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TWENTY-FIFTH MEETING

Wednesday, 22 March 1961, at 3 p.m.

Chairman: Mr. LALL

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 31 (Exemption from social security legislation)

1. The CHAIRMAN invited Mr. Jenks, Assistant Director-General of the International Labour Office, to address the Committee on article 31, which dealt with the exemption of diplomatic missions from social security legislation.
2. Mr. JENKS, Assistant Director-General of the International Labour Office, thanked the Chairman for the opportunity given to him to express the views of the International Labour Organisation as the specialized agency with primary responsibility within the United Nations family for matters relating to social security.
3. Article 31 embodied two principles which qualified each other but which were essentially complementary. First, that members of diplomatic missions and members of their families who formed part of their households, if they were not nationals of the receiving State, were exempt from the social security legislation in force in that State. Secondly, that the exemption was not applicable to servants and employees who were themselves subject to the social security legislation of the receiving State. He hoped that, subject to any questions of drafting which might require consideration, the Committee would approve those two principles, which appeared consistent both with the principles of international law relating to diplomatic immunities and with the general tendencies influencing its contemporary development.
4. Both principles were implicit in the general concept of social security which the 97 States members of the ILO — including 72 of the 77 States represented at the Conference — had accepted a solemn obligation to promote. While the second principle had as yet been less widely accepted than the first, both had been recognized in certain international agreements and were increasingly supported by a significant body of national law and practice.
5. The purpose of social security legislation was to provide for the individual a measure of protection in certain contingencies, such as accident, sickness, invalidity, death and retirement. In all those cases, continuity of protection was the primary condition of the effectiveness of social security. The importance of that continuity had been so widely recognized that a network of international agreements relating to the position of migrants under social security schemes had been concluded: regional arrangements on the subject had been adopted in Europe, the American Regional Conference of the ILO would be considering a proposed inter-American agreement on the matter at Buenos Aires in April 1961, and the whole question was to be further considered by the International Labour Conference in June 1961, with a view to the adoption of a new and comprehensive international labour convention on the subject.
6. For members of diplomatic missions and their families continuity of protection could only be secured by the sending State; in general, it was secured by applying to them the social security arrangements applicable to the public service of the sending State. The servants and employees of diplomatic missions, on the other hand, generally spent their whole working lives in one country, but not necessarily in the service of a particular diplomatic mission. Unless, therefore, they were covered by the social security system of the receiving State, they were liable to be without adequate social security protection in the event of invalidity, bereavement or old age.
7. A survey of the contemporary development of social security legislation, based on reports from the governments of 89 States and 87 non-metropolitan territories, by the ILO Committee of Experts on the Application of Conventions and Recommendations, showed that one of the most marked trends in the contemporary development of social security was towards comprehensiveness in the persons covered. It was therefore inconceivable that governments which were committed to the general concept of comprehensiveness of coverage by the principles underlying their own social security systems would hesitate to provide adequate protection for the local staff of their own diplomatic missions in the only manner in which that protection could be satisfactorily provided, namely, by co-operating in the arrangements necessary to secure continued participation by such staff in the social security scheme of the country where they were employed. Any such hesitation would involve a departure from the principle enunciated in the Universal Declaration of Human Rights that "everyone, as a member of society, has the right to social security".
8. The concluding sentence of article 31 specified that immunity did not exclude voluntary participation in the social security scheme of the receiving State; and it would be equally appropriate to permit exemption from the social security legislation of the receiving State for servants or employees who were nationals of the sending State and continued to be covered by its legislation.
9. There remained the question how the practical details of participation in the local scheme could most conveniently be arranged in respect of those subject to it and he hoped, in view of the practical importance of that question, that the Conference would give consideration to it. There were two possible methods of dealing with the matter: One was to treat the staff of diplomatic missions as self-employed persons and make them personally responsible for payment of the equivalent of the employer's contribution. That system, apart from being administratively cumbersome, involved a danger of default in the payment of contributions which could impair the contributions record of the insured person and defeat the whole purpose of social security arrangements. The other method was for the diplomatic

mission to accept responsibility for the payment of social security contributions on the basis of agreed arrangements which reconciled the immunity of the mission from legal process and fiscal charges with its acceptance of the social responsibilities which all good employers were expected to assume in the modern State. He mentioned, as an illustration, the practice of international organizations in Switzerland and elsewhere in regard to local staff not adequately protected by the special arrangements of those organizations: such staff was subject to the national scheme and the contributions were paid by virtue of agreed arrangements.

