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21st meeting of the Committee of the Whole

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property in the provision was justified by the fact that entirely private and personal matters were involved. It provided a safeguard against the possibility that a member of a mission might act as a "front" for the parties to a transaction—in the case, for example, of the acquisition of real property for the account of a French national or of concealing assets in an inheritance by means of gifts of immovable property. The amounts involved were not exorbitant, and they were not levied on all goods or transactions. There was no question, for example, of requiring customs duties or value-added tax to be paid on a motor vehicle. The proposal referred solely to registration, court or record fees, mortgage dues and stamp duty, which did not affect movable property; mortgage dues were only levied on immovable property, and court or record fees were only levied on judgements, which rarely had to do with movable property. Thus, the French amendment was purely practical in nature.

51. Mr. TAKEUCHI (Japan) noted that article 33 was modelled on article 34 of the Vienna Convention on Diplomatic Relations, and the ILC had rightly stated in paragraph 4 of its commentary to article 33 (see A/CONF.67/4) that "except in the case of nationals of the host State, representatives enjoy extensive exemptions from taxation". As his delegation had pointed out in connexion with article 24 (18th meeting), taxation systems varied from country to country and it was extremely difficult to formulate a text which would satisfy all countries, as was shown by the lengthy deliberations on the text of article 35 of the Vienna Convention on Diplomatic Relations.

52. Referring to subparagraph (*a*) of article 33, dealing with indirect taxes, he said that under the Japanese system there were taxes which were normally incorporated in the price of goods or services and were collected by so-called special collectors. For example, under the law concerning the travel tax, the travel tax was collected by the railway, shipping or airline company and was included in the price of the ticket paid by the passenger who was legally liable to pay that tax. Accordingly, such taxes were regarded as "indirect taxes normally incorporated in the price of goods or services". He added that such taxes as securities transaction tax, admission tax, liquor tax, sugar excise tax, gasoline tax, local road tax, playing card tax, and liquified petroleum tax were included in the indirect taxes referred to in subparagraph (*a*). The amendment submitted by France (A/CONF.67/C.1/L.65) was acceptable to his delegation.

53. Mr. MOLINA LANDAETA (Venezuela) said that, while he respected the right of every State to defend its taxation system, he was unable to support the French amendment.

54. The CHAIRMAN invited the Committee to vote on the French amendment to article 33 (*f*) (A/CONF.67/C.1/L.65).

The amendment was rejected by 23 votes to 18, with 19 abstentions.

Article 33 was adopted by 57 votes to none, with 1 abstention.

The meeting rose at 1.05 p.m.

21st meeting

Wednesday, 19 February 1975, at 3.25 p.m.

Chairman: Mr. NETTEL (Austria).

Consideration of the question of the representation of States in their relations with international organizations in accordance with resolutions 2966 (XXVII), 3072 (XXVIII) and 3247 (XXIX) adopted by the General Assembly on 14 December 1972, 30 November 1973 and 29 November 1974 (*continued*)

Article 34 (Exemption from personal services) (A/CONF.67/4)

1. The CHAIRMAN observed that no amendments had been submitted to article 34 proposed by the International Law Commission (ILC) (see A/CONF.67/4).

2. Mr. SKALLI (Morocco) suggested that the Committee should invite the Drafting Committee to review the text proposed by the ILC for article 34 with a view to improving it.

3. He proposed the following wording:

"The head of mission and the members of the diplomatic staff of the mission shall be exempted in the host State from all personal services . . .".

4. The CHAIRMAN said that the suggestion made by the representative of Morocco would be referred to the Drafting Committee. If he heard no objection, he would take it that the Committee could agree to adopt article 34.

It was so decided.

Article 35 (Exemption from customs duties and inspection) (A/CONF.67/4, A/CONF.67/C.1/L.66)

5. Mr. MUSEUX (France), introducing his delegation's amendment to paragraph 1 (*b*) of article 35 (A/CONF.67/C.1/L.66), said that it was intended to prevent any misinterpretations of that provision and to avoid any abuses of privileges and immunities. His delegation could, however, agree to withdraw the amendment, provided that paragraph 1 (*b*) was interpreted to mean that the articles intended for consumption would not exceed the quantities necessary for direct utilization by the persons concerned.

6. Mr. MOLINA LANDAETA (Venezuela) said that his delegation would vote in favour of article 35 and that it could have supported the amendment to

paragraph 1 (*b*) withdrawn by the French delegation, which related to the important problem of abuses of the privilege of exemption from customs duties and inspection.

7. Mr. CALLE Y CALLE (Peru) said that his delegation could also have supported the French amendment intended to prevent any abuses of the privileges provided for in paragraph 1 (*b*) of article 35.

8. The CHAIRMAN said that, since the French delegation had withdrawn its amendment to paragraph 1 (*b*), he took it that the Committee could agree to adopt the text of article 35 proposed by the ILC and to refer it to the Drafting Committee.

It was so decided.

Article 36 (Privileges and immunities of other persons) (A/CONF.67/4, A/CONF.67/C.1/L.64, L.71)

9. Mr. TAKEUCHI (Japan), introducing the joint amendment to paragraph 1 of article 36 submitted by the Canadian and Japanese delegations (A/CONF.67/C.1/L.64), drew attention to the fact that a typing error had appeared in the text of the amendment and that the word "nations" should be replaced by the word "nationals".

