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22nd meeting of the Committee of the Whole

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main point was that the principle behind the new paragraph 4 proposed by Mexico should be observed.

37. Mr. TUNKIN (Union of Soviet Socialist Republics) stressed the importance of the inviolability of mission premises for the cause of peace and the maintenance of good relations among States. The International Law Commission had studied that question at length and had wisely decided not to provide for any exceptions to the principle. That decision was, moreover, based on established practice and on the existing state of international law. It was also in line with existing international conventions, particularly with the Havana Convention of 1928, the laws of many countries and the 1959 resolution of the Institute of International Law. Some amendments submitted to article 20 — for example, the joint Irish-Japanese amendment and the Mexican amendment — reintroduced proposals that had been rejected by the Commission. The practical course of international relations showed the potential danger of the proposed exceptions to the principle of the inviolability of the mission premises.

38. The Indian amendment, dealing with the right of the owner to enter the premises leased to the mission, seemed unnecessary, for such cases could easily be settled by agreement between the mission and the owner. The same applied to the Japanese amendment; the Soviet Union was not opposed to that amendment, but article 20, paragraph 1, as it stood should meet the case.

39. To justify their views, the sponsors of the amendments limiting the scope of the principle of inviolability stated that, if exceptions were not laid down, abuses would arise. Abuses in the exercise of a right were, of course, always possible. But the danger of allowing the receiving State to judge whether exceptional circumstances permitted it to enter the mission premises without the consent of the head of the mission was still more serious, for it could affect the international relations. The Soviet delegation therefore supported article 20 as it stood, though its wording might be improved by the adoption of the amendments submitted by the Ukrainian SSR and the Federation of Malaya, and would vote against all other amendments to article 20.

40. Mr. AMLIE (Norway) said that the inviolability of the mission premises was a fundamental principle of international law and was essential for the maintenance of normal relations among States. The receiving State should take all measures necessary for ensuring respect for that principle and, if it failed in that obligation, it was responsible for the consequences. His delegation therefore unreservedly approved the principle stated in article 20 and hoped that all States would respect it. Its wording might perhaps be improved by the Ukrainian amendment, which was perfectly reasonable. On the other hand, in the light of the commentary of the International Law Commission, his delegation considered it preferable not to introduce into the convention a provision such as that proposed by Japan, in view of the difficulty of finding a satisfactory formula. The new paragraph proposed in the joint Irish-Japanese amendment conflicted with the principle of inviolability, and

his delegation would be unable to support it. It would therefore vote in favour of article 20 as it stood, subject to possible drafting improvements.

41. Mr. BOLLINI SHAW (Argentina) said his delegation was opposed to any exceptions to the principle of the inviolability of mission premises and believed it would be dangerous to introduce them into the convention. The joint Irish-Japanese amendment was at variance with that principle and was all the more dangerous in that it left it entirely to the receiving State to decide what circumstances were exceptional and therefore justified its intervention. It was precisely in cases of public danger that it was most necessary to ensure the inviolability of the mission premises. The Argentine delegation would therefore vote against that amendment, but would support what remained of the Spanish amendment, as well as the Ukrainian amendment, both of which widened the scope of article 20. His delegation approved the idea behind the Japanese amendment but, if it were to be interpreted as permitting the service of a writ through the post, it would vote against the amendment.

The meeting rose at 1.10 p.m.

TWENTY-SECOND MEETING

Monday, 20 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (continued)

1. The CHAIRMAN invited the Committee to continue its debate on article 20 and the amendments thereto.¹
2. Mr. KIRCHSCHLAEGER (Austria) stressed the importance of article 20, which embodied a basic principle of the convention and an essential condition for the functioning of the mission. Although the classic concept of extritoriality belonged to the past, the premises of the mission must be regarded as sacrosanct and protected by the receiving State by every means within its power. His government was most anxious that the principle of inviolability of the mission premises should be clearly formulated in the convention; it would therefore support the article as drafted by the International Law Commission, which represented a satisfactory balance of interests.
3. Mr. de ERICE y O'SHEA (Spain), recalling that his delegation had withdrawn all but paragraph 3 (b) of its amendment (L.168), said that it could not support any amendment to the draft which might be construed as infringing the principle of inviolability. The draft might be clarified, but not restricted. On that ground his delega-

¹ For the list of the amendments submitted to article 20, see twenty-first meeting, footnote to para. 23.

tion would vote against the joint amendment submitted by Ireland and Japan (L.163), for the additional paragraph which it proposed would in effect nullify article 20.

