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would probably be decided by the Drafting Committee. In any case, his delegation would vote for the article as it stood.

67. Mr. USTOR (Hungary) said that in the case of a lease, dues and taxes were payable by the landlord, who could, however, recover them by including them in the rent. If the tenant was a State, it should be exempt also from dues and taxes charged indirectly in so far as the landlord was liable for them. That interpretation would be particularly satisfactory for a State which was unable to buy buildings and which had no choice but to rent the premises necessary for its mission. His delegation would be willing to support any amendment in that sense but did not consider the Mexican amendment suitable.

68. The CHAIRMAN put to the vote the Mexican amendment (L.130), which was co-sponsored by Austria and Spain.

The amendment was adopted by 44 votes to 2, with 27 abstentions.

69. The CHAIRMAN proposed that the Belgian amendment (L.164) should be referred to the Drafting Committee.

It was so agreed.

Article 21, as amended, was adopted by 72 votes to none, with 1 abstention.

Appointment of sub-committee to consider item 11 of the agenda (Special missions)

70. The CHAIRMAN recalled that, under item 11 of the agenda, the Conference was to study certain draft articles on special missions. He proposed that a sub-committee should be appointed for that purpose composed of the following countries: Ecuador, Iraq, Italy, Japan, Senegal, Union of Soviet Socialist Republics, United Kingdom, United States of America and Yugoslavia.

It was so agreed.

The meeting rose at 1 p.m.

TWENTY-FOURTH MEETING

Tuesday, 21 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)

Article 22 (Inviolability of the archives)

1. The CHAIRMAN invited debate on article 22 and drew attention to the amendments submitted by Bulgaria (L.126), France and Italy (L.149) and the United States of America (L.153).

2. Mr. de VAUCELLES (France), introducing the joint French-Italian amendment, said that its object was to establish clearly the absolute inviolability of the mission's archives and documents as such, and not merely as part of the furniture of the mission. As in the case of the official correspondence of the mission (article 25, paragraph 2) their inviolability should be absolute, wherever they happened to be, even outside the premises of the mission — for what were archives but old correspondence? It was therefore essential that they should be immediately identifiable: otherwise a sending State would have no justification in complaining if documents found outside the mission were read.

3. With regard to the United States amendment, he asked for an explanation of the meaning of the words "reference collections".

4. Mr. CAMERON (United States of America) said that his delegation had submitted its amendment because it did not think that article 22 could be properly applied without some definition or limitation of the meaning of "archives and documents". He would accept any drafting changes that would make the amendment more acceptable to the Committee, provided that the final wording made it clear that the government of the receiving State should be able to recognize the material whose inviolability it undertook to respect. He would oppose any definition that included documents outside the mission's premises unless they were identified as proposed by the French-Italian amendment.

5. Mr. BAIG (Pakistan) said that his government was somewhat concerned over article 22. It did not question the complete inviolability of the archives and documents of diplomatic missions when in proper custody or transit — for instance, while they were on the mission premises or in the physical possession or custody of a member of the mission, or when carried in a diplomatic bag. Cases did occur, however, and had occurred in his country, in which documents purporting to belong to a mission had been found in entirely unauthorized hands — deposited with nationals of the receiving State, for example; and such documents sometimes related to actionable matters.

6. Even though article 40, paragraph 1, contained an express exhortation, his government hoped that article 22 would be re-drafted in terms prohibiting such abuse. His delegation was not proposing a specific amendment because of the difficulty of devising language which would not impair the inherent inviolability of diplomatic archives and documents which, as all agreed, must be upheld. He considered it necessary to state, however, that if a diplomatic document was found in unauthorized hands in his country, and there was good reason to believe that it was in those hands with the positive, or even negative, connivance of the mission concerned, the Government of Pakistan would regard its inviolability as void; for the document, whether or not it still bore visible external signs of its origin, would then have ceased to retain its true diplomatic character.

7. Hence, his delegation could not support the Bulgarian amendment which sought to extend inviolability beyond

limits which his government already considered too wide. The amendment submitted by France and Italy, despite its qualifying second sentence, seemed to have a similar effect. The amendment proposed by the United States was the closest approach to what his government had in mind, and his delegation would support it.

