

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

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**Sixth 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)*

31. Mr. BARTOŠ (Yugoslavia) said that he had abstained from voting on paragraph 3, but had voted for article 15 as a whole, because his delegation had not changed the views he had expressed on paragraph 3 in the Committee of the Whole.

32. Mr. GLASER (Romania) said that he had abstained from voting on paragraph 3 because he shared the views expressed by the previous speakers on that paragraph.

33. Mr. JEZEK (Czechoslovakia) said that he had abstained from voting on paragraph 3, because it was in conflict with paragraph 1. The special position given to the representative of the Holy See was a relic of past practices and was inconsistent with the universally recognized principle of the sovereign equality of States.

34. Mr. USTOR (Hungary) said that he had abstained from voting on paragraph 3, but had voted in favour of article 15 as a whole for the reasons given by his delegation in the Committee of the Whole.

35. Mr. GOLEMANOV (Bulgaria), explaining his vote, said that he had abstained from voting on paragraph 3 for the reasons he had given in the Committee of the Whole.

#### ARTICLE 15 bis

*Article 15 bis was adopted unanimously.*

#### ARTICLE 16

*Article 16 was adopted unanimously.*

The meeting rose at 12.55 p.m.

### SIXTH PLENARY MEETING

*Tuesday, 11 April 1961, at 3.25 p.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 17

##### *Paragraph 1*

2. Mr. AGUDELO (Colombia) recalled that at the fourth plenary meeting the Conference had decided to retain the words "ad interim" in article 5. Despite that vote some delegations still had doubts; accordingly, in order to avoid any confusion, his delegation requested a separate vote on the words "ad interim" in article 17, paragraph 1.

*The Conference decided by 56 votes to 4, with 6 abstentions, to retain the words "ad interim" in paragraph 1.*

*Paragraph 1 was adopted by 70 votes to none.*

#### *Paragraph 2*

*Paragraph 2 was adopted.*

*Article 17 as a whole was adopted by 69 votes to none.*

#### ARTICLE 18

3. Mr. CASTREN (Finland) proposed the deletion of the words "including the residence of the head of the mission" in article 18, since, according to article 1 (i) as adopted, the expression "premises of the mission" included the residence of the head of the mission.

4. Mr. EL-ERIAN (United Arab Republic) agreed that the Finnish representative's proposal was sound. The Drafting Committee had indeed appreciated the point, but had thought it better to mention the residence of the head of the mission expressly in article 18.

5. Mr. CASTREN (Finland) agreed that his amendment should be referred to the Drafting Committee.

6. Mr. BOUZIRI (Tunisia) requested a formal vote on article 18. The amendments submitted to that article in the Committee of the Whole had been withdrawn, but his delegation would interpret article 18 in accordance with them, and would therefore abstain from voting on the article.

7. The PRESIDENT put article 18 to the vote, on the understanding that the Finnish amendment would be referred to the Drafting Committee.

*Article 18 was adopted by 64 votes to none, with 4 abstentions.<sup>1</sup>*

#### ARTICLE 19

##### *Paragraph 1*

8. Mr. BOLLINI SHAW (Argentina) criticized the drafting of paragraph 1.

9. The PRESIDENT suggested that the paragraph should be referred to the Drafting Committee.

*It was so agreed.*

*Article 19 was adopted by 70 votes to none.<sup>2</sup>*

#### ARTICLE 20

##### *Paragraph 1*

*Paragraph 1 was adopted.*

##### *Paragraph 2*

*Paragraph 2 was adopted.*

<sup>1</sup> The Drafting Committee subsequently decided that the words "including the residence of the head of the mission" should stand in article 18.

<sup>2</sup> The Drafting Committee decided not to change the wording of article 19.

*Paragraph 3*

10. Mr. de ERICE y O'SHEA (Spain) recalled that in the Committee of the Whole (21st meeting) his delegation had submitted an amendment (A/CONF.20/C.1/L.168) specifically mentioning the mission's means of transport among the property entitled to inviolability. His delegation had withdrawn the amendment on the understanding that the expression "other property" would be interpreted as including the mission's means of transport. He noted, however, that in the Committee's report (A/CONF.20/L.2, para. 108) the expression in question was taken to mean only property within the premises of the mission. In his opinion, it was necessary to specify that the mission's means of transport were immune from requisition and attachment. Accordingly, he proposed that, after the words "and other property thereon", the words "and also of its means of transport" should be added.