10. The purpose of the joint amendment to paragraph 1 was neither to expand nor to restrict the scope of existing privileges and immunities. Rather, it was intended to add words which would bring the paragraph into line with other relevant provisions, such as paragraph 2 of article 36 and paragraphs 1 and 2 of article 37, which referred not only to nationals of the host State but also to persons permanently resident in the host State. Those provisions accorded equal privileges and immunities to them. His delegation feared that if the Committee could not agree to the joint amendment to paragraph 1, some rather strange and awkward situations might arise. For instance, the wife who was also permanently resident in the host State would have been accorded such privileges as exemption from dues and taxes under article 33 and exemption from customs duties and inspection under article 35, which her husband, namely a member of the diplomatic staff who was permanently resident in the host State, would not enjoy under article 37, paragraph 1, and which would give to the latter only immunity from jurisdiction and inviolability in respect of official acts.

11. Mr. VON KESSEL (Federal Republic of Germany), introducing his delegation's amendment to paragraphs 3 and 4 of article 36 (A/CONF.67/C.1/L.71), said that its purpose was essentially the same as that of the Canadian-Japanese amendment, which his delegation could fully support. Paragraphs 3 and 4 of article 36 were based on paragraphs 3 and 4 of article 37 of the 1961 Vienna Convention on Diplomatic Relations,[1] except that the words "who are not nationals of or permanently resident in the receiving State" had been omitted from the text of the present paragraphs 3 and 4. The reason for that omission was explained in paragraph 5 of the commentary to article 36 (see A/CONF.67/4), which stated that such a reference was unnecessary in the light of the provisions contained in paragraph 2 of article 37. His delegation was, however, of the opinion that the purpose and scope of article 36 were the same as those of article 37 of the 1961 Vienna Convention and therefore considered that their wording should be identical.

12. Mr. EL-ERIAN (Expert Consultant) pointed out that article 37, paragraph 2, related to members of the staff of the mission other than the head of mission and members of the diplomatic staff and to persons on the private staff who were nationals of or permanently resident in the host State. He suggested that, if the Committee considered that certain provisions appeared to overlap, a possible solution would be to request the Drafting Committee to include all references to such persons in article 37 and to delete any references to them contained in other articles, such as article 36, paragraphs 3 and 4.

13. Mr. GÜNEY (Turkey) said that his delegation could support the amendments proposed by Canada and Japan and by the Federal Republic of Germany because they were based on the wording of article 37 of the 1961 Vienna Convention and were intended to improve the text of article 36.

14. Mr. WERSHOF (Canada), speaking as a sponsor of the amendment in document A/CONF.67/C.1/L.64, said that, although he could support the amendments proposed by the Federal Republic of Germany, he thought that the reasoning behind those amendments and the amendment proposed by his delegation and the delegation of Japan was different. As had been pointed out by the Expert Consultant and by the ILC in paragraph 5 of the commentary to article 36, the reference to persons not nationals of or permanently resident in the host State had been omitted from paragraphs 3 and 4 because it was covered by the provisions of paragraph 2 of article 37. He was, however, of the opinion that the family members referred to in paragraph 1 were not covered by article 37 and therefore wondered why the ILC had referred to such persons who were not nationals of the host State, but had not referred to such persons who were also not permanently resident in the host State. He requested the views of the Expert Consultant on that point.

15. Mr. EL-ERIAN (Expert Consultant) replied that paragraph 2 of the commentary to article 36 indicated that practice with regard to the privileges and immunities accorded to the members of the families of permanent representatives was not entirely clear. He thought that, in omitting the reference to persons not permanently resident in the host State, the ILC had probably merely wished to ensure that such members of the family of members of missions would not be subject to treatment different from that of the members of missions. In that connexion, he reiterated his earlier suggestion that all questions relating to persons who were nationals of or permanently resident in the host State should be dealt with in article 37.

16. Mr. SMITH (United States of America) said that, although his delegation had not submitted any amendments to article 36, it was not convinced that

[1] United Nations, *Treaty Series*, vol. 500, No. 7310, p. 95.

the provisions of that article, as proposed by the ILC, were appropriate. Referring to article 105, paragraph 2, of the Charter of the United Nations, which provided that representatives of the members of the United Nations and officials of the Organization should enjoy such privileges and immunities as were necessary for the independent exercise of their functions in connexion with the Organization, he said that his delegation attached particular importance to the word "necessary". It was of the opinion that it had not been demonstrated that all the privileges and immunities provided for in article 36 were really necessary for the independent exercise of the functions of the administrative and technical staff, the service staff, the private staff and the members of the families of members of missions. It considered that article 36 gave such persons broader privileges and immunities than they enjoyed under the *status quo*. Moreover, the Convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies [2] did not provide for privileges and immunities as broad as those found in article 36.

17. Before the scope of the privileges and immunities accorded to such members of the staff of missions was expanded, it must first be demonstrated that the level of privileges and immunities provided for by the Conventions to which he had just referred was insufficient for the independent exercise of the functions of the administrative and technical staff, the service staff, the private staff and members of the families of members of missions. So far as he was aware, no delegation had stated that the two Conventions on the Privileges and Immunities of the United Nations and the Specialized Agencies were inadequate in that respect.