4. As he had indicated (21st meeting, para. 32) the delegation of Spain would support the new paragraph 4 proposed by Mexico (L.129), which expanded the provisions of article 20. It would, however, prefer the wording of the new paragraph to be that originally proposed by Mexico, without the change agreed to by the Mexican representative (21st meeting, para. 36); he suggested that the delegation of Mexico might consider reverting to its original proposal.

5. Although supporting the principle of the amendment proposed by Japan (L.146), he thought it might be more appropriately dealt with in connexion with article 40, paragraph 2.

6. His delegation had withdrawn paragraph 3 (a) of its amendment in favour of the Ukrainian amendment (L.132). It would suggest, further, that a like amendment should also be made to article 20, paragraph 1. If that suggestion were accepted by the sponsor of the amendment, it would cover the point in the amendment proposed by China (L.123), which was in fact already covered by the general meaning of the draft article and by the Ukrainian amendment.

7. The amendment proposed by the Federation of Malaya (L.114) affected drafting only, and his delegation would support it. It could not, however, support the amendment proposed by India (L.161), which dealt with a matter that should be settled directly between landlord and tenant.

8. The proposal by Spain in paragraph 3 (b) of its amendment was intended to strengthen the principle of inviolability as formulated in the Ukrainian amendment.

9. Mr. WALDRON (Ireland) said that his delegation and that of Japan withdrew their joint proposal and would instead support the first part of the Mexican amendment, which they thought did not in any way infringe the principle of inviolability.

10. Mr. BOUZIRI (Tunisia) regretted the withdrawal of the Irish-Japanese amendment, which his delegation would have supported. The principle of inviolability should be clearly expressed in the convention, and it was essential that the receiving State should give the fullest protection to the mission. However, even some of the staunchest defenders of the principle had admitted that its unlimited application might lead to abuse. Article 20 as drafted made no adequate provision for limiting the possibility of abuse. Reference had been made to the regrettable situation which might arise, for example, if a fire broke out on diplomatic premises in the absence of the head of mission, and it was impossible to reach any responsible member of the mission. It would surely be contrary to the principle of inviolability that the mission premises should be left to destruction. The receiving State should be empowered to try to protect the mission premises, even in the absence of its head. The Committee should try to find a more balanced solution, and his delegation would support any amendment strengthening the principle of inviolability and

reducing the danger of abuse. It would therefore vote for the first part of the Mexican amendment, which obliged the head of the mission to co-operate with the local authorities in certain specified cases. The amendment was, however, more restrictive than that proposed, and since withdrawn, by Ireland and Japan, which his delegation would have preferred.

11. His delegation would also support the second part of the Mexican amendment, which dealt with a matter of considerable importance, both for countries with old capitals for which they had reconstruction plans, and for young countries wishing to improve their capitals after gaining their independence.

12. Mr. BARTOŠ (Yugoslavia) said that the principle of the inviolability of mission premises was one of the most ancient in international law, and his government and his delegation supported it both in practice and in theory. The two sentences of paragraph 1 were indissolubly linked, and his delegation could not vote for any amendment which attempted to dissociate the principles embodied in them. The International Law Commission had realized the existence of the special cases which had given rise to considerable discussion both in the past and during the current conference. It had recognized the possibility of abuse, but had felt that, if a guarantee had to be given, it should be given to the party to be protected. The Commission had taken the view that heads of mission were reasonable people who, if worthy of the trust given them, would naturally in the event of danger or emergency ask for the co-operation of the receiving State. The first part of the Mexican amendment was not at variance with that view, and his delegation would therefore support the proposed new paragraph 4. Although exceptional circumstances should not be neglected, the principle of inviolability must not be infringed. The consent of the head of mission was essential, and he should be allowed to determine the extent of his co-operation with the local authorities.

