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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.[1]

The meeting rose at 1.5 p.m.

[1] 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

denied, but the rules governing its composition and functions often varied widely from country to country. The proposed new article differed from the other articles of the convention in that it had no legal character. Its inclusion in the convention might give rise to misinterpretation.

4. Mr. KEVIN (Australia) said he thought that the proposed new article was not necessary.

5. Mr. TUNKIN (Union of Soviet Socialist Republics) supported that view. There was no necessity to include the article, which might be appropriate in a manual of international law but was out of place in the convention.

The proposed new article (L.281) was rejected by 23 votes to 15, with 27 abstentions.

Article 28 (Inviolability of residence and property)

6. The CHAIRMAN, inviting debate on article 28, drew attention to the amendments submitted by Spain (L.220) and the United States of America (L.259). With reference to the Spanish amendment, he expressed the opinion that the term " property " covered means of transport.

7. Mr. de ERICE y O'SHEA (Spain) said that in view of the Chairman's opinion, he would withdraw the amendment.

8. Mr. CAMERON (United States of America), introducing his delegation's amendment, said that article 28, paragraph 2, as drafted correctly provided that the inviolability of the residence and property was limited by the provisions of article 29, paragraph 3. The purpose of the United States amendment, which was consequential on the amendments which his delegation would be submitting to article 29 (L.260) and to article 30 (L.261), was to spell out the " except " clause in more specific terms. His delegation's reasoning was that, if a diplomatic agent was liable to an action under article 29, or to counter-claims under article 30, or to an action after immunity had been waived, then, in such cases, the relevant papers and correspondence should be made available to the courts. The maintenance of inviolability in that connexion might frustrate the purpose of provisions allowing the diplomatic agent to be sued.

9. Mr. GLASER (Romania) opposed the United States amendment. Actions to obtain disclosure of certain documents were recognized in law, but were not in accordance with the juridical status of the diplomatic agent, who should not be constrained to produce such documents. If the diplomatic mission was authorized by its government to produce documents and wished to do so, there was nothing to prevent it, but it should not be compelled to produce any papers in its possession.

10. Mr. BAIG (Pakistan) said he assumed that article 28, paragraph 2, related exclusively to papers, correspondence and property in the diplomatic agent's private residence. If his assumption should not be correct, he would have to make a reservation similar to that made by his delegation in regard to article 22 (24th meeting, para. 6) — viz., that any correspondence of a diplomatic agent found in unauthorized hands should be regarded as having forfeited its diplomatic immunity.

11. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his doubts concerning the wisdom of accepting the amendment had not been dispelled by the United States representative's explanation. He had always held the view, during the International Law Commission's debates, that the exceptions under sub-paragraph 1 (*a*), (*b*) and (*c*) were sufficiently comprehensive. There was no question of the inviolability of papers or correspondence in regard to a real action relating to private immovable property (paragraph 1 (*a*)); an action relating to a succession (paragraph 1 (*b*)); or an action relating to a professional or commercial activity exercised by the diplomatic agent in the receiving State and outside his official functions (paragraph 1 (*c*)). If the diplomatic agent was compelled, as he might be in accordance with article 29, paragraph 1 (*a*), (*b*) or (*c*), to be a party to a civil action, he had to submit the relevant papers if he was interested in winning his case. The addition in article 28 of a reference to article 30 would appear liable to give rise to misinterpretation.

12. Mr. CAMERON (United States of America) said his delegation had considered that its amendment would be acceptable as a logical improvement. If the diplomatic agent became involved as executor or administrator in an action relating to a succession, for example, he would be a defendant, and not a plaintiff, in an action under article 29, paragraph 1 (*b*). In such cases it should not be permissible to suppress any documents which would be helpful as evidence to the court in resolving the issue. Having placed that view on record, however, his delegation would not press its amendment to article 28 (L.259) and would in consequence also withdraw its amendments to articles 29 (L.260) and 30 (L.261).

Article 28 was adopted unanimously without change.

Article 29 (Immunity from jurisdiction)

13. The CHAIRMAN invited debate on article 29 and the amendments thereto.[1] He announced that the delegations of Mexico and China had withdrawn their amendments (L.178 and L.210 respectively); and as the Committee had just heard, the United States amendment (L.260) had also been withdrawn.

