

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

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## **36th meeting of the Committee of the Whole**

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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.

6. Mr. RIPHAGEN (Netherlands) supported the proposal. The new article was necessary because the draft articles did not specify anywhere that diplomatic privileges and immunities did not apply to a person who carried on professional activities in the receiving State.
7. Mr. CARMONA (Venezuela) warmly supported the Colombian proposal. The exercise of gainful outside activities by a diplomatic officer would be detrimental to the dignity of his office.
8. Mr. BOLLINI SHAW (Argentina) said that the incompatibility of diplomatic or consular functions with any other occupation was laid down by Argentine legislation. He therefore warmly supported the Colombian proposal, which would eliminate a source of complications and difficulties.
9. Mr. MELO LECAROS (Chile) said that the problem under discussion raised a serious moral issue, and expressed his strong support for the proposal.
10. Mr. de ERICE y O'SHEA (Spain), supporting the proposal, said that it applied with particular force to commercial activities. A diplomatic agent who engaged in such activities would be guilty of an act of unfair competition; his commercial activity would be detrimental to his own nationals and to other persons engaged in the same trade.
11. The proposed provision was not meant to debar diplomats from the exercise of literary or artistic activities or to prevent a diplomatic agent from acting as counsel in proceedings before the International Court of Justice. He suggested that the principle of the proposal be voted upon and that the Drafting Committee should be asked to settle the actual text.
12. Mr. WESTRUP (Sweden) warmly supported the proposal.
13. Mr. de ROMREE (Belgium) supported the proposal in principle, but pointed out that the expression "staff of a diplomatic mission" was not defined in article 1. He asked whether the intention was to cover members of the diplomatic staff only, or all members of the mission's staff.
14. Mr. de VAUELLES (France) supported the proposal but pointed out that such activities as lectures at universities and elsewhere, even if paid, were exclusively cultural in character. That type of activity, which rendered a service to the receiving State, should not be discouraged any more than the literary activity of a diplomat who happened to be a well-known author.
15. Lastly, the proposed provision should not be applied to too large an area. There was no need to lay down the principle of incompatibility in respect of such subordinate staff as typists, for example.
16. Mr. PONCE MIRANDA (Ecuador) said that diplomatic functions were obviously incompatible with the exercise of an outside gainful occupation. A diplomat's personality was indivisible; it was not possible to draw a distinction between the time which he gave to his diplomatic functions and that which he might devote to his outside activities.
17. Mr. MENDIS (Ceylon) thought that the supporters of the proposed new article had in mind a regular professional activity from which a permanent income was derived, and not an occasional activity, particularly of a cultural character. There could be no objection to a diplomat who happened to be a scholar of repute and an authority on a special subject giving a course of lectures at a university in the receiving State. He suggested that the Drafting Committee might consider whether the proposed provision should be applicable solely to activities for which remuneration was paid.
18. Mr. LINARES (Guatemala) supported the proposal for the reasons given by its sponsor.
19. Mr. BREWER (Liberia), supporting the proposal, said that the possibility of a diplomatic agent engaging in a professional or commercial activity in the receiving State outside his official functions should not even be contemplated; for that reason, his delegation had misgivings regarding the provisions of article 29, paragraph 1 (c).
20. With reference to commercial activities, he stressed the injustice which would be done to persons having commercial dealings with someone who enjoyed diplomatic immunities. A private person dealing with a diplomat in such a case would be deprived of such legal remedies as the possibility of attaching the diplomat's property.
21. Mr. AGUDELO (Colombia), in reply to the Belgian representative, said that the proposed provision was meant to apply exclusively to members of the diplomatic staff.
22. The question had also been raised of literary and other cultural activities. The proposed provision was not intended to debar diplomats from such activities or to preclude their receiving the modest remuneration usually paid in respect of university lectures.
23. Mr. SILVA MAFRA (Brazil) supported the Colombian proposal for the reasons given by other representatives.
24. Mr. OJEDA (Mexico) said that there was an irrefutable argument in support of the Colombian proposal. If the exercise of outside activities were to be deemed compatible with diplomatic office, the diplomat would have a dual status. If, for example, he requested exemption from customs dues in respect of an imported article, it would be difficult to ascertain whether that article was to be used for his diplomatic or for his other activities.
25. Mr. SOSA PARDO (Peru), supporting the Colombian proposal, said that the incompatibility of diplomatic functions and the exercise of other activities was recognized in Peruvian law. He noted the explanations given by the Colombian and Spanish representatives in regard to cultural and professional activities.
26. Mr. TAKAHASHI (Japan) said he was ready to support the Colombian proposal for a new article but hesitated to support the Colombian proposal (L.173) to delete sub-paragraph (c) from article 29, paragraph 1, because that sub-paragraph applied not to diplomatic

