

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

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## **2nd 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)*

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

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

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

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

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

The meeting rose at 12.30 p.m.

## SECOND MEETING

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

Chairman: Mr. LALL (India)

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

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

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

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

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

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

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

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

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

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

### Article 1 (Definitions) (continued)

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

### Article 2 (Establishment of diplomatic relations and missions)

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

intercourse and immunities, despite certain doubts that had been expressed during debates in the United Nations. His delegation was ready to co-operate fully with the other delegations on the urgent task of codifying the international law on the subject. The clarification and codification of the duties of sending and receiving States would be a constructive contribution to international co-operation. It would also prevent such incidents as that referred to by the representative of Belgium.

11. While he had no objection to the draft of article 2, he intended to propose the inclusion of a reference to temporary missions.

12. Mr. JEZEK (Czechoslovakia) stressed the importance of drawing up a code based on the needs of modern life and taking into account developments within States and in the international community. It was essential that rules of international law should be based on peaceful co-existence and co-operation in accordance with the United Nations Charter. To that end he would submit two amendments to article 2: the first would provide that every State should have the right of legation, which included the right to receive and send diplomatic agents; and the second would provide that differences in constitutional, legal and social systems should not prevent the establishment and maintenance of diplomatic relations between States.

13. Mr. PONCE MIRANDA (Ecuador) also stressed the importance of the right of legation, and considered that it should be specified in article 2; for instance, the article might begin with the words: "In the exercise of the right of legation". Article 1 (Definitions) would be more appropriately placed at the end of the Convention.

14. Mr. de ERICE y O'SHEA (Spain) fully shared the views of the representative of Ecuador, but considered that it would be more correct to speak of the "right of mission". He suggested that a new paragraph should be added indicating that the form of the accrediting documents might also be fixed by mutual consent.

15. Mr. MARESCA (Italy) did not consider it appropriate to introduce a reference to the right of legation or mission. He was satisfied with the draft of article 2, which placed the emphasis on mutual consent.

16. Mr. RUEGGER (Switzerland) said he could not consider any addition to the text until all possible implications had been studied.

#### *Article 3 (Functions of a diplomatic mission)*

17. Mr. OJEDA (Mexico) drew attention to paragraph 4 of the International Law Commission's commentary on article 3 (A/3859), which was so important that in his delegation's opinion it should be incorporated in sub-paragraph (b).

18. Mr. de ERICE y O'SHEA (Spain) proposed that the exercise of consular functions should be mentioned in sub-paragraph (b). In sub-paragraph (e) the words "economic, cultural and scientific relations" should be replaced by a reference to "friendly relations of all kinds".

19. Mr. MARESCA (Italy) suggested that in the English text the words "*inter alia*" in the first line should be replaced by a term closer to the French "*notamment*".

20. Mr. DASKALOV (Bulgaria) was content that article 3 should mention merely the principal functions, without giving a detailed list. He was satisfied with the existing sub-paragraph (e).

21. Mr. BARTOŠ (Yugoslavia) said it was unfortunate that Mr. Sandström, the International Law Commission's Special Rapporteur for the topic of diplomatic intercourse and immunities, was not present to explain the draft. After extensive discussion in the Commission, the majority had concluded that the establishment of diplomatic relations did not automatically involve that of consular relations (449th meeting of the Commission). The diplomatic protection of the nationals of the sending State mentioned in sub-paragraph (b) was quite distinct from consular protection. The establishment of consular relations was thus a separate matter, and his delegation would not support the proposal to mention it in sub-paragraph (b).

22. His delegation supported sub-paragraph (e), which recognized the recent expansion of the economic, cultural and scientific activities of diplomatic missions.

23. Mr. KRISHNA RAO (India) said that, because the Commission's commentaries would not form part of the final instrument or instruments to be adopted by the Conference, and in view of the importance of paragraph 4 of the commentary on article 3, his delegation would propose an amendment to sub-paragraph (b) limiting the protection of the interests of the sending State and of its nationals to the extent recognized by international law.

24. Mr. DIMITRIU (Romania) said that a draft on diplomatic intercourse should state that contemporary international law regarded aggression as a crime, recognized the principle of self-determination, and imposed respect for the sovereignty and equality of all States. His delegation would propose an additional provision specifying that diplomatic law should serve the interests of peace.