11. Mr. CARMONA (Venezuela) agreed in principle with the Spanish representative. However, some special cases might occur. For example, a motor-car or other vehicle belonging to the mission might be used for illegal purposes by persons enjoying asylum; in such cases, it could hardly be argued that vehicles so used should be immune. It would be better not to mention means of transport among property enjoying immunity, and his delegation would therefore vote for paragraph 3 as it stood.

12. Mr. BOUZIRI (Tunisia) said he would vote for paragraph 3 on the understanding that article 20 did not prevent the receiving State from using the land on which the premises of the mission stood for public works, as provided by an amendment submitted by Mexico (A/CONF.20/C.1/L.129) in the Committee of the Whole and later withdrawn.

13. Mr. MARESCA (Italy) approved and supported the Spanish representative's oral amendment. There would be a serious gap in the convention if the mission's means of transport were not specifically included among property enjoying immunity. However, means of transport should be immune only when used for official purposes in the course of the mission's normal activities.

*The Spanish representative's amendment was adopted by 41 votes to 7, with 16 abstentions.*

*Article 20 as a whole, as amended, was adopted by 67 votes to one, with 3 abstentions.*

14. Mr. de ROSENZWEIG DIAZ (Mexico) said he had voted for article 20, but maintained the opinion on it which he had expressed in the Committee of the Whole.

## ARTICLE 21

*Paragraph 1*

15. Mr. GLASER (Romania) said he approved paragraph 1, which stated the correct principle of the immunity of the sending State and of the head of the mission from taxation, but could not accept paragraph 2 because, no doubt for praiseworthy reasons, it made an

exception to a rule which should be absolute. His delegation would therefore request a separate vote on paragraph 2.

16. Mr. de ROSENZWEIG DIAZ (Mexico) did not agree that paragraph 2 contained an exception to the rule stated in paragraph 1. Its object was merely to prevent a private person from taking advantage of the rule.

17. Mr. USTOR (Hungary) said that article 21, paragraph 1, which granted exemption from all dues and taxes in respect of premises of the mission not only owned but also leased by the sending State, was a valuable contribution to the progressive development of international law. Some States could not buy the premises necessary for their missions, and the provision flowed naturally from the principle of the sovereign equality of all States. His delegation would therefore vote for paragraph 1. However, it would vote against paragraph 2, which undermined the principle stated in paragraph 1 and could be interpreted as denying exemption from dues and taxes in respect of leased premises, a possible source of confusion. Accordingly he likewise requested a separate vote on paragraph 2.

*Paragraph 1 was adopted by 69 votes to 1, with 2 abstentions.*

*Paragraph 2 was adopted by 48 votes to 12, with 9 abstentions.*

*Article 21 as a whole was adopted by 69 votes to none, with 1 abstention.*

## ARTICLE 22

18. Mr. BAIG (Pakistan) said he would have to vote against article 22, which was too sweeping. The provision as originally drafted by the International Law Commission (A/3859) had been too broad; with the addition of the words "at any time and wherever they may be" the article had become even less acceptable, and his delegation requested a separate vote on the words in question. Pakistan did not in any way challenge the complete immunity of the mission's archives and documents when ordinarily used, stored or despatched in transit. Sometimes, however, documents which were manifestly diplomatic were used for illicit purposes or handed to persons not entitled to hold them. In such cases the Pakistan Government would reserve the right, if article 22 were adopted as it stood, to treat the papers in question as not entitled to the benefit of immunity.

19. The PRESIDENT put to the vote the words "at any time and wherever they may be" in article 22.

*The Conference decided by 46 votes to 6, with 13 abstentions, to retain those words in article 22.*

*Article 22 was adopted by 64 votes to 1, with 7 abstentions.*

## ARTICLE 23

*The article was adopted unanimously.*

## ARTICLE 24

20. Mr. DEJANY (Saudi Arabia) said that his delegation recognized the principle embodied in article 24, as he had stated at the 24th meeting of the Committee of felt it necessary to explain his government's position restrictions in force in two zones of Saudi Arabia, he felt it necessary to explain his government's position on the application of article 24. The cities of Mecca and Medina, where Islam had been born, were holy cities, and for over 1,300 years they and their surrounding areas had been centres of traditional religious practices which time had not changed. One of those traditions was that surroundings were accessible only to Moslems. That restriction had not been imposed by the Government of Saudi Arabia, but had been strictly enforced for over 1,300 years by every government, without exception, which had administered that part of the Arabian peninsula. It was thus an historical fact, a living tradition, much older than the subject which the Conference had been convened to discuss.

