

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

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## **35th meeting of the Committee of the Whole**

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whose immunity did not exempt him from the jurisdiction of his own country. The result was that a diplomat who was a national of the receiving State was like a dangerous amphibian that could not be caught either in the water or on dry land. In fact, article 37 would make the national of the receiving State immune from any jurisdiction. Unless article 37 could be redrafted, therefore, he would propose that both it and article 7 be deleted.

60. Mr. CAMERON (United States of America) said that the most important part of his delegation's amendment (L.274) was the second sentence, which extended immunity from jurisdiction in respect of their official capacity to all members of the mission who were nationals or permanent residents of the receiving State. He believed that as long as they were members of the mission, nationals of the receiving State and of the sending State should enjoy the same immunity. The first sentence of his amendment was of no great importance and he would not object to its deletion; what he wished to ensure was that nationals of the receiving State, when working for the sending State, should not be impeded in the performance of their functions and should have the same immunity from jurisdiction as the ambassador whom they represented and for whom they were working.

61. Mr. SUBARDJO (Indonesia) was in favour of deleting article 37 as proposed by Venezuela, because he was opposed to the appointment of nationals of the receiving State to a foreign diplomatic mission. In a spirit of compromise, however, he would follow the example of the representative of Yugoslavia and vote for the inclusion of article 37, subject to the French amendment.

62. Mr. TALJAARD (Union of South Africa) said he would abstain from voting on article 37 because the law of his country forbade the granting of immunities, privileges and exemptions to citizens of the Union of South Africa.

63. Mr. WICK KOUN (Cambodia) said he would support the Venezuelan proposal to delete article 37 because nationals of his country were not allowed to become diplomatic agents in foreign missions established in Cambodia, and Cambodian nationals recruited as technical or administrative staff of such missions were not granted diplomatic privileges or immunities.

64. Mr. ZLITNI (Libya) said that he had opposed article 7, and he also opposed article 37. In his country it would be unacceptable for a citizen to be immune from national jurisdiction, and he thought it would be better for international relations if nationals of receiving States were not allowed to act as diplomatic agents for sending States. If they served on a foreign mission without diplomatic rank, they could be protected to the extent permitted under the laws of the receiving State.

65. The CHAIRMAN said that the Venezuelan proposal (L.234) that article 37 should be deleted would be put to the vote first.

66. Mr. MATINE-DAFTARY (Iran) requested a separate vote on the deletion of each of the two paragraphs of the article.

*The Venezuelan proposal that paragraph 1 of article 37 should be deleted was rejected by 43 votes to 12, with 12 abstentions.*

*The Venezuelan proposal that paragraph 2 of article 37 should be deleted was rejected by 46 votes to 12, with 11 abstentions.*

67. The CHAIRMAN put to the vote the amendment by Mexico (L.180).

*The Mexican amendment was rejected by 26 votes to 14, with 30 abstentions.*

68. Mr. CAMERON (United States of America) requested a separate vote on the first sentence of his delegation's amendment (L.274).

*The first sentence of the United States amendment was rejected by 35 votes to 12, with 23 abstentions.*

*The second sentence of the United States amendment was rejected by 36 votes to 11, with 23 abstentions.*

*The amendment submitted by France (L.224) was adopted by 43 votes to 7, with 17 abstentions.*

69. In reply to a question by the CHAIRMAN regarding the Australian amendment (L.279), Mr. KEVIN (Australia) confirmed that his delegation's amendment should be construed as proposing the addition of the words "or permanent resident(s)" after "national(s)" in paragraphs 1 and 2 of article 37.

*The Australian amendment was adopted by 27 votes to 8, with 32 abstentions.*

70. The CHAIRMAN announced that the Canadian amendment (L.246/Rev.1) was no longer applicable.

*Article 37, as amended, was adopted by 52 votes to 3, with 13 abstentions.*

The meeting rose at 1.10 p.m.

