United Nations Conference on Diplomatic Intercourse and Immunities

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Fourth 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)*

FOURTH PLENARY MEETING

Monday, 10 April 1961, at 3.15 p.m.

President: Mr. VERDROSS (Austria)

1. The PRESIDENT said it would be recalled that at the second plenary meeting (para. 12) the Conference had decided to refer to the Committee of the Whole the substantive items (items 10 and 11) on its agenda. The Committee had completed its work; and the draft convention, protocol and resolution which it had prepared, as recorded by the Drafting Committee, and an account of the proceedings in the Committee of the Whole were contained in the Committee's report (A/CONF.20/L.2 and Corr.1, L.2/Add.1, L.2/Add.2 and L.2/Add.3).[1]

2. He invited the Conference to deal first with item 11 of the agenda.

Consideration of draft articles on special missions in accordance with resolution 1504 (XV) adopted by the General Assembly on 12 December 1960 (item 11 of the agenda)

Draft resolution on special missions

3. The PRESIDENT asked the Conference to vote on the draft resolution on special missions (A/CONF.20/L.2/Add.3).

The draft resolution was adopted unanimously.[2]

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959 (item 10 of the agenda)

4. The PRESIDENT invited debate on the draft convention (A/CONF.20/L.2/Add.1 and Add.1/Corr.3).

Title

The title of the convention was adopted unanimously.

Preamble

5. The PRESIDENT, inviting the Conference to discuss the preamble, drew attention to an amendment submitted by the United Kingdom (A/CONF.20/L.3).

6. Mr. VALLAT (United Kingdom) said his delegation had submitted its amendment because it believed it important to make clear that the Conference had not met to create privileges for the benefit of members of the diplomatic staff, and to say so explicitly in order to forestall reactions from parliaments and public opinion.

7. Mr. CARMONA (Venezuela) supported the United Kingdom amendment, the idea of which was already implied in the draft. The Conference would, however, be well advised to guard against possible misinterpretations of the convention.

8. Mr. MATINE-DAFTARY (Iran) also considered that the United Kingdom delegation had drawn attention to an essential matter. The International Law Commission had never lost sight during its work of the functional necessity theory on which the status of diplomatic staff was based. In laying down that diplomats enjoyed a privileged status, it had not in any way intended to confer privileges upon them, but to facilitate the tasks of their mission.

9. Mr. EL-ERIAN (United Arab Republic) agreed with the previous speakers. In his opinion the amendment was completely in harmony with the spirit of the Convention.

The United Kingdom amendment (A/CONF.20/L.3) was adopted by 68 votes to none, with 4 abstentions.

ARTICLE 1

10. Mr. GASIOROWSKI (Poland) said that the terminology of article 1 was not uniform. It spoke sometimes of " the staff " and sometimes of " the members of the staff ". The same inconsistency existed between article 1 and, for instance, articles 7, 8 and 36. To make the text consistent, therefore, the expressions in article 1, subparagraphs (*d*), (*f*) and (*g*) " diplomatic staff ", "administrative and technical staff ", and " service staff " should each be preceded by the words " the members of the ". He thought those corrections desirable because article 1 was formal and defined the terms used in the Convention.

11. The PRESIDENT suggested that the Polish representative's proposal should be referred to the Drafting Committee.

It was so agreed.

Article 1 was adopted unanimously, subject to drafting changes.[3]

ARTICLE 2

Article 2 was adopted unanimously.

ARTICLE 3

12. Mr. CARMONA (Venezuela) thought that article 3, paragraph 2, as it stood did not reflect the decision taken by the Committee of the Whole at its 9th meeting to adopt the principle of the Spanish delegation's amendment (A/CONF.20/C.1/L.30) providing that a diplomatic mission could perform consular functions " if the receiving State does not expressly object thereto ". The draft before the Conference did not mention either the receiving State's objection, or its agreement or consent as the Italian delegation had proposed. Venezuela was one of the countries which did not allow diplomatic and consular functions to be combined. The draft provision

[1] For the summary records of the 1st to 41st meetings of the Committee of the Whole, see pp. 55 to 240, below.

[2] The resolution was subsequently circulated in an addendum to the Final Act of the Conference (A/CONF.20/10/Add.1). See also vol. II.

[3] The Drafting Committee incorporated the Polish representative's amendments in its final draft of article 1.

under discussion might be construed to mean that the receiving State was obliged, or virtually obliged, to agree to the combination of the two functions. It was essential that the receiving State should have the right to give or refuse its permission. His delegation gave notice of its government's reservations on the point if the Conference did not recognize that right.