25. Mr. VALLAT (United Kingdom) recalled that his government, in its comments on the International Law Commission's 1957 draft, had suggested that the article concerning the functions of a diplomatic mission should include a reference to cultural activities, "the function of projecting the culture and way of life of the sending State in the receiving State, which seems in modern times to be one of the acknowledged functions of a diplomatic mission" (A/3859, p. 54). His delegation thanked the Commission for taking that suggestion into account in drafting sub-paragraph (e), and would vote in favour of that sub-paragraph and indeed of the whole of article 3.

26. Monsignor CASAROLI (Holy See) pointed out that, as drafted, article 3 placed five functions on the same footing. In fact, the function of representation was the fundamental one; the other four — protection, negotia-

tion, observation and promotion of friendly relations — were only adjuncts to it. His delegation therefore proposed that article 3 be re-drafted on the following lines: "The functions of a diplomatic mission consist in representing the sending State in the receiving State for the purpose, *inter alia*, of: (a) Protecting in the receiving State..."

27. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) recalled that Article 1, paragraph 2, of the Charter made the development of friendly relations among nations one of the purposes of the United Nations. Hence, the functions set forth in sub-paragraph (e) were obviously of cardinal importance.

28. Mr. WESTRUP (Sweden) asked whether the word "nationals" (of the sending State) used in sub-paragraph (b) covered bodies corporate.

29. The CHAIRMAN said that the question would be considered and a reply given later.

30. Mr. LINTON (Israel) said that his delegation was, in general, satisfied with the text of article 3, which rightly recognized the non-exhaustive character of the enumeration it contained. Diplomatic functions and relations were in a state of constant development, and he therefore believed that the Commission had acted wisely in not attempting to draw up an exhaustive list. Such an attempt could hinder the development and further broadening of the field of diplomatic functions and relations. The words "*inter alia*" allowed for further change and development, and should be retained.

31. With regard to the suggestion made by the representative of India that article 3, sub-paragraph (b) should include a provision specifying that protection of nationals should be exercised only to the extent recognized by international law, he thought that the most appropriate place to discuss the suggestion would be in connexion with article 40, which dealt generally with the conduct of the mission towards the receiving State. The duty of the mission to respect the law, both domestic and international, was relevant to all the provisions of the draft, and not only to article 3.

32. Mr. BARUNI (Libya) said that his delegation accepted draft article 3, but suggested that the provision contained in sub-paragraph (e) should, because of its importance, be placed immediately after sub-paragraph (a).

33. Mr. de LEMOS (Portugal) supported the proposal of the Holy See; it was right to mark the profound difference between the essential function of representation and the consequential functions set forth in the later sub-paragraphs.

34. Mr. de VAUCELLES (France) said that his delegation would support the Spanish proposal for including in sub-paragraph (b) a provision to the effect that a diplomatic officer could perform consular functions if the receiving State so agreed. That proposal was broader than the provision put forward by Czechoslovakia in

its comments on the final draft, which specified that the functions of a diplomatic mission also comprised consular functions "in those cases where official consular relations between the sending State and the receiving State do not exist" (A/4164). He had himself, as head of a French diplomatic mission, exercised consular functions in the capital of a receiving State where, although consular relations between France and that State had always existed, there had been no French consul.

35. He agreed with the representative of Israel that the words "*inter alia*" should be retained to allow for future developments.

36. Mr. de SOUZA LEO (Brazil) said that his delegation agreed with the substance of article 3, but urged a fuller concordance of the texts in the three languages.

37. Mr. BARNES (Liberia) said that his delegation agreed generally with the description of the functions of a diplomatic mission set forth in article 3, but proposed that the order should be changed to reflect the degree of their importance. The most important function, that of representation, would remain as sub-paragraph (a) and be followed by those of negotiation and observation. Next in importance was the promotion of friendly relations, and last would come the existing sub-paragraph (b) concerning protection.

38. Mr. BOUZIRI (Tunisia) supported the proposal of the representative of the Holy See for the re-drafting of the beginning of the article, for a diplomatic mission's basic function was representation. He also agreed that the draft enumerated the functions in the wrong order. The existing sub-paragraph (b) should come last and be preceded by the existing sub-paragraph (c), which was of greater importance.

39. Mr. BARTOŠ (Yugoslavia) was not in favour of the Holy See's amendment. The function of representation changed from one period to another. He would prefer the traditional definition of diplomatic functions found in every classical textbook: representation, protection, negotiation and observation. The International Law Commission had wished to give a certain weight to each of those functions in its draft, and had added sub-paragraph (e) to bring the list up to date.

40. Mr. de ERICE y O'SHEA (Spain) said that the intention of his amendment to sub-paragraph (e) had apparently been misunderstood. The importance of developing "economic, cultural and scientific relations" was recognized, but to specify them in that way would exclude other important fields, such as sport. He therefore proposed that the sub-paragraph should refer simply to the development of "relations of all kinds".