### THIRTY-FIFTH MEETING

Wednesday, 29 March 1961, at 3.20 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 38 (Duration of privileges and immunities)

1. The CHAIRMAN invited debate on article 38 and the amendments thereto.<sup>1</sup>

<sup>1</sup> The following amendments had been submitted: Mexico, A/CONF.20/C.1/L.181; Netherlands, A/CONF.20/C.1/L.190; United Kingdom, A/CONF.20/C.1/L.207/Rev.1; France, A/CONF.20/C.1/L.225; Switzerland, A/CONF.20/C.1/L.243; France and Italy, A/CONF.20/C.1/L.251; Federation of Malaya, A/CONF.20/C.1/L.253; Spain, A/CONF.20/C.1/L.271; United States of America, A/CONF.20/C.1/L.275 and Rev.1; Sweden, A/CONF.20/C.1/L.293.

2. Mr. RIPHAGEN (Netherlands) said that the first of his delegation's amendments (L.190) concerned the definition of the family and hence the Committee would not need to discuss it. He withdrew the second amendment in favour of the second United Kingdom amendment (L.207/Rev.1).

#### *Paragraph 1*

3. Mr. de VAUCELLES (France), introducing the amendment submitted jointly with Italy (L.251), said that the benefit of diplomatic privileges and immunities could hardly be accorded to members of the mission as soon as they entered the territory of the receiving State, if the competent authorities of that State had not been notified of their arrival. And yet, except for the head of the mission and military attachés — who could not be appointed without the agrément or consent of the receiving State — that would be the position of the members of the mission. They could, of course, show their diplomatic passports, but the customs officials of the receiving State might not know the language of the sending State and hence might not be able to understand the particulars entered in the passports. That was the consideration underlying the joint amendment (L.251). Diplomats outside the scope of sub-paragraphs (a), (b) and (c) of the amendment should enjoy only the privileges specified in article 39 until such time as the receiving State had in some way acknowledged notification of their arrival.

4. Mr. CAMERON (United States of America) withdrew his delegation's amendment to paragraph 1 (L.275) in favour of the joint amendment submitted by France and Italy.

5. Mr. TUNKIN (Union of Soviet Socialist Republics) considered that sub-paragraphs (a) and (b) and the first part of sub-paragraph (c) of the joint amendment introduced unnecessary explanations, since it was obvious that the persons referred to could not enter the territory of the receiving State without having obtained the necessary agrément, consent or visa. The second part of sub-paragraph (c) would only complicate relations between States. The Soviet delegation would therefore vote against the joint amendment.

*The joint amendment to paragraph 1 (L.251) was rejected by 29 votes to 12, with 22 abstentions.*

*The Swiss amendment (L.243) was rejected by 31 votes to 7, with 28 abstentions.*

6. The CHAIRMAN said that accordingly paragraph 1 of article 38 remained unchanged.

#### *Paragraph 2*

7. Mr. CAMERON (United States of America), introducing his delegation's amendments (L.275 and Rev.1), said that their object was to specify, first, that the termination of functions involved the cessation of exemption from the customs duties and import taxes and charges referred to in article 34; secondly, that in case of national emergency, civil strife or armed conflict, the receiving State could take appropriate measures to ensure the

safety of the members of the mission and of their property. The latter provision merely confirmed a practice of many years' standing and it seemed only natural to include it in the convention.

8. Mr. TUNKIN (Union of Soviet Socialist Republics) thought the original text much clearer than the United States amendment. The International Law Commission had rightly considered that members of the mission, as nationals of the sending State, should continue to enjoy privileges and immunities until they left the territory of the receiving State. His delegation held that the loss of privileges and immunities could not in any circumstances take effect from the time when the functions ceased, and it would therefore vote for the original text of paragraph 2.

9. Mr. de VAUCELLES (France) asked that separate votes be taken on the United States amendment to paragraph 2 and on the proposed new paragraph 3 (L.275 and L.275/Rev.1).

*At the request of the representative of the United States of America, the votes were taken by roll-call.*

#### *Paragraph 2 (L.275)*

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

*In favour:* Austria, Belgium, Chile, China, Dominican Republic, France, Holy See, Korea, Liechtenstein, Luxembourg, Union of South Africa, United States of America, Viet-Nam.

