

United Nations Conference on Diplomatic Intercourse and Immunities

Vienna, Austria
2 March - 14 April 1961

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First plenary meeting

Extract from Volume I of the *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

SUMMARY RECORDS OF THE PLENARY MEETINGS

FIRST PLENARY MEETING

Thursday, 2 March 1961, at 3 p.m.

Acting President: Mr. STAVROPOULOS
(Legal Counsel, representing the Secretary-General)

later

President: Mr. VERDROSS (Austria)

Opening of the Conference

[Agenda item 1]

1. The ACTING PRESIDENT welcomed the Federal President of the Republic of Austria and expressed to him and to the Government and people of Austria the thanks and appreciation of all participants in the Conference for the welcome they had been given. He acknowledged the Austrian Government's invitation that had brought the Conference to Vienna, the generous contribution which had made the Conference possible and the excellent facilities which would ensure its success.

2. He then declared the United Nations Conference on Diplomatic Intercourse and Immunities open.

On the proposal of the Acting President, the Conference observed a minute of silent prayer or meditation.

3. The ACTING PRESIDENT, on behalf of the Secretary-General of the United Nations, welcomed the delegations; the Secretary-General attached great importance to its work and deeply regretted his inability to be present in person.

4. The choice of Vienna as the site of the Conference recalled the Congress of Vienna. The Regulation of Vienna, adopted by that Congress in 1815 and amended three years later at Aix-la-Chapelle, had been intended to obviate for all time the difficulties so often caused by questions of precedence. It dealt in general and in detail with the classification of diplomatic agents and still had much authority.

5. Perhaps no subject was more familiar to international lawyers and diplomats than that of diplomatic intercourse and immunities. It was governed by "extensive state practice, precedent and doctrine"¹ going back to the very beginning of formal relations between nations; it had a vast literature, and an impressive body of jurisprudence had been built upon it.

6. In view of the long history of the institution of diplomacy, it was surprising that so little progress had been made at the intergovernmental level towards the codification of the rules of diplomatic intercourse and immunities. Between the Congress of Vienna and the time when the matter had been referred to the International Law Commission, there had been few projects and only one

successful undertaking: the adoption by the Sixth International American Conference, at Havana in 1928, of a Convention regarding Diplomatic Officers,² regulating the duties, privileges and immunities of diplomatic agents and the commencement and termination of diplomatic missions.

7. He then outlined the stages in which the subject had been developed, starting with the International Law Commission's debate at its first session in 1949 (A/925) and culminating, in response to General Assembly resolution 685 (VII) of 5 December 1952, in the forty-five draft articles on diplomatic intercourse and immunities which had been adopted by the Commission at its tenth session in 1958 (A/3859) and which were to be the basis of the Conference's deliberations.

8. As was stated in its report to the General Assembly in 1958, the International Law Commission had decided that the draft articles it had adopted should be recommended to States Members of the United Nations with a view to the conclusion of a convention. On 7 December 1959 the General Assembly had decided (resolution 1450 (XIV)) that an international conference of plenipotentiaries should be convened for that purpose. The draft articles related only to permanent diplomatic missions; but the Commission had since undertaken a preliminary survey of "ad hoc diplomacy" and adopted three draft articles on special missions (A/4425, chapter III), which had been referred to the Conference by General Assembly resolution 1504 (XV) of 12 December 1960.

9. Commenting on methods of work, he drew attention to the provisional agenda (A/CONF.20/1/Rev.1), the provisional rules of procedure (A/CONF.20/2 and Corr.1), and the Secretary-General's memorandum on the method of work and procedures of the Conference (A/CONF.20/3). He also observed that the Asian-African Legal Consultative Committee had adopted, at Colombo in 1960, a final report on functions, privileges and immunities of diplomatic envoys or agents (A/CONF.20/6).

10. He stressed the importance of the Conference's task, and recalled that, in the words of General Assembly resolution 685 (VII), early codification of the international law on diplomatic intercourse and immunities was "necessary and desirable as a contribution to the improvement of relations between States". The topic by its very nature permeated relations between States, for it was vitally important that they should be conducted with the minimum of friction and the maximum of goodwill and facility. Experience had shown that success in the achievement of that aim depended largely on the existence of established rules adapted to modern circumstances.