8. Mr. GOLEMANOV (Bulgaria), introducing his delegation's amendment (L.126), said that it would not affect the principle of inviolability so clearly stated in draft article 22, but would place more emphasis on the importance of the principle and on the duty of the receiving State to ensure that it was respected. It also conformed with the opinion expressed by the International Law Commission in its commentary (A/3859), which he shared, that the documents of a mission were inviolable even when separated from the archives or carried by a member of the mission. He recognized that the joint French-Italian amendment had, in part, the same object as the Bulgarian amendment, though he regarded the words "at any time" as unnecessary and considered that the second sentence of the French-Italian amendment was concerned with detail rather than with principle.

9. Mr. BARTOŠ (Yugoslavia) said he was entirely satisfied with the article as it stood. The point raised by Bulgaria and by France and Italy had been discussed on more than one occasion in the Commission and had given rise to the question whether archives and documents outside the mission's premises should be given absolute protection or protection only by reason of the principle of the inviolability of the premises. It was difficult to lay down that a State had the duty to protect archives and documents that were not properly protected by the mission; the Yugoslav Government did not feel able to guarantee that the police and the courts would safeguard archives and documents that fell into unauthorized hands. It was no use expecting protection for material bearing visible identification marks, if the other conditions were not fulfilled. He would therefore support the United States amendment, but oppose those submitted by France and Italy and by Bulgaria.

10. Mr. YASSEEN (Iraq) said that the principle of the inviolability of archives and documents was absolute and did not derive from the inviolability of the mission's premises. The archives and documents of the mission were accordingly inviolable at all times and in all places. In his opinion, the article as it stood was perfectly adequate, since it contained no condition as to time or place. Nevertheless, it might be useful to make the text still clearer, and he would therefore support the Bulgarian amendment and the first sentence of the French-Italian amendment. The second sentence of the French-Italian amendment, however, appeared to make the identification of documents and archives outside the Commission's premises a condition of their inviolability, and if that were so he would vote against it.

11. Mr. JEZEK (Czechoslovakia) considered that the amendment proposed by Bulgaria, and similar drafting in the final part of the amendment proposed jointly by France and Italy, would make article 22 more explicit

and should therefore be adopted. It would also be useful to include the definition proposed by the United States of America.

12. Mr. DADZIE (Ghana) thought that the definition proposed by the United States would only complicate article 22; it would be preferable to include it in article 1 (Definitions). With regard to the amendment proposed by France and Italy, he considered that the second sentence was unnecessary and added nothing to the existing text. The amendment proposed by Bulgaria was an improvement. He would prefer the article to remain unchanged, but would support the Bulgarian amendment if it was put to the vote.

13. Mr. GASIOROWSKI (Poland) fully agreed with the representative of Iraq that the inviolability of archives and documents was entirely independent of the inviolability of the mission premises. That was recognized in the amendments submitted by Bulgaria and by France and Italy. The additional words "at any time" went a little too far, however, and he could not support the second sentence of the French-Italian amendment since it was really a statement of the obvious.

14. The representative of the United States of America, in introducing his amendment, had referred to limitation. He was against any limitation of diplomatic privileges and immunities and could therefore not support that amendment.

15. Mr. de VAUCELLES (France) said that he had been somewhat surprised at some of the comments on the second sentence of the French-Italian amendment. Its intention was precisely to prevent the kind of abuses referred to by the representative of Pakistan, for it was obvious that there would be no justification for a complaint alleging violation of diplomatic immunity unless proper precautions had been taken. With regard to the comments on the words "at any time", he said their object was to cover the case of the severance of diplomatic relations where there might be an interim period during which archives and documents were without proper supervision.

16. Mr. CAMERON (United States of America) said he had no intention of limiting inviolability; the only intention of his delegation's amendment was to define archives and documents so that the receiving State would be able to carry out its obligations and fully to respect their absolute inviolability. That would prevent possible difficulties between receiving and sending States over what constituted the archives and documents of the mission. In view of the comments that had been made, however, he withdrew his amendment.

17. Mr. GLASER (Romania) said he had no objection to the first sentence of the French-Italian amendment, though he agreed with the representative of Iraq that its intention was in any case implicit in the draft of article 22. He had doubts about the second sentence, however, in spite of the explanation given by its sponsor, for it would complicate rather than simplify the application of the article. The identification mark was not an integral part of the archives or documents; hence it

had nothing to do with the principle of their inviolability and should not be mentioned in the convention. The fact that violation might occur through failure to recognize a diplomat, his car or his documents was irrelevant to the principle. He hoped that the representatives of France and Italy would reconsider the second sentence of their amendment.

18. Mr. SUCHARITAKUL (Thailand) strongly supported the principle that the archives and documents of a mission, being confidential, should be protected from violation. He would therefore vote for article 22 as drafted, but would oppose the amendment by France and Italy because it sought to extend the limits of inviolability and might be interpreted to give protection to prohibited documents in unauthorized hands.

