

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

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## **33rd meeting of the Committee of the Whole**

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existing limits. The sending and the receiving States would still remain free to make reciprocal arrangements providing for special treatment, a procedure which his delegation would much prefer.

66. Mr. BOLLINI SHAW (Argentina) referred to the view expressed by his government in its comments on the 1957 draft (A/3859, annex) that equal consideration should be granted to administrative and technical staff in accordance with the regulations established under local legislation, subject to reciprocity. The extension of privileges and immunities to such staff, as provided for in article 36, paragraph 1, would introduce a new principle into international law. His delegation would, therefore, support the amendment proposed by Venezuela (L.233) and also that proposed by Libya, Morocco and Tunisia (L.211/Rev.1).

The meeting rose at 1.5 p.m.

### THIRTY-THIRD MEETING

*Tuesday, 28 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 36 (Persons entitled to privileges and immunities) (continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 36 and the amendments thereto.<sup>1</sup>

2. Mr. DANKWORT (Federal Republic of Germany) said that article 36, paragraph 1, as drafted by the International Law Commission, was perfectly balanced. As the Commission had indicated in its commentary on article 36, the provision constituted progressive development. His delegation would therefore vote for paragraph 1, perhaps supplemented by the United Kingdom amendment (L.205).

3. Mr. DADZIE (Ghana) said he would support article 36, paragraph 1, as amended by India (L.256). However, his delegation suggested the deletion in that amendment of the words "under uniform rules and regulations", and the addition at the end of the sentence of the words "under rules and regulations applied to such staff without discrimination".

4. Mr. KRISHNA RAO (India) accepted that suggestion.

5. Mr. SUBARDJO (Indonesia) said that the problem was how to reconcile the different points of view on the granting of diplomatic privileges and immunities to administrative and technical staff. Perhaps the best

solution would be to provide that the treatment of such staff should be governed by reciprocity. That solution had the merit of flexibility and of allowing for the progressive development of international law. His delegation would vote for the Indian amendment (L.256), as just further amended. It would also vote for the amendment (L.228/Rev.1) proposed jointly by Burma, Ceylon and the Federation of Malaya to article 36, paragraph 1.

6. Mr. SCOTT (Canada) stated that, in conjunction with the delegations of Australia, Brazil, Burma, Ceylon, the Federation of Malaya and Sweden, his delegation had prepared a revised draft provision concerning the extension of diplomatic privileges and immunities to the administrative and technical staff of missions (L.258/Rev.1, para. 4).

7. Mr. WESTRUP (Sweden) said that the revised provision submitted by the Canadian representative did not replace sub-paragraph (ii) of the Swedish delegation's amendment (L.308) to paragraph 1 of article 36.

8. Mr. TUNKIN (Union of Soviet Socialist Republics) recalled that the International Law Commission had proposed that diplomatic privileges and immunities should be extended to administrative and technical staff because it wished to take into account the progressive development of international law. The Soviet Union had not initially supported that extension, but it recognized that the new provision would benefit small countries whose missions often had scanty staffs that had to carry out several functions at once.

9. The existing practice showed that a number of States had already started to grant the main diplomatic privileges to the administrative and technical staff of missions on the basis of legislation and bilateral agreements.

10. The practice of the Soviet Union, since 1956, had been to grant the diplomatic privileges to the administrative, technical and service staff of the foreign missions in Moscow on a reciprocal basis.

11. The Soviet Union was ready to agree to a general rule in the convention extending the main diplomatic privileges and immunities (personal inviolability, inviolability of premises, immunity from jurisdiction and so on) to the administrative and technical staff of diplomatic missions.

12. Accordingly, the USSR delegation supported in principle article 36 as it stood.

13. Mr. CARMONA (Venezuela) said that his delegation had submitted an amendment (L.233) to article 36 to the effect that diplomatic privileges and immunities could be granted to the administrative and technical staff and to the service staff of the mission on the basis of special agreements subject to reciprocity. Since the Committee apparently wished to establish a general rule on the subject, his delegation would not press its amendment and would support the Italian amendment (L.199), but remained free to vote according to circumstances on the various amendments submitted to article 36.

14. The CHAIRMAN called on the Committee to vote first on the United States amendment (L.273) to article 36,

<sup>1</sup> For the list of amendments submitted to article 36, see 32nd meeting, footnote to para. 15.

paragraph 1, which was furthest removed from the original proposal.

