

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

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**7th meeting of the Committee of the Whole**

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only members of the family forming part of the household of a member of the mission enjoyed the specified privileges. In that respect, they conformed to a well-established principle of international law recognized by Hyde and other writers. The Commission had been wise in refraining from laying down an explicit criterion for determining who should be regarded as a member of the family and what should be the age-limit for children. The composition of the household varied from country to country, depending on the family system. In India, there was a legal obligation to support aged parents and unmarried sisters, and the same might be true elsewhere.

66. In any case, the definition of the family proposed in the United States amendment (L.17), apart from being inconsistent with articles 34, 35 and 36 and the commentary thereon, was open to a number of objections. The expression "any minor child or any other unmarried child" involved the definition of minority for purposes of marriage, a definition which differed from country to country. The term "full-time student", which had a definite meaning in the United States university system, would be inapplicable elsewhere. In any event there did not appear to be any reason why an unmarried daughter living with her father should not be regarded as belonging to his household, even if she was not a student. Last but not least, it was undesirable to require an agreement between the receiving and the sending State in the event of the diplomat's wishing to take with him persons not covered by the United States. The adoption of the United States definition, which would require such an agreement, would mean that a diplomat might have to wait for the conclusion of lengthy negotiations between the two countries before he could take with him persons whom he considered part of his family. In the final analysis a diplomat, for financial or other reasons, was most unlikely to take with him as part of his household persons not really dependent upon him. His delegation, he repeated, took the view that no definition of the family was necessary. If, however, the Committee thought it necessary to define the term, he would commend to its attention the definition contained in the Indian amendment (L.90) which was based on articles 34, 35 and 36, and was also in accordance with a recommendation of the Harvard Research Group. His delegation would accept any drafting amendments making that definition acceptable to other delegations.

67. Mr. VALLAT (United Kingdom) agreed generally with the comments of the representative of the United Arab Republic on article 1. The purpose of that article was only to provide the terms to be used in the rest of the draft, not to deal with substantive matters, which were covered by other provisions.

68. The United Kingdom delegation meant, whenever the acceptance of an amendment was doubtful, to adhere to the Commission's text. It had been prepared by experts with great care, after consideration of government comments, and should take priority in the thoughts of the Conference.

69. Mr. de SOUZA LEO (Brazil) said it was very difficult to agree on general definitions such as those

in article 1. Perhaps the wisest course would be to retain the text prepared by the Commission after mature consideration.

70. Two of the amendments before the Committee (L.8 and L.16) attempted to enumerate the classes of diplomatic officers covered by the term "diplomatic staff". Such an enumeration, if adopted, would be more appropriately placed after article 13, which enumerated the classes of heads of mission.

71. With regard to the definition of the family, his delegation felt that the existing practice of considering only dependants as members of the household should be recognized.

The meeting rose at 6.20 p.m.

## SEVENTH MEETING

Thursday, 9 March 1961, at 10.55 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 1 (Definitions) (continued)

1. The CHAIRMAN invited the Committee to continue its debate on article 1 of the International Law Commission's draft (A/CONF.20/4) and on the amendments proposed to that article.<sup>1</sup>

2. Mr. WALDRON (Ireland) said that the debate at the fifth and sixth meetings suggested that his delegation's amendment to article 1, sub-paragraph (d) (L.16) had little chance of acceptance. Accordingly, and also wishing to facilitate the proceedings, his delegation withdrew the amendment.

3. Mr. BESADA RAMOS (Cuba) said that his delegation withdrew its amendment (L.81) to sub-paragraph (a), and would support the similar Czechoslovak amendment (L.34), of which Cuba had become a co-sponsor.

4. Mr. KAHAMBA (Congo: Léopoldville) withdrew his delegation's amendment (L.73) to sub-paragraph (d).

5. Mr. de ERICE y O'SHEA (Spain) said that his delegation had agreed with that of Colombia not to press their joint amendment (L.5) to sub-paragraph (a) to a vote.

6. The CHAIRMAN suggested that the Swiss amendment (L.23) to sub-paragraph (a), which involved merely a drafting change, should be referred to the drafting committee.

*It was so agreed.*

<sup>1</sup> For a list of the amendments, see footnote 1 to the summary record of the fifth meeting.

