

# **United Nations Conference on Diplomatic Intercourse and Immunities**

Vienna, Austria  
2 March - 14 April 1961

Document:-  
**A/CONF.20/C.1/SR.26**

## **26th meeting of the Committee of the Whole**

Extract from Volume I of the *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

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.<sup>1</sup>

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

<sup>1</sup> 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.

identifying the diplomatic bag, the official seal was the easiest to recognize, was not open to any misunderstanding and hence was preferable to any other mark. The amendment might be treated as only a drafting amendment which could be referred to the Drafting Committee. Otherwise, his delegation supported the text of article 25 as it stood. The codification of all the diplomatic rules observed was a laudable aim, but if carried too far it might hinder the development of international law.

4. Commenting on some of the amendments submitted, he said his delegation opposed the deletion of the words "and consulates" in paragraph 1 of the article, as was proposed by Switzerland (L.158). In paragraph 3 of its commentary on article 25 (A/3859) the International Law Commission explained why it had not changed the rule laid down in paragraph 1 of the article concerning the mission's communications with consulates in other countries, and the reasons given were convincing. His delegation would support the joint amendment (L.264) which endorsed the opinion expressed by the Commission in paragraph 2 of its commentary, concerning the use of radio transmitters by diplomatic missions. It would also support the amendments submitted by the United States (L.154, para. 3) and by France (L.125, para. 1) which endorsed the principle that the diplomatic bag could not be opened or detained, for China was firmly attached to that principle.

5. Mr. WESTRUP (Sweden) said he had been impressed by the United Kingdom representative's appeal to members of the Committee to approach the matters before it in a liberal spirit and to trust in the good sense of the international community. The flood of amendments before the Committee was like a forbidding wall of restrictions, precautions and defences against all kinds of imaginary abuses. What sort of convention could result from such an attitude? The Swedish delegation had not yet made up its mind about which of the amendments to article 25 it could support; but already it felt that the International Law Commission's draft should be tampered with as little as possible for it was the result of long and careful work by jurists who had not failed to weigh scrupulously all the considerations put forward by the delegations to the Conference.

6. Mr. GASIOROWSKI (Poland) said he supported the wise words of the Swedish representative. The general trend of the many amendments before the Committee was to restrict the freedom of missions and their diplomatic privileges and immunities. Hence, they were contrary to the spirit of the convention being drawn up. In particular, the effect of some amendments would be to qualify the inviolability of the diplomatic bag, and so were inconsistent with the recognized principles of international law as confirmed by the International Law Commission. Admittedly, the diplomatic bag could be misused, but such cases were less dangerous than the possible abuse by the receiving State of the right to search the bag. Consequently, the amendments which recognized that right were unacceptable. Nor could the Polish delegation support amendments which restricted the freedom of missions to use radio transmitters, for they restricted

the freedom of communication of missions with their governments. He did not mean that a mission did not have the duty to co-operate with the authorities of the receiving State in that matter; in fact it was in its own interest to do so in order to avoid jamming of its transmissions. The joint amendment (L.264), stipulating that the radio transmitters of diplomatic missions must be used in accordance with the laws of the receiving State was superfluous, inasmuch as article 40 provided in any case that it was the duty of all persons enjoying privileges and immunities to respect the laws and regulations of the receiving State. Furthermore, the inclusion of a provision requiring missions to comply with the international regulations in using radio transmitters raised a difficult question of law: that of precedence among international conventions. It was surely arguable that a convention on diplomatic intercourse and immunities should prevail over the international conventions on telecommunication. In any event, the Polish delegation would vote against any proposal that tended to restrict the mission's freedom of communication.

7. Mr. DADZIE (Ghana) said that the mission's freedom of communication was sacrosanct. At the same time, however, the limits of the freedom should be laid down, for otherwise it would be impossible to determine whether the freedom had been abused.

8. With regard to the proposed deletion of the words "and consulates" in paragraph 1, he pointed out that where consular functions were performed side by side with diplomatic functions, consulates were, in fact, sections of diplomatic missions. A convention on consular intercourse and immunities was in preparation, and its provisions should not be anticipated. Accordingly, his delegation was in favour of the proposed deletion of the words in question.

9. Turning to the other amendments to paragraph 1, he said he was not opposed to paragraph 1 (a) of the United States amendment (L.154), which referred to international postal and telecommunication conventions. With regard to paragraph 1 (b) of that amendment, he said it should be specified who was meant by "officials of the sending State". In the context, the reference could only be to diplomatic staff.

10. His delegation would support the joint amendment (L.264), since it considered the prior consent of the receiving State to be one essential condition for the use of a radio transmitter by the mission, the two other conditions being the obtaining of a permit and compliance with the laws of the receiving State.

