

United Nations Conference on Diplomatic Intercourse and Immunities

Vienna, Austria
2 March - 14 April 1961

Document:-
A/CONF.20/SR.7

Seventh 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)*

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).

The Australian amendment was rejected by 23 votes to 13, with 23 abstentions.

Paragraph 1 (a) was adopted by 60 votes to none, with 2 abstentions.

Paragraph 1 (b)

4. Mr. de ROSENZWEIG DIAZ (Mexico), referring to comments made at the 6th meeting (paras. 36-38), requested a separate vote on the words "as a private person and not on behalf of the sending State".

The words in question were adopted by 39 votes to 13, with 12 abstentions.

Paragraph 1(b) was adopted by 61 votes to none, with 3 abstentions.

Paragraph 1 (c)

5. The PRESIDENT drew attention to the Netherlands amendment (A/CONF.20/L.5) and to the Italian representative's proposal (6th meeting, para. 41) that paragraph 1 (c) be deleted.

6. Mr. WESTRUP (Sweden) said that in spite of the arguments advanced in support of paragraph 1 (c) he was strongly opposed to the exception which it introduced, in the case of an action for the recovery of tax to the general principle of diplomatic immunity. It was contrary to international practice, which recognized that a diplomatic agent should not be hindered in his official work, and he could see no reason for introducing fiscal matters into the convention. He supported the statement made by the representative of Italy at the sixth meeting and would prefer to see the sub-paragraph deleted.

7. Mr. MATINE-DAFTARY (Iran) suggested that a vote should be taken on the principle underlying paragraph 1 (c). If the Conference approved that principle then it would be logical to adopt the Netherlands amendment extending the exception to actions for the recovery of all taxes mentioned in article 32.

8. The PRESIDENT said that it was impossible to vote specifically on a principle; the voting on the clause would *ipso facto* show whether the principle was approved or not.

The Netherlands amendment was rejected by 46 votes to 6, with 6 abstentions.

Paragraph 1 (c) was rejected by 35 votes to 24, with 11 abstentions.

Paragraph 1 (d)

9. Mr. AGO (Italy) proposed that consideration of paragraph 1 (d) should be deferred until after article 40 *bis* had been voted on, as the two were closely linked.

10. Mr. TUNKIN (Union of Soviet Socialist Republics) said that although at first sight there appeared to be a close connexion between article 40 *bis* and article 29, paragraph 1 (d), careful examination showed that they were not entirely interdependent. Article 40 *bis* referred

solely to diplomatic agents, whom it prohibited from practising professional or commercial activities in the receiving State. Article 36, however, made the immunities specified in article 29 (among other articles) applicable also to the families of diplomatic agents. Thus, if paragraph 1 (d) of article 29 was omitted, the family of a diplomatic agent would enjoy diplomatic privileges and immunities while engaged in professional or commercial activities — whether article 40 *bis* was adopted or not.

11. Replying to a question from the PRESIDENT whether he wished to maintain his proposal, Mr. AGO (Italy) pointed out that if article 40 *bis* was retained as drafted, it would not entirely exclude the possibility of a diplomatic agent carrying on a professional or commercial activity; and hence, in that event, paragraph 1 (d) of article 29 should also be retained. If, however, the words "In principle" were deleted from article 40 *bis* — as proposed by the representative of Colombia at the sixth meeting (para. 45) — it would obviously be impossible to retain paragraph 1 (d) of article 29, because it would then refer to activities prohibited under article 40 *bis*. The question of the diplomatic agent's family would not then arise. He therefore maintained his proposal.

12. Mr. GLASER (Romania) thought that even if the words "In principle" were deleted from article 40 *bis*, with the consequence that professional and commercial activities would be completely prohibited, there was no assurance that a diplomatic agent might not engage in prohibited activities. It might therefore be wise to retain paragraph 1 (d) of article 29 as a safeguard.

13. Mr. AGUDELO (Colombia) supported the views of the representative of Italy.

14. Mr. EL-ERIAN (United Arab Republic) said that there was a clear distinction between the situations referred to in article 29 and article 40 *bis*. Article 29 established the principle, approved by the International Law Commission and the Committee of the Whole, that a diplomatic agent should be subject to the jurisdiction of the receiving State with respect to professional or commercial activities. Article 40 *bis*, on the other hand, was the result of an entirely new proposal for a provision prohibiting such activities in the Convention. He therefore considered that paragraph 1 (d) of article 29 should stand, irrespective of the decision on article 40 *bis*. As had been pointed out, the prohibition of professional and commercial activities would not necessarily prevent them, any more than prohibition necessarily prevented crime. Moreover, both the International Law Commission and the Committee of the Whole had endorsed the principle that the diplomatic agent should not be entirely immune from the jurisdiction of the receiving State.