10. The desired result could probably be achieved by simply adding to the proposed article 31 a provision to the effect that social security contributions due in respect of employees or servants of a diplomatic mission who were subject to the social security legislation of the receiving State would be paid by the mission in accordance with arrangements to be agreed between it and the receiving State. The necessary arrangements could consist of provision for periodical payments in an agreed manner with no procedural incidents inconsistent with diplomatic status. Such arrangements would not involve regulation of the relationship between employer and employee in a manner inconsistent with the diplomatic status of the employer; their essential purpose would be to ensure that the diplomatic status of the employer did not deprive the employee and his family, after he left diplomatic employment, of the protection enjoyed by the other members of the community.

11. The CHAIRMAN thanked Mr. Jenks for his valuable statement.

Article 25 (Freedom of communication) (resumed from the 24th meeting)

12. The CHAIRMAN invited the Committee to resume its debate on article 25 and the amendments thereto.¹ In addition to the amendments the withdrawal of which had been announced at the previous meeting, the Liberian amendment (L.135) had been withdrawn; Liberia had become a co-sponsor of the Chilean amendment (L.133).

13. Mr. de VAUCELLES (France), introducing his delegation's amendment (L.125), pointed out that the third sentence of its first paragraph granted the right to open the diplomatic bag in the presence of a representative of the mission. It was specified, however, that that right could only be exercised with the authorization of the Ministry for Foreign Affairs of the receiving State. Opening the diplomatic bag was a most serious and exceptional measure and he considered that the right to do so should not be exercised otherwise than with the authorization of that Ministry. Hence he could not support the amendment by the United Arab Republic (L.151) which did not prescribe such authorization. In any event, his delegation withdraw the sentence in question.

14. In the first sentence of his delegation's amendment

¹ For the list of the amendments, see 24th meeting, footnote to para. 52.

the reference to "articles intended for official use" was replaced by a reference to "official articles", the object being to cover such items as medals and decorations which were usually sent by the diplomatic bag; those items were of an official nature, but were not intended for official use by the mission receiving them.

15. The proposed new single paragraph 3, to replace the existing paragraphs 3 and 4, had the advantage that it gave the definition of the diplomatic bag before stipulating that the bag must not be opened or detained. That method had been adopted by the International Law Commission for the draft as a whole: article 1 defined the terms used in the subsequent articles.

16. With regard to the second French amendment, concerning the diplomatic courier, he said it was, of course, essential that the courier should be able to prove his status. Normally, as was noted by the International Law Commission in paragraph 6 of its commentary on article 25 (A/3859), he was furnished with a courier's passport; in addition, he should be furnished with an official document specifying the number of packages which constituted the diplomatic bag, in order to avoid disputes and possible abuses. In that respect the French amendment reflected the existing practice of a large number of countries.

17. Commenting on the United States amendment (L.154), he said he could accept paragraph 3 if the first two lines were replaced by the two sentences proposed in the corresponding French amendment. He had no objection to paragraphs 2 and 5 of the United States amendment.

18. With regard to the proposals on the subject of radio transmitters (L.264 and L.145), he agreed that in principle the consent of the receiving State was needed for a mission to install and use such a transmitter. However, he thought that the introduction of a reference to that principle would only complicate matters and impair the harmony of international relations. In practice, the receiving State could only present the installation of such a transmitter by opening the diplomatic bag in which it was introduced into the country, and it could only find out whether the transmitter was being used in contravention of local regulations and the provisions of international conventions, by inspecting the mission premises—an inspection which would infringe the inviolability of the mission premises.

19. Abuses could, of course, occur, but the only remedy was for the receiving State to make representations to the head of the mission concerned under article 40, which regulated the conduct of the mission and of its members towards the receiving State. If the head of mission should continue to make use of a radio transmitter in a manner considered harmful by the receiving State, that State could declare him *persona non grata* under article 8.

20. The French practice in the matter of radio transmitters belonging to foreign missions was extremely liberal. Such transmitters were tolerated in France subject only to reciprocity.

21. Mr. CAMERON (United States of America) introduced the United States amendments to article 25 (L.154). He amended orally paragraph 1 (a) to read: "subject, however, to the provisions of applicable International Postal and Telecommunication Conventions."

22. That amendment was not intended to impose any restrictions on the use of radio transmitters by diplomatic missions. There was nothing in the applicable International Postal and Telecommunication Conventions which affected freedom of communication. Those conventions, however, contained provisions on radio transmitters, and it was essential to specify that freedom of communication by means of transmitters was subject to the provisions of those conventions.

