be preferable to refer to "administrative and technical staff", as elsewhere in the draft. The term "current affairs" was also new to the text and could be variously interpreted. It might be construed to mean "day-to-day affairs". If the principle of the Danish amendment were adopted, the exact drafting might perhaps be left to the drafting committee.

27. Mr. TUNKIN (Union of Soviet Socialist Republics) doubted whether the revised version of the Italian amendment really added much to the draft. The International Law Commission had not felt it necessary to include details of procedure. If the Italian amendment were to be accepted, however, it should more faithfully reflect current practice, under which notification was sometimes sent by the mission rather than by its head. That practice had not given rise to complications in the past. He suggested, therefore, that the Italian amendment should be amended to read: "... either by the mission or, in case it is unable to do so, by the Ministry for Foreign Affairs of the sending State to the Ministry for Foreign Affairs of the receiving State." If the mission itself was unable to notify the designation, the Ministry for Foreign Affairs might have to communicate directly with the Ministry for Foreign Affairs of the receiving State.

28. His delegation would support the United States suggestion that in the Danish amendment "current affairs" should be replaced by "current administrative affairs". It would, however, suggest that the phrase "in the capacity of chargé des affaires" at the end of the revised Danish text should be deleted, since it would lead only to confusion. The intention of the Danish amendment would be adequately expressed without those words, since the official would not of course be in charge of diplomatic affairs.

29. Mr. de ERICE y O'SHEA (Spain) agreed that the use of the term "chargé des affaires" might lead to confusion, and suggested that the drafting committee should keep that risk in mind.

30. Mr. SCHROEDER (Denmark) said that the intention of the amendment submitted by this delegation was exactly as described by the representative of the United States of America. Since, however, there seemed to be certain objections to the drafting, it would not press the amendment to a vote but would be satisfied if the principle were accepted and the final drafting left to the drafting committee.

31. Mr. de ROMREE (Belgium) supported the view expressed by the representative of the United States of America. The case of a chargé des affaires was rare but did occur. If accepted by the receiving State, he had no right of representation or negotiation. It should be made clear that he was in charge of the current administrative affairs of the mission.

32. Mr. KEVIN (Australia) said that, like the representative of India, he also had had some doubts about the meaning of the term "current affairs", as well as about the definition of "chancery staff".

33. The CHAIRMAN proposed that the Committee should vote on the principle of the Danish amendment as revised. If the principle was approved, the drafting committee would be asked to re-draft the provision in the light of the debate.

*The principle of the Danish amendment was adopted by 61 votes to 2, with 9 abstentions.*

34. Mr. TUNKIN (Union of Soviet Socialist Republics), referring to the Italian amendment as revised, suggested that the words "the head of" before the word "mission" should be omitted. The provision as it stood did not correspond to practice.

35. Mr. MAMELI (Italy) agreed that the suggestion should be referred to the drafting committee.

36. Mr. TALJAARD (Union of South Africa) objected that the substitution of "mission" for "head of the mission" would materially change the amendment, and might give rise to difficulties within the mission about who should be appointed. It might even be possible for a member of the staff to appoint himself.

37. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his suggested amendment was really a drafting change. He would therefore agree that the principle of the Italian amendment should be adopted and referred to the drafting committee.

38. The CHAIRMAN proposed that the Committee should adopt the principle of the amendment proposed by Italy, as revised, subject to the comments made in the course of the debate.

*The principle of the Italian amendment as revised was adopted by 69 votes to 1, with 3 abstentions.*

*The amendment proposed by China (L.70) was rejected by 10 votes to 24, with 36 abstentions.*

*The amendment proposed by Spain (L.172) was adopted by 36 votes to 1, with 33 abstentions.*

*Article 17 as a whole, as amended, was adopted by 68 votes to none, with 2 abstentions.*

39. Mr. MELO LECAROS (Chile) said that although his delegation, wishing to be co-operative, had voted in favour of the article, it had reservations concerning the words "ad interim" and would raise the matter in the plenary conference.<sup>2</sup>

40. Mr. BARTOŠ (Yugoslavia) said that his delegation had gladly voted for article 17 as amended since for the first time an international regulation had been adopted concerning the position of *chargés d'affaires ad interim*.