agents only, but also applied, in virtue of article 36, to members of a diplomatic agent's family forming part of his household and to the administrative and technical staff of the mission.

27. Mr. MONACO (Italy) thought that the question raised by the Colombian proposal was more a matter for municipal law than for an international instrument. On practical grounds, however, he favoured the proposal, provided that it was made clear in the wording of the proposed provision that the intention was to prevent diplomats from engaging in gainful activities such as commerce, industry or a regular profession.

28. Mr. PINTO de LEMOS (Portugal) said that the law of Portugal, like that of most other countries, debarred diplomats from engaging in activities extraneous to their official duties. Because of the privileges which they enjoyed, diplomats should be careful not to lay themselves open to criticism.

29. He supported the proposed new article, and noted that it would not preclude cultural activities on the part of a diplomat.

30. Mr. GLASSE (United Kingdom) said there could be no question as to the soundness of the principle underlying the Colombian proposal that diplomatic functions were incompatible with other activities, particularly those of a commercial character. The wording of the proposed provision should, however, be carefully examined so as not to make it unduly sweeping. The extra-diplomatic activities of diplomats — mostly of a cultural character — were in the main of a beneficial kind, and no one would wish to discourage them. On a more practical plane, there was no reason to prevent an embassy chaplain or physician from ministering to the spiritual needs or attending to the physical health of persons outside the diplomatic mission.

31. Mr. NGUYEN-QUOC DINH (Viet-Nam) supported the Colombian amendment, particularly after hearing the explanations given by its sponsor.

32. Mr. AMLIE (Norway) said that the Colombian proposal embodied a sound principle which was recognized by the Norwegian Foreign Service Act. He would, however, like some explanation about the scope of the expression "commercial activity". Would it, for example, apply to a loan to a friend in financial difficulties, or to operations on the stock exchange? And if so, what would be the position of a diplomatic agent who had undertaken such operations before his appointment?

33. Mr. GHAZALI (Federation of Malaya), speaking also on behalf of the representative of India, agreed with the principle underlying the Colombian proposal but considered that it should be limited to commercial activity for personal profit. It was surely permissible for a diplomatic agent to take part in a raffle or auction for charity, or to give a lecture on a subject on which he was a specialist. He therefore suggested that the Committee should vote on the principle of the proposal and refer it to the Drafting Committee.

34. Mr. BIRECKI (Poland) was in favour of the Colombian amendment as it remedied an omission in the

convention. He had some doubts, however, regarding the definition of "liberal profession" and therefore supported the procedure suggested by the representative of the Federation of Malaya.

35. Mr. KEVIN (Australia) questioned the need to provide in a convention for a matter that should be a question of professional ethics and therefore the concern of individual States.

36. Mr. CONTRERAS CHÁVEZ (El Salvador) expressed support for the Colombian proposal.

37. The CHAIRMAN proposed that a vote should be taken on the principle of the Colombian proposal and that, if adopted, it should be referred to the Drafting Committee for revision in the light of the debate.