13. The drafting change proposed by the Federation of Malaya was not contrary to the very exact provisions of paragraph 2, which his delegation fully supported.

14. The meaning of the words "and other property" in the Ukrainian amendment was not clear. In its narrower sense it was already covered by the draft. If, however, it was meant in its wider sense, his delegation could not agree that all the property of the mission should be immune when outside the premises. That point was covered under another heading, and the issue should not be confused in connexion with article 20.

15. In regard to the new paragraph 5 proposed by Mexico, he said the International Law Commission had considered the question of inviolability in relation to the carrying out of public works by the receiving State. (A/3859, paragraph 7 of the commentary on article 20.) It had not wished to write a provision on that subject into the draft. His delegation would, however, be inclined to vote for the principle of the proposed new paragraph 5, in the hope that the Drafting Committee would be able to find an alternative way to express it in a separate article, to avoid casting doubt on the inviolability of the mission premises.

16. The provision proposed by India for periodic inspection of property should appear in the lease and not in an instrument codifying international law, for the principle of inviolability should be qualified in the least possible way.

17. Mr. MACDONALD (Canada) said that, although there seemed to be general agreement on the principle of the inviolability of mission premises, there had been considerable discussion on whether an attempt should be made to define the exact limits of its application. Exceptional circumstances might arise in which the receiving State, with overriding responsibility for the protection of life and property, might be forced to take unusual measures: for example, a sudden fire in mission premises on one or two floors of a block in the centre of a city, threatening appalling destruction of life and property if unchecked. Various attempts had been made, both inside and outside the International Law Commission, to propose a suitable wording which would define the application of the principle of article 20 in a public emergency. It had been suggested that the convention should not attempt to define the exact measures to be taken in an emergency which was by its very nature difficult or even impossible to foresee precisely in a legal document. His delegation had considered introducing an amendment for that purpose, but had recognized the danger of a provision that might go too far. The new paragraph 4 proposed by Mexico offered a procedure which seemed to follow from the general principle enunciated in paragraph 1 of article 20. As an effort to formulate a general rule to cover exceptional circumstances, however, the Mexican amendment might not fully solve the problem confronting the Committee. There should be agreement that, in an unusual public emergency, the receiving State should not be unduly obstructed in appropriate and necessary action.

18. The consensus of opinion in the Committee might be that a formal amendment along those lines was unnecessary. The understanding of his delegation was, however, that the principle of article 20, paragraph 1, should be construed by the sending State in such a way that its mission would not unduly prevent legitimate remedial measures in a genuine public emergency. If it was evident from the summary record that the Committee accepted that view, it might be preferable not to adopt any amendment which would limit precisely the application of the paragraph in an emergency.

19. His delegation would support paragraphs 2 and 3 as they stood, which should not be weakened by amendment.

20. Mr. DADZIE (Ghana) said that the point raised in the Indian amendment (L.161) was a matter between the lessor and the lessee to be covered in the lease. Admittedly, if a provision for periodic inspection was inadvertently omitted from a lease, difficulties might arise. The convention was not, however, an appropriate instrument for such a provision, and his delegation suggested that the amendment should be withdrawn.

21. His delegation considered draft article 20 very suitable and would vote for it, subject only to the Ukrai-

nian amendment. It would also support the amendment of Japan if pressed to a vote, and the amendment of the Federation of Malaya, which should be referred to the Drafting Committee.

22. His delegation would, however, support only in principle the amendments submitted by Mexico and Spain. Emergencies, which were exceptional, were covered by the second sentence of paragraph 1, and there was no need to elaborate on the circumstances in which the consent of the head of mission should be sought.