*Article 18 (Use of flag and emblem)*

41. The CHAIRMAN drew attention to the amendments submitted to article 18 by Mexico (L.59), Italy

(L.101), and the Philippines (L.136), the last two having the same intent.

42. Mr. REGALA (Philippines), introducing his delegation's amendment, said that it concerned the first of the three groups of privileges and immunities mentioned in paragraph 4 of the International Law Commission's introductory commentary to section II of its draft (A/3859) — viz., those relating to the mission's premises and archives. The object of the amendment was to ensure the observance of local laws and regulations; their non-observance would be a breach of general practice and out of keeping with the spirit of the remainder of the instrument being drafted.

43. Mr. OJEDA (Mexico), introducing his delegation's amendment (L.59), said that its object was to bring the article more into line with existing practice. It was, however, of minor importance, and if the Committee wished to retain the article as it stood he would not press the amendment.

44. Mr. MAMELI (Italy) said that the display of the flag on diplomatic premises was a matter of great importance for all States. The flag should, however, only be shown on special occasions: the constant and indiscriminate use of the flag would deprive it of its meaning and would make receiving States reluctant to grant permission for the use of the flag or ensure its constant protection. Those were the considerations underlying his delegation's amendment.

45. Mr. LINTON (Israel) considered that the draft gave adequate expression to the practice followed generally and accepted in his own country. The Conference should promote uniformity and not divergence of practice, and he therefore preferred article 18 to remain unchanged.

46. Mr. MATINE-DAFTARY (Iran) agreed. With regard to the Mexican amendment, he saw no reason to abolish an established custom. The amendments of Italy and the Philippines seemed to him superfluous, for article 40 stated expressly that it was the duty of all persons enjoying privileges and immunities to respect the laws and regulations of the receiving State.

47. Mr. GOLEMANOV (Bulgaria) said that article 18 reflected what he regarded as the general practice. It also took into account the fact that in some countries (as was mentioned in the Commission's commentary on the article) there were restrictions on the use of the flags and emblems of foreign States. He therefore supported the article as drafted, and considered that all three amendments were unnecessary.

48. Mr. KRISHNA RAO (India) referring to the Philippine amendment, said that the meaning of the phrase "existing laws and regulations" was not clear; perhaps the word "existing" should be omitted. Secondly, did the amendment apply only to the residence and means of transport, or to the premises as well? If all were included, he would have objections.

49. Mr. TUNKIN (Union of Soviet Socialist Republics) said he was satisfied with article 18 as drafted. It

<sup>2</sup> See fourth plenary meeting.

merely noted a general and universally recognized practice, for it was only normal that the receiving State should respect the flag and emblem of the sending State. The amendments did not seem to affect substance, and the doubts expressed by some delegates were unfounded. It was hardly conceivable that a receiving State would not allow the flag to fly on the mission's premises on its national day, for example; and it was surely unnecessary to legislate against the misuse by a mission of its own national flag. He would therefore prefer article 18 to remain unchanged.

50. Mr. de VAUCELLES (France) likewise supported article 18 as drafted. The reference in two amendments to the laws and regulations of receiving States caused him some concern, for the Commission's commentary mentioned regulations in some countries restricting the use of the flags and emblems of foreign States. Indeed, the Commission had drafted article 18 as a safeguard against such laws, and had (as pointed out by the representative of Iran) provided in article 40 against any abuse of privileges and immunities, although a diplomat arriving in his country of assignment would naturally comply with its laws and customs.

51. With regard to the Mexican amendment, he said that the head of a mission might find it useful to display the flag on his motor-car, for it would enable him to reach an important destination through heavy traffic without delay.