14. Mr. LINARES (Guatemala) withdrew his delegation's amendment (L.156) in favour of that submitted by Colombia (L.173) proposing the deletion of article 29, paragraph 1 (*c*). It considered that a diplomatic agent should devote himself exclusively to his diplomatic functions. Paragraph 1 (*c*) as it stood might be interpreted as an implicit authorization for the diplomatic agent to engage in a professional or commercial activity in the receiving State.

[1] The following amendments had been submitted: Guatemala, A/CONF.20/C.1/L.156; Colombia, A/CONF.20/C.1/L.173; USSR, A/CONF.20/C.1/L.176; Mexico, A/CONF.20/C.1/L.178; Switzerland, A/CONF.20/C.1/L.215; Spain, A/CONF.20/C.1/L.221; Venezuela, A/CONF.20/C.1/L.229; United States, A/CONF.20/C.1/L.260; Australia, A/CONF.20/C.1/L.288; Netherlands, A/CONF.20/C.1/L.186; Italy, A/CONF.20/C.1/L.195; Libya, Morocco and Tunisia, A/CONF.20/C.1/L.208; China, A/CONF.20/C.1/L.210.

15. Mr. AGUDELO (Colombia), thanking the delegation of Guatemala, explained that his delegation's amendment to article 29 (L.173) was a corollary of a further amendment (L.174) proposing the insertion of a new article between articles 40 and 41 to provide that the staff of a diplomatic mission might not practice any liberal profession or commercial activity otherwise than in the performance of their official duties. In his delegation's opinion, the two amendments should be considered together.

16. The CHAIRMAN suggested that the discussion of the Colombian amendment to article 29 should be deferred on the understanding that it would be discussed later in connexion with the proposed new article (L.174).

It was so agreed.[2]

17. Mr. BOUZIRI (Tunisia), introducing the amendment proposed jointly by Libya, Morocco and Tunisia (L.208), said it was a purely drafting amendment. In some countries a distinction was drawn between criminal jurisdiction and penal jurisdiction. The intention was that the words " the jurisdiction of the criminal courts " should cover both types of jurisdiction. However, the sponsors would not press the amendment to a vote, but suggested that it should be referred to the Drafting Committee.

It was so agreed. [2]

18. Mr. CARMONA (Venezuela), introducing his delegation's amendment (L.229), said it was not only a right but an obligation for the sending State to prosecute any of its diplomatic agents accused of an offence which was punishable under the laws of both States. Such an obligation would, of course, not exist if the sending State did not consider the offence punishable under its own laws.

19. Mr. RIPHAGEN (Netherlands), introducing the amendment submitted by his delegation (L.186), pointed out that there was no substantive connexion between its two parts.

20. The first was concerned with immunity from civil jurisdiction and not with immunity from criminal jurisdiction, liability to give evidence or measures of execution. It was prompted by practical considerations and also by the belief that, however necessary privileges and immunities might be for the smooth working of international relations, they should not cause injustice to private citizens. Read in conjunction with article 36 (Persons entitled to privileges and immunities), it was clear that article 29 covered a large group of people, for it applied not only to diplomatic agents and administrative and technical staff, but also to the families of those two categories and to the service staff of the mission. Many of those people used cars in their daily life, and in the event of a traffic accident they could not be sued by the victim in the courts of the receiving State. They could only be sued in the sending State and, as was pointed out in paragraph 12 of the International Law Commission's commentary on article 29 (A/3859), there was no certainty of finding a competent court there. In any case, litigation in a foreign country involved many difficulties. For example, the determination of the facts and the assessment of damages required a wide knowledge of local conditions and habits; and in many countries an alien could not obtain free legal assistance and would therefore have to face heavy costs. It was true that some diplomats and their families were insured against accidents, but that would not help a victim where (as was the case in some countries) there was no provision for direct action against the insurance company. Even if the Minister for Foreign Affairs in the receiving State were willing to take the matter up with the sending State, there was still the problem of establishing responsibility, which might be denied by the diplomat and his insurance company. The impartial determination of the facts was vital, and in many cases could only be effected through the courts. One possibility, which he had alluded to, was that of direct action against the insurance companies. Another was the waiver of diplomatic immunity, but that was a course which, for political and other considerations, States were reluctant to take.

21. The Netherlands Government therefore considered that provision should be made in article 29 for the possibility that courts in the receiving State should ascertain the facts regarding civil liability in an accident. That was the purpose of his delegation's amendment. His government attached the greatest importance to the question, and would find it difficult to accept the idea that the regulation of diplomatic intercourse and immunities could result in injustice to the inhabitants of the receiving State.