23. Mr. KRISHNA RAO (India) said that the amendment submitted by his delegation was intended to deal with a practical problem which had arisen in his country. If a house were leased and the mission made a number of structural changes, then, if the lease made no provision for periodic inspection, the lessor would have no redress, since the mission had immunity and could not be used. In view, however, of the general recognition of the principle that the owner should be able to safeguard his property, his delegation would withdraw its amendment.

24. It would support the article as drafted, subject to the amendments proposed by the Ukrainian SSR and the Federation of Malaya, and would fully support the Canadian representative's interpretation of the article as a whole.

25. Mr. de VAUCELLES (France) fully supported the principle of the absolute inviolability of the premises of the mission and was opposed to the admission into article 20 of any exception to the rule. He had hesitated over the first part of the Mexican amendment, since there was some justification for it; but his considered opinion was that it would serve no useful purpose. It was inconceivable that the head of a mission would refuse to take preventive measures in case of an epidemic — even if he insisted that the measures should be carried out by members of his own staff. Similarly, it should be possible to deal with an outbreak of fire without raising the problem of the violation of the premises.

26. The second part of the Mexican amendment had some value but was not strong enough. He would be prepared to support it if the representative of Mexico would agree to the introduction of two important ideas: first, that if the premises had to be vacated, the receiving State should negotiate with the sending State on the principle as well as on the time to be allowed; and secondly that the receiving State should compensate the sending State as well as provide suitable alternative premises.

27. He was in favour of the Malayan amendment, which clarified without fundamentally changing the provision. For the same reason he supported the amendment of the Ukrainian SSR. With regard to the Japanese amendment, he suggested that it would be more appropriate to deal with the question of service of writs during the discussion of article 40. He saw no objection to the addition proposed in paragraph 3 (b) of the Spanish amendment.

28. He supported the statement of the representative of Sweden concerning the receiving State's responsibility

for protecting the mission premises against damage (21st meeting, para. 35). Respect for the premises of a foreign Power was essential to good relations between States.

29. Mr. AGUDELO (Colombia) said that the principle of the inviolability of the premises of a mission was respected as historic and sacred in his country. In his opinion it would be dangerous to incorporate in article 20 any exceptions to the principle, since they could only weaken it. Most of the amendments submitted to article 20 seemed to be concerned with exceptional circumstances which could be dealt with by the governments concerned and should not form the subject of an express provision in a convention. Accordingly, he supported article 20 as it stood and only wished to support the minor changes proposed in paragraphs 1 and 3 of the Spanish amendment.

30. The International Law Commission had been instructed by General Assembly resolution 1400 (XIV) to study the codification of the principles and rules of international law relating to the right of asylum. He considered the matter extremely important and might speak on it later.

31. Mr. ASIROGLU (Turkey) said that the immunity and inviolability of the premises of the mission formed the very basis of the convention which the Conference was drafting. The principle was essential in international relations and must be carefully guarded. The consequences of an infringement were not limited to the two States concerned, for it would spread insecurity among other missions in the receiving State and so affect the diplomatic relations of other countries. The Committee therefore had a very important task; and in his opinion it should first answer the fundamental question: should the rule of inviolability be applied unconditionally or not? The Turkish delegation was opposed to inclusion of exceptions in article 20, in spite of the arguments advanced during the discussion. He could not support the first of the Mexican amendments because he considered that, even in an emergency, the authorities of the receiving State should not enter the mission's premises without permission. He was, however, prepared to support the second part of the Mexican amendment, as it concerned local legislation and did not constitute an exception to the rule of inviolability, but he suggested that it should include a provision that the receiving State should pay a reasonable indemnity to the sending State. His delegation had some doubts of the value of the Japanese amendment, since a writ could well be transmitted through the Ministry for Foreign Affairs or even by post. He could not support the proposal of China for the deletion of paragraph 3 of article 20 because, as explained in paragraph 6 of the International Law Commission's commentary on the article, that paragraph served the useful purpose of emphasizing that even a judicial order would not justify entry of the premises of the mission for the purpose of any search, requisition, attachment or execution. His delegation would vote for paragraph 3 (b) of the Spanish amendment, which had some value, and for the drafting amend-

ments proposed by the Ukrainian SSR and by the Federation of Malaya.