23. Paragraph 1 (b) of his delegation's amendment was intended to broaden the scope of the second sentence of article 25, paragraph 1, so as to cover communications with officials of the sending State in the receiving State and in third States. All governments had officials abroad with whom their diplomatic missions needed to communicate directly. Such direct communication made for economy and should therefore be facilitated. In that connexion, he opposed the Swiss proposal (L.158, para. 1) for the deletion of the words "and consulates". It would be inconsistent with freedom of communication to restrict in any way the freedom of the diplomatic mission to communicate with the consulates of the sending State.

24. The object of paragraph 1 (c) of his delegation's amendment was to cover the application of national regulations enacted in pursuance of International Postal and Telecommunication Conventions, and such reasonable restrictions as the requirement that the border should be crossed at a particular place where facilities existed for the adequate treatment of diplomatic couriers and diplomatic bags. On the other hand, it would not be reasonable to impose limitations on the size of the diplomatic bag or on the number of couriers.

25. He withdrew paragraph 2 of his delegation's amendment in favour of paragraph 3 of the Swiss amendment (L.158) which expressed the same idea that the diplomatic bag should contain only articles essential to the performance of the functions of the mission.

26. With reference to paragraph 3 of his delegation's amendment he agreed that the first two lines should be replaced by the two sentences proposed by the French representative. The remainder of the United States text was intended to give the receiving State some latitude to open the diplomatic bag with the consent of the mission concerned, or have the bag rejected if such consent were not given. Such a provision would safeguard the inviolability of the diplomatic bag and at the same time enable the receiving State to prevent unauthorized material from being included in the bag.

27. Paragraph 4 of his delegation's amendment deleted words which would become unnecessary if they were included in the immediately preceding clause; probably only a drafting amendment was involved.

28. He would be prepared to withdraw paragraph 5 of his delegation's amendment, concerning the rejection of a diplomatic bag containing radioactive materials, if the Swiss amendment to article 25, paragraph 4 (L.158, paragraph 3), was adopted. He believed that such materials would be excluded by the Swiss formula, which restricted the use of the diplomatic bag to articles essential to the performance of the mission's functions.

29. Lastly, paragraph 6 of his delegation's amendment was intended to make it clear that a diplomatic courier enjoyed the same measure of inviolability as a member of the administrative and technical staff of the diplomatic mission. A provision of that kind was necessary to define the status of diplomatic couriers.

30. Mr. de VAUELLES (France) thanked the United States representative for accepting his suggestion (para. 17 above) and said that the withdrawal of the third sentence in the first French amendment (L.125) was conditional on the adoption of the United States amendment to paragraph 3 (L.154, paragraph 3). If the latter amendment were not adopted, he reserved the right to reintroduce the French amendment.

31. Mr. KRISHNA RAO (India) introduced the amendment proposed jointly by Argentina, India, Indonesia, Mexico and the United Arab Republic (L.264). It had been argued that freedom of communication under article 25 included the right of a mission to install within its premises a wireless transmitter for exchanging messages between the mission itself and other posts of the sending State. It was therefore necessary to make it clear that such was not the case. The joint amendment was based on a number of well-recognized principles of international law and was completely justified by the principle on which the convention was based. It was also necessitated by the inherent conditions and hazards involved in the use of a wireless transmitter.

32. No one would dispute that the International Law Commission had based its text on the "functional necessity" theory, which justified privileges and immunities as being necessary to enable the mission to perform its functions. The theory of extritoriality had been completely discarded; if the draft were based on that theory, it might perhaps have been contended that a mission could set up a wireless transmitter irrespective of international or internal regulations. But article 40 expressly stipulated that, without prejudice to their diplomatic privileges and immunities, it was the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. In the event of abuse, the receiving State was entitled to notify the sending State that the person concerned was *persona non grata* or not acceptable. It was further provided that the premises of a diplomatic mission should not be used in any manner incompatible with its functions. The purpose of the joint amendment was to provide that the mission should respect not only the internal laws of the receiving State but also international regulations, such as the International Telecommunication Conventions. In that sense, the amendment was fully in conformity with the theory of functional necessity and with the provisions of article 40.

33. There were, he noted in passing, no restrictions whatsoever on communication by any other means — post, telegraph, telephone, diplomatic bag or diplomatic courier. It could not be argued, therefore, that a provision making the installation of a wireless transmitter subject to the consent of the receiving State in any way interfered with the mission's freedom of communication. The sending State could use freely the customary public facilities. The sponsors of the amendment were not saying that missions could not use wireless transmitters, but only that the consent of the receiving State should be obtained and that international rules and regulations should be observed.