*Against:* Argentina, Brazil, Bulgaria, Byelorussian SSR, Colombia, Czechoslovakia, Denmark, Ecuador, Finland, Federal Republic of Germany, Ghana, Hungary, India, Indonesia, Iran, Iraq, Japan, Morocco, Nigeria, Poland, Romania, Saudi Arabia, Spain, Sweden, Switzerland, Ukrainian SSR, Union of Soviet Socialist Republics, Albania.

*Abstaining:* Australia, Burma, Cambodia, Canada, Ceylon, Congo (Leopoldville), Ethiopia, Federation of Malaya, Ireland, Israel, Italy, Liberia, Libya, Mexico, Netherlands, Norway, Pakistan, Panama, Peru, Philippines, Portugal, Thailand, Tunisia, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Venezuela, Yugoslavia.

*The amendment was rejected by 28 votes to 13, with 28 abstentions.*

#### *New paragraph 3 (L.275/Rev.1)*

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

*In favour:* Union of South Africa, United States of America, Viet-Nam, China, Italy, Korea.

*Against:* Switzerland, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Albania, Argentina, Austria, Belgium, Brazil, Bulgaria, Byelorussian SSR, Canada, Colombia, Czechoslovakia, Denmark, Ecuador, Finland, France, Ghana, Guatemala, Hungary, India, Indonesia, Iran, Iraq, Japan, Luxembourg, Mexico, Morocco,

Netherlands, Nigeria, Norway, Poland, Portugal, Romania, Saudi Arabia, Spain, Sweden.

*Abstaining:* Thailand, Tunisia, Turkey, United Arab Republic, Venezuela, Yugoslavia, Australia, Burma, Cambodia, Ceylon, Chile, Congo (Leopoldville), Dominican Republic, Ethiopia, Federation of Malaya, Federal Republic of Germany, Holy See, Ireland, Israel, Liberia, Libya, Liechtenstein, Pakistan, Panama, Peru, Philippines.

*The paragraph proposed by the United States was rejected by 38 votes to 6, with 26 abstentions.*

10. The CHAIRMAN said that as a consequence of the voting, paragraph 2 of article 38 remained unchanged. *New paragraph proposed by Mexico*

11. Mr. de ROSENZWEIG DIAZ (Mexico), introducing his delegation's proposal (L.181), said that the reason for it was that the International Law Commission's text contained no provision concerning the immunities enjoyed by the family of a deceased member of the mission. The proposed new paragraph was based on article 24 of the Havana Convention of 1928 (A/CONF.20/7).

12. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the Mexican proposal, which was entirely in accordance with the International Law Commission's intentions.

*The new paragraph proposed by Mexico (L.181) was adopted by 63 votes to none, with 5 abstentions.*

13. The CHAIRMAN said that the new provision would become paragraph 3 of article 38.

*Paragraph 3 (new paragraph 4)*

14. Mr. de ERICE y O'SHEA (Spain) withdrew his delegation's amendment (L.271), which had the same purpose as the provision adopted for the new paragraph 3.

15. Mr. WESTRUP (Sweden) said that his delegation's amendment (L.293) was based on the same considerations as the new article proposed by the Colombian delegation (L.174) — intended to prevent diplomats from practising a liberal profession or commercial activity — and the Swiss amendment to article 32 (d) (L.239) which had been adopted at the 30th meeting (para. 81). The addition proposed by his delegation reproduced a provision of Swedish law on death duties, and the Swedish Government was most anxious that it should be included in the convention. He would probably be able to support the United Kingdom amendment to paragraph 3 (L.207/Rev.1), which would limit the classes of goods exempted from death duties.

16. Mr. de VAUCELLES (France) said that his delegation had submitted its amendment (L.225) because, under French law, the estate of a foreign diplomat who had died in France was administered in the sending State. That being so, death duties were levied only on movable or immovable property physically or nationally situated in France, excluding the furniture of the deceased's home.

17. Mr. AGUDELO (Colombia) suggested that, if the Chairman and the Swedish delegation agreed, the Swedish amendment (L.293) should be considered at the same time as the Colombian proposal (L.174).