*The amendment was rejected by 58 votes to 3, with 9 abstentions.*

15. Mr. MARESCA (Italy) withdrew the first of his delegation's amendments (L.199).

16. The CHAIRMAN put to the vote the Swedish amendment to article 36, paragraph 1 (L.308, subpara. (ii)).

*The amendment was rejected by 35 votes to 5, with 31 abstentions.*

17. The CHAIRMAN invited the Committee to vote on the principle of the amendments proposed by Libya, Morocco and Tunisia to article 36, paragraphs 1 and 2 (L.211/Rev.1).

*The principle was rejected by 35 votes to 24, with 10 abstentions.*

18. The CHAIRMAN put to the vote the revised amendments submitted by the Canadian representative (L.258/Rev.1) affecting paragraph 1 of article 36 and proposing a new paragraph which, if adopted, would become paragraph 2 of article 36.

*The amendments were adopted by 47 votes to 7, with 13 abstentions.*

19. The CHAIRMAN put to the vote the Australian amendment (L.278) to paragraph 1 of article 36.

*The amendment was rejected by 24 votes to 9, with 33 abstentions.*

20. The CHAIRMAN observed that, after the adoption of the revised amendment submitted by Canada, all that remained of the Japanese amendment (L.249) to paragraph 1 of article 36 was sub-paragraph (ii), on which the Committee should now vote.

*That amendment was rejected by 17 votes to 5, with 42 abstentions.*

21. The CHAIRMAN drew attention to the Netherlands amendment (L.189), which proposed the addition of a new provision to paragraph 1 of article 36.

22. Mr. RIPHAGEN (Netherlands) explained that the proposed provision was intended to apply both to diplomatic agents and to other members of the administrative and technical staff to whom the benefit of diplomatic privileges and immunities would be extended.

23. Mr. BOUZIRI (Tunisia) thought that the Committee should not vote on the amendment before it had decided whether or not a diplomat had the right to engage in a private professional or commercial activity, a question which had been left in suspense at the time of the discussion of article 29 (27th meeting, para. 16).

24. The CHAIRMAN put to the vote the question whether the Committee should proceed to an immediate vote on the Netherlands amendment.

*The Committee decided to proceed to an immediate vote by 24 votes to 23, with 16 abstentions.*

*The Netherlands amendment was rejected by 28 votes to 19, with 21 abstentions.*

25. Mr. KRISHNA RAO (India) withdrew his delegation's amendment (L.256), on the understanding that the receiving State had the right to exercise supervision over some of the articles imported by the administrative and technical staff at the time of their installation. That was how the Indian Government interpreted the revised amendment submitted by Canada and adopted by the Committee.

26. The CHAIRMAN observed that, in consequence of the adoption of the revised amendment, it was unnecessary to vote on the Swiss amendment (L.242) or on the first two amendments submitted by Viet-Nam (L.285/Rev.1). There remained before the Committee the amendment to paragraph 3 (future paragraph 4) of article 36 submitted by Burma, Ceylon and the Federation of Malaya (L.228/Rev.1), and the Japanese (L.249), the Canadian (L.258/Rev.1) and Australian amendments (L.278) to paragraph 2 (future paragraph 3) of article 36.

27. Mr. KEVIN (Australia) withdrew his delegation's amendment in favour of that of Canada.

28. The CHAIRMAN, replying to a question by Mr. MARESCA (Italy), said that service staff were provisionally defined in article 1 (g).

29. Mr. RIPHAGEN (Netherlands) drew attention to the interdependence between the new paragraph 3 of article 36 and article 37. Under the terms of that paragraph and of several amendments, some members of a diplomatic mission who were not nationals of the receiving State would only have the benefit of immunity and of exemption from dues and taxes in respect of acts performed in the exercise of their functions. It would therefore be advisable to make a mental reservation about what could be approved within the framework of article 37, because that article laid down that only a diplomatic agent who was a national of the receiving State enjoyed immunity from official acts performed in the exercise of his functions.

30. The CHAIRMAN emphasized that article 36 referred to members of the staff who were not nationals of the receiving State, while article 37 dealt only with nationals of that State. There was therefore a fundamental distinction between the two articles.

31. Mr. SCOTT (Canada) thought that, in order to bring the second and third of his delegation's amendments (L.258/Rev.1) into line with the texts of the new paragraphs 1 and 2 of article 36, the words "or nationals of a third State ordinarily resident in the receiving State immediately prior to their appointment or employment" should be replaced by the words "or permanent residents".