34. Most States were parties to the International Telecommunication Convention. Under article 33 of the 1947 Convention,¹ the Contracting Parties were obliged to take the necessary steps to ensure the establishment of the channels and installations necessary to carry on the rapid and uninterrupted exchange of international telecommunications. They were obliged to safeguard the channels and installations within their jurisdiction, and to ensure the maintenance of the sections of international communications circuits within their control. Under article 42 of the same Convention, the Contracting Parties recognized the desirability of limiting the number of frequencies and the spectrum space used to the minimum essential to provide in a satisfactory manner the necessary services; and under article 44 they undertook to require the private operating agencies which they recognized, and the other operating agencies duly authorized for that purpose, to observe the rule that there should be no harmful interference with the radio services of others. International law therefore made it necessary for each State to frame regulations under its own laws to control the installation of wireless transmitters. The responsibilities undertaken under an international convention could not be thrown away in order to provide for an unlimited right which was not absolutely essential.

35. The international telecommunications regulations allotted frequencies to countries. A transmitter had to work on the frequency allotted to the country in which it was installed, irrespective of its ownership. It was possible that in certain cases, particularly in capitals, there would be an overcrowding of the frequencies for transmission. The Governments of Belgium and Japan had pointed out in their comments (A/3859, annex) that in view of the situation of the frequency assignment and the saturation of the wavelengths suitable for medium and long-distance communication, some of the receiving States, from a purely technical point of view, would be unable to grant an operating licence to every case. The system of radio communication could not possibly function if some forty or fifty embassies in the same capital broadcast over any channels they wished. If the regular licensing laws of the receiving State were not observed there might be interference, and even dangerous interference, with normal radio, television and radio-telephone services.

36. It should also be borne in mind that certain explosive

charges could be detonated by the accidental use of high-power transmitters in the vicinity.

37. In practice, all countries save one required the consent of the authorities for the installation of a wireless transmitter in diplomatic missions. Moreover, permission was granted only on the basis of reciprocity. Public opinion was suspicious of private wireless stations operated by diplomatic missions and would not agree to such missions being given entire freedom to install and use them as they pleased.

38. It could not therefore be said that the right to install a transmitter without permission was recognized. The joint amendment was consequently based on existing practice, and its sponsors hoped that those delegations which did not fully support it would at least not vote against the amendment.

39. Mr. JEZEK (Czechoslovakia), introducing his delegation's amendment (L.162), said that diplomatic couriers performed an essential function in the exercise of the freedom of communication of diplomatic missions. The diplomatic bag contained the major part of the correspondence of those missions and it was through that bag that the mission received instructions from the sending State. It was therefore of paramount importance to ensure the normal and prompt delivery of the diplomatic bag carried by the diplomatic courier.

40. As it stood, article 25, paragraph 5, merely stated that the diplomatic courier was not liable to arrest or detention. Paragraph 3 specified that the diplomatic bag should not be opened or detained. Those provisions imposed negative obligations on the receiving State; but surely it was necessary in addition to stipulate that both the diplomatic bag and the diplomatic courier should be protected from interference by persons other than the authorities of the receiving State. The Czechoslovak amendment would impose on the receiving State a positive duty to co-operate with the diplomatic courier and hence to protect him from interference by third parties.

41. Mr. CARMONA (Venezuela) said his delegation withdrew his amendment (L.145) and would become a co-sponsor of the joint amendment (L.264).

42. He was not convinced by the argument that the only way in which the receiving State could prevent a diplomatic mission from installing or using a radio transmitter was by violating the diplomatic bag or inspecting the mission's premises. The articles should lay down the principle applicable in the matter, in order to give the receiving State the right to protest against any abuse and to take the necessary steps to avoid the continuance of such abuse.

43. The law of many countries, including that of Venezuela, did not permit the unrestricted use of a radio transmitter, because, among other things, those transmitters could interfere with radio, telegraph and telephone communications.

44. It was for those reasons that the joint amendment (L.264) subordinated the installation and use of a radio transmitter by a mission to the consent of the receiving State, as was the current practice.

¹ United Nations *Treaty Series*, vol. 193, p. 188.