21. When that historical restriction was considered in connexion with the aim of article 24 — that the diplomatic mission should be free to perform its functions — its effect was clearly unimportant, since the two areas were not sealed against any mission as such, and were ordinarily accessible at least to some members of the staff of a mission. Furthermore, there was nothing in the two zones, apart from the religious precincts, which could not be found in any other city of the country, and consequently the diplomatic report of any mission could not be considered incomplete for lack of information obtained from those areas.

22. The restriction should also be viewed in the light of article 40, paragraph 1; and in that regard the members of all diplomatic missions had shown understanding and respect and had never raised any objection. Since the restriction on entry into the two zones was an historical fact well known both to governments and to individuals, his delegation would take its acceptance by all governments which exchanged diplomatic missions with the Government of Saudi Arabia as indicating their tacit consent, and as meaning that they did not regard it as a hindrance to the freedom of movement and travel of members of their missions within the meaning of article 24. His delegation accordingly considered that the restriction was not in degree or nature one to which article 24 applied, but came within the meaning of article 40, paragraph 1.

*Article 24 was adopted unanimously.<sup>3</sup>*

## ARTICLE 25

*Paragraph 1*

23. Mr. KRISHNA RAO (India), introducing the amendment sponsored by fourteen delegations to paragraph 1 (A/CONF.20/L.15 and Add.1), said that the main, indeed the only, object of the last sentence of paragraph 1 was to stress that the consent of the receiving State had to

<sup>3</sup> Subject to a drafting change suggested by the representative of Spain and affecting the Spanish text only.

be obtained both for the installations and for the use of a wireless transmitter by a mission. Those two operations might, however, require different forms of consent. How that consent was given was purely a matter of procedure for the receiving State to decide. It was a matter in which the sending State was not, and naturally could not be, interested. It depended on the provisions of the constitution and municipal law of the receiving State. The part played by municipal law and international regulations was, however, only one of its aspects, not its essence. The essence was consent. The sponsors therefore proposed the deletion as superfluous of the words mentioned in the amendment. On behalf of the sponsors of the amendment, he again appealed for the support of those who in Committee (29th meeting) had either voted in favour or abstained in the vote on a similar amendment. He hoped that those who did not entirely agree with the amendment would at least abstain.

24. He proposed that the last sentence of paragraph 1 should be put to the vote first in its amended form ("However, . . . receiving State"). If the sentence was adopted in that form, it would, according to the rules of procedure, be unnecessary to put to the vote the words which the amendment proposed to delete.

25. Mr. VALLAT (United Kingdom) welcomed the spirit in which the fourteen delegations had submitted their amendment. The United Kingdom delegation had stated in the Committee of the Whole that the last sentence of article 25, paragraph 1, was quite unacceptable. The wording proposed in the amendment still raised difficulties, and he was obliged to reserve the position of his government towards it. However, in view of the conciliatory spirit shown by the sponsors of the amendment, he would merely abstain from the vote on the amendment and also on paragraph 1 as a whole.

26. Mr. MATINE-DAFTARY (Iran) said that in the Committee of the Whole his delegation had abstained from voting on the amendment (A/CONF.20/C.1/L.264) on which the new amendment was based. Its reason had been that, whereas it considered that the provision requiring the receiving State's consent to the installation of a wireless transmitter was relatively unimportant, yet the receiving State should be empowered to suspend transmission in case of misuse by the diplomatic mission; for instance, if it used the transmitter for propaganda, or for purposes harmful to the security of the State.

27. He asked what was the exact meaning of the word "use" in the amendment. If its sponsors simply wished to say that the consent of the receiving State was necessary for the operation of the transmitter, he could not approve the amendment. If, however, the words meant that the receiving State was entitled to withdraw its consent in case of misuse by the diplomatic mission, the Iranian delegation would have no difficulty in voting for it.

28. Mr. BOUZIRI (Tunisia), speaking as one of the sponsors of the amendment, thanked the United Kingdom representative for his understanding attitude. In reply to the Iranian representative, he said that the inten-

tion was to forestall the misuse of radio transmitters by diplomatic missions. That was why the consent of the receiving State was considered necessary both for the installation and for the operation of a transmitter. The amendment expressed that idea very clearly, and the receiving State could obviously withdraw its consent at any time in case of misuse.