18. Article 36 was virtually identical to article 37 of the 1961 Vienna Convention on Diplomatic Relations. Such similarity was consistent with the general view of the ILC reflected in the draft articles that missions to international organizations should be accorded the same benefits by the host State as diplomatic missions were accorded by receiving States.

19. The Committee of the Whole had also consistently taken a similar view. His delegation could not, however, agree with that view for reasons which it had already explained and which were supported by article 105 of the Charter of the United Nations. In his delegation's opinion the position adopted by the Committee was ill-advised, but, by now, inexorable and any amendments it might have submitted would not have been given favourable consideration.

20. His delegation was also concerned that the apparent consensus in the Committee was not to reflect in the proposed convention all the rights and obligations provided for in the 1961 Vienna Convention, but, rather, to reflect the obligations, but not the rights, of the host State. His delegation considered that there was a major difference between the bilateral diplomatic relationship and the trilateral international relationship. The Committee appeared, however, to have forgotten that difference in attempting to increase the rights of sending States and to have remembered it when trying to give less protection to host States. Consequently, his delegation could not support article 36 and reaffirmed its disagreement with similar decisions thus far taken by the Committee.

21. Sir Vincent EVANS (United Kingdom) said his delegation agreed with the delegations of Canada and Japan that the words "or permanently resident in" (see A/CONF.67/C.1/L.64) should be included in paragraph 1 of article 36 in order to bring it into line with the wording of paragraph 2 relating to the administrative and technical staff of the mission and their families.

22. On the other hand, his delegation considered that the additions to paragraphs 3 and 4 proposed by the Federal Republic of Germany (A/CONF.67/C.1/L.71) concerning members of the service staff and persons on the private staff of members of the mission who were nationals of or permanently resident in the host State were adequately covered by the first sentence of paragraph 2 of article 37.

23. He also suggested that the Drafting Committee might consider the case, not covered in article 36, of a member of the private staff of a member of the mission who was a national of or permanently resident in the host State. An example of such a person might be the British butler of the Frenclı representative to the United Nations Educational, Scientific and Cultural Organization.

24. Mr. MOCHI ONORY DI SALUZZO (Italy) said that he had been instructed to express his delegation's concern at the broad scope of that article, particularly as regards its paragraph 2 which extended a considerable measure of privileges and immunities also to members of the administrative and technical staffs of missions and even to their families. He was aware that the general trend in international relations was directed towards extending the scope of immunities granted to persons sent to represent their States abroad, in order to safeguard their position and to protect them from all possible dangers, but some limits should be imposed, not only for abstract reasons such as the national sovereign jurisdiction of the State, but also and even more for practical considerations. He recalled the example of the possible failure to fulfil contractual obligations entered into with nationals of the host State by members of the administrative and technical staff of missions or delegations or by someone of their families (covered by the immunity of paragraph 2 of article 36 and articles 30 and 31 of the draft convention) for supply of goods or services.

25. He added that in so far as immunity from penal jurisdiction was concerned, two factors should also be considered. First, if it was generally assumed in granting it to people of high rank such as diplomats on the basis that they generally would not violate the laws of the residing State, such a presumption was more difficult for members of the missions who were not diplomats and especially for their families (the last not being in particular under direct and disciplinary control of the sending State). Secondly, a person accredited to international organizations did not reside

[2] General Assembly resolutions 22 A (I) and 179 (II).

in, so to say, "the territory" of that organization, but in the territory of another State which could have no relation with the sending State apart from hosting the representative of that State to an organization situated in its own territory. Therefore, two of the traditional bases for diplomatic immunities—i.e., the presumption that official representatives of a sovereign State were such civilized persons of high rank that they would not violate any law, and their so-called "subjective extra-territoriality", which meant that in case of illegal behaviour by such persons they could be returned to the sending State to be, if so desired, prosecuted and punished—were in the present case totally lacking, because of the quality of the persons concerned (article 36, paragraph 2) and especially because the lack of any juridical relation between the sending State and the host State, which had no means to protect its own laws and the rights of its nationals *vis-à-vis* them.

26. Such difficulties were not, in the opinion of the Italian delegation, solved, either by the provisions of the following article 75—because they did not give any right or power to the sending State—or by the restrictions expressed by the articles following article 36, whose broadness posed many difficulties for the Italian delegation.

27. It was with such difficulties in mind that his delegation had supported the proposed amendments (A/CONF.67/C.1/L.18 and L.28) to article 9, which had sought to restrict its provisions, and therefore would have contributed towards solving some of the previously expressed problems connected with article 36. Such amendments were unfortunately rejected.

28. In the present situation and at the present state of the draft convention, the Italian delegation was therefore unable to support article 36, particularly its paragraph 2, and he requested a separate vote on each of its paragraphs.

29. The CHAIRMAN put to the vote article 36 and the amendments thereto.

The joint amendment of Canada and Japan to paragraph 1 (A/CONF.67/C.1/L.64) was adopted by 48 votes to 3, with 9 abstentions.

Paragraph 1, as amended, was adopted by 55 votes to none with 5 abstentions.