18. Mr. de ROSENZWEIG DIAZ (Mexico) noted that the last sentence of paragraph 3 of the draft article made no mention of movable property. The object of the Mexican amendment to that paragraph (L.181) was to specify that estate, succession and inheritance duties would only be charged on movable property if the heirs or legatees were nationals of the receiving State.

19. Mr. GHAZALI (Federation of Malaya), introducing his delegation's amendment (L.253), said that if the last part of the first sentence of paragraph 3 were retained, some absurd situations would result. The receiving State would have difficulty in ascertaining what goods subject under an export ban had been acquired in the country. Besides, the goods might have been acquired at a time when they could have been exported lawfully. And in any case, to apply the provision in question the receiving State would have to make long inquiries, which would be painful to the family of the deceased. Hence, the clause should not be retained as it stood.

20. Mr. MACDONALD (Canada) approved the provision in the draft enabling the receiving State to levy death duties on immovable property situated in its territory regardless of the diplomat's domicile. The Canadian delegation did not, however, agree with the International Law Commission on the distinction between movable and immovable property. What mattered was whether the movable property were in the receiving State at the time of death. The principle of charging duty only on property necessary to the diplomat in the exercise of his functions had worked well in Canada for the last twenty years. A bank account should be taxable, and it was difficult to decide whether part of it should be exempt. Hence, the best solution would be to allow the receiving State to decide what should be done within reasonable limits.

21. Mr. GLASSE (United Kingdom), introducing his delegation's amendment to paragraph 3 (L.207/Rev.1), said that its object was to achieve greater clarity. As it stood, the provision was too broad. Undoubtedly, diplomats had to defray some expenses in the exercise of their functions; but the convention was not concerned with their private and personal incomes. All movable property in the receiving country, including clothes, jewels, pictures and accumulated salary, might well be exempted.

22. Mr. SIMMONS (Ghana) said that his delegation and that of India had decided to support the Federation of Malaya's amendment (L.253).

23. The CHAIRMAN said that the Swedish delegation had agreed that its amendment (L.293) should be discussed with the Colombian proposal (L.174).<sup>2</sup>

24. Mr. CAMERON (United States of America), replying to a question by the French representative, said that

<sup>2</sup> See 36th meeting.

the second sentence of the paragraph proposed by the United States to replace the existing paragraph 3 (L.275) referred to estate, succession and inheritance duties, which would be chargeable only if such duties were payable in the receiving State and if the property was more than what the diplomat needed for the fulfilment of his mission.

*The United States redraft of the existing paragraph 3 (L.275, para. 4) was rejected by 34 votes to 9, with 26 abstentions.*

*The United Kingdom amendment adding the words " or permanent resident " after the word " national " in paragraph 3 (L.207/Rev.1) was adopted.*

*The amendment submitted by the Federation of Malaya (L.253) was rejected by 32 votes to 22, with 15 abstentions.*

*The amendment submitted by France (L.225) was rejected by 40 votes to 9, with 18 abstentions.*

*The amendment to paragraph 3 submitted by Mexico (L.181) was rejected by 24 votes to 9, with 36 abstentions.*

*The second amendment submitted by the United Kingdom (L.207/Rev.1) was adopted by 30 votes to 24, with 13 abstentions.*

*Article 38 as a whole, as amended, was adopted by 66 votes to none, with 5 abstentions.*

25. Mr. RUEGGER (Switzerland) asked that his delegation's reservations on paragraph 1 of article 38 should be noted. The provision seemed to confer on members of a mission other than the head of mission all diplomatic privileges and immunities on entry into the receiving country. In Switzerland, that provision might create many difficulties. According to Swiss practice, members of diplomatic missions did not enjoy privileges and immunities until their appointment had been notified to the federal government and the government had signified its agreement, at least tacitly, by entering them on the diplomatic list.

*Article 32 (Exemption from taxation) (resumed from the 31st meeting)*

26. The CHAIRMAN recalled that it had been agreed at the 30th meeting (para. 69) and confirmed at the 31st (para. 10) that the discussion on article 32, subparagraph (c) would be deferred until the Committee had settled the terms of article 38. Since then the delegations of France, Canada, and the United States of America had informed him that they would not press their amendments (L.219, L.257 and L.263) to the subparagraph. Accordingly, he suggested that subparagraph (c) and article 32 as a whole, as amended, should be regarded as adopted.