19. Mr. SOLHEIM (Norway) expressed support for the Bulgarian amendment. He also supported the first sentence of the French-Italian amendment, but opposed the second sentence.

20. At the request of Mr. YASSEEN (Iraq), the CHAIRMAN put to the vote separately the second sentence of the amendment submitted by France and Italy (L.149).

The second sentence of the amendment was rejected by 26 votes to 15, with 27 abstentions.

21. At the request of Mr. TUNKIN (Union of Soviet Socialist Republics) the CHAIRMAN put to the vote separately the words "at any time" in the first sentence of the amendment submitted by France and Italy (L.149).

The words "at any time" were adopted by 24 votes to 19, with 26 abstentions.

22. The CHAIRMAN put to the vote the first sentence of the amendment by France and Italy (L.149).

The first sentence of the amendment was adopted by 45 votes to 5, with 18 abstentions.

23. The CHAIRMAN said that, as the Bulgarian amendment (L.126) was covered by the amendment just adopted, it was unnecessary to put it to the vote. The amendment adopted replaced the text of article 22, so that the article as a whole had been adopted.

Article 23 (Facilities)

24. The CHAIRMAN said that no amendments had been submitted to article 23.

Article 23 was adopted without comment.

Proposed additional article (Concerning deeds executed on mission premises)

25. Mr. de ERICE y O'SHEA (Spain) said that his delegation's proposal (L.192) was intended to ensure that documents officially issued or executed in a diplomatic mission obtained in the receiving State the same measure of recognition which that State gave to documents issued or executed in the sending State itself. The Spanish proposal merely stated the existing practice in the matter and was, in a sense, consequential on the Committee's acceptance of the principle that diplomatic

missions could perform consular functions (9th meeting, para. 16).

26. Mr. BARTOŠ (Yugoslavia), speaking on a point of order, asked the Chairman to rule on whether the Spanish proposal was within the Conference's terms of reference. In his opinion it was not. He had full powers from his government to deal with the question of diplomatic intercourse and immunities, but not with the intricate question of the territorial effects of legal instruments.

27. The CHAIRMAN said that the Spanish proposal related to the acceptability of a document under the laws of the receiving State and did not seem to raise any question of diplomatic intercourse or immunities. He appreciated the spirit in which the amendment had been proposed but, since its subject was outside the scope of the Conference, he must, with regret, rule it out of order. If there was no objection, he would take it that the Committee accepted his ruling.

It was so agreed.

Article 24 (Free movement)

28. The CHAIRMAN invited debate on article 24, to which amendments had been submitted by the Philippines (L.141), Venezuela (L.144) and Italy (L.150/Rev.1).

29. Mr. REGALA (Philippines), introducing his delegation's amendment (L.141), said that its purpose was to spell out in the body of article 24 the important principle recognized in the International Law Commission's commentary on the article: "The establishment of prohibited zones must not, on the other hand, be so extensive as to render freedom of movement and travel illusory."

30. If the restrictions imposed by the receiving State on grounds of national security on the free movement of diplomats were so extensive as to render freedom of movement illusory or nugatory, diplomatic agents would be unable to perform the function of "ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the government of the sending State", which the Committee had approved in article 3 (d).

31. It might be objected that the amendment was, in a sense, an interpretation of article 24; but he would point out that at its previous meeting the Committee had adopted a Mexican amendment to article 21 (L.130) which was likewise in the nature of interpretation.

32. There was a marked tendency on the part of many States to restrict the movement of diplomats — a tendency which his delegation viewed with concern. He had read with great interest the records of the discussions in the International Law Commission on the subject at its ninth session, in 1957, and, in particular, the remark of Sir Gerald Fitzmaurice, then a member of the Commission and since elected a judge of the International Court of Justice, that a provision on freedom of movement would not have been necessary thirty years previously; it would then have been considered axio-

matic that a diplomat had full freedom of movement in the receiving State, subject only to minor exceptions relating to fortified zones (ILC, 400th meeting, para. 35). What had once been the exception, however, was in danger of becoming the rule; the restrictions that were being increasingly imposed were nullifying freedom of movement, in disregard of the duty of the receiving State to accord full facilities for the performance of the mission's functions, as laid down in article 23, which the Committee had adopted without opposition.