Paragraph 2 was adopted by 55 votes to 2 with 2 abstentions.

The amendment of the Federal Republic of Germany to paragraph 3 (A/CONF.67/C.1/L.71) was adopted by 42 votes to none, with 19 abstentions.

Paragraph 3, as amended, was adopted by 51 votes to none, with 10 abstentions.

The amendment of the Federal Republic of Germany to paragraph 4 (A/CONF.67/C.1/L.71) was adopted by 44 votes to none, with 15 abstentions.

Paragraph 4, as amended, was adopted by 49 votes to none, with 12 abstentions.

Article 36, as a whole, as amended, was adopted by 52 votes to none, with 10 abstentions.

30. Mr. TANKOUA (United Republic of Cameroon), speaking in explanation of vote, said that he had voted for the amendment to paragraph 1 and for paragraph 1 as a whole, because it seemed to reflect existing practice. He had abstained from the vote on the other paragraphs and on the article as a whole because the provisions of the article appeared to create two categories of staff for the sending State with that of its permanent mission to an international organization enjoying more extensive privileges in the host State than the staff of its embassy in the same host State. It would be necessary to bring the Vienna Convention on Diplomatic Relations and the proposed convention into line with each other.

Article 37 (Nationals of the host State and persons permanently resident in the host State) (A/CONF.67/4)

31. The CHAIRMAN observed that no amendments had been submitted to article 37.

32. Mr. MUSEUX (France) said that the adoption of the amendment to paragraph 3 of article 36 had implications for paragraph 2 of article 37, in which "other members of the staff" included "members of the service staff" which were the subject of article 36 paragraph 3. It appeared that the latter paragraph had become redundant and the same might be true of the amended paragraph 4 of article 36. The Drafting Committee should be requested to look into the matter.

33. Although his delegation had not submitted an amendment to article 37, he thought it regrettable that paragraph 2 did not extend to other members of the mission's staff the immunity from jurisdiction and inviolability in respect of official acts performed in the exercise of their functions granted in paragraph 1 to the head of mission and members of the diplomatic staff. It was logical that all categories of persons should enjoy that immunity, which was not an immunity granted to the individual as such, but rather to the sending State, since official acts were performed in its service. Members of the administrative and technical staff would be in a dangerous position if they were liable to interrogation by the authorities as witnesses. Absence of immunity for such persons was likely to prejudice the effective functioning of the mission.

34. It was true that there was a similar omission from the Vienna Convention on Diplomatic Relations but his delegation preferred the attitude adopted in article 105, paragraph 2 of the Charter of the United Nations, which stated that representatives of the Member States should enjoy such privileges and immunities as were necessary for the independent exercise of their functions in connexion with the Organization. If the Chairman agreed, he would present the following oral amendment to paragraph 2 of article 37: the last part of the first sentence should be amended to read: "shall enjoy privileges and immunities only in respect of official acts performed in the exercise of their functions".

35. The CHAIRMAN accepted the submission of the oral amendment by the French representative.

36. Sir Vincent EVANS (United Kingdom), supported by Mr. EUSTATHIADES (Greece) and Mr. MUSEUX (France), requested that a decision on

article 37 should be deferred, in order to give delegations time to consider the French oral amendment.

37. The CHAIRMAN said that he endorsed the French representative's request that the Drafting Committee should look into the compatibility of the amended article 36 and article 37.

38. With regard to the request to defer consideration of article 37, he suggested that the Committee should take it up at its next meeting.

It was so decided.

Article 38 (Duration of privileges and immunities) (A/CONF.67/4, A/CONF.67/C.1/L.57, L.68)

39. Mr. ALBA (Spain) said that his delegation wished to withdraw the amendment it had submitted in document A/CONF.67/C.1/L.57.

40. Mr. LANG (Austria), introducing the amendment submitted by his delegation (A/CONF.67/C.1/L.68), said that its purpose was not necessarily to protect host States in general. In fact its main purpose was to protect the dignity of members of a mission. It was in the interest of the sending State, as well as that of the host State, that the latter should know about the arrival in its territory of persons entitled to privileges and immunities. In view of the fact that fewer and fewer countries required that persons entering their territories should be in possession of a visa, embarrassing situations could occur if the host State had not been notified of the arrival of persons entitled to privileges and immunities. His delegation was aware of the fact that certain amendments to article 15 had been rejected. It believed, however, that the amendment it was now proposing to article 38 might be acceptable because, since it referred exclusively to information concerning arrivals, it would be less general in scope than the amendments to article 15; furthermore it did not specify whether the information had to be transmitted to the host State or to the organization. He hoped that the Committee would reconsider the question, taking into account the explanations he had just given.

41. Mr. KUZNETSOV (Union of Soviet Socialist Republics) said that his delegation believed it could support the amendment if it was interpreted as meaning that for States for which an entry visa was required, the request for such a visa would be regarded as notification of arrival.