*It was so agreed.*

*Article 39 (Duties of third States)*

27. The CHAIRMAN invited debate on article 39 and the amendments thereto.<sup>3</sup>

<sup>3</sup> The following amendments had been submitted: Bulgaria and Ukrainian SSR, A/CONF.20/C.1/L.183; Netherlands, A/CONF.20/C.1/L.191; United States of America, A/CONF.20/C.1/L.276; Spain, A/CONF.20/C.1/L.319.

28. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic), introducing the amendments proposed jointly by Bulgaria and the Ukrainian SSR (L.183), said that their object was to make the language of the article more specific. A diplomat who passed through the territory of a third State should enjoy not only inviolability and all other immunities necessary for his transit or return, as the draft article laid down, but also immunity from jurisdiction and customs privileges. In addition, paragraph 3 should mention the diplomatic bag, which should be strictly inviolable.

29. Mr. CAMERON (United States of America) said that his delegation's amendment (L.276) would grant privileges and immunities to a diplomatic agent in immediate and continuous transit. By custom a diplomat could only enjoy those privileges if he did not deviate from his itinerary and did not stay in the territory of a third State.

30. Mr. de ERICE y O'SHEA (Spain) believed that, in submitting its amendment (L.319), his delegation had not raised a serious problem.

31. With regard to the Bulgarian-Ukrainian amendment, he hoped that its sponsors would agree to add the words " and all other immunities ".

32. Mr. RIPHAGEN (Netherlands) said that a diplomatic agent sometimes found himself unexpectedly in the territory of a third State — for example, when an aeroplane in which he was travelling was diverted. His delegation's amendment (L.191) to paragraph 1 of article 39 was designed to cover that case.

33. Mr. TUNKIN (Union of Soviet Socialist Republics) thought the amendment to paragraph 1 proposed by Bulgaria and the Ukrainian SSR clarified without altering the meaning of the provision. The Spanish amendment did not add anything fresh, but was acceptable to the Soviet delegation. The United States amendment to paragraph 1 introduced the undefined concept of immediate and continuous transit. Moreover, the new paragraph 4 proposed by the United States would entitle any State to deny passage in transit to a diplomat or to impose any conditions it saw fit. That provision was contrary to international law and completely unacceptable.

34. Mr. GLASER (Romania) said the purpose of the amendment submitted by Bulgaria and the Ukrainian SSR and of the Spanish amendment was to clarify paragraph 1 considerably. In particular, it was important that a diplomatic agent in transit through the territory of a third State should be immune from jurisdiction and have customs privileges. Likewise, the second Bulgarian-Ukrainian amendment has rightly extended to the diplomatic bag the inviolability of a diplomatic courier in transit.

35. The innovations suggested in the United States amendment were either superfluous or dangerous. The purpose of the convention was to facilitate diplomacy; but the provisions of the United States amendment would complicate and hinder it. Every State was admittedly entitled to deny passage through its territory to any

person; but it was unnecessary to say so in the convention. The International Law Commission had stated in paragraph 3 of its commentary on article 39 (A/3859) that it felt it should adopt an intermediate position. Moreover, the United States amendment introduced a new and vague concept — immediate and continuous transit. For those reasons the Romanian delegation could not support the United States amendments.

36. Mr. da SILVA MAFRA (Brazil) supported the Netherlands amendment, which covered all the points with which the other amendments were concerned.

37. Mr. CAMERON (United States of America) said he would support the Netherlands amendment (L.191). Replying to the criticisms of the USSR and Romanian representatives concerning the United States amendments, he pointed out that the first merely recognized the duties and obligations of a third State under article 39. The only novelty in the United States amendment was the concept of immediate and continuous transit. Admittedly that concept was not defined, but that was not a valid reason for not mentioning it. The Committee had not succeeded in defining the meaning of “reasonable and normal” in connexion with another article, but had retained the expression. The sole object of the second United States amendment was to forestall and prevent misuse of the privilege of transit.

38. Mr. MONACO (Italy) said that he would support the Netherlands amendment (L.191); the class of persons entitled to the privileges provided in article 39 should be defined.