11. With regard to international regulations, he was not in agreement with the United Kingdom representative's interpretation of the relevant provision of the International Telecommunication Convention (25th meeting, para. 53). The despatch of a mission was an undertaking like any other, and in his opinion the provision in question applied to diplomatic missions. He agreed in principle with the United States amendment to paragraph 3 (L.154, paragraph 3). As worded, however, the amendment was liable to raise serious difficulties, and accordingly, in the liberal spirit advocated by the United King-

dom delegation, his delegation would propose its own amendment to article 25, paragraph 3 (L.294).

12. The delegation of Ghana would support the Chilean amendment (L.133), which extended to diplomatic couriers *ad hoc* the inviolability provided for in article 25, paragraph 5. It also supported in principle, the Swiss amendment (L.158 and Add.1), which endorsed existing practice, as well as the Czechoslovak amendment (L.162), which supplemented paragraph 5 very satisfactorily.

13. Mr. MARESCA (Italy) said that article 25 was extremely important. Since a diplomatic mission could not function normally unless it was constantly in touch with the sending State, it had to be authorized to use all appropriate means of communication; at the same time, however, it should never disregard local regulations.

14. He agreed with the Polish representative that the future Convention should prevail over other more general international instruments, such as the Telecommunication Convention. So far as the inviolability of the diplomatic bag was concerned, he said that any weakening of the principle was bound to harm diplomatic privileges and immunities as a whole. In any case where the inviolability was used improperly, it would be better to deny admission to the diplomatic bag than to declare *persona non grata* a diplomat who might not be responsible for the violation committed by the sending State.

15. The Italian delegation approved of the French amendment (L.125, paragraph 2) concerning diplomatic couriers. It also considered that the Chilean amendment (L.133) would facilitate the work of diplomatic missions, but that the functions of diplomatic couriers *ad hoc* should be more strictly regulated than those of other diplomatic couriers.

16. Mr. EL-ERIAN (United Arab Republic) said that the difficulties encountered by the Committee arose from the fact that — like articles 10 and 24 — article 25 tried to strike a just balance between the need to ensure the proper functioning of the mission and the need to safeguard the interests of the receiving State. As was stated by the General Assembly in its resolution 685 (VII), the codification of the rules of diplomatic intercourse and immunities should contribute “to the improvement of relations between States”, and it was with that consideration in mind that the United Arab Republic had submitted or co-sponsored two amendments aiming to make fair allowance for the interests involved (L.151/Rev.1 and L.264).

17. At the previous meeting, the Indian representative had very well explained the grounds for regulating the use of radio transmitters by diplomatic missions. Moreover, since usage varied from one State to another, and the use of radio transmitters by missions had given rise to various difficulties in practice, it seemed reasonable to lay down in the convention — as was proposed in the joint amendment (L.264) — that the consent of the receiving State was required.

18. Although the principle of the inviolability of the diplomatic bag was universally recognized, some gov-

ernments had at times demanded its opening; that was a practical problem which the Committee could not ignore. The amendment proposed by the United Arab Republic (L.151/Rev.1) should be acceptable to most delegations, as it allowed a diplomatic mission which refused inspection to send the diplomatic bag back to the sending State.

19. Mr. de ERICE y O'SHEA (Spain) agreed with the representatives of Sweden and Poland that mutual trust was the very basis of diplomatic representation, and that in the absence of that trust the convention would be meaningless. For the purpose of the normal discharge of his functions as representative of the sending State, the head of the mission had to keep in constant touch with the home government. Consequently, it was essential that the diplomatic bag should be neither opened nor detained. That being so, the amendment proposed by the United Arab Republic would not solve the problem, since the bag might be rejected several times, and the head of mission would then be unable to maintain contact with his government. The Spanish delegation could not therefore vote for amendments which would impair the principle of inviolability of the diplomatic bag.

20. With regard to radio transmitters, he recognized that the mission should be allowed all possible means of communication, but he also considered that the rights of the receiving State should be safeguarded. Unlike the Polish representative, he did not think that the adoption of the convention on diplomatic intercourse and immunities would relieve States of the duty to respect any other general conventions to which they were parties, such as the Telecommunication Convention. However, the Spanish delegation would have no difficulty in voting for the joint amendment (L.264), which safeguarded the rights of the receiving State and should also enable all States to make better use of means of communication.

21. Mr. BOUZIRI (Tunisia) said that, although he approved of article 25 as it stood, he did not consider it perfect, and thought that various improvements could be made. He supported paragraph 3 of the United States amendment (L.154), and the amendments submitted by Chile (L.133), Switzerland (L.158/Add.1) and the United Arab Republic (L.151/Rev.1).