13. The PRESIDENT observed that, after adopting the substance of the Spanish amendment, the Committee of the Whole had referred it to the Drafting Committee. He asked Mr. de Rosenzweig-Diaz to explain the matter to the Conference on behalf of the Drafting Committee.

14. Mr. de ROSENZWEIG DIAZ (Mexico), speaking as a member of the Drafting Committee, recalled that several statements had been made on the matter in the Committee of the Whole. The delegation of Mexico, for instance, had defended the view that a diplomatic mission should not be prevented from exercising consular functions. The Drafting Committee had been asked to devise a formula which would take into account all the views expressed in the discussion. The Committee of the Whole had wished to avoid implying that the receiving State was obliged to accept the combination of diplomatic and consular functions. The Drafting Committee had therefore taken account of the principle of the Spanish amendment without ignoring the discussion.

15. Mr. AGO (Italy) paid a tribute to the Drafting Committee, which had carried out a difficult task; but he could not accept the provision as drafted. The Spanish delegation's amendment would allow a diplomatic mission to perform consular functions if the receiving State had no objection. The International Law Commission itself had considered that the right context for such a provision would be a convention on consular intercourse and immunities. The Drafting Committee's text did not say anything about an agreement between the two States, and it was to be feared that a diplomatic mission might from one day to the next begin to carry out consular functions without asking leave of the receiving State. For those reasons, and also because opinions were divided, it would be better to delete paragraph 2.

16. Mr. GLASER (Romania) said there was no reason for the restriction of a long-established practice in the matter of the exercise of consular functions by diplomatic missions. For example, a mission which granted a visa acted in conformity with its function, which was to represent the sending State in the receiving State. Besides, in granting a visa to a citizen of the receiving State, the mission was performing the function of promoting friendly relations between the two States. The fact that the law of some countries, Venezuela for instance, forbade the combination of diplomatic and consular functions, did not mean that the rules applied elsewhere should be made more rigorous. Indeed, there was nothing in the convention to forbid the exercise by a diplomatic mission of so-called consular functions. It would be wrong to reopen the discussion or to reverse the decision of the Committee of the Whole; and his delegation would vote for paragraph 2 as drafted.

17. Mr. TUNKIN (Union of Soviet Socialist Republics) said there were two distinct problems. The first was a matter of procedure and concerned the limits of the Drafting Committee's task. The Committee of the Whole had asked the Drafting Committee to settle the text of the new provision in the light of the discussions. The Committee had agreed that a diplomatic mission could exercise consular functions, and the Drafting Committee has taken full account of the recommendations. It had therefore not exceeded its terms of reference and had found a satisfactory solution.

18. Secondly, there was the problem of substance. It had been generally agreed that current practice authorized the combination of diplomatic and consular functions. It was customary for a diplomatic mission to issue visas and certify documents. Some countries insisted on application for permission in exceptional cases — for example, for a consul to appear as representative in a lawsuit — but those provisions did not in the least affect the principle generally accepted.

19. The provision was carefully worded, and the Soviet delegation would vote for it.

20. Mr. MATINE-DAFTARY (Iran) moved the closure of the debate in order to avoid a new discussion on an already much-debated question, and also asked for a separate vote on article 3, paragraph 2.

21. Mr. BOUZIRI (Tunisia) opposed the motion for the closure. The provision was important, and discussion on it had only just begun. He considered that article 3, paragraph 2, should be retained as drafted, but he also thought that all delegations should be entitled to express their opinions freely.

22. Mr. DADZIE (Ghana) also opposed the motion.

The Iranian representative's motion was rejected by 33 votes to 14, with 19 abstentions.

23. Mr. AGO (Italy) said that the idea expressed in article 3, paragraph 2, had been debated at length in the International Law Commission in connexion with its draft on consular intercourse and immunities (A/4425) and the Commission had reserved a decision pending the receipt of the comments of governments.

24. The Romanian and Soviet representatives had said that there was no need to modify current practice. It was true that diplomatic missions often performed consular functions. But there should be agreement on what consular functions were. Some of them came within the scope of ordinary diplomatic functions, and hence this exercise by diplomatic missions should not usually require the special permission of the receiving State; but others did not come within the scope of diplomatic functions, and consequently this exercise by diplomatic missions would require that State's consent. Paragraph 2 went far beyond established practice, and most States would probably be unable to accept it.