32. Mr. de ROMREE (Belgium) said that the International Law Commission had prepared an excellent draft of one of the most important articles in the convention. The article conformed with international practice and had the full support of the Belgian Government. Consequently, he could not accept any amendment that tended to weaken the article. He shared the views of the many representatives who had spoken in that sense. He had listened with particular interest to the statements of the representatives of Norway and Sweden concerning the special obligation under paragraph 2 of the article, and stressed that it was an obligation relating not only to means but also to results; an obligation of the receiving State to guarantee the effective protection of the mission — and it was precisely in the case of disorders that protection should be effective. In his own country the practice was automatic: first an apology was presented to the mission; secondly, compensation was offered; and lastly, effective protection was guaranteed against any repetition of the incidents. His government was bound to approve an article that it intended to respect.

33. Mr. LINARES ARANDA (Guatemala) said that the inviolability of diplomatic premises was an absolute and not a relative principle. Consequently, he supported article 20 as drafted, and opposed all the amendments.

34. Mr. MARESCA (Italy) supported article 20 as it stood and considered as dangerous any amendments that would undermine its principle, but would not oppose any amendments that spelt out the principle in more specific terms. The Spanish amendment, for example, contained a new and interesting idea, though it might be more appropriate to another article.

35. Mr. GLASER (Romania) said that, while he understood and sympathized with the considerations underlying some of the amendments, he also agreed with other representatives in assuming that the head of a mission was a reasonable person, who would not prevent action to cope with outbreaks of fire or epidemics. Minor mishaps might sometimes be used as a pretext to enter diplomatic premises. But the temptation to provide for exceptions in the article should be resisted, for they could only be detrimental to the principle. He could therefore only accept the amendments proposed by the Federation of Malaya and the Ukrainian SSR, and would vote for article 20 as amended by them.

36. Mr. PECHOTA (Czechoslovakia) supported article 20 as amended by the Malayan and Ukrainian proposals. The principle of the inviolability of the premises of a mission had long been sacrosanct, but the discussions at the Conference had raised the important problem whether the principle permitted exceptions. Attempts had been made to introduce exceptions into the draft; but the International Law Commission has opposed them. The same was happening at the Conference. The Commission had been opposed to exceptions because they would weaken the basic principle; and it had been argued

that the formulation of basic principles would not prevent co-operation between the mission and the local authorities on particular issues. Similar arguments had been advanced at the Conference, and it had also been pointed out that some of the exceptions could impair international relations.

37. Some of the amendments had already been withdrawn, but there still remained the Mexican proposal providing that the head of the mission "shall" co-operate with the local authorities in case of fire, epidemic or other extreme emergency. He was opposed to the amendment because there could be no such legal obligations, and a codification of rules of law could not be concerned with a moral duty. He would support only amendments containing clarifications or drafting changes, such as those submitted by the Federation of Malaya and the Ukrainian SSR.

38. Mr. VALLAT (United Kingdom) supported the article as it stood, subject to the drafting amendment proposed by the Federation of Malaya, which he suggested should be referred to the Drafting Committee. He was also prepared to support the amendment of the Ukrainian SSR if he could be assured that it applied to property on the mission's premises and not elsewhere. He could not support paragraph 3 (b) of the Spanish amendment because, although he was not opposed to its idea, he doubted whether it came within the scope of article 20. He hoped that the sponsors of that and other amendments would withdraw them rather than allow them to be out-voted. The second paragraph of the Mexican amendment raised a problem that seemed to him entirely beyond the scope of the Conference.