41. Mr. DANKWORT (Federal Republic of Germany) said that his delegation was satisfied with the Commission's draft of article 3. It agreed with the representative of Spain, however, that the exercise of consular functions by a diplomatic mission should be expressly mentioned in article 3.

**Article 4 (Appointment of the head of the mission: agrément)**

42. Mr. REGALA (Philippines) suggested that article 4 should be amended to provide that the receiving State had to decide within a reasonable time whether to give its agrément.

43. Mr. BOLLINI SHAW (Argentina) said that his delegation would submit an amendment providing that the receiving State should not be obliged to give its reasons for refusing to grant the agrément, a matter entirely within its own competence.

44. Mr. de ERICE y O'SHEA (Spain) fully supported that view. He suggested, however, that since the agrément was not usually required for *chargés d'affaires ad interim* who might act as heads of mission, the word "permanent" should be inserted before "head of the mission".

45. Mr. CAMERON (United States of America) announced that his delegation would submit an amendment to cover the case in which a *chargé d'affaires ad interim* had been directed to fill the post until the arrival of the permanent head of the mission. The term "agrément" was not technically correct in that case, and it was proposed that the words "or other sign of approval" should be added in the first line, before the words "of the receiving State".

**Article 5 (Appointment to more than one State)**

46. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that his delegation would submit an amendment to article 5. Although it accepted the principle that a receiving State had the right to withhold its agrément, the regulation of that principle by international law might complicate the procedure of presenting credentials.

47. Mr. CAMERON (United States of America) said that his delegation was submitting an amendment to article 5, requiring that the receiving State should first be notified of the intention of the sending State to accredit the head of mission to a third State, so that it might object if it so desired; the proposed amendment also extended the article to cover diplomatic staff accredited to the third State.

48. Mr. de ERICE y O'SHEA (Spain) had no objection to article 5 or to the amendment proposed by the representative of the United States, which would clarify it. He suggested, however, that the article should be amended to provide for the case in which several States agreed to accredit a single head of mission to one or more States.

49. Mr. BOLLINI SHAW (Argentina) observed that that point was covered by the Havana Convention of 1928, article 5 of which provided that "Several States may entrust their representation before another to a single diplomatic officer."

The meeting rose at 5.20 p.m.

**THIRD MEETING**

*Tuesday, 7 March 1961, at 10.45 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 6 (Appointment of the staff of the mission)**

**Article 7 (Appointment of nationals of the receiving State)**

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

**Article 9 (Notification of arrival and departure)**

**Article 10 (Size of staff)**

1. The CHAIRMAN invited the Committee to consider articles 6 to 10, which were interdependent, together. He drew attention to the amendments submitted by the delegation of France to articles 6, 7, 8 and 9 (A/CONF.20/C.1/L.1, L.2, L.3, L.4), by the delegation of the United Kingdom to article 9 (A/CONF.20/C.1/L.9) and by the delegation of Italy to article 6 (A/CONF.20/C.1/L.48).<sup>1</sup>

2. Mr. PHILOPOULOS (Greece) observed that article 8, which dealt with the recall of a member of the mission, should not be mentioned in article 6, which dealt with the appointment of the staff of the mission. Furthermore, the phrase "subject to the provisions of article 7" should be inserted at the beginning of article 10, paragraph 1.

3. Mr. de VAUCELLES (France) said that the object of his delegation's amendment of article 6 (L.1) was to make it clear that, while the appointment of a member of the staff of a diplomatic mission should not be subject to the agrément of the receiving State, that State remained free to discuss the question of his entry on the diplomatic list. It was, of course, the sending State which conferred diplomatic status on its nationals, but that status had to be recognized by the receiving State, and it was, precisely, entry on the list which constituted such recognition. The point was very important, for it established a distinction between the diplomatic staff proper and the administrative and technical staff of the mission, who, in the opinion of the French delegation, should not enjoy such extensive privileges and immunities as diplomats. The purpose of the second part of the amendment was to extend to specialized technical advisers and attachés the generally recognized right of the receiving State to refuse its agrément to military attachés. The procedure would apply only to the head of the specialized technical services, since it had gradually become the custom—recognized in fact by all States—for him to act as the representative of his particular ministerial department,

<sup>1</sup> All references in this and subsequent records of the Committee of the whole to "L" documents are references to documents in the series A/CONF.20/C.1/L. . . .