25. Mr. de ERICE y O'SHEA (Spain) recalled that paragraph 2 had its origin in an amendment submitted by his delegation. The convention should certainly contain a provision endorsing established practice. The

Spanish amendment had contained a proviso which the Drafting Committee, concerned to express the idea as tersely as possible, had not seen fit to mention. However, the idea was implied in paragraph 2 if read in conjunction with paragraph 1, and hence his delegation would not oppose paragraph 2.

26. Mr. KRISHNA RAO (India) said that paragraph 2 was a compromise which fully satisfied his delegation.

27. Mr. DADZIE (Ghana) said that, while not opposed to paragraph 2, he was somewhat apprehensive about its results, for paragraph 1, enumerating the functions of a diplomatic mission, gave the impression that all consular functions were excluded. Those apprehensions might perhaps be removed if paragraph 2 became a new sub-paragraph of paragraph 1. Furthermore, his delegation suggested that the words " in the present article " should replace the words " of the present Convention ".

28. Mr. BOLLINI SHAW (Argentina) said he had no objection to a provision in article 3 stating that a diplomatic mission could perform consular functions. Such a provision would be in keeping with current practice. However, to forestall reservations on the part of States embarrassed by that provision, he proposed that the words " in the absence of objection by the receiving State " should be added in paragraph 2.

29. Mr. RUEGGER (Switzerland) proposed that, in order to facilitate the signature of the convention by some States, article 3, paragraph 2, should be amended to read: " Nothing in the present article shall be construed as preventing the performance, by mutual consent, of consular functions by diplomatic missions."

30. Mr. YASSEEN (Iraq) suggested that the Conference should refer paragraph 2 back to the Drafting Committee with instructions to revise it in terms stressing the need for the consent or absence of objection of the receiving State.

31. Mr. GLASER (Romania) said there were two schools of thought. The first took the view, reflected in the instructions given by the Committee of the Whole to the Drafting Committee, that, in accordance with existing practice and without prejudice to the rules of international law, a diplomatic mission might perform consular functions. The other, represented by the Italian representative, held that a diplomatic mission should be allowed to perform consular functions only with the consent of the receiving State. Despite the good intentions of its author, the Swiss proposal implying the consent of the receiving State did not reconcile those two conflicting views. The Romanian delegation preferred the former.

32. Mr. NGUYEN-QUOC DINH (Viet-Nam) said that in the Committee of the Whole his delegation had supported the Spanish proposal, adopted by the Committee, for an additional sub-paragraph to paragraph 1. According to that sub-paragraph a diplomatic mission might perform consular functions unless there was express objection by the receiving State. His delegation was rather surprised not to find that idea of the consent of the receiving State, which it approved and which was in conformity with the accepted rules of international law, reproduced in the Drafting Committee's text. Hence it supported the proposal made by the representative of Iraq that paragraph 2 should be referred back to the Drafting Committee for redrafting on the following lines: " Nothing in the present article shall be so construed as to prevent the performance, in accordance with the existing rules, of consular functions by a diplomatic mission."

33. Mr. VALLAT (United Kingdom) opposed the proposal for referring paragraph 2 back to the Drafting Committee. The provision was perfectly clear; it did not conflict with any opinion expressed and did not affect existing practice in international law.

The proposal of the representative of Iraq was rejected by 53 votes to 13 with 3 abstentions.

34. Mr. GHAZALI (Federation of Malaya) proposed for paragraph 2 the following words incorporating the ideas expressed by the representatives of Switzerland and Ghana: " Nothing in the present article shall be construed so as to prevent the performance by mutual consent of consular functions by a diplomatic mission."

35. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the proposal of the Federation of Malaya might lead to confusion. Some consular functions were already mentioned in paragraph 1 as forming part of the functions of a diplomatic mission, and there was no need at all to lay down a new rule of law requiring the consent of the receiving State for the performance of consular functions. The best course would be to continue the existing practice.

36. Mr. RUEGGER (Switzerland) said that his proposal had been meant to speed up the discussion, not to prolong it. Since the preamble stated that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the Convention, he agreed to amend his original proposal to read: " Nothing in the present article shall be so construed as to prevent the performance, in accordance with existing customary international law, of consular functions by diplomatic missions."

37. Mr. BARTOŠ (Yugoslavia) cited article 2 of the draft on consular intercourse and immunities (A/4425) under which the establishment of consular relations was to take place by mutual consent of the States concerned. In its commentary on that article the International Law Commission noted that consular relations might be established between States which did not maintain diplomatic relations; and it had deferred its decision on the provision proposed by the Special Rapporteur stating that the establishment of diplomatic relations included the establishment of consular relations. Opinion in the Commission was therefore divided on that point. However, in a spirit of conciliation the Yugoslav delegation would support the second proposal by Switzerland, which represented an acceptable compromise.