45. Mr. MELO LECAROS (Chile) introducing his delegation's amendment (L.133), of which Liberia had become a co-sponsor, said that the proposed additional provision reflected a practice which was well-established in his country and which had caused no difficulty. It was particularly useful in cases of emergency. It might happen, for example, that as a consequence of unrest in a certain capital a mission might be completely cut off from its Ministry of Foreign Affairs. It could then entrust the diplomatic bag to a person who enjoyed its confidence. The proposed provision was, however, a restriction rather than an extension of the right to appoint diplomatic couriers. In stating that *ad hoc* diplomatic couriers should enjoy inviolability only until they had delivered the diplomatic bag or correspondence, it would limit the possibility at the moment available to any State of appointing anyone it pleased. His delegation could not accept the Swiss amendment (L.158/Add.1) since it could not be applied in emergency situations.

46. Mr. BINDSCHEDLER (Switzerland) explained that the object of the first of his delegation's amendments (L.158) was to render the second sentence of article 25, paragraph 1, applicable only to diplomatic couriers. There should be no need for a diplomatic mission to use diplomatic couriers for the purpose of communicating with consulates, a practice which was not allowed by international law. An extension of the existing practice, as would be permissible under article 25 as it stood, might lead to intolerable abuses. In that connexion he said his delegation could not support paragraph 1 (b) of the United States amendment extending the provisions of article 25 to "officials of the sending State in the receiving State, and in third States". The number of such officials and experts was so great that their inclusion in the network of diplomatic communications would involve an excessive extension.

47. With reference to the second Swiss amendment, he said his delegation recognized that a mission had a right to use its own radio transmitting station, but thought that some administrative procedure should be prescribed which avoided the technical difficulties that might arise in the allocation of frequencies and the resulting possibility of interference. The additional paragraph proposed by his delegation was based on paragraph 2 of the commentary of the International Law Commission on article 25 and represented a compromise between two extremes, viz., that no permission should be required from the receiving State, and that it was essential to have the prior authorization of the receiving State, which would be free to grant or withhold permission.

48. His delegation's third amendment would define more strictly the articles which could be conveyed by the diplomatic bag. Publicity material, travel brochures and films, for example, should be imported in accordance with the normal regulations of the receiving State, for a diplomatic mission was not a publicity, film or travel agency.

49. The next Swiss amendment had a similar purpose. It tightened up the provisions of paragraph 5 in stipulating that the diplomatic courier should be protected by

the receiving State only "in the performance of his functions".

50. Lastly, he drew attention to the additional paragraph proposed by his delegation (L.158/Add.1) concerning the carriage of the diplomatic bag by the captain of a commercial aircraft.

51. Mr. KAHAMBA (Congo: Léopoldville) said that article 25 was acceptable as it stood, but should be supplemented by a provision concerning the use of wireless transmitters by missions. The express consent of the authorities of the receiving State should be required for the mission's installation and use of wireless transmitters; his delegation would therefore vote for the joint amendment (L.264) and would oppose any amendment which did not require that consent. It would also oppose the United States amendment to the second sentence of paragraph 1.

52. Mr. VALLAT (United Kingdom) said that his government attached great importance to the maintenance of the principle that a diplomatic mission had the right to use a wireless transmitter in exactly the same way as the other means of communication mentioned in paragraph 1. The convention was intended not to hamper or impede but to facilitate the performance of a mission's diplomatic functions. Article 23, which had been approved by the Committee, provided that the receiving State should accord full facilities for the performance of the mission's function. It was quite inconsistent with that principle that a sending State should be required to ask the consent of the receiving State before its mission could use its own wireless transmitter. It was not a matter of communication in general or of broadcasting, but of telecommunication by direct wireless link between a mission and its government and other missions and consulates. Paragraph 1 provided that "all appropriate means" might be employed. Surely wireless telegraphy was one of the most appropriate means available. As the International Law Commission said in paragraph 2 of its commentary on article 25, freedom of communication was generally recognized and was essential to the performance of the mission's functions. That freedom must include communication by wireless, both for sending and receiving. It was a most efficient, and for many States a normal, means of communication. It should not be the object of discrimination simply because it was a modern method of communication. No one would think, for example, of stipulating that a diplomatic courier might not travel by air and had to continue to travel by an outmoded means of transport. The United Kingdom Government did not require a diplomatic mission to seek authorization before operating a wireless transmitter, nor did it insist on licences. In its experience, the diplomatic missions in London recognized their moral obligation to co-operate with the authorities in order to avoid any possibility of harmful interference, just as United Kingdom missions abroad co-operated with the authorities of the receiving States. In neither case had there been any difficulty. If the freedom to use wireless transmitters were abused, the matter should be dealt with as provided by the Convention, for example, by declaring the head of mission *persona non grata* or

by breaking off diplomatic relations if the abuse were sufficiently serious. It was not a normal method of preventing abuse, however, to provide that the authorization of the receiving State should be required.