7. The CHAIRMAN said the delegation of Ghana had informed him that it would not press for a vote on its amendment (L.89) to sub-paragraph (a) at that stage, but reserved the right to revert to it when the Committee took a final decision on article 1. In consequence of the withdrawal of amendments, he suggested that sub-paragraph (a) as drafted by the Commission should be regarded as provisionally adopted. Similarly, he suggested that sub-paragraph (b), to which no amendment had been proposed, should be regarded as provisionally adopted.

*It was so agreed.*

8. Mr. RUEGGER (Switzerland) said that his delegation did not press for a vote on its amendment to sub-paragraph (c).

9. The CHAIRMAN observed that, since no other amendment to sub-paragraph (c) had been proposed, that sub-paragraph could be considered as provisionally adopted by the Committee.

*It was so agreed.*

10. The CHAIRMAN noted that two of the three amendments submitted to sub-paragraph (d) had been withdrawn. Thus all that remained to be considered was the Guatemalan amendment (L.8) to the sub-paragraph.

11. Mr. LINARES (Guatemala) withdrew his delegation's amendment.

12. The CHAIRMAN suggested that sub-paragraph (d) as drafted by the Commission should be regarded as provisionally adopted.

*It was so agreed.*

13. Mr. LINARES (Guatemala) said he would not press for a vote on his delegation's amendment (L.8) to sub-paragraph (e), though he would reserve the right to re-submit it later.

14. The CHAIRMAN suggested that sub-paragraph (e) should be considered as provisionally adopted.

*It was so agreed.*

15. The CHAIRMAN said that as the Swiss delegation was not pressing for a vote on its amendment (L.23) to sub-paragraph (f), the Committee had before it only the Guatemalan amendment (L.35).

16. Mr. LINARES (Guatemala) said that since the amendment was linked to the other amendments to article 1 previously withdrawn by Guatemala, his delegation would likewise withdraw that amendment.

17. The CHAIRMAN suggested that sub-paragraph (f) be considered as provisionally adopted.

*It was so agreed.*

18. The CHAIRMAN suggested that sub-paragraph (g), to which no amendments had been proposed, should be considered as provisionally adopted.

*It was so agreed.*

19. The CHAIRMAN invited the Committee to consider the United States amendment to sub-paragraph (h) (L.17). The amendment seemed to have the support of the majority of the Committee and accordingly he suggested that, without being put to the vote, it might be regarded as provisionally adopted.

20. Mr. VALLAT (United Kingdom) said he was aware that the decisions being taken by the Committee on article 1 were only provisional. But if sub-paragraph (h) was put to the vote, the United Kingdom delegation would ask for a separate vote on the words "of the head or" which it regarded as superfluous and due to an error.

21. Mr. TUNKIN (Union of Soviet Socialist Republics) agreed with the United Kingdom representative. The Committee might instruct the drafting committee to review the sub-paragraph in question.

22. The CHAIRMAN suggested that, subject to that reservation, sub-paragraph (h), as amended by the United States, should be considered as provisionally adopted.

*It was so agreed.*

23. The CHAIRMAN suggested that the three proposals, submitted by the United States of America (L.17), India (L. 90) and Ceylon (L.91), respectively, concerning the addition of a definition of "family" or "member of the family" of a member of a mission might be considered together.

24. Mr. GUNewardene (Ceylon) and Mr. KRISHNA RAO (India) said that they did not press their amendments, which were merely meant to reconcile their views and those of the United States delegation on the particular question raised. The existing text of article 1 was entirely satisfactory to them.

25. Mr. CAMERON (United States of America) was glad to note that the United States proposal had gained the approval of many delegations. In view of some of the comments made on its amendment, the United States delegation was prepared to delete the words "or any other unmarried child who is a full-time student".

26. Mr. TUNKIN (Union of Soviet Socialist Republics) thanked the United States representative for that concession, which made the amendment acceptable to the Soviet delegation. The meanings attached to "spouse" and "minor child" were generally the same in all countries, but the meaning of "other members of the family" was not. Hence, it should be left to the States concerned to agree on which other members of the family should enjoy diplomatic privileges and immunities.

27. Mr. WESTRUP (Sweden) said that the Swedish delegation could accept the United States proposal, as amended.

28. Mr. BOLLINI SHAW (Argentina) said that his delegation had prepared a definition of "members of the family". The United States proposal, as amended by its sponsor, was acceptable to the Argentine delegation and rendered its own definition superfluous. Nevertheless, he suggested that the following words should

be added to the enumeration in the United States proposal: "sons of full age incapable of work, unmarried daughters and ascendants in the first degree".