29. Mr. MATINE-DAFTARY (Iran) said he was satisfied with the Tunisian representative's explanation, which he noted.

*The amendment was adopted by 57 votes to 1, with 12 abstentions.*

*Paragraph 1, as amended, was adopted by 65 votes to none, with 6 abstentions.*

*Paragraphs 2, 3, 4 and 5*

*Those paragraphs were adopted unanimously.*

*Paragraph 6*

30. Mr. de VAUCELLES (France) pointed out that paragraph 6 was incomplete. In adopting an amendment sponsored by Chile and Liberia (A/CONF.20/C.1/L.133) at its 29th meeting, the Committee of the Whole had in effect decided that a courier *ad hoc* should enjoy personal inviolability and inviolability as far as the diplomatic bag was concerned, but that such inviolability should not extend to his personal effects and baggage. No such qualifying words appeared in the paragraph 6 before the Conference. The French delegation nevertheless considered the point important, since, as it had pointed out, a courier *ad hoc*, who was not an official of the sending State, could not be granted the same immunities as other couriers. The Chilean delegation had accepted that view.

31. He suggested that paragraph 6 should be referred to the Drafting Committee with instructions to add a proviso that the inviolability enjoyed by an *ad hoc* courier should not apply to his personal effects and baggage.

*It was so agreed.*

*Paragraph 6 was adopted unanimously.<sup>4</sup>*

*Paragraph 7*

32. Mr. de SOUZA LEO (Brazil) considered that paragraph 7 had no place in the convention: it added nothing and might even be interpreted dangerously. It was a rule of interpretation that anything not expressly prohibited should be considered lawful. Since, however, under paragraph 7 the captain of an aircraft was not deemed to be a diplomatic courier, he should be placed on the same footing as any other person to whom diplomatic bags were committed; and it was difficult to see why, for instance, ships' masters or the drivers of motor vehicles should not also be mentioned in that paragraph. If the convention mentioned only captains of aircraft, it might be inferred that to entrust a diplomatic

bag to other persons was unlawful. Since the diplomatic bag was sufficiently protected by other paragraphs of article 25, and in third States by article 39, paragraph 3, it would be preferable to delete paragraph 7 and settle particular cases by bilateral agreement.

33. Mr. JEZEK (Czechoslovakia) said that he would ask for a separate vote on the last sentence of paragraph 7 ("The mission may send . . ."). Since it went into unnecessary detail, it was likely to cause complications. The way in which the diplomatic bag was handed over to the mission was normally regulated by the receiving State, and those regulations had to be respected. Hence the Czechoslovak delegation would have to vote against the sentence.

*The Conference decided by 49 votes to 9, with 10 abstentions, to retain the sentence in question.*

*Paragraph 7 was adopted by 53 votes to 3, with 13 abstentions.*

*Article 25 as a whole, as amended, was adopted by 70 votes to none, with 1 abstention.*

34. Mr. TUNKIN (Union of Soviet Socialist Republics), explaining his vote, said his delegation had voted for the amendment (A/CONF.20/C.1/L.15) to paragraph 1 because it slightly improved the provision. That did not mean, however, that the wording was entirely satisfactory. The Soviet delegation had voted for the deletion of the last sentence of paragraph 7, the wording of which did not seem to be clear. He would also like to point out that, if a delegation gave its own interpretation of a text, whether already put to the vote or not, the silence of the Conference should not be taken to denote agreement with that interpretation.

ARTICLE 26

*Article 26 was adopted unanimously.*

ARTICLE 27

*Article 27 was adopted unanimously.*

ARTICLE 28

*Article 28 was adopted unanimously.*

ARTICLE 29

35. Mr. RIPHAGEN (Netherlands), introducing his delegation's amendment (A/CONF.20/L.5), recalled that, at the time when the Committee of the Whole had adopted article 29, paragraph 1 (c),<sup>5</sup> it had not yet considered article 32. If paragraph 1 (c), which did not appear in the International Law Commission's draft, were adopted, it should apply to all taxes from which a diplomatic agent was not exempt. There was no reason why the exception to the diplomat's immunity should be restricted to a single tax category.

36. In addition, he asked for a separate vote on paragraph 1 (b), in which the words "as a private person and not on behalf of the sending State" had been added to

<sup>4</sup> The Drafting Committee subsequently decided not to amend paragraph 6 in the manner suggested by the representative of France.