11. It was fitting that the Conference should meet in a city so closely associated with diplomatic history. The Secretary-General had asked him to convey his

¹ Article 15 of the Statute of the International Law Commission (A/CN.4/4), United Nations publication, Sales No. 49.V.5.

² League of Nations, Treaty Series, vol. CLV, p. 261; also reprinted in United Nations Legislative Series, *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities*, United Nations publication, Sales No. 58.V.3, p. 419.

sincere wish that the work of the coming weeks might meet with enduring success and contribute directly to the vital task of promoting peaceful relations among all peoples.

**Address by the Federal President
of the Republic of Austria**

12. H.E. Dr. Adolf SCHAERF, Federal President of the Republic of Austria, expressed his pleasure that the General Assembly of the United Nations had decided to accept the invitation of the Austrian Government and to hold the important Conference on Diplomatic Intercourse and Immunities at Vienna. He warmly welcomed the delegations to Austria.

13. Vienna had for many years been closely connected with the history of diplomacy. The purpose of the Conference, attended by so many eminent representatives of States, was to complete, or at least to continue, the work begun at Vienna 146 years earlier. The seventeenth annex to the Final Act of the Congress of Vienna, signed on 19 March 1815, contained the regulation on the classification of diplomatic agents. The Regulation of Vienna had not only, as stated in the preamble, avoided the difficulties which had often arisen "by reason of claims to precedence between various diplomatic agents" and which until that time had even led to armed conflict; it had also improved relations between the great and small Powers by establishing an order of precedence for their diplomatic representatives based on what might be called democratic principles. The order of precedence of diplomats was no longer decided by the military or political power of the States they represented, or by alliances or the family relationships of sovereigns, but by seniority as determined by the order of their arrival in the receiving country. The classification of heads of missions as ambassadors, envoys and *chargés d'affaires* has survived, and only of late had it diminished somewhat in importance; but within the various diplomatic categories the principle of equal status for the representatives of greater or lesser Powers had been respected since the Congress of Vienna.

14. That principle had been embodied in the draft articles drawn up by the International Law Commission, which provided the basis for the Conference's discussions. The durability of the Regulation of Vienna was all the more remarkable since the political decisions of the Congress of 1815, based on the supremacy of the five great Powers then dominant in Europe, had not secured peace for long.

15. The expression "Diplomatic Corps" to designate all the ambassadors, envoys and *chargés d'affaires* accredited to a particular country had first been used at Vienna in the eighteenth century, before the Congress of Vienna. The Diplomatic Corps had acquired its first written legal recognition and rules in 1815 under the Regulation of Vienna, which had, however, been limited to order of precedence. The Conference had the task of adapting the customary law which had grown up on diplomatic intercourse and immunities to the needs of modern times and of formulating it in a convention.

In every capital city, the totality of diplomatic representatives would in that way become a body with a code of rules.

16. The primary responsibility of each member of the Diplomatic Corps was, and would continue to be, to represent the interests of his country. Questions affecting all members of the Diplomatic Corps, whatever differences there might be in the policies of the countries they represented, would, however, be settled by the provisions on diplomatic intercourse and immunities to be approved by the Conference.

17. In establishing the principles governing the work of their diplomats, the governments of all countries should surely make a greater effort to take account of the aspirations shared by all peoples. All men and women in every part of the globe, of every colour, longed for peace and security. They abhorred the use or the threat of force for the achievement of selfish political ends. All men of goodwill were agreed that the task of feeding the hungry was more important than the struggle for power.

18. The great Powers should help the nations which had recently obtained their independence, or which would do so in the near future, to make good use of their new freedom. That was the conviction of all who were themselves independent or who were still struggling towards independence. The United Nations had done enduring work for the maintenance of peace, respect for human rights, and the freeing of many peoples from foreign rule and oppression. It was continuing its efforts with wonderful courage and zeal.

19. Austria believed unreservedly in the principles on which the United Nations Charter was based. For that reason, and not only because the Conference was a sequel to the Congress of 1815, the Austrian people were happy that their capital city had been chosen for a meeting designed to promote peace in the world.

20. On their behalf and on his own, he expressed his wish for the complete success of the United Nations Conference on Diplomatic Intercourse and Immunities.

21. The ACTING PRESIDENT thanked the Federal President of the Republic of Austria for his kind and thoughtful words and for honouring the Conference with his presence; he thanked the Austrian Government for the generous contribution and the administrative arrangements which had enabled the Conference to meet at Vienna.