42. Mr. HOFMANN (German Democratic Republic) asked the Expert Consultant to indicate the moment at which entitlement to privileges and immunities became effective for a member of a mission already in the territory of the host State. According to article 38, they became effective from the moment his appointment was notified to the host State by the organization or by the sending State. From the provisions of article 15, it would appear that the sending State would have complied with its obligation to provide notification of arrival when such notification had been given to the organization. At that point, it became the obligation of the organization to transmit the notification to the host State. In the opinion of his delegation, failure by the organization to transmit the notification to the host State should not jeopardize the status of a diplomat who had already assumed his functions. In such cases, if the sending State could prove that it had transmitted notification of arrival in adequate time, and if it could be proved that the diplomat in question had in fact assumed his functions, the host State would be obliged to grant the privileges and immunities. Accordingly, the right to privileges and immunities should be enjoyed from the time that the sending State had complied with its obligation to notify the organization and from the time that the person concerned had in fact assumed his functions. Paragraph 1 of article 38 seemed to reintroduce, indirectly, the obligation of the sending State to notify the host State as well as the organization of the arrival of persons entitled to privileges and immunities. It should be noted, however, that it was precisely that obligation which the Committee had rejected when considering article 15.

43. Mr. EL-ERIAN (Expert Consultant) said that the thinking of the Commission on the question of duration of privileges and immunities was that, once they were in the territory of the host State, members of missions enjoyed the legal status conferred on them by the draft articles before they officially assumed their functions and also after those functions had been officially terminated. To make enjoyment of that status dependent on other provisions in the convention relating to notification might give rise to difficult situations. A few months previously, an ambassador had died before submitting his credentials. The question whether his estate was liable to duty had then arisen. He (the speaker) had been asked for his opinion and had said that, as codified by the ILC, the practice was that a person entitled to privileges and immunities enjoyed such privileges and immunities from the moment he entered the territory of the host State, or from the moment he assumed his functions if he was already in that territory. It would be unduly harsh if, as a result of the failure of notification, certain substantive rules were curtailed.

44. Mr. RAJU (India) said that the idea in the Austrian amendment was the same as that advanced by the Austrian representative when the Committee had considered article 15. The effect of the amendment would be to make it mandatory for the sending State to notify the host State of the arrival of all persons entitled to privileges and immunities. The principle underlying the amendment had already been rejected by the Committee when it had discussed the French amendment in document A/CONF.67/C.1/L.38. In the opinion of his delegation, adoption of the amendment would impair the principle of direct relationship between the sending State and the organization. Furthermore, the amendment would not be consistent with the provisions of paragraph 1 of article 15, which had already been approved. Accordingly, his delegation would be unable to support the amendment. It endorsed the Commission's text as it stood.

45. Mr. MUSEUX (France) said that his delegation supported the Austrian amendment. The purpose of the amendment was not to reopen discussion of a question on which the Committee had already taken a decision

when considering article 15. Unlike the formal notification required under article 15, the information required under the Austrian amendment was merely informal. From the practical point of view, it was in the interests of all concerned that the host State should be notified of the arrival of persons entitled to privileges and immunities. If it was so notified, it would be in a position to implement the provisions of the convention in the matter.

46. Mr. ATAYIGA (Libyan Arab Republic) said that his delegation agreed with the representative of the Soviet Union that a request for an entry visa should be regarded as notification of arrival. In the case of countries for which no entry visa was required, however, the sending State should be allowed some latitude in the matter. His delegation would, therefore, be unable to support the Austrian amendment. In its opinion, the Commission's text was satisfactory.

47. Mr. WERSHOF (Canada) said that his delegation supported the Austrian amendment. He wished to draw attention to some of the practical problems to which the provisions of paragraph 1 of article 38 might give rise. In the case to which the Expert Consultant had referred, no one would quarrel with the opinion that the estate of an ambassador who had died before presenting his credentials should be exempt from tax. There were, however, other situations which might prove embarrassing. For example, how were the immigration and customs officials of a host State to treat a junior officer arriving to take up his post when neither its authorities nor the organization had been notified of his arrival? In such circumstances, how could the host State be held accountable if that junior officer's privileges and immunities were not accorded from the moment he stepped on the soil of the host State? Such embarrassing situations would be avoided if sending States adopted the habit of ensuring that the authorities of the host State were notified of the arrival of persons entitled to privileges and immunities.

48. Mr. SOARES DOS SANTOS (Brazil) said that the question had been fully discussed when the Committee had considered article 15. In the opinion of his delegation, it was out of place to reopen the question of prior notification. Accordingly, it was unable to support the Austrian amendment.

49. Mr. ABDALLAH (Tunisia) said that in developing countries appointments of members of missions were often made at the last moment; there was, therefore, no time to comply with the procedure suggested by the Canadian representative. In any case, it was unlikely that a diplomat would not be in possession of a passport indicating his position and rank.

50. Mr. LANG (Austria) said that his delegation had submitted its amendment mainly for practical reasons. The words "duly informed" meant that the manner in which the host State was informed of the arrival of a person entitled to privileges and immunities would be as informal as possible. His delegation did not believe that adoption of the amendment would impair the direct relationship between the sending State and the organization. It would be left to the sending State to decide whether the information should be transmitted through the organization or directly to the host State. He thanked those representatives who had spoken in support of his delegation's amendment.

51. Mr. RICHARDS (Liberia) said that the question had been fully debated and settled when the Committee had considered article 15. His delegation would vote against the Austrian amendment.