*It was so agreed.*

*The principle of the proposal of Colombia (L.174) was adopted by 63 votes to none, with 2 abstentions, on the basis proposed by the Chairman.*

38. In view of the comments that had been made, Mr. AGUDELO (Colombia) withdrew his delegation's amendment (L.173) to article 29, paragraph 1 (c).

#### *Article 41 (Modes of termination)*

39. The CHAIRMAN invited debate on article 41 and on the Brazilian delegation's amendment thereto (L.116).

40. Mr. SILVA MAFRA (Brazil) introduced his delegation's amendment (L.116) deleting sub-paragraph (a) dealing with appointments of limited duration. In the introduction to its draft (A/3859), the International Law Commission stated that the draft dealt only with permanent diplomatic missions, and not with what might be termed "ad hoc diplomacy", covering itinerant envoys, diplomatic conferences and special missions sent to a State for limited purposes. The Commission had not examined the question of *ad hoc* diplomacy until its twelfth session in 1960 (A/4425, chapter III), and he believed that sub-paragraph (a) of article 41 was intended to provide for the kind of mission that was used at the end of the war. Nevertheless, a convention dealing with permanent diplomats should not contain provisions regarding *ad hoc* diplomacy.

41. Mr. GLASSE (United Kingdom), supporting the Brazilian amendment, said it was questionable whether there was any need for article 41 at all. To justify itself the article should contain an exhaustive list of the circumstances in which a diplomatic agent's function might be brought to an end. The reference books on legal practice contained very complete catalogues of such circumstances, and the article ignored a very important one, namely, the death, abdication or deposition of the sovereign head of the State to which the diplomatic agent was accredited. As it was evidently intended that the convention should be as complete a guide as possible to legal practice, in his opinion article 41 should either be removed or expanded.

42. Mr. de ERICE y O'SHEA (Spain) fully supported the view of the United Kingdom representative. As it stood, article 41 was entirely inadequate. In effect sub-

paragraphs (b) and (c) only covered the head of the mission, although the term "diplomatic agent" was defined in article 1 (e) as including members of the diplomatic staff of the mission. It also failed to mention several important circumstances which would bring the function of a diplomatic agent to an end. All that it said, in effect, was that the diplomatic agent's term of office was ended by agreement between the receiving State and the sending State.

43. Mr. EL-ERIAN (United Arab Republic) said he had been impressed by the comments of the representatives of Brazil, the United Kingdom and Spain. Article 41 presented certain difficulties. It was not clear if subparagraph (a) referred solely to *ad hoc* diplomacy, which usually had a particular purpose, or to normal missions of limited duration. Nor was it clear whether the article referred to the closing of a mission or to the termination of a diplomatic agent's term of office. He suggested that the article should be referred to the Drafting Committee for consideration in connexion with the report of the Sub-Committee on Special Missions, and that no decision should be taken on whether to delete or amplify article 41 until the Drafting Committee's report had been received.

44. The CHAIRMAN pointed out that the Sub-Committee's report had already been issued (L.315) and that in any case decisions of substance could not be referred to the Drafting Committee.

45. Mr. TUNKIN (Union of Soviet Socialist Republics) supported the Brazilian amendment. He agreed that article 41 did not fit in with the general structure of the convention, which was concerned with permanent missions. Even after the deletion of subparagraph (a), it did not add much to the convention and he believed that the International Law Commission had only included it because it would be awkward if nothing were said about modes of termination. The Commission had cautiously used the term "*inter alia*" because it was aware that too much detail could only lead to controversy. While he had no great enthusiasm for the article, he felt it would be better to retain it in the convention, subject to the deletion of subparagraph (a), rather than omit it altogether.