32. The CHAIRMAN put to the vote the second of the Canadian amendments as so amended.

33. Mr. BOUZIRI (Tunisia) and Mr. PINTO de LEMOS (Portugal), speaking on a point of order, said that the Committee should not vote on oral amendments, and

that delegations should be given time to study at their leisure amendments submitted in writing.

34. Mr. MARESCA (Italy) agreed, and said he had some doubts about the manner in which the first two paragraphs of article 36 had been approved.

35. Mr. CARMONA (Venezuela) also protested against the procedure followed in taking votes and deplored the confusion which prevailed in the Committee's work.

36. The CHAIRMAN said that the change in wording which the Canadian representative had proposed was not in any sense an oral amendment; its sole purpose was to bring the second and third Canadian amendments into line with the provisions which had been adopted as paragraphs 1 and 2 of article 36. All the other amendments which had been put to the vote had been submitted in writing. However, if any members of the Committee were in doubt about a particular point, he was at their entire disposal to give any explanations they might require.

37. Mr. TALJAARD (Union of South Africa) had no criticism to make of the procedure followed by the Committee. With regard to the second Japanese amendment (L.249), he thought that it duplicated the Canadian amendment.

38. Mr. DONOWAKI (Japan) believed that the wording proposed by his delegation was wider than that proposed by Canada in so far as it included nationals of a third State whether they were permanent residents of the receiving State or not.

39. After a discussion in which Mr. de VAUCELLES (France), Mr. WICK KOUN (Cambodia), Mr. SUCHARITAKUL (Thailand), Mr. BOUZIRI (Tunisia) and Mr. TUNKIN (Union of Soviet Socialist Republics) took part, Mr. DONOWAKI (Japan) withdrew his amendment.

40. Mr. CAMERON (United States of America) recalled that at the previous meeting the chairman of the working party set up to consider article 31 had mentioned the suggestion that a reference to exemption from social security provisions should be added in what would become the new paragraph 3 of article 36 (32nd meeting, para. 4). In the circumstances, he wondered if the Committee could proceed to vote on the new paragraph 3 without taking into account that suggestion.

41. The CHAIRMAN called on the Committee to vote on the paragraph 3 proposed by Burma, Ceylon and the Federation of Malaya (L.228/Rev.1).

*The provision was rejected by 18 votes to 18, with 27 abstentions.*

*The Canadian amendment (L.258/Rev.1) to paragraph 2, as amended, was adopted by 54 votes to 2, with 12 abstentions.*

42. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation was in favour of the new wording of paragraph 2, which had become indispensable after the adoption of article 31.

43. The CHAIRMAN put to the vote the amended paragraph 2 of the draft. With the addition of the words "and from social security provisions contained in article 31" that paragraph would constitute paragraph 3 of the new text.

*Paragraph 2, as amended, was adopted by 59 votes to none, with 7 abstentions.*

44. Mr. SMITH (Canada), in explaining his vote, observed that article 31 and article 32 (a) might conflict, in cases where a State's social security legislation provided for the levy of an indirect tax. He assumed that the Committee was taking into consideration only direct taxes such as municipal property taxes, in which case the two texts would not conflict. His delegation had voted in favour of paragraph 2, as amended, on that assumption.

45. The CHAIRMAN proposed that the Committee should proceed to consider paragraph 3 (future paragraph 4).

46. Mr. GLASSE (United Kingdom) said that the reason why his delegation had submitted its amendment (L.205) was that it considered that the International Law Commission had perhaps gone a little too far in granting exemption from taxes and dues on the wages of private servants of members of the mission. In the United Kingdom, only servants of the head of a mission were exempt from tax, their services being considered as indispensable to the proper functioning of the mission. However, since the amendment was not of any particular importance, the United Kingdom delegation did not insist on its being put to the vote.

47. Mr. NGUYEN-QUOC DINH (Viet-Nam) withdrew his delegation's third amendment (L.285/Rev.1).

48. Mr. BOUZIRI (Tunisia) announced the withdrawal of the third of the amendments co-sponsored by Tunisia (L.211/Rev.1). The provision in question formed part of a whole, the constituent parts of which could not be separated.

49. Mr. de SOUZA LEO (Brazil) and U SOE TIN (Burma) also withdrew their delegations' respective proposals (L.295, para. 4 and L.228/Rev.1, para. 3).

50. Mr. CAMERON (United States of America), referring to his delegation's amendment to paragraph 3 of the article (L.273/Rev.1), said he would not press it to the vote for, as a result of the rejection of the first United States amendment, it would mean that private servants would enjoy privileges not granted to their employers.