22. Mr. MONACO (Italy), introducing his delegation's amendment (L.195), said that paragraph 2 as it stood was too sweeping and too absolute. As the International Law Commission had pointed out in paragraph 9 of its commentary, the fact that there was no obligation on a diplomatic agent to give evidence as a witness did not mean that he should necessarily refuse to co-operate with the authorities of the receiving State. The interests of justice should prevail over all others. The proposed re-draft of paragraph 2 limited the scope of the provision. Although it stated that a diplomatic agent did not have to give evidence about a matter connected in any way with his functions, and that in other cases he could not be compelled to appear before a judicial authority, the re-draft provided that a court of law desiring a statement from him should submit to him a written list of questions. The diplomatic agent would therefore have prior knowledge of the basis on which he was expected to co-operate with the authorities.

23. The amendment was in conformity with the principle of the International Law Commission's draft, but was more specific and restrictive.

24. Mr. YASSEEN (Iraq) said that immunity from criminal jurisdiction did not inevitably mean complete impunity. In many countries, nationals were prosecuted for serious offences committed abroad, and it might be desirable to include an article making such a practice obligatory. A parallel could be drawn with the parliamentary immunity which existed in some countries and

[2] See 36th meeting.

which normally lasted only as long as the term of office. He did not dispute the value of the principle of such immunity: on the contrary he recognized it within logical and reasonable limits. Furthermore, considerations of justice demanded that every criminal and every criminal act should be punished.

25. Mr. TUNKIN (Union of Soviet Socialist Republics) said that his delegation's amendment (L.176) in no way changed th meaning of the text. It was intended to make a distinction between the giving of evidence and appearance in court for the purpose. It would facilitate the waiving of diplomatic immunities in that particular circumstance, for the need to appear in court might prevent a diplomat from consenting to give evidence.

26. Otherwise, he was entirely satisfied with the article as drafted by the International Law Commission. The Netherlands had proposed that a diplomatic agent should not be protected by immunity in the case of an action for damages relating to a traffic accident in the receiving State. The Netherlands proposal ran counter to the principle underlying article 29. He did not believe that a diplomatic agent should be immune from the consequences of an accident, but he considered that the matter was one that was covered by normal practice and should not be provided for in a convention. While he had no objection to the second part of the Netherlands amendment, he did not consider it to be in keeping with the views of the International Law Commission, and he would abstain from voting on it. He could not approve the amendment proposed by Italy for it seemed to state something that was already covered by article 29. He also had doubts on the Swiss amendment for it restricted diplomatic immunity. It was obviously the duty of diplomats to observe traffic regulations, but it did not follow that they should be subject to the jurisdiction of the receiving State in that respect.

27. With regard to the Spanish amendment, he considered the first to be useful but the other four unnecessary. The fourth in particular was potentially dangerous.

28. He was opposed to the re-draft of paragraph 4 submitted by Venezuela (L.229) as being too far-reaching.

29. Mr. KEVIN (Australia) said that his delegation's amendment (L.288) proposed that article 29 should be extended to provide for actions to recover tax on private income derived in the receiving State.

30. Mr. BINDSCHEDLER (Switzerland) said that his delegation's amendment (L.215) had been prompted by the serious increase in traffic accidents in his country, mostly caused by drivers, some of them diplomats whose diplomatic immunity was apparently not conducive to care on the roads. It was essential that someting should be done to remedy the situation before it became too serious. It would, in fact, be in the interests of diplomats to do so, for public opinion was tending to become rather hostile to the diplomatic corps. He did not see that his amendment constituted a serious exception to immunity, for article 40 provided that diplomats should respect the laws and regulations of the receiving State.

31. Commenting on the other amendments, he expressed support for the USSR amendment because diplomats would be more ready to give evidence if they were not obliged to appear in court. He suggested, however, that some other means of overcoming the difficulty might be found, for written evidence was not always admitted by codes of procedure.

32. While supporting the Netherlands amendment, which had the same basis as his own, he thought that it might be too far-reaching. In his opinion, a solution should be sought on the lines of the system followed in Switzerland, whereby all drivers were obliged to take out insurance policies providing for direct action against insurance companies by victims of accidents.

33. With regard to the Spanish amendments, he could not agree to the first amendment as it would provide immunity for a State inheriting property and wishing to take possession of it. He had difficulty in understanding the fifth of the Spanish amendments, and asked for clarification.