*The Brazilian amendment (L.116) was adopted by 54 votes to 1, with 10 abstentions.*

*Article 41 as amended was adopted by 65 votes to none, with 2 abstentions.*

#### Article 42 (Facilitation of departure)

46. The CHAIRMAN invited debate on article 42 and the amendments thereto.<sup>1</sup>

47. Mr. SICOTTE (Canada) said that article 42 had two defects: first, it implied that the receiving State had an obligation to facilitate the departure of diplomats at all times and not only in the event of an emergency. Secondly, it was not reasonable to expect the receiving

State to supply means of transport in times of emergency, such as flood, when there would be a shortage. He hoped that his delegation's amendment (L.309) would clarify the intention of the article and remedy its shortcomings.

48. Mr. GLASSE (United Kingdom) said that while his delegation's amendment (L.300) introducing the words "other than nationals of the receiving State" might appear to be a statement of the obvious, he felt it essential to establish that the receiving State should not be under an obligation to permit (much less to facilitate) the departure of its own nationals to another country with which it might, for example, be in a state of war.

49. Mr. de ERICE y O'SHEA (Spain) said that the International Law Commission was to be congratulated on having dealt with the very important situation of armed conflict. He was opposed to the Canadian amendment, which was too narrow. It was only in the event of armed conflict that a diplomat could leave the receiving State; in other emergencies it would be his duty to remain at his post to maintain relations with the receiving State and protect the nationals of his own country. Moreover, it was in the case of armed conflict that the provision of transport was of the greatest importance. He supported the United Kingdom amendment, for in the event of armed conflict the nationals of the receiving State would have to remain in their own country, even if previously they had been serving a foreign Power; in fact, article 42 should only apply to persons who were not nationals of the receiving State.

50. With regard to the Belgian amendment (L.287), he said that, although not convinced of the need for it, he would not oppose it. With regard to the additional paragraph proposed by his own delegation (L.321), he said that events in the Second World War had proved the need to make provision for the protection of the receiving State's agents in the sending State without leaving it to the good faith or discretion of the government concerned.

51. Mr. de ROMREE (Belgium) said that in spite of the optimism expressed by several members, experience had unfortunately shown that cases did arise in which more than two States were in armed conflict. The addition proposed in his delegation's amendment (L.287) would be in keeping with the provisions adopted in article 39 concerning the duties of third States.

52. Mr. BOLLINI SHAW (Argentina), although in agreement with the principle expressed in the Belgian amendment, considered it unnecessary to state it expressly, for third States would not be in the position which article 42 was intended to cover. His delegation would vote for the United Kingdom amendment. In regard to the Canadian amendment, he agreed with the representative of Spain that it was a diplomat's duty to remain in the receiving State in case of riot, rebellion or other emergency to protect his country's interests. It should be remembered, however, that there were other persons enjoying privileges and immunities, such as the members of the diplomat's family, who were under no obligation to remain. Article 42 should be amended to provide that the receiving State's obligation

<sup>1</sup> The following amendments had been submitted: Belgium, A/CONF.20/C.1/L.287; United Kingdom, A/CONF.20/C.1/L.300; Canada, A/CONF.20/C.1/L.309; Spain, A/CONF.20/C.1/L.321.

in an emergency other than armed conflict was limited to providing protection for members of the diplomat's families. An important omission in the Canadian amendment was that it made no reference to the necessary means of transport.

53. Mr. KEVIN (Australia) suggested that in the United Kingdom amendment the words "and permanent residents" might be added after "nationals".

54. Mr. OMOLOLU (Nigeria) supported the United Kingdom amendment, as amended by the Australian suggestion. Subject to that amendment, his delegation would support article 42 as it stood. The reference in the Canadian amendment to "riot, rebellion or other emergency" was too wide, since diplomats must remain at their posts in certain cases. It would also be too much to expect the receiving State to provide transport in case of rebellion or riot, for example.

55. Mr. GLASSE (United Kingdom) doubted the wisdom of the Australian suggestion, for permanent residents were in a very different category from that of the persons covered by article 42 and would have to be dealt with under a different régime. The intention of the United Kingdom amendment was to cover the case of nationals of the receiving State employed by diplomatic missions, over whom the receiving State retained its jurisdiction and who could not properly be granted facilities to leave in case of armed conflict.