The Federal President of the Republic of Austria withdrew.

Question of participation in the Conference

22. Mr. TUNKIN (Union of Soviet Socialist Republics) said that there had been grave violations of international law in the convening of the Conference. The purpose was to codify the international law on diplomatic intercourse and immunities, a subject of universal importance and interest which should be discussed by a conference in which all States were represented, so that the articles agreed upon should be universally accepted and applied;

but the Governments of the German Democratic Republic, the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam, and the Mongolian People's Republic had not been invited to participate. The argument that only States Members of the United Nations and of the specialized agencies could be invited was merely an attempt to cover discrimination against certain countries on the ground of their social system. The Western Powers were using the structure of the United Nations and of the specialized agencies to debar some socialist countries from taking part in their work. International law allowed no such discrimination. The Federal President of the Republic of Austria had referred in his address to the development of the principle of equality of all States. That was one of the fundamental principles of international law. The social structure of a country was not governed by international law, but was an internal matter for each State.

23. The most serious matter, however, was the continued flouting of reason and of international law by treating the representatives of the Kuomintang as representatives of China, a policy which harmed international co-operation and the cause of peace, to which all should be devoted. Only the Government of the People's Republic of China could appoint legitimate representatives of that great country.

24. Mr. MATTHEWS (United States of America) said that the remarks of the representative of the Union of Soviet Socialist Republics were out of order. The question raised in those remarks had been decided by the General Assembly in its resolution 1450 (XIV) convening the Conference. Under that resolution, "all States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice" had been invited to the Conference, and only representatives of those States could participate in its work. None of the regimes referred to by the representative of the Union of Soviet Socialist Republics was a Member of the United Nations or of a specialized agency, or a party to the Statute of the International Court of Justice. The Republic of China, however, was a member of the United Nations and the specialized agencies, and its government represented China in all organs of those organizations. That government alone, therefore, was qualified to represent China at the Conference.

25. Mr. BIRECKI (Poland) said that the absence of the legitimate representatives of China, which could not be represented by the Kuomintang, was a flagrant violation of a basic principle of international law. That the situation was illogical was demonstrated by the fact that a number of governments represented at the Conference recognized the Government of the People's Republic of China as the only legal government of that country.

26. His country, together with others, regretted that the United Nations was being used by certain States for discriminatory purposes. The important subject to be considered was of universal interest, and the discrimination applied to the Government of the People's Republic of China, as well as to the Governments of the German

Democratic Republic, the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam and the Mongolian People's Republic, reduced the scope of the Conference.

27. Mr. REGALA (Philippines) appealed to delegates to cut short the discussion. The Conference had been convened to consider a highly technical subject and was not an appropriate forum for controversy. The question of the representation of China had been fully discussed in the General Assembly of the United Nations.

28. Mr. HU (China) said that the offensive and irrelevant remarks questioning the status of his delegation were inconsistent with the purpose for which the Conference had been convened. They were an attempt to make it a forum for political controversy into which his delegation, although it was the main target of the attack, did not wish to be drawn. The Conference had been convened under resolution 1450 (XIV) of the General Assembly. Clearly, any alteration in its composition would call for the amendment of that resolution, which was outside the competence of the Conference.

29. Mr. JEZEK (Czechoslovakia) said it was inadmissible that the place of the lawful representatives of China should be occupied by representatives of the Kuomintang group who did not represent anybody. The Government of the People's Republic of China, which was the only legal government of China, maintained diplomatic relations with nearly forty States and commercial relations with over eighty States; its exclusion from the Conference would harm the interests of all States, apart from being contrary to international law, the Charter of the United Nations and the interests of the Conference. The Government of the People's Republic of China could not be expected to ratify any instrument adopted by a conference to which its representatives were not admitted. Nor was there any possible justification for excluding representatives of the German Democratic Republic, the Mongolian People's Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam. Every State should be permitted to take part in the Conference, which was of worldwide scope.

30. Mr. LALL (India) said that his delegation did not intend to question the adequacy of the invitations to the Conference, which were governed by resolution 1450 (XIV), but considered that the Republic of China, which had been invited to the Conference, could only be represented by the effective government of China.