39. Mr. MELO LECAROS (Chile) supported the Netherlands amendment (L.191). The Chilean delegation considered that the protection accorded to diplomatic couriers by the article should be extended to diplomatic couriers *ad hoc*. He suggested that the Drafting Committee might be asked to redraft the last sentence of paragraph 3 to that effect.

*It was so agreed.*

40. Mr. OMOLOLU (Nigeria) supported article 39 with the amendments proposed by Bulgaria and the Ukrainian SSR (L.183) and by the Netherlands (L.191).

41. Mr. de VAUCELLES (France) said he accepted the second of the Bulgarian-Ukrainian amendments (L.183) but not the first, which might raise problems and difficulties in the case, for instance, of a stop during transit through the territory of a third State. The words “and such other immunities as may be required” in paragraph 1 of the draft were amply sufficient.

42. The French delegation would support the Netherlands amendment (L.191).

43. He asked whether the Spanish amendment (L.319) implied that a third State was obliged to grant a visa to a diplomatic agent passing through its territory in transit.

44. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) accepted the oral sub-amendment proposed by the Spanish representative (see para. 31 above) to the joint amendment submitted by Bulgaria and the Ukrainian SSR.

*The United States amendment to paragraph 1 (L.276) was rejected by 29 votes to 3, with 34 abstentions.*

*The Spanish amendment (L.319) was adopted by 27 votes to 11, with 26 abstentions.*

*The Bulgarian-Ukrainian amendment to paragraph 1 (L.183), as amended orally, was rejected by 30 votes to 22, with 16 abstentions.*

*The Bulgarian-Ukrainian amendment to paragraph 3 (L.183) was adopted by 56 votes to none, with 14 abstentions.*

45. Mr. CAMERON (United States of America) announced that, in view of the reception given to his delegation's first amendment, and of the comments made on the second, he would withdraw the latter.

46. The CHAIRMAN pointed out that, since the Spanish amendment (L.319) to paragraph 1 had been adopted, the first part of the Netherlands amendment (L.191) lapsed; in any case he understood the Netherlands representative had withdrawn that part.

47. Mr. TUNKIN (Union of Soviet Socialist Republics) considered that the Netherlands amendment might well be retained if the word “also” were inserted before “apply”. The question might be referred to the Drafting Committee. In any case, if the Netherlands amendment were put to the vote, the Soviet Union delegation would support it.

48. Mr. YASSEEN (Iraq) pointed out that the Netherlands amendment was more general than that of Spain: it spoke of an authorization, not of a visa.

49. Mr. PINTO de LEMOS (Portugal) resubmitted the Netherlands amendment in full.

50. The CHAIRMAN invited the Committee to vote on the Netherlands amendment (L.191) resubmitted by Portugal in full.

*The amendment was adopted by 59 votes to none, with 10 abstentions.*

*Article 39 as a whole, as amended, was adopted by 69 votes to none, with 1 abstention.*

#### *Article 40*

51. The CHAIRMAN said that section III of the International Law Commission's draft concerned the mission's conduct towards the receiving State. It consisted of one article (article 40), on which he invited debate. Amendments had been submitted by Albania and Czechoslovakia (L.303) and by Japan (L.306).

52. Mr. MYSLIL (Czechoslovakia), introducing the amendment submitted jointly by Albania and Czechoslovakia (L.303), said it was self-explanatory; its object was greater flexibility in the procedure to which paragraph 2 referred. That procedure varied from State to State, and the convention should recognize the fact. The words proposed to be added to paragraph 2 would allow States whose procedure was less rigid than in others to retain their practice.

53. Mr. DONOWAKI (Japan) said that his delegation's amendment (L.306) was concerned mainly with drafting.

If the Drafting Committee could produce better wording for the amendment, his delegation would be satisfied.

54. Mr. GLASSE (United Kingdom) suggested that the joint amendment would be improved if the words "and also" were replaced by "or".