52. Mr. BARTOŠ (Yugoslavia) expressed approval of article 18, and also of the amendments proposed by Italy and the Philippines. He asked, however, that the drafting committee should be instructed to take into account the wording used in article 29 of the Commission's recent draft on consular intercourse and immunities (A/4425). His government considered that it would be wise to make clear that the head of a mission could use the flag only for his own means of transport, and not on public transport: heads of missions had been known to use the flag in trains and boats. He could not approve the Mexican amendment, for the use of the flag on the means of transport of a head of mission would assist the authorities of the receiving country to give him the protection and honours to which he was entitled.

53. Mr. BREWER (Liberia) supported the existing text of article 18. In view of the comments of the representative of Yugoslavia, however, he suggested the addition of the word "official" before "means of transport".

54. Mr. TAWO MBU (Nigeria) supported article 18 as drafted because it confirmed a reasonable and long-standing practice. He saw no justification for the three amendments proposed, but supported the proposal of the representative of Liberia that the word "official" should be added.

55. Mr. CAMERON (United States of America) supported article 18 as it stood.

56. Mr. BOUZIRI (Tunisia) said he was strongly opposed to the article as drafted, for it would allow the

flag of a mission to be flown for 24 hours a day the whole year round. He agreed with the representative of Italy that the flag was a precious symbol and should be reserved for special occasions; and it could not be denied that there had been abuses of the privilege. He did not agree with the remark of the representative of Iran, for article 40 should be read in the context of the section in which it was placed; he did not think it could be applied to article 18, which concerned the rights of diplomats. He shared the views expressed on transport, and considered the Mexican amendment too drastic. He would support the proposal that the word "official" should be added before "means of transport".

57. Mr. JEZEK (Czechoslovakia) supported article 18 as drafted, because it corresponded with international practice. He saw no reason for amending it.

58. Mr. REGALA (Philippines) said he appreciated the comments on his delegation's amendment, in particular those of the representatives of India, Yugoslavia and Tunisia. With regard to the comments of the representative of Iran, he pointed out that article 40 was in a different section and therefore could not apply to article 18. His delegation's amendment was fully justified and appropriate; it also conformed with other articles approved earlier. He was, however, prepared to revise it to read: "according to the prevailing practice in the receiving State"; and if it were adopted in principle he would agree that it should be referred to the drafting committee.

59. Mr. SINACEUR BENLARBI (Morocco) said he was in favour of the Italian amendment for the reasons expressed during the discussion, in particular the consideration that the receiving State was expected to ensure continuous protection for the flag. There was no objection to the use of the flag on the means of transport, provided that it was limited to specific occasions. With regard to the reference to article 40, he said that that article appeared in another section of the draft.

60. Mgr. CASAROLI (Holy See) said he saw no objection to the revised version of the amendment proposed by the Philippines.

61. Mr. NAFEH ZADE (United Arab Republic) said that, while he was in favour of article 18 as drafted, he had no objection to the Italian amendment or to the revised version of the Philippine amendment. He was, however, opposed to the Mexican amendment, since it abolished a right that was universally recognized and enjoyed.

62. Mr. PUPLAMPU (Ghana) said he could see no need for amending article 18, and was prepared to vote for it in its present form.

63. Mr. VALLAT (United Kingdom) supported article 18 as drafted. Once again the International Law Commission had produced a very careful balance: article 18 defined certain rights, and article 40, paragraph 1, defined the obligations of the persons enjoying those rights. The balance should not be disturbed by amendments.