33. Mr. KAHAMBA (Congo: Léopoldville) said that his delegation supported article 24 as drafted by the International Law Commission. It interpreted the article as applying to the use of such common means of transport as motor-cars. So far as movement by aircraft was concerned, which constituted the only practical form of travel between the various parts of the Congo, he said the whole territory might be regarded as a prohibited zone. His government reserved the right to control and limit the movement of aircraft, including those belonging to foreign diplomatic missions. In particular, it reserved the right to fix air routes, to regulate the use of airports and to charge dues for their use. It was not opposed to the use of aircraft by diplomatic missions, but reserved its right to regulate that use.

34. Mr. TUNKIN (Union of Soviet Socialist Republics) said that article 24 was the outcome of thorough and difficult discussions in the Commission. The question with which it was concerned affected the security of many States and consequently it had not been easy to find a satisfactory compromise acceptable to all members of the Commission. A compromise had been reached, however, and it was reflected in the text. His delegation therefore supported the article as it stood and considered that the amendments submitted were unnecessary or even harmful.

35. The Philippine amendment (L.141), which gave a reasonable interpretation of article 24, had no place in the article itself. It belonged in the commentary and was, indeed, based on the Commission's commentary. The statement contained in it was unobjectionable, but it would not be wise to include it in the article, because it did not lay down a rule of conduct under international law.

36. The Venezuelan amendment (L.144) introduced new elements into the article which would complicate its interpretation.

37. Lastly, the Italian amendment (L.150/Rev.1) introduced a reference to article 44, on non-discrimination. Article 44, however, related to all the articles and if a reference to it was introduced in article 24 and not elsewhere, the whole structure of the draft would be affected. He urged the Italian representative not to press for a vote on his amendment.

38. Mr. MONACO (Italy) withdrew his delegation's amendment on the understanding that a reference to article 44 was unnecessary because, in view of its generality, that article should in any event be construed as applying to article 24.

39. Mr. NGUYEN-QUOC DINH (Viet-Nam) expressed concern at the terms in which article 24 was drafted. It stated the principle of freedom of movement, which his delegation supported wholeheartedly, but unfortunately it also stated the contrary principle that the receiving State could, for reasons of national security — of which it was the sole judge — restrict that freedom.

40. In view of the unsatisfactory nature of the draft, his delegation had at first considered proposing the deletion of the initial proviso relating to prohibited zones; but it had refrained from submitting such an amendment because it was unlikely to receive the support of the majority.

41. As he understood it, one of the basic principles accepted by the International Law Commission was that international law prevailed over municipal law but did not override the recognized competence and powers of the receiving State. In the matter of freedom of movement and travel, it was advisable to draw a distinction between the normal exercise of the powers of the receiving State and an abnormal exercise of those powers. His delegation would therefore support the Philippine amendment (L.141) although its terms were not perhaps sufficiently explicit. For, although the amendment provided that restrictions must not be so extensive as to render the freedom of movement illusory or nugatory, nothing was said about the consequences of violation of that rule.

42. In that connexion the withdrawn Italian amendment would have been useful, since an explicit reference to the terms of article 44, paragraph 2 (a) might perhaps have deterred a receiving State which intended to introduce unwarranted restrictions.

43. Mr. VALLAT (United Kingdom) said that article 24 had a long history. It had been considered with great care by the Commission and represented a delicate compromise. Even in a technical conference it was not possible to ignore altogether the political factors involved in certain questions, and for that reason, it would be very unwise to reopen the discussion on article 24.

44. The interpretation in the Philippine amendment would be accepted by most of those present; indeed, it was precisely the interpretation which the Commission itself, in its commentary, had placed on article 24. Reading the article in its context, he saw nothing in its terms which allowed the receiving State to deny freedom of movement. The condition expressed in the initial proviso was carefully circumscribed within specified limits. Moreover, the provisions of article 24 should be read in conjunction with article 23. The freedom of movement provided for in article 24 was one of the facilities which, under article 23, the receiving State was under a duty to accord for the performance of the mission's functions. If, therefore, the right granted in the proviso relating to prohibited zones were to be exercised in such a manner as to render freedom of movement and travel illusory or nugatory, the receiving State would be violating not only article 24 but also article 23.

45. He therefore urged the sponsors of amendments not to press for a vote on them and to believe that the

terms of article 24 adequately safeguarded the principle of freedom of movement.