15. Mr. de ERICE y O'SHEA (Spain) moved that the Conference suspend the debate on article 29 and proceed forthwith to consider article 40 *bis*.

16. Mr. AGO (Italy) said a distinction should be drawn between gainful activities that were legitimate and those that were not. If the words "In principle" were main-

tained in article 40 *bis*, that would imply that some such activities might be legitimate and it would then be appropriate to maintain paragraph 1 (*d*) of article 29. If, however, the words in question were deleted, such activities would in all cases constitute a violation of the terms of the convention, and some appropriate sanction would have to be considered.

17. For those reasons, he supported the Spanish representative's motion.

18. Mr. REGALA (Philippines) also supported the motion.

The motion was carried by 52 votes to 3, with 15 abstentions.

19. The PRESIDENT said that, in pursuance of the decision just taken, the Conference would next consider article 40 *bis*, after which it would resume debate on article 29.

Article 40 bis

20. Mr. AGUDELO (Colombia) recalled that article 40 *bis* had its origin in a Colombian proposal (A/CONF.20/C.1/L.174) which had been adopted by the Committee of the Whole (36th meeting) by a very large majority and referred to the Drafting Committee. Unfortunately, the introduction by the Drafting Committee of the words "In principle" had altered the sense of the article and greatly weakened it. He therefore asked for a separate vote on those words.

21. Mr. CAMERON (United States of America) was in favour of retaining the words "In principle". His delegation supported the principle that a diplomatic agent should not practise any professional or commercial activity for personal profit, and considered that the words "In principle" were necessary in the context because there was no agreed definition of the meaning of "commercial activity". He had discussed the expression with a number of other representatives who had given many different interpretations. He mentioned, by way of example, the case of a diplomatic agent who was a stockholder and member of the board of directors of the parent company in the sending State of a company operating in the receiving State; that might be regarded as a case of commercial activity in the receiving State, though for his part he would not consider such an interpretation of the term "commercial activity" to be correct. It was precisely in order to find a way out of that type of difficulty that the Drafting Committee had introduced the useful words "In principle".

22. The PRESIDENT put the words "In principle" to the vote.

The result of the vote was 31 in favour and 29 against, with 6 abstentions.

The words were rejected, having failed to obtain the required two-thirds majority.

Article 40 bis, as amended, was adopted by 61 votes to 2, with 8 abstentions.

Article 29 (resumed from para. 18 above)

23. The PRESIDENT put paragraph 1 (*d*) to the vote.

Paragraph 1 (d) was adopted by 36 votes to 13, with 21 abstentions.

Paragraph 2 was adopted unanimously.

24. The PRESIDENT pointed out that, in consequence of the deletion of paragraph 1 (*c*), the reference in paragraph 3 would be amended to read "sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 1 of this article".

Paragraph 3, with that drafting change, was adopted unanimously.

Paragraph 4 was adopted unanimously.

Article 29 as a whole, as amended, was adopted by 69 votes to none, with 1 abstention.

Article 30

Paragraphs 1, 2 and 3 were adopted unanimously, without comment.¹

Paragraph 4

25. Mr. BOUZIRI (Tunisia) said that he would vote against paragraph 4. He recalled that his delegation, together with those of Libya and Morocco, had proposed in the Committee of the Whole the addition of a proviso that if there was no waiver of immunity in respect of execution, the sending State should, in case of need, consult with the receiving State on suitable means of enforcing execution of the judgment (A/CONF.20/C.1/L.200/Rev.2, para. 3). That proposal had been rejected at the Committee's 29th meeting, and paragraph 4 as it stood meant that where immunity of jurisdiction had been waived in respect of proceedings, a separate waiver would be required for the execution of the judgment. That position was morally untenable, since a diplomatic agent would be able to avail himself of the judgment if he won the action, but resist it with impunity if he lost. The provisions of paragraph 4 disregarded the law of the receiving State, ignored the authority of its courts and injured the interests of its nationals.

26. Mr. CARMONA (Venezuela), supporting the previous speaker, recalled the amendments deleting paragraph 4 submitted by his delegation and a number of others in the Committee of the Whole (A/CONF.20/C.1/L.230 and Add.1 and L.179 and Add.1). His delegation could not possibly accept the proposition that a waiver of immunity in respect of proceedings did not imply a waiver of immunity in respect of execution of the judgment. Such a proposition would flout the justice of the receiving State.

27. If paragraph 4 was deleted, the countries in which a separate waiver was necessary for the execution of a judgment would still be free to apply that rule if they wished.

Paragraph 4 was adopted by 43 votes to 14, with 11 abstentions.