52. The CHAIRMAN put to the vote the amendment to article 38 proposed by Austria (A/CONF.67/C.1/L.68).

The amendment was rejected by 22 votes to 20, with 21 abstentions.

Article 38 was adopted by 60 votes to none, with three abstentions.

53. Mr. SMITH (United States of America) said that his delegation had voted for the Austrian amendment, although it was unable to endorse the interpretation placed on it by certain speakers. The issue of a visa could not, *per se*, be regarded as notification of arrival. In so far as article 38 was concerned, he reiterated the views expressed by his delegation at the 11th meeting on article 15.

Article 39 (Professional or commercial activity) (A/CONF.67/4, A/CONF.67/C.1/L.67)

54. Mr. MUSEUX (France), introducing his delegation's amendment (A/CONF.67/C.1/L.67), said that some of the omissions from the Commission's text of article 39 should be rectified. The matters in question had also been omitted from the text of the Vienna Convention on Diplomatic Relations. In the modern world, however, it was becoming increasingly frequent for several members of a family, even occasionally a diplomat's family, to have to work. Article 39 provided that the head of mission and members of the diplomatic staff of the mission were not to practice for personal profit any professional or commercial activity in the host State. The text made no mention, however, of members of the mission's administrative and technical staff or of members of the family of the diplomatic, administrative and technical staff. While it might still be relatively rare for members of diplomats' families to practice a professional or commercial activity for personal profit, it was no longer rare for members of the family of the administrative and technical staff to do so. Clearly, the host State could not be expected to agree that such persons and persons forming part of the household of a member of the mission, should enjoy privileges and immunities in respect of acts performed in the course of or in connexion with the practice of such activity. His delegation had considered the possibility of suggesting that members of a mission, and persons forming a part of their household who practised a professional or commercial activity for profit should not be entitled to any privileges and immunities. It had concluded, however, that that was unnecessary; all that was required was that they should not enjoy any privilege or immunity in respect of acts performed in the course of or in connexion with the practice of such activity.

55. Mr. MOLINA LANDAETA (Venezuela) said that the French amendment (A/CONF.67/C.1/L.67)

would undoubtedly fill a gap in the text of article 39.

56. There had been some experience in his country of wives of diplomatic agents who had applied to the Venezuelan authorities, through the Ministry of Foreign Affairs, for permission to practice such professions as nursing and teaching. The policy had been to grant such permission, on the understanding that the persons concerned would, in respect of their professional activities, not enjoy immunity from criminal or civil jurisdiction.

57. That being said, he asked the Expert Consultant whether the problem of a working member of the household of a diplomatic agent had been considered by the ILC and, if so, why no provision had been made to deal with the question covered in the French amendment.

58. He found the Spanish version of the French amendment very confusing and possibly erroneous. His own suggestion would be to simplify the drafting of the proposed additional paragraph more or less on the following lines: "Members of the administrative and technical staff, and persons forming part of the household of a member of the mission, when they practice a professional or commercial activity for personal profit, shall not enjoy any privileges or immunities in respect of acts performed in the course of or in connexion with the practice of such activities."

59. Mr. VON KESSEL (Federal Republic of Germany) said that his delegation was very much in favour of the French proposal A/CONF.67/C.1/L.67). Under contemporary conditions of life, it was becoming increasingly common for the wife or grown-up child of a diplomatic agent to engage in gainful activity. The old concept of the family of a diplomatic agent being simply his household was now virtually out of date.

60. In addition to the convincing arguments put forward by the French representative, he indicated that, under certain regional arrangements like the European Economic Community's agreements on freedom of settlement, there existed cases in which any national of the sending State, including of course the persons envisaged in the French amendment, would be entitled to practice his or her profession in the host State without any need of prior consent from its competent authorities.

61. He welcomed the Venezuelan representative's redraft; if the sponsor accepted it, the delegation of the Federal Republic of Germany would find it much easier to support the amendment.

62. Mr. BIGAY (France) accepted the Venezuelan redraft of the additional paragraph for article 39 proposed by the French delegation (A/CONF.67/C.1/L.67).

63. That being said, he explained that, in the phrase "persons forming part of the household of a member of the mission", the expression "member of the mission" covered, in the mind of the French delegation, both members of the diplomatic staff of the mission and members of the administrative and technical staff.

64. Mr. DORAN (Israel) said that his delegation whole-heartedly supported the French amendment. Nevertheless, it was concerned at a gap that would still remain in article 39 even with the incorporation of the proposed second paragraph.

65. He was thinking of the case of a diplomatic agent's spouse who practised medicine or nursing and of the problems of liability at tort in respect of professional mistakes that could arise. Neither the present text of article 39 nor the French amendment would provide any guidance to deal with those delicate problems.

66. Mr. HAQ (Pakistan) said that, in view of the silence of the ILC on the problem which the French amendment endeavoured to solve, and the fact that the Commission had examined very thoroughly all facets of the problem of professional or commercial activity dealt with in article 39, his delegation felt that the Commission's text of the article should be adopted without any addition.

67. Mr. EL-ERIAN (Expert Consultant) said, in reply to the Venezuelan representative's question, that article 39 was modelled on article 42 of the 1961 Vienna Convention on Diplomatic Relations and on article 48 of the 1969 Convention on Special Missions.