46. Mr. DEJANY (Saudi Arabia) said that his delegation agreed with the principle stated in article 24 and would support the article as it stood. In view of the existence from time immemorial of historical restrictions on two zones in his country, however, he felt it necessary to explain his government's position in regard to the application of article 24. The cities of Mecca and Medina, the birthplaces of Islam, were holy cities, and for over 1300 years they and their environs had been the centre of certain practices and traditions which had not changed with the passage of time. One of those traditions was that the environs of the two cities were accessible only to members of the Moslem faith. That restriction had not been imposed by the Government of Saudi Arabia, but had been strictly enforced for over 1,300 years by all the governments, without exception, which had administered that part of the Arabian peninsula. It was thus an historical fact, a living tradition, much older than the subject which the Conference had been convened to discuss.

47. When that historical restriction was considered in connexion with the spirit of article 24 — that the diplomatic mission should be free to perform its functions — it was evident that its effect was unimportant, since the two areas were not sealed against any one mission and were ordinarily accessible at least to some members of the staff of a mission. Furthermore, there was nothing in the two zones, apart from the shrines, which might not be found in any other city in the country, and hence no diplomatic report of any mission could be considered incomplete for lack of information obtained from them.

48. The restriction should also be considered in the light of article 40, paragraph 1, and in that connexion the members of all diplomatic missions had shown understanding and respect and no objection had ever been raised. Since the restriction on the two zones was an historical fact well known both to governments and to individuals, his delegation would interpret its acceptance by all governments which exchanged diplomatic missions with the Government of Saudi Arabia as indicating their tacit consent and as meaning that they did not regard the restriction as a hindrance to the freedom of movement and travel of members of their missions within the meaning of article 24. His delegation accordingly considered that the restriction in question was not one of the degree or nature referred to in article 24, but one that came within the meaning of article 40, paragraph 1.

49. Mr. REGALA (Philippines) said he had noted the comments made by various representatives, including those of the Soviet Union, Viet-Nam and the United Kingdom, to the effect that the intention of article 24 was to establish freedom of movement as a general rule and that restrictions imposed on the free movement of members of the mission under that article should not be so extensive as to render the freedom of movement illusory or nugatory. If that interpretation was expressly

noted by the Committee, his delegation would not press its amendment (L.141).

50. Mr. GIMENEZ (Venezuela) said that in a spirit of co-operation his delegation would withdraw its amendment (L.144).

51. The CHAIRMAN said that in consequence of withdrawals, there remained no amendments to article 24.

Article 24 was adopted unanimously without change.

Article 25 (Freedom of communication)

52. The CHAIRMAN invited debate on article 25 and the amendments thereto.¹ The large number of amendments originally submitted had been reduced by the withdrawal of those of Argentina, the United Arab Republic (L.140 only), Indonesia and India; instead, the delegations in question sponsored a joint amendment (L.264).

53. Mr. OJEDA (Mexico) withdrew the first part of his delegation's amendment (L.131) and said that, after consultation with the sponsors of the joint amendment, his delegation had agreed to become a co-sponsor of that amendment. He wished, however, to propose a sub-amendment replacing the words "making proper arrangements" by the words "obtaining authorization".

54. Mr. MITRA (India), Mr. NAFEH ZADE (United Arab Republic), Mr. BOLLINI SHAW (Argentina) and Miss SASTRODIREDO (Indonesia) accepted the sub-amendment proposed by Mexico.

55. Mr. de VAUCELLES (France) proposed that in view of the complexity of the amendments to article 25 and the need for some delegations to await further instructions, the discussion of the article should be deferred until the next meeting.

It was so agreed.

Article 26

56. The CHAIRMAN said that no amendments had been submitted to article 26.

Article 26 was adopted unanimously, without change.

The meeting rose at 5.35 p.m.

¹ The following amendments had been submitted: China, A/CONF.20/C.1/L.124; France, A/CONF.20/C.1/L.125; Mexico, A/CONF.20/C.1/L.131; Chile, A/CONF.20/C.1/L.133; Liberia, A/CONF.20/C.1/L.135; Argentina, A/CONF.20/C.1/L.138; United Arab Republic, A/CONF.20/C.1/L.140 and L.151; Switzerland, A/CONF.20/C.1/L.158 — Add.1; Venezuela, A/CONF.20/C.1/L.145; Indonesia, A/CONF.20/C.1/L.147; Federation of Malaya, A/CONF.20/C.1/L.152; United States of America, A/CONF.20/C.1/L.154; Czechoslovakia, A/CONF.20/C.1/L.162; India, A/CONF.20/C.1/L.165; Spain, A/CONF.20/C.1/L.167; Argentina and India, Indonesia, United Arab Republic, A/CONF.20/C.1/L.264 (see Chairman's remark above).