22. His delegation would also support the joint amendment (L.264), which was intended to safeguard the rights of the receiving State; for unlike some delegations, it did not consider that diplomatic intercourse was based on absolute trust. Indeed, arguing that possible abuses by the mission were less serious than abuses by the receiving State, a number of delegations were apparently anxious to draft rules restricting the latter's rights. Actually, however, small countries and young States might have to defend themselves against abuses by the diplomatic missions of more powerful States, and the convention should take account of the fact that abuses occurred on both sides.

23. To answer that argument, some speakers had referred to the principle of reciprocity; but in reality that principle was often illusory. The French representative had said

that the joint amendment would not prevent a mission from using the diplomatic bag to bring a radio transmitter into the receiving State (25th meeting, para. 18). Even if that were possible in fact, the argument was hardly tenable, and the French delegation itself had submitted an amendment (L.125) limiting the objects which could be brought in by means of the diplomatic bag.

24. It had also been said (25th meeting, para. 52) that the joint amendment was incompatible with the principle laid down in article 23, but it should be noted that article 23 had not been cited during the discussion of article 24, under which the freedom of movement could be restricted. Lastly, it had been argued that radio transmitters were a modern means of communication and that the Committee would be showing a retrograde attitude if it refused to take account of technical advances (*loc. cit.*). That argument was hardly convincing, however, since technical advances were not always satisfactory from the human point of view; they had to be judged in their own particular context.

25. The Indian representative had, at the previous meeting, very thoroughly explained the technical reasons justifying the regulation of the use of radio transmitters by diplomatic mission; besides, a diplomatic mission might use a transmitter improperly and in a manner detrimental to law and order, and in such a case, if the receiving State was unable to exercise effective control over transmissions, it was perfectly natural that it should not allow the mission to introduce radio transmitters into its territory.

26. Mr. AMLIE (Norway) said he wished to comment on three specific points. First, he was perfectly willing to agree to a provision granting protection to diplomatic couriers *ad hoc*. The Chilean amendment seemed to him acceptable in principle, and only needed a few drafting changes. Secondly, his delegation was not entirely convinced that free use of a radio transmitter by the sending State in the territory of the receiving State followed naturally from the principles of international law. It was not necessary to express an opinion on the principle, however, for as the Soviet representative had rightly said (25th meeting, para. 66), the difficulties encountered were difficulties in application — practical difficulties. Perhaps it would be possible to work out a provision enabling the diplomatic mission to use a transmitter subject to notifying the receiving State, which could present technical comments. Thirdly, with regard to the diplomatic bag, his delegation sympathized with the efforts made by the United States and the United Arab Republic in their amendments. It seemed, however, that if a principle was enunciated only to be restricted afterwards, that meant that it was not considered to have absolute validity. The inviolability of the diplomatic bag was a rule that had been recognized for centuries, and he believed that it should be maintained. His delegation would consequently not support the amendments in question.

27. Mr. MATINE-DAFTARY (Iran) also believed that the inviolability of the diplomatic bag was sacrosanct. Abuses had occurred and others might occur in future,

and they might be committed either by the diplomat or by the sending State. The diplomat might, of course, use the bag for personal purposes, such as sending gifts, but those minor irregularities were not really serious. The diplomat might go even further and carry narcotics or other forbidden products in the bag; in any such case, the receiving State could then declare him *persona non grata*. If the sending State took advantage of the facilities offered, for example, to send propaganda or subversive material, the best solution would be for the receiving State to enter into negotiations on the matter with the sending State. His delegation supported the article as it stood, but also took a favourable view of the amendments which left the sending State free to choose between withdrawing the bag or submitting to a check. After all, susceptibilities were involved, and an inspection of the diplomatic bag might have unpleasant repercussions and even create a scandal.

28. He had followed with interest the statements on the question of the use of radio transmitters by diplomatic missions. The world was in a period of transition and was witnessing the birth of new States, some of which had been impoverished by centuries of colonial rule. The United Kingdom delegation had been surprised that some representatives opposed the use of modern techniques. He thought that the probable reason for their opposition was that those States feared the uses to which those inventions might be put. It was easy for highly industrialized States to install radio transmitters as and when they pleased, and consequently they naturally upheld the principle of the free use of transmitters; but less favoured States were in a very different position. At the Conference on the Law of the Sea, the great Powers had defended Grotius's principle of the freedom of the seas, while the smaller States had argued for an extension of territorial waters. The attitude of the great Powers was perfectly understandable, for they had large fleets for which the freedom of the seas had obvious advantages. In his opinion, the use of a radio transmitter by a diplomatic mission should not depend solely on the receiving State's consent; if, however, the sending State abused its privilege, then the receiving State should be able to suspend the use of the transmitter. If there were amendments conforming to his delegation's views, it would be prepared to support them; otherwise, it would itself submit an amendment.