38. Mr. RIPHAGEN (Netherlands) pointed out that no delegation had proposed any change in the existing

practice governing the performance of consular functions by a diplomatic mission. Since, furthermore, the preamble expressly stated that the rules of customary international law should continue to govern questions not expressly regulated in the Convention, the best course would clearly be to delete paragraph 2. The Netherlands delegation joined the representative of Iran in requesting a separate vote on that paragraph.

39. Mr. BOUZIRI (Tunisia) moved that the vote on paragraph 2 be postponed. The authors of the various oral amendments would then be able, if necessary, to re-draft them, and the delegations would also be able to study at leisure the various aspects of the problem.

The motion was rejected by 30 votes to 12, with 22 abstentions.

40. The PRESIDENT put to the vote the Argentine proposal (see para. 28 above) that the words " In the absence of objection by the receiving State " should be added in paragraph 2.

The proposal was rejected by 34 votes to 23, with 15 abstentions.

41. The PRESIDENT put to the vote the Swiss proposal to insert, between the words " the performance " and " of consular functions ", the words " in accordance with existing customary international law ".

There were 26 votes for and 25 against the proposal, with 18 abstentions. Since the proposal did not obtain the required two-thirds majority, it was rejected.

42. The PRESIDENT put to the vote paragraph 2 as it stood in the draft convention.

Paragraph 2 was adopted by 51 votes to 7, with 14 abstentions.

Article 3 as a whole was adopted by 67 votes to none, with 4 abstentions.

ARTICLE 4

Paragraph 1

Paragraph 1 was adopted unanimously.

Paragraph 2

43. Mr. VALLAT (United Kingdom) said that in Committee his delegation had argued that paragraph 2 was useless and dangerous. On the one hand, since the convention recognized the receiving State's right to refuse the agrément, that State could clearly exercise the discretionary power without giving reasons. On the other hand, since article 4, paragraph 2, and article 8, paragraph 1, provided that the receiving State was not obliged to give reasons, the inference could be drawn that it had to give reasons in any case where it was not expressly stated that it was under no obligation to give reasons. That interpretation could be placed especially on article 5, paragraph 1; article 6; and article 7, paragraphs 2 and 3. His delegation would therefore vote against article 4, paragraph 2.

44. Mr. BOLLINI SHAW (Argentina) recalled that paragraph 2 had its origin in an amendment submitted by his delegation (A/CONF.20/C.1/L.37). It was universally recognized in practice that the receiving State was not obliged to give reasons for its refusals, and the draft convention merely codified that practice. Article 9, paragraph 1, did not contain a provision analogous to that in article 4 for the simple reason that it was complementary to that article. In addition, Argentina had submitted in committee an amendment to article 6 providing that the receiving State was not obliged to give reasons for its refusal (A/CONF.20/C.1/L.38); but that amendment had not been put to the vote. Reserving his right to raise the matter again in connexion with article 6, he pointed out that approval of appointments of attachés came under article 8, which specified that the receiving State was not obliged to explain its decision. Unlike that of the United Kingdom, his delegation considered that article 4, paragraph 2, was in complete harmony with the other articles of the Convention.

Paragraph 2 was adopted by 41 votes to 17, with 11 abstentions.

Article 4 as a whole was adopted.

ARTICLE 5

45. Mr. GOLEMANOV (Bulgaria) requested a separate vote on paragraph 3.

Paragraph 1

46. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the phrase " unless there is express objection by any of the receiving States " might be interpreted to mean that the consent of each receiving State concerned was necessary. That interpretation would give rise to difficulties which had not yet occurred in practice, and it would therefore be wise to delete the phrase, on which the Soviet delegation would therefore ask for a separate vote.

The Conference decided by 54 votes to 17, with 3 abstentions, to retain the phrase in question.

Paragraph 1 was adopted by 60 votes to none, with 11 abstentions.

Paragraph 2

47. Mr. MELO LECAROS (Chile) asked for a separate vote on the words " ad interim ", which he thought should be omitted. Like many other governments, that of Chile considered that no distinction existed between chargés d'affaires, since they all acted as heads of mission pending the appointment of an ambassador or minister. Although the International Law Commission had differentiated between the chargé d'affaires mentioned in article 13 and that mentioned in article 17, the distinction was unreal, since, as the Spanish representative had pointed out in the Committee of the Whole, their functions were the same. But, according to a fundamental principle of law, things were what they were, not what they were said to be. It could no doubt be argued that the distinction enabled States to place their chargés d'affaires in the category which suited them best. But that argument only held good if it was in accordance with the spirit of the convention, which it was not.