68. The problem dealt with in the French amendment (A/CONF.67/C.1/L.67) had been considered by the ILC during the discussion in second reading of its draft on special missions. In the debate of the Sixth Committee of the General Assembly on the preliminary draft on special missions, the proposal had been made that the prohibition established in the article entitled "Professional activity" should be extended to the administrative and technical staff of the permanent mission as well, though an exception might be made in the case of teaching activities.[3] He did not recall any proposal at the time for the inclusion in the draft on special missions of a provision on the lines of the present French proposal.

69. As far as the present subject was concerned, he himself, as Special Rapporteur on the topic of relations between States and international organizations had mentioned in his third report in 1968 the proposal by some Governments, during the discussion in the Sixth Committee, that a clause should be added providing that the receiving State could permit the persons concerned "to practise a professional or commercial activity on its territory". In that connexion, he had added: "The Commission took the view that the right of the receiving State to grant such permission is self-evident. It therefore preferred to make no substantive departure from the text of the Vienna Convention on this point."[4]

70. In his sixth report, he had pointed out in 1971 that the reasons which had prompted the inclusion in the 1961 Vienna Convention on Diplomatic Relations of a provision similar to article 39 now under discussion applied equally in the context of relations between States and international organizations. He had added

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[3] See *Official Records of the General Assembly, Twenty-fourth session*, Annexes, agenda items 86 and 95 (*b*), document A/7746, paragraph 58.

[4] See *Yearbook of the International Law Commission 1968*, vol. II, document A/CN.4/203 and Add.1–5, p. 158, paragraph 2 of the commentary on article 43.

that he accordingly saw no reason to depart from the precedent of the 1961 Convention.[5] He had therefore proposed that the article entitled "Professional activity" should be retained in the form in which the Commission had adopted it on first reading.[6]

71. It could be seen that the ILC, during its work on the present topic, had considered only the question of the prohibition of professional activities for the head of mission and the members of the diplomatic staff who enjoyed a wide range of privileges and immunities and who had a status totally incompatible with the exercise of such activities. It had also examined the suggestion, which had been made during the Sixth Committee's debates, and on which he had commented in his sixth report in 1971, for the extension of that prohibition to administrative and technical staff. It had not explored thoroughly the impact of the exercise of such activities on the enjoyment of privileges and immunities, whether accorded by the draft articles or granted by the host State, i.e. the problem dealt with in the French proposal (A/CONF.67/C.1/L.67).

72. Mr. MOCHI ONORY DI SALUZZO (Italy) declared that he wanted to stress his delegation's concern to the extension of privileges and immunities provided by article 36 in general and particularly as regards its paragraph 2. Such a concern was especially great in so far as commercial and professional activities were concerned. He therefore wanted to support the French amendment, which would help to solve some of the problems involved; its incorporation in article 39 would certainly help to render the future convention more acceptable.

73. Sir Vincent EVANS (United Kingdom) said that the French amendment (A/CONF.67/C.1/L.67) had the full support of the United Kingdom delegation. It was quite unconscionable to accord privileges and immunities to anyone in respect of professional or commercial activities performed outside the scope of his functions as a member of the mission.

74. Mr. TAKEUCHI (Japan) also supported the French amendment (A/CONF.67/C.1/L.67). He noted that the proposed additional paragraph did not intend to prohibit commercial activities but it would only restrict privileges and immunities in connexion with such activities.

75. Mr. CALLE Y CALLE (Peru) pointed out that when the ILC had adopted article 39 in second reading in 1971, it had examined with the utmost care all aspects of the problem of professional or commercial activity. It had also duly taken into account all observations of Governments and it was significant that there had not been a single observation on the problem with which the French amendment now purported to deal. He therefore saw no reason for the inclusion of the proposed additional paragraph in article 39.

76. Moreover, it seemed to him that the preoccupations of the French delegation were already largely provided for by paragraph 2 of article 36, which clearly specified that immunity from civil and administrative jurisdiction "shall not extend to acts performed outside the course of "the duties of members of the administrative and technical staff of the mission or of members of their families.

77. Mr. WERSHOF (Canada) pointed out that paragraph 2 of article 36 only covered some of the aspects dealt with in the French proposal. It ruled out the enjoyment of privileges and immunities only for two categories of persons and, moreover, did not refer to all privileges and immunities.

78. The French proposal covered a much wider field than the sole problem of immunity from civil and administrative jurisdiction in respect of administrative and technical staff and the members of their families.

79. He therefore appealed to delegations not to oppose the French proposal in the mistaken belief that its provisions were already implicit in paragraph 2 of article 36.

80. Mr. SYSSOEV (Union of Soviet Socialist Republics) said that the French proposal went beyond the scope of article 39 as adopted by the ILC, which concerned only the head of mission and members of the diplomatic staff of the mission, persons who obviously should not practice for personal profit any professional or commercial activity in the host State. His delegation viewed with concern the attempt through the French amendment to introduce other matters and it therefore opposed that amendment.

81. Mr. ESSY (Ivory Coast) welcomed the French proposal, which would solve problems arising from the professional activities of the wives of diplomatic agents. At the same time, however, he pointed out that, very often in developing countries, the activities in question were performed on a voluntary or non-remunerated basis and would therefore not be affected by the terms of the French amendment, which dealt only with activities carried out "for personal profit".