31. Mr. DANKWORT (Federal Republic of Germany) expressed regret at the statement made by certain delegations that the Conference should be attended by representatives of an area which was not a State in the legal sense, but merely the Soviet zone of Germany. The Conference was bound by the terms of resolution 1450 (XIV), and the statement was out of order.

32. Mr. BESADA (Cuba) said that the exclusion of representatives of certain countries was part of the imperialist policy of certain Powers and was detrimental to the authority of the United Nations. The Conference

should be attended by the representatives of all legitimate governments which had the support of their peoples.

33. Mr. WHANG (Republic of Korea) said that the Republic of Korea had come into being as a result of elections held in 1948 under the supervision of the United Nations. The authorities which controlled North Korea had no international standing and had defied the authority of the United Nations.

34. Mr. DIMITRIU (Romania) said that the absence of the lawful representatives of China and of the representatives of the German Democratic Republic, the Mongolian People's Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam would impair the authority of the Conference and of any instruments it might adopt.

35. Mr. PONCE MIRANDA (Ecuador) said that the Conference had no authority to broaden its composition; the suggestion that it should do so was out of order. The Conference had been convened to deal with a highly technical subject, and the proper forum for discussing the question of participation was the General Assembly.

36. Mr. NAFEH ZADE (United Arab Republic) said that the Conference, as a law-making conference entrusted with the tasks of codifying and developing general rules of diplomatic intercourse and immunities, should be of a truly universal character. It could not disregard the Chinese people, which formed one-fourth of the population of the world. His delegation therefore urged that the People's Republic of China should participate in the Conference.

37. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that the Conference was expected to prepare instruments which would strengthen international peace and security; he urged that the lawful representatives of China, and the representatives of the German Democratic Republic, the Mongolian People's Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam, should participate in its work, and that the representatives of the Kuomintang régime should be excluded. Under Article 2, paragraph 6, of the Charter, the United Nations was to ensure that non-member States should act in accordance with the principles of the Charter "so far as may be necessary for the maintenance of international peace and security". In the light of that provision, it was clear that States not Members of the United Nations should participate in the preparation of international instruments on diplomatic intercourse.

38. Mr. SIRI (Albania) expressed his delegation's satisfaction that the Conference had a greater number of participants than previous conferences, but regretted the absence of the representatives of the German Democratic Republic, the Mongolian People's Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam. His delegation urged the exclusion from the Conference of the persons who were illegally occupying the place of China, and the seating of the representatives of the People's Republic of China, which maintained cordial relations with all its neigh-

bours and had invariably followed a policy of peaceful coexistence with all nations.

39. Mr. SUBARDJO (Indonesia) expressed regret at the absence of representatives of China and a number of other countries from a conference which would deal with matters of concern to all States.

40. The ACTING PRESIDENT said that all the statements made would be reported in the official summary record.

Election of the President

[Agenda item 2]

41. The ACTING PRESIDENT invited nominations for the office of the President of the Conference.

42. Mr. GUNWARDENE (Ceylon) nominated Mr. Alfred Verdross (Austria), Professor of International Law and former Rector of the University of Vienna, whose great qualities as a scholar and jurist eminently fitted him for the office.

43. Mr. VALLAT (United Kingdom) seconded the nomination of Mr. Verdross, an eminent member of the International Law Commission and President of the Institute of International Law.

44. Mr. RUEGGER (Switzerland) supported the nomination and said that the election of Mr. Verdross would be a fitting tribute to the Institute of International Law, which had played such an important part in the codification of international law, and to Austria, the host to the Conference.

45. Mr. TUNKIN (Union of Soviet Socialist Republics), supporting the nomination, said that Mr. Verdross, as a member of the International Law Commission, had taken an active part in the preparation of the draft before the Conference. He expressed his delegation's gratitude to the Austrian Government for its hospitality.

46. Mr. CASAS (Uruguay) said that he was particularly pleased, as a former student of Mr. Verdross at Vienna, to support his nomination.

47. Mr. de ERICE y O'SHEA (Spain) said that he had had the privilege of attending, in 1928, Mr. Verdross' lectures at the Academy of International Law at The Hague; his delegation supported the nomination.

48. Mr. MATINE-DAFTARY (Iran) said that he had worked for the past four years with Mr. Verdross in the International Law Commission, and warmly supported the nomination.