34. Mr. de ERICE y O'SHEA (Spain) that the object of the first of his delegation's amendments (L.221) was to exclude from the jurisdiction of the courts of the receiving States actions relating to a succession in which the diplomatic agent acted on behalf of his government. In that case, it was the sending State which was the heir, and not the diplomatic agent. It was not uncommon for a person resident abroad to bequeath property to his home country; the property was usually intended to serve purposes connected with the furtherance of good relations between the two countries concerned.

35. He withdrew the second amendment in favour of the Colombian amendments (L.173 and L.174).

36. The third of his delegation's amendments was based on the principle that a diplomat could refuse to appear in court as a witness, but should not refuse to give evidence. It was therefore proposed that he should give his evidence through the government of the sending State.

37. Explaining his delegation's fourth amendment, he said that, if measures of execution could be taken, those measures would of necessity be inconsistent with inviolability; they would in fact constitute exceptions to the rule of inviolability.

38. Lastly, the fifth amendment was based on the principle that immunity did not mean impunity. It proposed that, where a person in the receiving State had a claim against a diplomat, the action brought by that person in the courts of the receiving State should be referred by means of letters rogatory to the courts of the sending State; those courts would, of course, apply the laws of the receiving State in whose territory the events on which the claim was based had taken place.

39. Mr. BARTOŠ (Yugoslavia) said that article 29 was a compromise, achieved in an effort to reconcile two contradictory ideas: the idea, expressed in article 40, that it was the duty of persons enjoying diplomatic privileges to respect the laws and regulations of the receiving State, and the idea that those persons should, in the interests of the performance of the diplomatic function, be absolutely immune from prosecution.

40. Immunity from prosecution was, however, subject to two general exceptions. One was set forth in article 29, paragraph 4, which specified that a diplomatic agent was not exempt from the jurisdiction of the sending State. The other was set forth in article 30, which dealt with the waiver of immunity by the sending State; that State could remedy an abuse by allowing proceedings to be brought against its diplomatic agent in the courts of the receiving State.

41. In addition, the International Law Commission had laid down three specific exceptions in the cases described in paragraph 1 (*a*), (*b*) and (*c*). The effect of the Netherlands amendment would be to add another exception, relating to civil actions arising out of traffic accidents. He supported that amendment, because the system of compulsory insurance referred to by the Swiss representative was not completely watertight: most insurance policies contained provisions on exemptions and on the limitation of the insurance company's liability. There would always be cases in which the victim of a traffic accident would be left with no redress if he could not institute court proceedings. In the same connexion, he supported the Swiss amendment; such measures as the withdrawal of a driving licence were necessary to safeguard life and property on the road.

42. He would have been inclined to admit other exceptions as well, particularly in the case of actions arising out of an employment agreement relating to a locally employed servant of a foreign diplomatic mission. As legal adviser to the Yugoslav Ministry of Foreign Affairs, he was placed in a difficult position when he had to explain to such a servant that his only means of redress was to retain the services of a lawyer in the foreign sending State concerned. He would have also favoured an exception for cases arising out of a lease, but the desired result could perhaps be achieved if the authorities of the receiving State warned prospective lessors of premises to be used by diplomats to insist on the inclusion in the lease of a clause providing for the waiver of immunity.

43. With regard to the question of a diplomatic agent giving evidence as a witness, he supported the Soviet Union amendment (L.176), which would facilitate the solution of the problem by stating that the attendance of the diplomat for that purpose was not required; it would thus be possible for the evidence to be given in writing, where that form of evidence was admitted. Unfortunately, in many countries, a statement made outside the court and not in the presence of all the parties to the case was not deemed to constitute judicial evidence. The Soviet Union amendment therefore did not fully meet the case but, since it constituted a step in the right direction, his delegation would support it.

44. In connexion with the Spanish representative's remarks regarding the proviso in paragraph 3, he observed that in certain cases it was possible to levy execution without infringing the inviolability of a diplomatic agent or of his residence. Execution could be limited to such steps as the attachment of a bank account, which did not affect either the person or the residence of the diplomatic agent.

45. Paragraph 4 and the amendments thereto raised an extremely complex question. Broadly, there were two systems with regard to criminal jurisdiction. In English and American law, that jurisdiction was strictly territorial: the competence of the criminal courts was limited to the trial of offences commited in the territory of the country. Under the legislation of most continental countries, on the other hand, there could be a concurrent jurisdiction on the part of the courts of the country where an offence was committed and those of the country of which the offender was a national.