56. Mr. TUNKIN (Union of Soviet Socialist Republics) accepted the United Kingdom amendment but agreed with its sponsor that the addition suggested by the representative of Australia would be inadvisable. Article 42 was quite different from article 36 and should not employ the same terminology. Article 42, as amended by the United Kingdom, was preferable to the text proposed by Canada. His delegation also had some doubts in regard to the Belgian amendment and could not support the additional paragraph proposed by Spain, which, if accepted, would lead to confusion. There was no need to include specific provisions regarding reprisals in the convention.

57. Mr. GASIOROWSKI (Poland) opposed the Belgian amendment, which was unnecessary, since the point was already covered by article 39 concerning the duties of third States. His delegation would support the United Kingdom amendment without the Australian sub-amendment. It would, however, oppose the Canadian amendment, since the Polish Government had always held the view that diplomatic privileges and immunities should be as wide as possible. The subject of the Spanish proposal was covered by international law outside the scope of the present convention, and in particular by the right of reprisal.

58. Mr. KEVIN (Australia) said that he had not meant to introduce a sub-amendment but had merely asked the representative of the United Kingdom to consider the advisability of including a reference to permanent residents of the receiving State.

59. Mr. de ROMREE (Belgium) accepted the view expressed by the representative of Poland that his

delegation's amendment was covered by article 39 concerning the duties of third States. Accordingly, as a conciliatory gesture, his delegation would withdraw the amendment.

60. Mr. DADZIE (Ghana) supported the United Kingdom amendment. His delegation would, however, oppose the Spanish proposal, which did not improve the article, and the Canadian amendment, which omitted to mention the most important matter of transport.

61. Although his delegation was in general agreement with the provisions of article 42, it thought that the reference to "property" in the last line was not entirely appropriate. It would be impracticable to require the receiving State to provide transport for the entire property of all persons enjoying immunity. The intention might be to include simply personal effects, but the article could be interpreted as meaning all movable property including, for example, office furniture. His delegation, together with that of India, would therefore propose the insertion of the word "personal" before "property".

62. Mgr. CASAROLI (Holy See) said that the first part of article 42, with the United Kingdom amendment, was entirely acceptable and in conformity with practice. He agreed with the representatives of Ghana and India, however, in regard to the second part of the article. It was too much to expect the receiving State, even in case of need, to provide transport for all persons enjoying privileges and immunities, and their property.

63. His delegation would be ready to accept the Spanish proposal, but the drafting was not entirely clear and might be open to misinterpretation.

64. Mr. de ERICE y O'SHEA (Spain) agreed that the wording of the proposed additional paragraph might not be entirely clear. He had wished to avoid the use of terms such as "detention" and "reprisals" since it was understood that the point was already covered by general principles of international law and by the provisions of article 43 (c). His delegation would not press its proposal.

65. Mr. GHAZALI (Federation of Malaya) strongly supported the United Kingdom amendment on condition that the Australian suggestion for the addition of a reference to permanent residents of the receiving State was adopted. It would be wrong to stipulate that the receiving State should provide transport to enable a permanent resident, who had his home in that State and had been given privileges and immunities by virtue of his function, to flee the country in case of armed conflict.

66. Mr. GLASER (Romania) said that the great importance of the provisions of article 42 was generally recognized. The immunities and privileges of a diplomatic agent needed protection most precisely when relations between the sending and receiving States were broken off, or in case of dangers arising from armed conflict and a possibly hostile population. The greatest care should therefore be exercised in modifying the International Law Commission's text. The United Kingdom amendment was entirely justified, but its sponsor had

been right to reject the Australian suggestion, which would entirely change the situation. The permanent resident was not a citizen of the receiving State. There might be strong arguments in favour of the proposal that the word "personal" should be added before the word "property", but careful consideration should be given to possible alternative terms. He would suggest, therefore, that the Drafting Committee should consider the point.