29. Mr. de ERICE y O'SHEA (Spain) considered that the United States proposal, as amended, was too narrow, for, except as otherwise agreed, between the sending and the receiving States, it meant that the family would, in effect, be restricted to the spouse and minor children. Furthermore, in Spain, for example, girls attained majority at the age of 18. The Spanish delegation was consequently unable to support the United States proposal. If Argentina decided not to submit its amendment, Spain would do so in its place.

30. Mr. KRISHNA RAO (India) thanked the United States representative for his conciliatory gesture, but thought that a procedure requiring the conclusion of an agreement between the receiving State and the sending State was too complicated. It would accordingly be preferable to delete the words "as may be agreed upon between the receiving and the sending States". He proposed to revert to the amendment submitted by the Indian delegation on the same question (L.90) in due course.

31. Mr. OJEDA (Mexico) suggested the following definition: "'Members of the family' are the members economically dependent on a member of the mission and the members who form part of his household." The Mexican delegation considered that definition sufficiently broad to be acceptable to the majority of States, but submitted it merely as a suggestion and did not ask that it be put to the vote.

32. Mr. EL-ERIAN (United Arab Republic) welcomed the spirit of co-operation shown by the United States delegation, but thought that its amended proposal was not entirely satisfactory. It would therefore be preferable not to put it to the vote at once, but to leave delegations time to study the matter more thoroughly.

33. Mr. YASEEN (Iraq) shared that opinion. He drew attention to the difficulties to which the interpretation of the term "minor child" might give rise. If the age of majority was not the same in the sending State as in the receiving State, which law would apply? Minority was there regarded as a condition for the enjoyment of diplomatic status, and it would doubtless be difficult — especially with regard to immunity from criminal jurisdiction — to determine such minority by reference to a foreign law. The question merited further study, and it would be wise to defer consideration of the United States proposal.

34. Mr. VALLAT (United Kingdom) agreed. The words "immediate family" were vague, and the adjective "immediate" should be deleted, since it was provided in any case that the members of the family should be determined by agreement between the receiving and the sending States. The procedure would in fact be much simpler if the agreement were concluded directly between the diplomatic mission and the receiving State.

35. Mr. de ERICE y O'SHEA (Spain), after consulting with the Argentine representative, said that a joint pro-

posal<sup>2</sup> would be submitted by the Argentine and Spanish delegations on the definition of the family. Since India and Mexico had also submitted draft definitions, it would be advisable to compare the various texts and to defer for the moment consideration of the United States proposal.

36. Mr. BARNES (Liberia) and Mr. NGO-DINH-LUYEN (Viet-Nam) supported the suggestion that consideration of the United States proposal should be postponed.

37. Mr. TUNKIN (Union of Soviet Socialist Republics) also supported that suggestion. The definition of the members of the family entitled to diplomatic privileges and immunities was not a mere terminological matter. Logically, the problem should be studied in connexion with article 31 or article 36.

38. Mr. CAMERON (United States of America) said he would not press for an immediate vote on his delegation's proposal, and agreed to the postponement of the discussion.

*It was agreed that the question of defining "family" would be discussed at a later meeting.*

39. The CHAIRMAN drew attention to the definition of "premises of the mission" proposed jointly by the delegations of Bulgaria and the Byelorussian SSR (L.25). As the proposed definition seemed to have received general support during the discussion at the sixth meeting, he suggested that it should be considered as provisionally adopted.

*It was so agreed.*

40. The CHAIRMAN drew attention to the draft definition of "diplomatic mission" proposed jointly by Cuba and Czechoslovakia (L.34) (see para. 3 above).

41. Mr. CAMERON (United States of America) suggested that the words "functions particularly foreseen" should be substituted for "functions foreseen", since the list in draft article 3 was not exhaustive.

42. Mr. TUNKIN (Union of Soviet Socialist Republics) thought that the amendment suggested by the United States representative might be referred to the drafting committee.

43. Mr. VALLAT (United Kingdom) said he would vote against the proposed definition, as he considered it entirely unnecessary.

*The proposal (L.34) was rejected by 27 votes to 14, with 21 abstentions.*

44. Mr. WICK KOUN (Cambodia) explained that he had voted for the proposal because he considered that the meaning of "diplomatic mission" should be defined, equally with the other expressions used in the draft articles.