55. Mr. MYSLIL (Czechoslovakia) accepted that suggestion.

*The joint amendment (L.303) of Albania and Czechoslovakia to paragraph 2, with the drafting amendment suggested by the United Kingdom representative, was adopted by 37 votes to 12, with 20 abstentions.*

*Article 40, as amended, was adopted by 61 votes to none, with 6 abstentions.*

56. Mr. BARTOŠ (Yugoslavia), explaining his abstention, said that the diplomatic relations of the mission became more difficult if several departments could conduct official business with it. In fact, that was why the International Law Commission had wisely mentioned only the Ministry of Foreign Affairs.

57. Mr. MARISCAL (Mexico), Mr. BOLLINI SHAW (Argentina), Mr. LINARES (Guatemala), Mr. de ERICE y O'SHEA (Spain) and Mr. PINTO de LEMOS (Portugal) stated that they had abstained in the vote on article 40 because in their countries the sole official body empowered to negotiate with foreign diplomatic missions was the Ministry of Foreign Affairs.

58. Mr. MYSLIL (Czechoslovakia) pointed out that the joint amendment of his country and Albania, just adopted by the Committee, specified that the mission could conduct official business with other departments and institutions to the extent compatible with existing rules or established practice in the receiving State.

The meeting rose at 6.15 p.m.

### THIRTY-SIXTH MEETING

Thursday, 30 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)

*New article proposed by Colombia debarring diplomatic staff from the exercise of professional and commercial activities*

1. The CHAIRMAN recalled that it had been agreed at the 27th meeting (para. 16) that the new article proposed by the Colombian delegation (L.174) and the same delegation's amendment to article 29, paragraph 1 (c) (L.173) would be discussed together. In addition, at the 35th meeting (para. 23) the Swedish delegation had agreed that its amendment to article 38 (L.293) should be discussed in conjunction with the new proposed article

by Colombia. However, a United Kingdom amendment to article 38, paragraph 3 (L.207/Rev.1), which covered the point raised in the Swedish amendment, had been adopted at the 35th meeting.

2. Mr. WESTRUP (Sweden) said that, on the understanding that article 38 as adopted by the Committee at its previous meeting covered the point raised in his delegation's amendment, he withdrew it.

3. Mr. AGUDELO (Colombia) said that the new article proposed by his delegation (L.174) dealt with the delicate question of the incompatibility which should exist between the performance of diplomatic functions and the exercise of a liberal profession or commercial activities. That incompatibility was universally admitted, but it was nevertheless essential to state it explicitly in the convention. The International Law Commission's comments, particularly paragraph 7 of its commentary on article 29, showed that it had had doubts as to the advisability of including an article on incompatibility. His delegation had no such doubts. It might be argued that diplomatic privileges and immunities were granted exclusively in the interests of the exercise of diplomatic functions and to safeguard the representative character of diplomatic agents and hence would not cover non-diplomatic activities. Such a distinction, however, would render the problem even more complex because the diplomatic agent would be acting simultaneously in two different capacities, only one of which was covered by diplomatic privileges and immunities. It would be necessary to specify, in connexion with each particular privilege, the exceptions resulting from that dual capacity. The number of amendments which had been submitted to deal with the problem in regard to various articles (e.g., the Danish amendment to article 34 (L.212), the Netherlands amendment to article 36 (L.189) and the Swedish amendment to article 38 (L.293)) showed that, unless the general principle of incompatibility was clearly laid down in a separate article, many gaps would subsist in the future convention and they would constitute a constant source of difficulties in its practical application.

4. The proposed new article would safeguard the prestige of the diplomatic corps in the eyes of public opinion. It was the purpose of the convention not only to ensure the enjoyment of diplomatic privileges and immunities, but also to define the obligations involved. The proposed new article would give the sending State the assurance that its diplomatic agents abroad would limit their activities to their official duties. It would assist the receiving State by eliminating difficult problems, and would enhance the dignity of the diplomatic corps accredited to its government. Lastly, it would serve to protect diplomatic agents from any suggestion that they might be using the prestige of their office to further their outside interests.

5. For those reasons, his delegation urged that the proposed article be inserted as the first article of section III on "conduct of the mission and of its members towards the receiving State", and that the Committee should consider the desirability of deleting sub-paragraph (c) from article 29, paragraph 1.