¹ But see 10th meeting, *in fine*, statement by the President concerning a lacuna in article 30, paragraph 3.

Article 30 as a whole was adopted by 65 votes to none, with 5 abstentions.

Article 31

28. Mr. CAMERON (United States of America) recalled that article 31 had been discussed at length in the Committee of the Whole, which, at its 30th meeting, had appointed a working party to draft a provision in the light of the discussion. He drew attention specifically to the report of that working party and to the statements made by its chairman at the 32nd meeting of the Committee of the Whole.²

Paragraphs 1, 2, 3, 4 and 5 were adopted unanimously.

Article 31 as a whole was adopted by 69 votes to none, with 2 abstentions.

Article 32

29. The PRESIDENT said he understood that the Australian delegation did not wish to press for a vote on its amendment to article 32 (A/CONF.20/L.18), similar in purpose to the Australian amendment to article 29 (A/CONF.20/L.17) which the Conference had rejected.

30. Mr. BOLLINI SHAW (Argentina) asked for a separate vote on sub-paragraph (e). Since article 40 *bis* had been adopted without the words "In principle" it was difficult to see how a diplomatic agent could incur the charges specified in sub-paragraph (e), inasmuch as he was completely debarred from practising any professional or commercial activity.

31. Mr. OJEDA (Mexico) asked for a separate vote on the words "with respect to immovable property" in sub-paragraph (f). Stamp duty was sometimes charged otherwise than with respect to immovable property. For example, in his country, there was a small stamp duty on attestations and certifications; a cumbersome procedure would be needed to exempt diplomatic agents from that type of duty. If the words "with respect to immovable property" were deleted, however, stamp duty would in all cases be payable by diplomatic agents and the problem would not arise.

Sub-paragraph (a) was adopted by 68 votes to none, with 2 abstentions.

Sub-paragraph (b) was adopted unanimously.

Sub-paragraph (c) was adopted unanimously.

Sub-paragraph (d) was adopted unanimously.

Sub-paragraph (e) was adopted by 59 votes to 5, with 12 abstentions.

The words "with respect to immovable property" in sub-paragraph (f) were adopted by 48 votes to 10, with 12 abstentions.

Sub-paragraph (f) as a whole was adopted by 69 votes to 1, with 3 abstentions.

Article 32 as a whole was adopted unanimously.

² For the report of the working party (A/CONF.20/C.1/L.310) see vol. II; for the statement by the chairman of the working party see summary record of the 32nd meeting of the Committee of the Whole.

32. Mr. MARESCA (Italy) pointed out that there was a difference between immunity from taxation and immunity from jurisdiction. Immunity from jurisdiction remained in effect only so long as the diplomat retained his official status, whereas immunity from taxation continued beyond the duration of his mission.

Article 33

Article 33 was adopted unanimously without comment.

Article 34

33. Mr. KRISHNA RAO (India) said that the understanding of his delegation coincided with that of the International Law Commission when it had drafted article 34, namely, that the receiving State had power to make "regulations, *inter alia*, restricting the quantity of goods imported or the period during which the imported articles for the establishment of the agent must take place, or specifying a period within which goods imported duty free must not be resold", and that "such regulations could not be regarded as inconsistent with the rule that the receiving State must grant the exemption in question" (A/3859, commentary on article 34). It was significant that that understanding of article 34 had been accepted without objection by the Committee of the Whole.

34. His delegation would, however, welcome the amendment of paragraph 2 so as to make the personal baggage of a diplomat entirely exempt from inspection. It could understand inspection for the articles not covered by paragraph 1, but in practice it was not possible to enforce the rule concerning goods the import or export of which was prohibited by the law of the receiving State.

35. Mr. MELO LECAROS (Chile) stated that the words "in accordance with such laws and regulations" in paragraph 1 should be interpreted, in accordance with the International Law Commission's commentary, as allowing States to establish quotas.

36. Mr. MATINE-DAFTARY (Iran) pointed out a discrepancy between the French and English texts of paragraph 1 which might give rise to difficulties of interpretation. While the English words "in accordance with such laws and regulations as it may adopt" applied to the future as well as to the present, the French words "qu'il peut avoir adoptées" did not.