39. Mr. BOISSIER-PALUN (Senegal) considered article 20 the most important article of the convention. He had listened to the discussion on the amendments, but was convinced that every effort to achieve precision and provide against abuse of diplomatic immunity was bound to lead to complications that would ultimately make it difficult for States to ratify the convention. His government was ready to guarantee the inviolability of diplomatic premises within the widest possible limits. The draft article was entirely consonant with his government's ideas, and he would therefore vote for it without addition or change.

40. Mr. PINTO de LEMOS (Portugal) said that any modification of article 20 would tend to deprive it of its full meaning. He was convinced that the problems raised in the amendments could be settled by the governments concerned, for that was part of the work of diplomats and he had complete confidence in them. In any case, exceptional situations were rare, and it was not worth trying to provide for them if to do so meant that a universally accepted principle would suffer. He was entirely satisfied with the article as it stood.

41. The CHAIRMAN announced that the representative of China would not press his amendment (L.123) to a vote.

42. Mr. SUBARDJO (Indonesia) said that, in the light of the comments of the USSR and the Ukrainian represen-

tatives on article 20, his delegation would not support the first part of the Mexican amendment, which went counter to the principle expressed in article 20.

43. It would, however, support the second part of the Mexican amendment, which was not in any way inconsistent with the principle of the inviolability of mission premises set forth in article 20.

44. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) thanked the Spanish representative for withdrawing part of his amendment in favour of the Ukrainian amendment. With regard to the remaining Spanish amendment (L.168, paragraph 3 (b)), he shared the doubts expressed by the representatives of Yugoslavia and the United Kingdom. The point it raised seemed to be outside the scope of article 20, and he urged the Spanish representative to withdraw it, particularly as the customs treatment of the property of a diplomatic mission, and the obligations of third States, were dealt with in other articles.

45. Mr. de ERICE y O'SHEA (Spain) withdrew his delegation's remaining amendment for the sake of achieving unanimity on article 20.

46. Mr. TAKAHASHI (Japan) said that the purpose of the Japanese amendment was to establish a uniform rate concerning the service of judicial documents. He was prepared to withdraw the amendment, on the understanding that it was the unanimous interpretation of the Committee that no writ could be served, even by post, within the premises of a diplomatic mission.

47. Mr. MATINE-DAFTARY (Iran) said that draft article 20 expressed adequately the important principle of the inviolability of the mission premises, and should not be amended; any amendment might weaken the statement of the principle. In particular, such matters as co-operation with the local authorities in case of fire or epidemic could conveniently be left to the good sense of the head of mission and the local authorities. Any attempt to cover those situations by establishing exceptions to the principle of inviolability could open the door to abuse.

48. The Indian amendment related to a matter affecting the legal relationship between an ambassador as lessor and his landlord, and not to a question of public international law.

49. The question of expropriation in the public interest, which was the subject of the second part of the Mexican amendment, had been discussed at length in the International Law Commission, which had in the end decided that such matters should be settled by agreement between the two States concerned.

50. The draft articles already contained an adequate safeguard against abuse of the inviolability of the premises by the head of mission. He referred to article 40, paragraph 3; the "special agreements" mentioned in that provision would cover, *inter alia*, the question of the right of asylum, which was the subject of a convention in force between a number of Latin American States.

51. Mr. ZLITNI (Libya) supported the principle of the inviolability of the mission premises and expressed the hope that the Mexican delegation would withdraw the first part of its amendment.

52. On the other hand, the second part of the Mexican amendment did not in any way weaken the principle of the inviolability of the mission premises; it merely took into account the facts of the situation with which the receiving State might be confronted in carrying out its town-planning schemes.

53. Mr. de ROSENZWEIG DIAZ (Mexico) said that his delegation attached as much importance as any other to the principle of the inviolability of mission premises and that it had never been the intention of its amendment to establish any exceptions to that principle. Nothing in the terms of the Mexican amendment authorized entry into the mission premises or the performance of any acts therein without the full consent of the head of mission or of the sending State. All that was said in the proposed new paragraph 4 was that the head of the mission should co-operate with the local authorities in case of fire, epidemic or other extreme emergency. And the proposed new paragraph 5 expressly referred to an agreement between the receiving State and the sending State.