51. The CHAIRMAN, before calling on the Committee to take a decision on paragraph 3, asked the chairman of the working party which had considered article 31 whether exemption from social security legislation should not be included in the paragraph.

52. Mr. KIRCHSCHLAEGGER (Austria) replied that the working party had considered the question of private servants and had not thought it necessary to deal with the matter at that stage of the discussion.

53. The CHAIRMAN put to the Committee vote paragraph 3, as amended by Canada (L.258/Rev.1).

*Paragraph 3, as amended, was adopted by 56 votes to 1, with 8 abstentions.*

54. The CHAIRMAN called upon the Committee to vote on article 36 as a whole, as amended.

*At the request of the representative of Tunisia, a vote was taken by roll-call.*

*Senegal, having been drawn by the Chairman by lot, was called upon to vote first.*

*In favour:* Spain, Sweden, Switzerland, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia, Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Congo (Leopoldville), Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Federation of Malaya, Finland, Federal Republic of Germany, Ghana, Holy See, Hungary, India, Indonesia, Iran, Ireland, Israel, Japan, Korea, Liberia, Liechtenstein, Luxembourg, Netherlands, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Romania.

*Against:* Senegal, Tunisia, United Arab Republic, Venezuela, Viet-Nam, Italy, Libya, Morocco, Portugal, Saudi Arabia.

*Abstentions:* Turkey, Union of South Africa, Ethiopia, France, Iraq, Mexico, Panama.

*Article 36, as amended, was adopted by 54 votes to 10, with 7 abstentions.*

55. Mr. WESTRUP (Sweden) said he would revert to the subject matter of his delegation's proposal when the Committee came to consider article 1 in second reading.<sup>2</sup>

56. Mr. ZLITNI (Libya) said that his delegation had voted against the adoption of article 36 because it considered that as administrative and technical staff had no representative functions, they were not entitled to privileges granted to diplomats as such. There was no legal basis for those innovations.

57. Mr. CARMONA (Venezuela) announced that his government had sent him instructions which obliged him, in accordance with United Nations practice, to enter reservations to article 36 as adopted.

58. Mr. BESADA (Cuba) said he had voted for the adoption of the article, but had some reservations as regards the expression "permanent resident", which seemed to him insufficiently clear.

59. Mr. GLASER (Romania) pointed out that governments were at all times free to make reservations on any particular article, either during the discussion or even depositing their instruments of ratification.

60. Mr. BOUZIRI (Tunisia) considered that article 36 as adopted contained new provisions which altered the nature of a diplomatic mission, and which the Tunisian

delegation could not accept. For procedural reasons, the Tunisian delegation had not taken part in the vote on some amendments.

61. Mr. SINACEUR BENLARBI (Morocco) associated himself with the representatives of Libya and Tunisia and asked that their reservations should be mentioned in the record.

62. Mr. PINTO de LEMOS (Portugal) expressed the opinion that the principles adopted were contrary to the spirit of the convention and to the rules of international law.

63. Mr. de VAUCELLES (France), while admitting that the amendments adopted had improved the text, nevertheless considered that its provisions unduly extended the scope of diplomatic privileges. For that reason the French delegation had considered it necessary to abstain from voting.

64. Mr. BIRECKI (Poland) said he was generally in favour of the extension of diplomatic privileges. Nevertheless, he was glad that it had been possible to find a compromise formula acceptable to the majority of delegations.

65. Mr. DEJANY (Saudi Arabia) reserved his government's rights in regard to the article as a whole.

66. Mr. MONACO (Italy) said that the wording as adopted contained innovations which were hardly in conformity with recognized practice or the rules of international law.

67. Mr. MARISCAL (Mexico) said he had abstained from voting because his delegation preferred article 36 as drafted by the International Law Commission.

68. Mr. MENDIS (Ceylon) said he was not very much in favour of an extension of exemptions, for fear of possible misuse and of the particularly heavy financial burdens placed on States with limited means. His delegation had nevertheless voted for the article as a mark of its appreciation of the spirit of compromise on which the redraft was based.

The meeting rose at 6 p.m.

### THIRTY-FOURTH MEETING

*Wednesday, 29 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 35 (Acquisition of nationality) (resumed from the thirty-first meeting)*

1. The CHAIRMAN, inviting the Committee to continue its debate on article 35 and the amendments

<sup>2</sup> See 38th meeting.