<sup>5</sup> The provision had been proposed by Australia (A/CONF.20/C.1/L.288).

the International Law Commission's text. If the diplomatic agent was involved as executor, administrator, heir or legatee on behalf of the sending State, the sending State and not he was the executor, administrator, heir or legatee. But the immunities enjoyed by a foreign State did not fall within the terms of reference of the Conference and therefore could not be dealt with in the convention.

37. Mr. BOLLINI SHAW (Argentina) said he had doubts about paragraph 1. In view of the terms of article 40 *bis*, paragraph 1 (*d*) was superfluous. In the Committee, Colombia had proposed the deletion of the provision (A/CONF.20/C.1/L.173). The question of the income a diplomatic agent might receive as a writer, for instance, was adequately covered by paragraph 1 (*c*).

38. Mr. de ROSENZWEIG DIAZ (Mexico) supported the Netherlands amendment. With regard to paragraph 1 (*b*), he thought it would be difficult to contest the domestic law of the State in whose territory the will had been made. In Mexico, the domestic law applied.

39. Mr. AGUDELO (Colombia) shared the views expressed by the Argentine representative. His delegation had earlier proposed the deletion of the provision which had since become paragraph 1 (*d*), on which he asked for a separate vote. Since it conflicted with article 40 *bis*, it would be better to delete it.

40. Mr. ROMANOV (Union of Soviet Socialist Republics) pointed out that the Netherlands amendment considerably extended the scope of paragraph 1 (*c*), for article 32 mentioned indirect taxes, for example, those incorporated in the price of goods or services, and taxes on immovable property, such as estate duty. If the scope of the exception were so enlarged, the immunity of a diplomatic agent would be severely restricted. His delegation considered that the Netherlands amendment would make the text of article 29 obscure, and would therefore vote against it.

41. Mr. AGO (Italy) said that paragraph 1 (*c*) did not appear in the International Law Commission's draft, and he wondered why the Conference, when it was so liberal on other points, should be so inclined to subject a diplomatic agent to jurisdiction in the matter of taxation. The Netherlands amendment had the merit of making delegations face the facts, for its logic was so extreme that it forced a decision on the diplomat's immunity from jurisdiction. He proposed as the best course the deletion of paragraph 1 (*c*).

42. So far as paragraph 1 (*d*) was concerned, he said that the delegations of Argentina and Colombia had made out a strong case for its deletion; he wished to point out, however, that the clause was closely related to article 40 *bis*. If a diplomatic agent were entirely debarred from professional and commercial activities, taxes on income from that source would naturally not be mentioned in article 29. However, article 40 *bis* forbade such activities "in principle" only. Only if they were strictly forbidden would he favour the deletion of paragraph 1 (*d*).

43. Mr. KRISHNA RAO (India) said he had stated before in the Committee that paragraph 1 (*c*) was superfluous. The Conference should take into account article 32 and reconcile the two articles. His delegation considered that the Netherlands amendment clarified the matter, and would vote for it.

44. Mr. VALLAT (United Kingdom) said he had voted against paragraph 1 (*c*) in the Committee of the Whole for reasons both of principle and of practical convenience. His delegation had preferred the International Law Commission's draft, and he had pointed out that the exceptions listed in paragraph 1 (*a*), (*b*) and (*d*) were of a particular kind different from that in (*c*). He had emphasized that it was not the Conference's purpose to confer privileges on individuals; but it was essential that it should protect diplomats in carrying out their duties. If they were exposed to lawsuits, the performance of their functions might obviously be made more difficult. The Netherlands amendment would restrict immunity from jurisdiction, and his delegation would ask for a separate vote on paragraph 1 (*c*), believing that it would be a mistake to infringe the principle of immunity from jurisdiction in tax cases.

45. Mr. AGUDELO (Colombia) said that he had listened with great interest to the Italian representative's remarks. When the Conference considered article 40 *bis*, his delegation would propose that the words "in principle" be deleted. That would restore harmony to the text, and article 29, paragraph 1 (*d*) would then be superfluous.

The meeting rose at 6 p.m.

## SEVENTH PLENARY MEETING

Wednesday, 12 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 said he had received a letter from the representative of Lebanon in which that representative stated that his delegation approved of article 15, paragraph 3, in the vote on which (see 5th meeting) he had been unable to take part for reasons beyond his control.

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

Article 29 (continued)

Paragraph 1 (*a*)

3. The PRESIDENT drew attention to the amendment submitted by Australia (A/CONF.20/L.17).