53. The representative of India had suggested that the consent of the receiving State was required under the regulations of the International Telecommunication Convention. But the relevant regulation patently applied only to private persons or to undertakings, and it would be difficult to argue that governments came under that heading. If the matter fell within the scope of the International Telecommunication Convention, it should be dealt with by the parties to that convention in accordance with the provisions it contained for dealing with difficulties of interpretation, and not by the convention on diplomatic intercourse and immunities. The United Kingdom delegation would support article 25, paragraph 1, as it stood. If there was to be any amendment, it should be progressive and not retrograde, and should confirm the right to use wireless telegraphy. His delegation therefore suggested that the words "wireless telegraphy" might be inserted after "diplomatic couriers" in paragraph 1.

54. Mr. de SOUZA LEO (Brazil) considered that the use of wireless transmitters by a diplomatic mission should be subject to the prior authorization of the receiving State. His delegation would therefore support the joint amendment (L.264) which was in general very satisfactory and, with some drafting changes, might command the support of the Committee. The final text of article 25 should, however, make it clear that the use of wireless transmitters by a diplomatic mission was an exception and not the general rule, and that in consequence the receiving State must ensure that such transmitters were operated in accordance with the international conventions and regulations.

55. Mr. LINTON (Israel) said that the International Law Commission had rightly stressed in paragraph 2 of its commentary on article 25 that the article dealt with a generally recognized freedom which was essential to the performance of the mission's functions. The article itself provided that the mission might employ "all appropriate means", an expression which his delegation interpreted as including the mission's right to use a wireless transmitter. It was difficult to see why more restriction should be placed on the use of wireless transmitters than, for example, on that of diplomatic couriers. Wireless had become an almost universal and essential means of communication, the need for which would continue to increase as diplomatic representation become more and more widespread. For small countries the extensive use of commercial telegraph and radio services was a heavy expense and likely to increase. The use of their own wireless transmitters would cut the cost and add greatly to the efficiency of small missions in particular. Moreover, commercial channels were not always immediately available—for example, during holidays, labour disputes or states of emergency in the receiving country. The receiving State should therefore not interfere with the use of that safe, economic and quick means of communication. That did not mean that

the frequency on which a wireless transmitter was operated by a diplomatic mission should not be determined in good faith by the receiving State.

56. Mr. HAASTRUP (Nigeria) agreed that the principle adopted in article 23 and the provisions of article 25, paragraph 1, covered permission for using every appropriate means of communication. The possibility of harmful wireless interference could not, however, be altogether ruled out and the receiving State should be informed of the number of transmitters in use by diplomatic missions and the mode of their operation. His delegation would support the joint amendment, which covered that point. A provision might be added, however, that the receiving government's consent should not be unreasonably withheld.

57. Mr. BOLLINI SHAW (Argentina) said that the purpose of the joint amendment had been very clearly explained by the representatives of India and Venezuela, and he had little to add. As far as Argentina was concerned, there were no grounds for the fear expressed by some representatives that the amendment would place a restriction on freedom of communication. It was clear from his government's comments on the 1957 draft (A/3859, annex) that Argentina had no such intention. The International Law Commission, however, had stated in its commentary that if a mission wished to use its own radio transmitter, it would be obliged, in accordance with international conventions on telecommunications, to ask for the receiving State's permission; the amendment simply introduced that stipulation into the article. Several representatives had expressed the view that the amendment conflicted with article 23, and that it was unnecessary because the receiving State could always deal with improper use of a transmitter by declaring the person responsible *non grata*, for example. It was, however, precisely to avoid such a situation that he believed that suitable provisions should be made in the convention.

58. On the subject of diplomatic couriers, he would support the amendment proposed by Chile and Liberia (L.133).

59. Mr. de ERICE y O'SHEA (Spain) said that as his delegation's amendment (L.167) was concerned largely with drafting, he would withdraw it.

60. Mr. NGUYEN-QUOC DINH (Viet-Nam) said that he would support any amendment that made the installation of radio transmitting apparatus subject to a permit from the receiving State and to compliance with the laws of that State.

61. On the question of the diplomatic bag, he would oppose any amendment that would permit it to be opened by the receiving State. It would be better to define clearly what a diplomatic bag could contain, as the International Law Commission had done in article 23, paragraph 4. He would, however, support the amendment proposed by Switzerland (L.158/Add.1), which provided a useful addition to the definition.