67. Mr. ZLITNI (Libya) regretted that the Spanish proposal had been withdrawn and suggested that it might be reintroduced in connexion with article 43 (a).

68. The question of persons permanently resident in the receiving State was a very difficult one. Such residents had a different status in that State from that of foreign diplomats. The United Kingdom representative might perhaps explain whether the words "other than nationals of the receiving State" included nationals of the receiving State appointed as diplomatic agents.

69. Mr. KEVIN (Australia) suggested that the reference in article 42 might be to "persons enjoying privileges and immunities and having the nationality of the sending State" (L.328, submitted at next meeting).

70. Mr. SICOTTE (Canada), speaking on a point of order, proposed that the United Kingdom amendment should be incorporated in the Canadian amendment.

71. Mr. GLASER (Romania) requested that the United Kingdom and Canadian amendments should be voted on separately since some delegations, like his own, would wish to support the United Kingdom amendment but not the Canadian.

72. Mr. HUCKE (Federal Republic of Germany) agreed with the principle contained in the United Kingdom amendment but asked what would happen, if it was adopted, to those members of the family of a diplomat who might have the receiving State's nationality or double nationality; such persons should be allowed to leave with their husbands. His delegation would therefore propose that article 42 should apply to persons enjoying privileges and immunities "other than nationals of the receiving State, and members of the family of such persons, irrespective of their nationality" (L.327, introduced at the next meeting).

73. Mr. GLASSE (United Kingdom) accepted that concept. It was clearly necessary to include a reference in article 42 to the families of persons covered by the article.

74. Mr. TUNKIN (Union of Soviet Socialist Republics) objected that the provision proposed by the Federal Republic of Germany was completely new and might raise a number of controversial questions. It would be wiser to maintain the article as it stood with the United Kingdom amendment. The terms were sufficiently wide to allay the doubts which had been expressed, since the article referred to "persons enjoying privileges and immunities".

The meeting rose at 1.5 p.m.

### THIRTY-SEVENTH MEETING

Thursday, 30 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 42 (Facilitation of departure) (continued)

1. The CHAIRMAN said that of the amendments previously submitted to article 42 (36th meeting, footnote to para. 46) those of Belgium (L.287) and Spain (L.321) had been withdrawn. Two fresh amendments had been submitted, one by the Federal Republic of Germany (L.327) and one by Australia and the Federation of Malaya (L.328). He insisted on continued debate on article 42.

2. Mr. SICOTTE (Canada) said that his delegation would not press for a vote on its amendment (L.309).

3. Mr. GLASER (Romania) thought that, with the exception of that of the United Kingdom (L.300), the amendments submitted were liable to cause serious difficulties. The effect of the German amendment would be to give persons enjoying privileges and immunities a legal status different from that of members of their families. He thought it dangerous to lay down two different rules and his delegation would vote against that amendment and also against the amendment submitted by Australia and the Federation of Malaya.

4. Mr. TUNKIN (Union of Soviet Socialist Republics) said his delegation had originally intended to abstain, but had since decided to support article 42 as amended by the United Kingdom.

5. Mr. LUSH (United Kingdom) thought the German amendment an improvement on his own delegation's. The United Kingdom amendment did not deal with the case of a national of the receiving State — for instance, the wife of a diplomat who had retained her original nationality, and he thought the proposal deserved support. Humanitarian reasons could be invoked in favour of the German amendment and the United Kingdom delegation would vote for it. He asked that it should be put to the vote before his own delegation's proposal, which he would maintain if the German amendment was rejected.

6. The CHAIRMAN put to the vote the amendment submitted by Australia and the Federation of Malaya (L.328).

*The amendment was rejected by 19 votes to 19, with 24 abstentions.*

*The amendment submitted by the Federal Republic of Germany (L.327) was adopted by 35 votes to 4, with 27 abstentions.*