45. Referring back to the United States amendment to sub-paragraph (h) (L.17) provisionally adopted, he asked what was the meaning of the phrase "and who is not an employee of the sending State". Under Cambodian

<sup>2</sup> Later circulated as document L.105.

practice, the servants of Cambodia's diplomatic missions abroad were paid by the Cambodian Government and considered to be employed by the sending State.

*Article 1 of the International Law Commission's draft, as amended by the United States amendment to subparagraph (h) (L.17), and with the definition of "premises of the mission" proposed by Bulgaria and the Byelorussian SSR (L.25), was provisionally adopted.*

*Proposed new article concerning the right of legation*

46. The CHAIRMAN drew attention to the new article proposed by Czechoslovakia (L.7).

47. Mr. YASSEEN (Iraq) said that the Commission had quite rightly and intentionally avoided mentioning a "right of legation", and it was unnecessary, indeed dangerous, to introduce that phrase into the convention. The so-called "right of legation" actually depended entirely on the will of States, and insertion of the new article would give rise to misunderstanding both in theory and practice. He therefore opposed the Czechoslovak proposal.

48. Mr. PURLAMPU (Ghana) said he had carefully studied the Czechoslovak proposal. His government did not practise discrimination in establishing its diplomatic relations, but the proposal did not seem to contribute anything to the convention.

49. M. BOUZIRI (Tunisia) said that diplomatic relations were quite clearly based on mutual consent, as was correctly stated in article 2. If the concept of a right of legation were included, the text would appear unduly aggressive. The Tunisian delegation would vote against the Czechoslovak proposal.

50. Mr. JEZEK (Czechoslovakia) said he had followed attentively the remarks of the previous speakers. His delegation firmly believed that the right of legation was a well-established principle of international law and hence it would be right to embody the principle in the text. However, in view of the differences of opinion it would withdraw its proposal.

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

51. The CHAIRMAN drew attention to the amendments to article 2: one by Czechoslovakia (L.6), one by Ecuador and Spain (L.15), and a drafting amendment by Belgium (L.61, French only), which, however, had agreed that it should be referred to the drafting committee.

52. Mr. JEZEK (Czechoslovakia) said that his delegation's proposal was self-explanatory: it would prevent a State or group of States from isolating a country and thus hindering it from co-operating with other States. The proposal, by opposing any idea of discrimination, conformed to the United Nations Charter and the spirit of the International Law Commission's draft. He was convinced that the principle of his proposal should be written into the convention.

53. Mr. YASSEEN (Iraq) said that article 2 was perfectly satisfactory as it stood. It accurately reflected the existing positive law and, in addition, did not raise any controversial doctrinal questions. He opposed the Czechoslovak amendment.

54. Mr. BOUZIRI (Tunisia) approved the contents of the Czechoslovak amendment, which corresponded with a generally accepted point of view, but did not consider it should be inserted in the article itself. It contained a recognition of certain realities which would be better embodied in a preamble.

55. Mr. MATINE-DAFTARY (Iran) held that constitutional, legal and social systems concerned domestic law. In the past, countries with very dissimilar, if not opposed, customs and religions had none the less been on friendly terms. He feared lest, if the Czechoslovak amendment were put to the vote, it might not obtain enough votes and the result could be construed as a sign that the Committee was hostile to the principle of peaceful coexistence.

56. Mr. MITRA (India) noted that nearly all delegations agreed to the principle propounded by Czechoslovakia. However, he suggested that the words "of themselves" be added to the text, which would then read: "Differences in... systems shall not of themselves prevent..." That addition would have the merit of allowing for other hindrances which might exist to the establishment of diplomatic relations. As the principle was unanimously accepted, he thought it should be stated in a preamble, if not in an article.

57. Mr. JEZEK (Czechoslovakia) thanked the Indian delegation for its support and agreed to the insertion of the words "of themselves".

58. Mr. NGO-DINH-LUYEN (Viet-Nam) stated that though there was no disagreement in substance between his delegation's views and the Czechoslovak text, he considered it superfluous. Either diplomatic relations were established by mutual consent, or there was no consent, in which case the amendment would be meaningless unless the receiving State was bound to give reasons for its negative attitude.

59. Mr. CAMERON (United States of America) considered that article 2 as it stood confirmed the generally accepted practice in regard to mutual consent, and his delegation was not inclined to support any amendment. It would therefore vote against the text proposed by Czechoslovakia.