During the debate in the Committee of the Whole on the abolition of the class of ministers plenipotentiary, it had been pointed out that that abolition would accord with the trend towards a single class of permanent heads of mission — that of ambassadors. Attention had been drawn at that time to the need to respect the principle of the equality of States. But the maintenance of different classes of heads of mission would be discrimination between States, and endorsement in the convention of a distinction between two categories of chargés d'affaires which were in fact only one would likewise be a mistake.

48. Moreover, in the Committee of the Whole some speakers had maintained that there was a difference between a chargé d'affaires accredited by his government and one appointed by the head of mission. That argument, however, was not very convincing, since the method of appointment was a purely secondary matter.

49. In the opinion of the Chilean delegation the words " ad interim " should be deleted, because by differentiating between chargés d'affaires they might lead to discrimination between States and thus to confusion. The deletion would not in any way change the practice of States. Those which appointed or received permanent chargés d'affaires or chargés d'affaires en pied could continue to do so; while there would be no problem for States which, like Chile, recognized only one category of chargé d'affaires. Thus the convention would be acceptable to both groups of States.

The Conference decided by 53 votes to 9, with 8 abstentions, to retain the words " ad interim ".

Paragraph 3

50. Mr. MARESCA (Italy) said that paragraph 3 was based on an amendment submitted by Colombia (A/CONF.20/C.1/L.36) at the tenth meeting of the Committee of the Whole. In the opinion of the Italian delegation it should be laid down that the sending State was bound to notify the receiving State when appointing its head of mission or a member of the diplomatic staff of its mission to represent it in an international organization. It did not propose any change in paragraph 3, but wished to place on record its interpretation of that paragraph.

51. Mr. de VAUCELLES (France) said his delegation had voted for the Colombian amendment in Committee, but had later taken the view that the proposed provision was rather too restrictive because it only covered international organizations which had their headquarters in the receiving State. The Drafting Committee had enlarged the original text, so that it was important to consider the receiving State's possible reactions. Conceivably, the sending State might appoint as its representative in some international organization a head of mission accredited to a State which considered, rightly or wrongly, that the organization in question was acting against its interests. Accordingly, he proposed that in paragraph 3, between " may " and " act as representative ", the words " in the absence of any objection by the receiving State " should be inserted. It did not seem necessary to obtain the prior consent of the receiving State; but that State should at least be notified of the decision of the sending State.

52. Mr. RUEGGER (Switzerland) supported the French amendment. If that amendment should be rejected, the Italian representative's interpretation of paragraph 3 would be on record. The relations between international organizations and the States in which they had their headquarters were excellent; but it was often necessary in practice that a decision of a sending State to appoint a head of mission or a member of its diplomatic staff to represent it in an international organization should be subject to the agreement of the receiving State. In his delegation's view, the customary consultations between the sending and the receiving State should be preserved, because they were most useful, especially on the appointment of a permanent representative, and even more so if a head of mission was appointed to perform his functions in a city other than that in which the diplomatic mission had its seat. Moreover, that practice derived from customary international law, which was expressly safeguarded in the preamble.

53. Mr. AGUDELO (Colombia) thanked the delegations which had supported his delegation's amendment and appreciated the way in which the Drafting Committee had interpreted it. His delegation saw no difficulty in supporting the Italian suggestion, and thought, indeed, that it should be incorporated in paragraph 3. The French amendment would then be superfluous, since prior notification of the appointment of a chief of mission to an international organization would imply the tacit or express consent of the receiving State.

The French amendment was rejected by 32 votes to 27, with 11 abstentions.

Paragraph 3 was adopted by 55 votes to 2, with 15 abstentions.

Article 5 as a whole was adopted by 72 votes to none, with 1 abstention.

The meeting rose at 6.25 p.m.

FIFTH PLENARY MEETING

Tuesday, 11 April 1961, at 10 a.m.

President: Mr. VERDROSS (Austria)

Consideration of the question of diplomatic intercourse and immunities in accordance with resolution 1450 (XIV) adopted by the General Assembly on 7 December 1959 (item 10 of the agenda) *(continued)*

1. The PRESIDENT invited the Conference to continue its debate on the draft convention (A/CONF.20/L.2/Add.1).

ARTICLE 5 *bis*

2. Mr. BARTOŠ (Yugoslavia) said that his delegation had reservations concerning article 5 *bis*, since it did