54. He noted that some delegations took the view that the articles should set forth only the rights of the sending State and not its duties. Apparently, they thought that the receiving State might abuse its powers but that the sending State would never do so. For his part, he assumed that both States would apply the provisions of the draft articles in good faith. Even so, he would have considered it appropriate, in order to avoid misunderstandings, that some of the duties of the mission should be set forth in article 20. There could be no doubt, for example, that if the offices of a mission were situated in an apartment building, it was the duty of the head of the mission in case of fire to co-operate with the local authorities in order to avoid loss of life and property. However, on the understanding that the duties of the head of the mission and the mission staff were not placed in doubt, he was prepared not to press for a vote on the first part of his delegation's amendment.

55. With regard to the second part of the amendment, he accepted the suggestion of the Yugoslav representative (para. 15 above) that it should form the subject of a separate article so as not to appear to qualify the principle of inviolability of the mission premises. Moreover, in deference to the wishes of the French representative (see para. 26 above) he was prepared to include in the proposed new provision a reference to the right to compensation.

56. Mr. BOLLINI SHAW (Argentina) said it was his understanding that the Committee was not taking any decision or expressing any opinion regarding the validity or otherwise of the right of asylum in mission premises, a question which would be discussed and decided at the appropriate time by the competent bodies. It was on that understanding that his delegation had refrained from any comment on the right of asylum.

57. Mr. EL-ERIAN (United Arab Republic) supported the new provision proposed by the Mexican delegation and the suggestion that it should constitute a separate article. In that way the principle of inviolability would remain intact. He drew attention in that connexion to paragraph 7 of the International Law Commission's commentary to article 20. The Commission had not considered it advisable to insert in the article itself a provision on the subject, because such a provision would convey the erroneous impression that it constituted an exception to the principle of inviolability, when there was only a "moral duty of the sending State to co-operate".

58. Mr. SUFFIAN (Federation of Malaya), introducing the Malayan amendment (L.114), said that it went beyond a mere question of drafting. Its purpose was to set forth the special duty of the receiving State and its obligation to take appropriate steps to protect the premises of the mission. The duty of the receiving State related to the results and not merely to the means. It was that State's duty to ensure that the mission was effectively protected against any intrusion or damage, and to prevent any disturbance of the peace of the mission and any impairment of its dignity.

59. Mr. USTOR (Hungary) expressed support for article 20 as it stood, with the Malayan and Ukrainian amendments.

60. Mr. KERLEY (United States of America) asked whether the intention of the Ukrainian amendment was to refer to other property within the premises of the mission.

61. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic), replying to the United Kingdom and United States representatives, said that the "other property" referred to in his delegation's amendment was property on the mission premises and not property outside those premises.

62. Mr. MECHECHA HAILE (Ethiopia) supported the text of article 20 as it stood, subject only to the Ukrainian amendment. The attempt to introduce more details into the text would, if accepted, only render it more obscure.

63. Mr. TUNKIN (Union of Soviet Socialist Republics) suggested that the Malayan amendment should be referred to the Drafting Committee to see if the wording it used could be introduced into article 20 without affecting the clarity of the article.

64. Mr. SUFFIAN (Federation of Malaya) accepted that suggestion and withdrew his amendment on the understanding that it would be considered by the Drafting Committee.

65. The CHAIRMAN said that, as the Mexican delegation had agreed that the clause it had proposed as a new paragraph 5 should become a separate article, the only outstanding amendment to article 20 was the Ukrainian amendment.

The Ukrainian amendment (L.132) was adopted by 60 votes to none, with 10 abstentions.

66. The CHAIRMAN put to the vote article 20, as so amended, on the understanding that the Drafting Committee would consider the possibility of using the wording of the Malayan amendment (L.114).

Article 20, as amended, was adopted on that understanding by 68 votes to none, with 2 abstentions.