60. Mr. TUNKIN (Union of Soviet Socialist Republics) observed that, apart from the United States, all delegations had approved the principle of the amendment, which was an attempt to define the concept of equal rights among States. In modern law, matters pertaining to the internal structure of a State concerned that State alone. There was therefore no room for discrimination on account of differences in social systems. The Czechoslovak amendment reflected those realities faithfully. The Soviet delegation favoured its approval, but had no objection to some drafting changes. If the Czechoslovak

delegation was agreeable, it might perhaps be better to place the text in the preamble than in an article of the convention.

61. Mr. BAROUNI (Libya) approved article 2 as drafted, and favoured the insertion of the text proposed by Czechoslovakia in a preamble.

62. Mr. CAMERON (United States of America) noted that there had been some discussion on whether the Czechoslovak text should be placed in an article or in a preamble. For the moment, he would have to reserve his position on that question.

63. The CHAIRMAN said he gathered that the Czechoslovak delegation agreed to the insertion of its proposed text in a preamble.

The meeting rose at 12.55 p.m.

## EIGHTH MEETING

Thursday, 9 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)**

*Article 2 (Establishment of diplomatic relations and missions) (continued)*

1. The CHAIRMAN said that the one remaining amendment to article 2 (L.15, submitted jointly by Ecuador and Spain) had been withdrawn. He asked if the Committee was prepared to approve article 2 as drafted by the International Law Commission.

2. Mr. LINTON (Israel) stated his delegation's position on article 2. The important role of diplomatic relations in the fulfilment of the purposes of the United Nations had been rightly stressed by the International Law Commission in its commentary (A/3859) on article 2. The modern international community was based on the rules of conduct contained in the Charter of the United Nations and on the radically new concepts which the Charter had introduced into international law and relations. Peaceful co-existence and co-operation among States; prohibition of the use or threat of force in international law and relations; the duty to settle international disputes peacefully; and the principle of non-intervention by one State in the internal and external affairs of another State, were now legal as well as moral principles of the Charter governing the new order of the community of nations. Guided and animated by these principles, his government regarded normal and orderly diplomatic relations between all States as an essential instrument under the Charter for the maintenance of international peace and security, for international coexistence and co-operation, and for the prevention of

international tensions. He would therefore have preferred article 2 to be drafted in a form more in keeping with the spirit of article 1 of the Havana Convention, which was reflected in the Commission's comments.

*Article 2 was approved.*

*Article 3 (Functions of a diplomatic mission)*

3. The CHAIRMAN drew attention to the amendments to article 3.<sup>1</sup>

4. The changes proposed by Liberia and the Philippines (L.14) affecting the drafting only, he suggested that they should be referred to the drafting committee.

*It was so agreed.*

5. The CHAIRMAN said that there were no amendments to sub-paragraph (a), and invited comment on the amendments to sub-paragraph (b) (L.13, L.27, L.33 and L.82).

6. Mr. KRISHNA RAO (India) withdrew his delegation's amendment (L.13) in favour of that proposed by Mexico (L.33).

7. Mr. YASSEEN (Iraq) supported the Mexican amendment. Although the additional words were not necessary, being a statement of the obvious, they might psychologically curb a diplomat's zeal in protecting the interests of his State or of its nationals.

8. Mr. BESADA (Cuba) introduced his delegation's amendment (L.82) to sub-paragraph (b). The existing text might leave the way open to possible interference in the affairs of the receiving State, and even give the sending State's mission and members an extraterritorial quality. The Mexican amendment had some merit in that it mentioned international law, but its terms were rather vague.

9. Mr. AGUDELO (Colombia), referring to sub-paragraph (b), said that the protection of interests was sometimes carried to extremes — as countries on the American continent were all too well aware. He would support the proposal that the provisions should be qualified by a reference to international law.

10. Mr. GUNWARDENE (Ceylon) said that, though article 3 was a useful provision, he was uneasy over the wording of two of its sub-paragraphs. In the first place, sub-paragraph (b) was far too broad and should be qualified by some proviso. Secondly, in sub-paragraph (d) the words "by all lawful means" were open to differing interpretations.

11. Mr. RUEGGER (Switzerland) agreed with the many representatives who had urged the Committee to be very cautious in amending the International Law Commission's draft. Article 3, sub-paragraphs (a) and (b) and (c) — especially (b) — were a true codification of law. He regretted that the representative of Iraq saw any value in the addition proposed by Mexico. In his delegation's opinion — and Switzerland had long expe-

<sup>1</sup> For the list of amendments to article 3, see fifth meeting, footnote to para. 1.