49. The ACTING PRESIDENT proposed that, since there was only one nomination, the secret ballot required under rule 43 of the provisional rules of procedure should be dispensed with.

It was so agreed.

Mr. Alfred Verdross (Austria) was elected President by acclamation, and took the Chair.

50. The PRESIDENT thanked the representatives for the honour they had done him, in which he saw an expression of their desire to pay tribute to his country, the Republic of Austria.

51. The Conference was called upon to continue the work of the Congress of Vienna on the codification of diplomatic law. Until the signing of the Regulation of Vienna on 19 March 1815, questions of diplomatic rank had caused much friction in international practice. The success of that regulation in bringing to an end the earlier difficulties raised by the precedence of diplomatic officers encouraged the hope that the "Second Congress of Vienna" would also be crowned with success.

52. However, the task before the Conference covered a much wider field of diplomatic law than the Regulation of Vienna. That regulation had merely settled the classification of the various groups of diplomatic agents and the rank of each class; the Conference was to codify the rules governing diplomatic intercourse and immunities in general. That immense task was, however, greatly facilitated by the International Law Commission's draft (A/CONF.20/4).

53. The rules governing diplomatic intercourse and immunities had a long history. From the inception of international relations, and in particular since the establishment of permanent missions, the need had been felt to give diplomats a special status in order to enable them to carry out their duties unhindered. International practice had thus evolved a number of special rules which constituted the most stable and least disputed part of customary international law. They proceeded so obviously from the need for the peaceful coexistence of States that even the great political, economic and social upheavals of the twentieth century had not broken them down.

54. Although those rules were firmly established, there were sound reasons for codifying them in an international convention rather than leaving them in their traditional setting of customary international law. First, they had grown essentially out of the practice of the European and American States. With the emergence of the new States of Africa and Asia, it was appropriate that a body of customary law which had evolved in an international community consisting only of the western world should be formally recognized by the new world-wide international community. Secondly, codification was never a mere restatement of customary law. Its aim was also to clarify customary rules — always somewhat vague and uncertain — and even to transform practices based on mere courtesy into rules of law, if the new needs of the world-wide international community so required. For example, in article 34 of the International Law Commission's draft it was proposed to transform certain privileges previously granted to diplomats by courtesy into rules of international law.

55. Custom, once the most important source of international law, had lost its predominance. The ever-increasing number of States with different civilizations, and the recent great political, economic and social changes called for a process more rapid than custom for the evolution of rules of law; customary rules could only emerge slowly and under relatively uniform and stable conditions. For that reason, conventions had become the main instrument for developing international law.

56. The Conference's conclusions would affect not only Europe but all mankind. He hoped it would produce satisfactory results capable of strengthening good international relations, and so help to maintain peace in the world.

Adoption of the agenda

[Agenda item 3]

The provisional agenda (A/CONF.20/1/Rev.1) was adopted.

The meeting rose at 5.45 p.m.

SECOND PLENARY MEETING

Friday, 3 March 1961, at 3.40 p.m.

President: Mr. VERDROSS (Austria)

Adoption of the rules of procedure (A/CONF.20/2 and Corr.1)

[Agenda item 4]

1. The PRESIDENT drew attention to the provisional rules of procedure prepared by the Secretariat (A/CONF.20/2 and Corr.1).

2. Mr. VALLAT (United Kingdom) said that his delegation was grateful to the Secretariat for preparing the excellent provisional rules of procedure, but before the election of the vice-presidents, it wished to propose that rule 13 be amended to provide for a general committee of twenty-two members, instead of twenty-one. The purpose of the amendment was to facilitate agreement on the list of States from which the vice-presidents would be drawn.

3. Mr. MATINE-DAFTARY (Iran) supported the amendment.

4. Mr. BARNES (Liberia) had no objection to the proposed amendment, but pointed out that its adoption would involve the amendment of rule 6, to provide for the election of twenty, instead of nineteen, vice-presidents.

5. The PRESIDENT said that, if the proposed amendment to rule 13 was adopted, the necessary consequential changes in the other rules of procedure would be made automatically.

The amendment was adopted.

The provisional rules of procedure (A/CONF.20/2 and Corr.1), as amended, were adopted.

Election of the chairman of the Committee of the Whole

[Agenda item 6]

6. The PRESIDENT invited nominations for the office of chairman of the Committee of the Whole.