82. Mr. EUSTATHIADES (Greece) said that the problem of activities of that kind could of course be covered by enlarging further the terms of article 39. It It was not desirable, however, to attempt to deal exhaustively with all possible problems. There were some matters that could be well left to the practical good sense of the authorities concerned.

83. The CHAIRMAN put to the vote the French amendment to article 39 (A/CONF.67/C.1/L.67).

The amendment was adopted by 32 votes to 15, with 15 abstentions.

Article 39 as a whole, as amended, was adopted by 41 votes to none, with 20 abstentions.

84. Mr. KOECK (Holy See), explaining his vote, said that his delegation had voted in favour of article 39 as a whole, as amended, on the understanding that article 39 would be interpreted in the manner stated in paragraph 2 of the International Law Commission's commentary (see A/CONF.67/4), i.e., "that the right of the host State to grant permission to persons referred to in the article to practise a professional or commercial activity on its territory was self-evident".

[5] See *Yearbook of the International Law Commission, 1971*, vol. II, part one, document A/CONF.4/241 and Add.1–6, p. 78, Observations of the Special Rapporteur on article 46.

[6] See *Yearbook of the International Law Commission, 1969*, vol. II, document A/7610/Rev.1, p. 200, article 46.

85. Moreover, his delegation had voted in that manner on the understanding that the host State would not unduly impede, or interfere with, the principle of international co-operation and accordingly would not object to the exercise of any professional activity by one of its own nationals forming part of a foreign mission without just and reasonable grounds.

Article 40 (End of the functions of the head of mission or a member of the diplomatic staff) (A/CONF.67/4)

86. The CHAIRMAN observed that no amendment had been proposed to article 40.

Article 40 was adopted unanimously.

The meeting rose at 6.15 p.m.

22nd meeting

Thursday, 20 February 1975, at 3.25 p.m.

Chairman: Mr. NETTEL (Austria).

Organization of work

1. The CHAIRMAN requested delegations to submit, by noon on Friday, 21 February, amendments to articles 58 to 65 proposed by the International Law Commission (ILC) (see A/CONF.67/4), and to any articles of the annex discussion of which might, in the view of delegations, be possible together with those articles.

2. Mr. MAAS GEESTERANUS (Netherlands) said that he respectfully objected to the time-limit established by the Chairman for the submission of amendments to articles of the annex. His delegation would be unable to prepare its amendments in the time allowed.

3. The CHAIRMAN said that, in view of the decision taken by the Conference that morning (5th plenary meeting), he regretted that he had no choice but to establish that time-limit for the submission of amendments to the articles he had indicated.

4. Mr. SURENA (United States of America) said that there was a matter which was a source of concern to his delegation. It was possible that some delegations would consider it appropriate to deal with certain provisions of the annex together with the corresponding provisions of articles 58 to 65 of part III and would therefore submit amendments to those provisions of the annex by the time-limit established for the submission of amendments to articles 58 to 65. It was also possible that other delegations, while wishing to submit amendments to the same provisions of the annex, would not consider that they should be dealt with together with articles 58 to 65 and therefore would not submit amendments to them by the established time-limit. How would delegations which did not consider it appropriate to deal with the two provisions together be able to submit their written amendments to the articles in the annex in time for them to be discussed by the Committee?

5. The CHAIRMAN said that he shared the misgivings of the United States representative but it would be for the Committee to decide how the situation was to be dealt with.

6. Mr. MAAS GEESTERANUS (Netherlands) said that it was the desire of his delegation to facilitate the task of the Chairman and enable the Committee of the Whole to discharge its responsibilities. The time being allowed was, however, too short and he wished to appeal against the Chairman's ruling in the matter.

7. The CHAIRMAN, referring to the provisions of rule 22 of the rules of procedure, said that he had ruled that amendments to articles 58 to 65 of the draft articles and to any articles of the annex discussion of which might, in the view of delegations, be possible together with those articles should be submitted by noon on Friday, 21 February. The representative of the Netherlands had appealed against that ruling in so far as concerned with submission of amendments to articles of the annex.

8. He put to the vote the Netherlands appeal against the ruling of the Chairman.

The appeal was rejected by 21 votes to 15, with 22 abstentions.

9. Sir Vincent EVANS (United Kingdom) said that he wished to explain why he had voted in favour of the appeal. Normally it was the custom of his delegation fully to support the Chairman, and he quite understood the reason why the Chairman had ruled that amendments to the articles in question should be submitted not later than noon on the following day. An important consideration to be taken into account, however, was that the articles concerned were among the most difficult and controversial of the articles in part III. That was also true of the corresponding articles in the annex. There was the added complication that the text prepared by the ILC for the articles in the annex corresponding to the relevant articles in part III differed very considerably. In the circumstances to require that all the amendments to those articles should be submitted by noon on the following day would cause great difficulty to many delegations and he could not believe that such a requirement was in the best interests of the success of the Conference.

10. Mr. ZEMANEK (Austria), referring to the questions put by the representative of the United States, asked the Chairman whether he would allow those delegations which did not consider that the provisions in the annex could be dealt with together with the corresponding provisions of the articles of part III to submit oral amendments to the articles in the annex.