29. Miss SASTRODIREDO (Indonesia), speaking as one of the sponsors of the joint amendment (L.264), recalled that, according to the draft, the establishment of diplomatic relations took place by mutual consent (article 2); that the receiving State had to accord full facilities for the performance of the mission's functions (article 23); and that all members of the mission enjoyed freedom of movement and travel in the territory of the receiving State (article 24). Those rights had their counterpart in the obligations deriving from article 40. If the laws of the receiving State stipulated that a permit was necessary for the installation of a radio transmitter on the premises of a diplomatic mission, the sending State should, of course, apply for that permit, but the receiving State should not refuse it on unreasonable grounds. The receiving State's consent should also be required

for the installation of as yet unknown means of communication.

30. So far as the diplomatic bag was concerned she said her delegation would support the amendment of the United Arab Republic (L.151/Rev.1) and considered that, as provided in the United States amendment (L.154, paragraph 3), the bag should not be opened except with the permission of the Ministry for Foreign Affairs of the receiving State and that of the mission concerned, which, if it so desired, could have a representative of the mission present at the opening.

31. Mr. SINACEUR BENLARBI (Morocco) said he agreed with the view that the freedom of communication of a diplomatic mission was essential. At the same time, however, he supported the amendments which tended to curb possible abuses and to safeguard the interests of the receiving State. With regard to radio transmitters, his delegation would vote for the joint amendment and would also support the amendment of the United Arab Republic on the diplomatic bag.

32. In the modern world, the reality of the law should correspond to political reality. Technical advances made the relatively less developed countries somewhat apprehensive of the uses to which modern techniques might be put in their territories. Some countries which had shown an inclination to restrict the freedom of movement provided for in article 24, were paradoxically in favour of an extension of the rights provided for in article 25. His delegation considered that it was being logical in voting for article 25 (as amended by L.151/Rev.1 and L.264), as it had voted for article 24.

33. Mr. de ERICE y O'SHEA (Spain), speaking on a point of order, moved the adjournment of the debate under rule 25 of the rules of procedure, in order that delegations should have an opportunity of conferring with a view to working out a smaller number of agreed amendments.

34. Mr. BOUZIRI (Tunisia), opposing the motion, said that the different views could hardly be reconciled; the Committee should vote on the amendments.

35. Mr. CARMONA (Venezuela), agreeing with the Tunisian representative, likewise opposed the motion. If the debate were adjourned, the joint amendment (L.264), which had received the support of many delegations, might not reach the voting stage.

36. The CHAIRMAN said that under rule 25 of the rules of procedure, in addition to the proposer of the motion, two representatives could speak in favour of the adjournment and two against.

37. Mr. TUNKIN (Union of Soviet Socialist Republics) said he hoped his intentions would not be misunderstood by the Venezuelan representative. The Soviet Union had always taken the view that decisions should be reached by persuasion. There were two schools of thought in the Committee, and his delegation supported the motion for the adjournment in the hope that during the adjournment it would be possible to work out a generally acceptable compromise formula.

38. Mr. VALLAT (United Kingdom) also supported the motion. A generally acceptable solution must be found. The delegations had only had a short time in which to consult together and to ask their governments for instructions on so important a provision as article 25.

39. Mr. de ERICE y O'SHEA (Spain) said that his delegation did not wish to block the adoption of the joint amendment, which it in fact supported. But thirteen amendments had been submitted and, under rule 39 of the rules of procedure, they would all have to be voted on without interruption.

*The motion for the adjournment was carried by 46 votes to 18, with 6 abstentions.<sup>1</sup>*

The meeting rose at 1.5 p.m.

<sup>1</sup> For the continuance of the debate on article 25, see 29th meeting, para. 43.

## TWENTY-SEVENTH MEETING

*Thursday, 23 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)*

#### *Proposed new article concerning the diplomatic corps* *(resumed from the 18th meeting)*

1. The CHAIRMAN said it would be recalled that at the 18th meeting (para. 48) the Italian representative had introduced a proposal for the addition of an article concerning the diplomatic corps (L.102). The working party then appointed to draft a suitable provision (18th meeting, para. 55) had considered the matter and proposed a provision (L.281) on which he invited debate.

2. Mr. MARESCA (Italy), rapporteur of the working party, said that it would be noticed that the proposed provision omitted the reference to the "functions" of the diplomatic corps which had appeared in the Italian proposal. The new provision was consequently more elastic. In addition, the doyen was no longer described as "representing" the corps but as its presiding officer; and the new provision defined the corps as consisting of all the members of the diplomatic staff, and not merely of the heads of mission.

3. Mr. PECHOTA (Czechoslovakia) said that he had explained in the working party his delegation's view concerning the proposed new article. It maintained its view, which corresponded to that of the International Law Commission, that an article concerning the diplomatic corps would be inappropriate in the proposed convention. In modern practice the function of the diplomatic corps and of its doyen was restricted almost entirely to questions of protocol. Its existence was not