64. Mr. GLASER (Romania) also thought it wise to leave the text unchanged. He agreed with the arguments advanced against any alteration, especially those of the representatives of Iran, the USSR, and the United Kingdom. The object of the codification on which the Conference was engaged was to try to make existing rules a little more flexible, in order that the presence of diplomatic representatives would help to improve relations between States. The use of the flags contributed to that end, for it distinguished the premises and vehicles of the mission, and so gave the inhabitants of the receiving country an opportunity to show respect for foreign diplomatic representatives. With regard to the concern that some representatives felt over possible abuse of privilege by excessive use of a flag, he suggested that it was unwise to spoil a good rule for fear of a remote risk. The Philippine amendment, even as revised, still suffered from the ambiguity referred to by the representative of India, and in any case was a move towards rigidity rather than towards the desired flexibility. He agreed with the representatives who considered that article 40 contained sufficient safeguards. He was in favour of article 18 and would vote against the amendments.

The meeting rose at 1.10 p.m.

#### TWENTIETH MEETING

Friday, 17 March 1961, at 3.25 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 18 (Use of flag and emblem) (continued)

1. The CHAIRMAN invited the Committee to continue its debate on article 18 and the amendments thereto.<sup>1</sup>
2. Mr. SUBARDJO (Indonesia) supported the comments made by the Iranian and Soviet Union representatives at the previous meeting. The mission of the sending State should have the right to use its national flag and emblem at will. However, that right should not be abused, and he hoped that the Philippine amendment would be adopted. His delegation would therefore vote for the text of article 18 as amended by the Philippines.
3. Mr. ZLITNI (Libya) considered that the use of the flag, a sacred symbol to every country, was very important. Nevertheless, it must be subject to the laws and regulations of the receiving State. His delegation would therefore support the Philippine amendment and the Italian amendment, but suggested that in the latter the words "according to" should be replaced by "subject to".

<sup>1</sup> See 19th meeting, para. 41, and also, for revised Philippine amendment, para. 58.

4. Mr. SHARDYKO (Byelorussian Soviet Socialist Republic) said that article 18 as drafted was perfectly acceptable. The amendments tended to restrict the mission's unquestionable right to use the flag and emblem of the sending State. His delegation could not approve that point of view. Moreover, draft article 40 laid down that all persons enjoying diplomatic privileges and immunities owed the duty to respect the laws and regulations of the receiving State. The Italian and Philippine amendments were therefore superfluous. There had been talk of possible abuses by the sending State, but they were really inconceivable. The International Law Commission, which had studied the matter thoroughly, had therefore not thought fit to restrict the mission's right to display the flag and emblem of the sending State. That right would be seriously impaired if restricted by the laws of the receiving State. His delegation believed that it should remain an absolute right, and therefore could not support the amendments to article 18.

5. Mr. MELO LECAROS (Chile) said that article 18 stated a right, not a duty. The right should be qualified, and that was the object of the amendments of Italy and the Philippines, which his delegation supported. However, the limitations should be defined not only by the laws and regulations, but also by the practice and customs of the receiving State. He hoped that the sponsors of the amendments would agree to insert that rule.

6. Mr. de ERICE y O'SHEA (Spain) said that there was really very little difference of opinion. The Committee might note the view expressed by the United Kingdom representative (19th meeting, para. 63) that article 40 applied to all the privileges declared in the convention, including that in article 18. The amendments to article 18 would then be unnecessary, and the Committee could adopt the article as it stood.

7. Mr. REGALA (Philippines) said that, having regard to the Spanish representative's suggestion and in order to facilitate the Committee's work, he would withdraw his delegation's amendment.

8. Mr. BOUZIRI (Tunisia) agreed with the Byelorussian representative that the abuses in question were inconceivable, but they nevertheless occurred in real life. It was precisely to prevent such abuses that article 18 should be amended in the manner proposed by Italy and the Philippines.

9. Mr. MARISCAL (Mexico) withdrew his delegation's amendment.

10. Mr. MAMELI (Italy) said his delegation attached importance to its amendment to article 18. However, having regard to the debate he would be willing to accept a more flexible wording, such as that suggested by the representative of Chile. If that were impossible, he would support the Spanish representative's suggestion.

11. The CHAIRMAN thought that the Committee should adopt the Spanish suggestion and that, in view of the terms of article 40, article 18 might stand as drafted by the International Law Commission.

*It was so agreed.*