62. Mr. ZLITNI (Libya) said that a diplomatic mission wishing to install a radio transmitter should seek per-

mission from the receiving State. It would, of course, be eminently satisfactory if missions could use the public communications facilities of the receiving State, and such a reciprocal practice would be particularly welcome to the smaller States whose budgets did not permit them to install their own apparatus. But it was obvious that a mission wishing to use its own apparatus should appreciate the technical implications in the receiving State, which had been described by the representative of India. The use of wireless transmitters should be free from intervention, subject to the laws and to the formal authorization of the receiving State. He would therefore vote for the joint amendment.

63. On the question of the diplomatic bag, he recognized the principle of its inviolability, but considered that the receiving State should be allowed some latitude. That was provided by the kindred amendments of the United States of America (L.154, paragraph 3) and the United Arab Republic (L.151), both of which he could support in substance.

64. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the points raised in the many amendments before the Committee were not new. They had been considered carefully and at length by the International Law Commission. In general, he was in favour of the text produced by the Commission: it was reasonable and should be acceptable, subject perhaps to some clarification and explanation.

65. A specific question was that of radio communication which, as had been pointed out, was a comparatively new, though rapidly advancing, development and should be included in a convention designed to remain in force for many years (one might hope as long as the Regulation of Vienna). The International Law Commission had not mentioned radio transmitters in its draft of article 25, and had referred to them with caution in its commentary. The commentary implied, however, that, provided that the sending State conformed with the relevant international conventions, the receiving State should not have the right to refuse permission for the use of a radio transmitter by the mission.

66. In his opinion (which was confirmed by the arguments advanced in the discussion) the real issue was the practical one of how to avoid the overburdening of frequencies. A solution based on real requirements, the true interests of States, and the avoidance of needless complications in the relations between States, was bound to recognize a mission's right to use a radio transmitter. There was no reason for preventing the use of the most modern means of communication. For practical reasons too, it was obvious that the receiving State should be notified if a mission installed a radio transmitter. If agreement could be reached on the principle, he was sure it would be possible to find a formula that did not go beyond the bounds of actual requirements — as did many of the amendments, including that contained in document L.264.

67. Regarding the inviolability of the diplomatic bag, he said he would not comment on the amendments at that juncture. In his opinion, the diplomatic bag was as inviolable as diplomatic premises. To waive that prin-

ciple in exceptional cases was to invite rather than prevent difficulties, for who would decide what was an exceptional case justifying the opening of the bag. It was better to accept the possibility of occasional misuse than open the door to serious misunderstandings between States.

68. On the question of the diplomatic courier, he said that, although the article was satisfactory as it stood, it might be improved by the Czechoslovak amendment (L.162), which gave more emphasis to the responsibilities of the receiving State.

69. Mr. CAMERON (United States of America) said that his delegation's amendment to paragraph 3 had apparently been misconstrued as implying that the receiving State could open the diplomatic bag, which would be a departure from the long-established principle of the bag's absolute inviolability. The effect of his amendment, on the contrary, was not to authorize the opening of the bag, but to provide that the receiving State could question the way in which the diplomatic bag was being used and, if the sending State did not wish to submit it to examination, could reject the bag. There was nothing in the amendment to imply that the diplomatic bag could be opened against the sending State's wishes.

70. With regard to the joint amendment (L.264), he said that in his delegation's opinion the use of a radio transmitter by a mission did not require the receiving State's consent. In so far as United States law subordinated the mission's use of a radio transmitter to the consent of the federal authorities, he could give the assurance that, if the convention being drafted permitted a diplomatic mission freely to use radio for the purpose of communication and if the United States ratified the convention, legislative action would be taken to bring United States law into line with the convention.

71. Mr. SUFFIAN (Federation of Malaya), introducing his delegation's amendments (L.152), said that two principles were paramount; the official correspondence of a mission should be inviolable; and the diplomatic bag should not be opened or delayed. Paragraph 4 of article 25 laid down certain conditions regarding the diplomatic bag, but seemed to place more emphasis on the visible indication of its character than on the stipulation regarding its contents. His delegation's amendments gave the two points equal importance.

72. On the question of radio transmitters, he said he would vote for the joint amendment for the reasons given by those who had spoken in its favour.

73. Miss SASTRODIREJO (Indonesia), speaking as one of the sponsors of the joint amendment, said that she had nothing to add to the statements of her co-sponsors, in particular the representative of India.