37. The PRESIDENT said that the matter would be referred to the Drafting Committee.

Paragraph 1 was adopted unanimously, subject to drafting changes.³

38. Mr. GHAZALI (Federation of Malaya) said that his delegation found it difficult to vote for paragraph 2, which appeared to be an exception to the rule of the inviolability of the property of a diplomatic agent as declared in article 28, paragraph 2. The commentary of the International Law Commission made it clear that

³ The Drafting Committee subsequently redrafted the French text of the passage in question to read: *Suivant les dispositions législatives et réglementaires qu'il peut adopter...*

inviolability applied to articles intended for the diplomat's personal use. If he carried with him other articles, he did so at his own peril. If the receiving State had reason to believe that a diplomatic agent was carrying such articles, it had to take the risk of searching his baggage and exposing his folly; and if articles were actually found which were not covered by article 28, paragraph 2, or by article 34, paragraph 1, he could not claim inviolability. If no such articles were found, however, the receiving State would have to take the consequences of a violation of the personal property of a diplomatic agent. The provision as it stood would permit the receiving State to search the baggage of a diplomatic agent with impunity, owing no explanation to anyone. It was silent on who should authorize the search, which could therefore be made by the most junior customs official if he were satisfied that he had serious grounds for his presumption. It thus contained an element of ambiguity and uncertainty which might lead to embarrassment for the receiving State as well as to annoyance for the diplomatic agent. The Malayan delegation believed that sufficient remedy was offered to the receiving State by article 34, paragraph 1, and that it would not be wise to legislate in the Convention for exceptions. It would therefore urge the deletion of paragraph 2.

39. Mr. BARNES (Liberia) requested a separate vote on the words in paragraph 2 from "unless there are serious grounds for presuming" to the end of the paragraph.

*It was decided, by 52 votes to 10, with 6 abstentions, to retain those words.*⁴

Article 34 was adopted by 62 votes to none, with 4 abstentions.

Article 35

40. Mr. LINARES (Guatemala) said that his delegation considered that article 35 should be deleted. A provision on the acquisition of nationality might be appropriate in a convention on private international law, but was out of place in a convention on diplomatic privileges and immunities. The adoption of the article would cause serious difficulties for those States, including Guatemala, whose legislation was not in accordance with the provisions of the article or which had no law concerning the acquisition of nationality. The number of amendments submitted to article 35, and the attempt by the working group to draft a more satisfactory text (A/CONF.20/C.1/L.314) was sufficient proof that the best course would be deletion. If the article were not deleted, his delegation would have to make express reservations on behalf of its government, as the provisions were incompatible with the Guatemalan Constitution.

41. Mr. PONCE MIRANDA (Ecuador) said that article 35 as drafted was out of place in a convention concerning diplomatic relations and immunities, for it dealt with a case of conflict of laws. In the matter of the acquisition of nationality there was not truly a conflict

⁴ In consequence of this vote it became unnecessary to vote on the proposal of the delegation of the Federation of Malaya.

of laws, inasmuch as by reason of public policy, the municipal law invariably applied. The article was not acceptable because it raised a conflict of laws and, in addition, offered a solution which in his delegation's opinion was wrong. Article 4 of the Bustamante Code of private national law,⁵ which was in force among many American countries, provided that "constitutional precepts are of an international public order"; that was a most important provision if it was borne in mind that in a number of American States nationality questions were governed by the constitution itself. Furthermore, article 9 of the said Code provided that each contracting State would "apply its own law for the determination of nationality . . . whenever one of the nationalities in controversy is that of the said State". In other words, the Bustamante Code did not accept the existence of a conflict of laws in nationality questions in that case. In short, the immunity to the operation of nationality laws should be recognized by the unilateral act of the particular State. What was more, the immunity provided for in article 35 was extended, mistakenly, to all the members of the mission, including even the service staff, even though as a general rule that staff enjoyed immunity only in respect of acts performed in the discharge of their functions. With a view to avoiding difficulties and delays in the ratification of the convention it would be advisable to omit article 35.

42. Mr. AMAN (Switzerland) supported the proposal that article 35 should be deleted. If the provision should be adopted, his delegation would have to formulate a reservation, for the Federal Constitution of Switzerland provided that a foreign woman acquired Swiss nationality by her marriage to a Swiss citizen.

The meeting rose at 1 p.m.

⁵ Annexed to the Convention on Private International Law, Havana, 20 February 1928, League of Nations *Treaty Series*, vol. 86, pp. 254 *et seq.*

EIGHTH PLENARY MEETING

Wednesday, 12 April 1961, at 4.15 p.m.

President: Mr. VERDROSS (Austria)

Consideration of the report of the Credentials Committee

1. The PRESIDENT drew attention to the report of the Credentials Committee (A/CONF.20/L.14) which had been appointed at the second plenary meeting (para. 11).

2. Mr. USTOR (Hungary) stated that under rule 4 of the rules of procedure the Credentials Committee was obliged to examine representatives' credentials and report to the Conference. The report showed that the Committee had adopted a United States proposal in virtue of which no decision had been taken regarding the credentials submitted on behalf of the Hungarian representative (para. 7). That attitude was absurd, and in