67. Mr. MERON (Israel), speaking on a point of order, said that before a decision was taken on the new provision proposed by the Mexican delegation he wished to know whether that delegation accepted the French representative's suggestion that the necessity of agreement between the sending State and the receiving State should be specified in general terms, with regard to the whole process, not solely, as in the Mexican amendment, with regard to the question of the period of vacating the premises.

68. Mr. de ROSENZWEIG DIAZ (Mexico) said that in deference to the French representative's wish, he had already agreed to include in the provision a reference to the sending State's right to compensation. The point raised by the representative of Israel went much further, and he was not in a position to comment on it without time for reflection.¹

The meeting rose at 6.25 p.m.

¹ See statement by the Mexican delegation at the 23rd meeting, para. 2.

TWENTY-THIRD MEETING

Tuesday, 21 March 1961, at 10.40 a.m.

Chairman: Mr. LALL (India)

Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (continued)

Article 20 (Inviolability of the mission premises) (continued)

1. The CHAIRMAN said that the Mexican delegation wished to make a statement concerning the new provision which it had originally proposed as paragraph 5 of article 20 (L.129).

2. Mr. MARISCAL (Mexico), referring to the debate at the previous meeting, thanked the delegations which had expressed support for the proposed new provision. After consideration his delegation had decided to withdraw the provision. At the same time, however, he wished to state for the record that in his delegation's opinion the principle of the inviolability of mission premises could not be pleaded in cases of expropriation in the public interest by the receiving State; that rule was subject to an exception so far as the mode of execution of an expropriation order was concerned, for naturally no coercive measures could be applied. He added that

real property was governed by the legislative provisions applicable to the place where it was situated, and diplomatic missions should observe those provisions.

Article 13 (Classes of heads of mission) (resumed from the 17th meeting)

3. The CHAIRMAN, recalling that the debate on article 13 had been adjourned at the seventeenth meeting, wished the Committee to resume its debate on the article and on the amendments thereto.¹

4. Mr. WESTRUP (Sweden) suggested that a vote should be taken to establish how far the concept of two classes of heads of mission was current in modern times. The Swedish-Mexican and the Swiss amendments proposed a reduction in the number of classes, which would involve the abolition of some titles of heads of mission to which a number of States were still attached. On the other hand, the United Kingdom and France had proposed in their amendments (L.11 and L.98) the introduction of titles which, in the view of other delegations, had no place in a general convention. To avoid an express reference to titles which would be out of context in the convention, the delegation of Ghana had proposed its amendment (L.177).

5. Like the representative of Viet-Nam, he thought it would be better, without eliminating any title in current use and without introducing titles that were out of keeping with the context, to use an expression that would cover not only the representatives of class (a) but also those of class (b). The expression "titular heads of mission" suggested by the representative of Viet-Nam (17th meeting, para. 31) seemed attractive. The first question was whether the sending State could give the heads of its own missions titles differing according to the States to which they were accredited. Secondly, was it desirable that the receiving State should place all titular heads of mission in a single class irrespective of their titles?

6. His delegation was sorry that the proposed reduction in the number of classes had given rise to objections other than those concerning drafting. It would like the question of principle itself — namely, the reduction to two classes, to be voted upon without reference to any specific forms of words.

7. Mr. REGALA (Philippines) said that the Committee had been considering, in connexion with article 13, the division of heads of mission into classes as well as the rules governing the precedence of heads of mission and other members of the diplomatic staff. He drew attention to a related problem raised by the existence of international organizations, the headquarters of which were located in different countries, and by the grant of diplomatic status to the heads of those organizations.

¹ For the list of the amendments originally submitted to the article see 16th meeting, footnote to para. 24. In consequence of the withdrawal of the amendments submitted by the United Kingdom (L.11), China (L.69), Spain (L.94) and France (L.98), the following amendments remained before the Committee: Mexico and Sweden (L.57 and Add.1), Switzerland (L.108), Guatemala (L.155) and Ghana (L.177).