74. Mr. EL-ERIAN (United Arab Republic), introducing his delegation's amendment (L.151), said it related specifically to the matter of inspection and was not meant to weaken the principle of the inviolability of the diplomatic bag. He fully supported paragraph 3 of article 25. He was, however, in favour of the idea con-

tained in paragraph 3 of the United States amendment (L.154) that the sending State should have the right to refuse consent to the opening of the diplomatic bag, in which case the diplomatic bag could be rejected, and would agree to his delegation's proposal being amended in that sense. He wished to associate himself with the assurance given by the representative of the United States that such a provision would in no way affect the principle of the inviolability of the diplomatic bag.

75. Mr. PONCE MIRANDA (Ecuador) said he would vote for article 25 as drafted, subject to two changes. First, it was essential to state explicitly the right of a mission to use a radio transmitter for the purpose of communication; the United Kingdom representative had put the case very convincingly. Secondly, he supported the qualification of the inviolability of diplomatic couriers contained in the amendment sponsored by Chile and Liberia (L.133).

76. He was opposed to the introduction of any limitation to the provision in paragraph 3: it was essential that the diplomatic bag should be protected under the Convention.

77. The CHAIRMAN suggested that the discussion on article 25 should be continued at the next meeting.

It was so agreed.

Article 27 (Personal inviolability)

78. The CHAIRMAN, inviting debate on article 27, drew attention to the amendments submitted by China (L.209) and Belgium (L.214).

79. Mr. CHEN (China) said that his delegation's amendment (L.209) reproduced in effect a passage from the commentary of the International Law Commission which was in turn based on the observations of the Government of China (A/3859, annex) on the corresponding provision of the 1957 draft. The principle stated in the amendment was universally accepted in international law and should form part of the convention.

80. Mr. de ROMREE (Belgium), introducing his delegation's amendment (L.214), said that in so far as the word "reasonable" meant reasonable in the opinion of the receiving State, it had little sense, and in so far as it qualified protective action it could be dangerous because it would have a restrictive effect. If an adjective were necessary, he would prefer the word "appropriate" which was used in article 20.

The amendment submitted by China (L.209) was rejected by 27 votes to 6, with 34 abstentions.

The amendment submitted by Belgium (L.214) was adopted by 22 votes to 21, with 23 abstentions.

81. Mr. VALLAT (United Kingdom) explained that he had voted against the Belgian amendment because the removal of the word "reasonable" would give the article unlimited scope, and impose an impossible task on receiving States.

82. Mr. WALDRON (Ireland) and Mr. HAASTRUP (Nigeria) said that they had voted against the Belgian

amendment for the same reasons as the United Kingdom representative.

83. Mr. de ROMREE (Belgium) appreciated the views of the three preceding speakers and said he would be agreeable if his amendment were referred to the Drafting Committee with a direction to replace the word "reasonable" by the word "appropriate".

84. Mr. VALLAT (United Kingdom) moved that the Committee should reconsider its decision on the Belgian amendment on the terms just suggested by the Belgian representative (substitution of "appropriate" for "reasonable" in article 27).

85. Mr. GASIOROWSKI (Poland) requested that, under rule 33 of the rules of procedure, a vote be taken on the motion for reconsideration.

The motion was carried by 69 votes to none, with 1 abstention.

By 69 votes to none, with 1 abstention, the Committee decided that the word "reasonable" in article 27 should be replaced by "appropriate".

Article 27, as amended, was adopted unanimously.

The meeting rose at 6.20 p.m.

TWENTY-SIXTH MEETING

Thursday, 23 March 1961, at 10.45 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 25 (Freedom of communication) (resumed from the 25th meeting)

1. The CHAIRMAN invited the Committee to continue its debate on article 25 and on the amendments thereto.¹

2. Mr. BREWER (Liberia) recalled that his delegation had withdrawn its amendment (L.135) to become co-sponsor of the Chilean amendment (L.133). The purpose of the amendment was to cover the case where the diplomatic bag was entrusted to a person who was not a regular diplomatic courier. Such a person then enjoyed the same inviolability as a regular courier, and the convention should confirm that practice, which was followed in many States.

3. Mr. HU (China) said that his delegation's amendment (L.124) was very simple. Of the external marks

¹ For the list of the amendments originally submitted, see 24th meeting, footnote to para. 52. Since then the following amendments were withdrawn: L.124, L.125 [Third sentence of first amendment only], L.131 [first amendment only], L.135, L.138, L.140, L.145, L.147, L.154 [para. 2 only], L.165, L.167. In addition, L.151 was superseded by L.151/Rev.1 and Rev.2.