46. Apart from the question of jurisdiction, there also arose the problem of whether the act constituted an offence punishable under the laws of the two countries concerned. Lastly, there would be the question whether the alleged offence constituted a political crime or an ordinary offence in the eyes of the law to be applied.

47. In view of the complex questions involved, he thought that, as far as criminal jurisdiction was concerned, the only practicable course was to include the provision contained in paragraph 4, which simply stated that a diplomatic agent was not exempt from the jurisdiction of his sending State. That statement would make it possible for the courts of the sending State, if that State's legislation empowered them to deal with the alleged offence committed in the receiving State, to try the diplomatic agent in accordance with the criminal law of the sending State.

48. With regard to civil jurisdiction, he recalled that the 1957 draft of the International Law Commission (A/3623) had contained a provision along the lines proposed in the second Netherlands amendment (L.186). The provision had been dropped on the ground that civil litigation against the diplomatic officer was always possible in the sending State. Nevertheless, he favoured the inclusion of the proposed provision and would support the Netherlands amendment.

49. He was opposed to all the other amendments to article 29.

50. Mr. EL-ERIAN (United Arab Republic) supported in principle article 29, paragraphs 1, 2 and 3, as drafted. His delegation favoured the full immunity of diplomatic agents from criminal jurisdiction, and their immunity from civil jurisdiction, subject to the exceptions set forth in paragraph 1 (*a*), (*b*) and (*c*).

51. He supported the exemption of the diplomatic agent from the duty to give evidence as a witness, which was a well-established rule of international law and a very necessary one in the interests of the proper functioning of diplomatic missions.

52. As was stated clearly in the article, diplomatic agents enjoyed immunity only from the jurisdiction of the receiving State. They were subject to that State's laws, and they remained amenable to the jurisdiction of the sending State. In the matter of civil jurisdiction the Netherlands amendment to paragraph 4 would fill a gap in that it would help to solve difficulties regarding the proper forum. Under the general rules of civil procedure, a suit or claim normally had to be brought in the court of the locality where the defendent resided.

In the case of a diplomatic agent, who resided outside his country, the sending State should designate a competent court to deal with the case.

53. He also supported the Venezuelan amendment (L.229). A diplomatic agent who committed a crime could not be tried in the receiving State, where he enjoyed absolute immunity from criminal jurisdiction. However, under the law of many countries the courts had competence to try a national for an offence committed abroad if the offence were punishable under the laws both of his home country and of the country where the offence was committed. In some countries, however, the law contained no such provision, and if the legislation of the sending State was of that type, immunity from jurisdiction could result in impunity for a diplomatic agent for offences committed in the receiving State. The Venezuelan amendment would fill that gap by imposing on the sending State the obligation to prosecute the offender. The proviso that the act of which the diplomatic agent was accused must constitute an offence punishable under the laws of both States had been inspired by the provisions of extradition treaties, and provided ample safeguards against any unwarranted prosecution.

54. Mr. WESTRUP (Sweden) said that the explanations given by the Swiss representative regarding compulsory insurance also applied to the Swedish law in the matter. In Sweden, registration plates for motorcars were not delivered unless the owner had taken out an insurance which fully covered his civil liability towards third parties. Insurance was required to be fully effective, which meant that the victim of an accident should be able to obtain compensation without need for litigation. Those provisions were applied to members of the diplomatic corps in the same manner as to other owners of motor vehicles.

55. Mr. ROMANOV (Union of Soviet Socialist Republics) said that it was true that written evidence was not admitted by the courts of some countries; but where a diplomatic officer was the only witness in a case, his statement in the preliminary inquiry could generally be invoked. In addition, there was the possibility of reading in court the written statement. Counsel for the defence could also take cognizance of a written statement included among the document of the case. The Soviet Union amendment (L.176) was an attempt to reconcile the needs of the administration of justice with the immunity of diplomatic officers.

56. Mr. HUCKE (Federal Republic of Germany) drew attention to paragraph 2 of the commentary to article 29, from which it was clear that the International Law Commission had intended to set forth in paragraph 1 the immunity of diplomatic agents from the jurisdiction of all courts, including commercial courts, courts set up to apply social legislation and all administrative authorities exercising judicial functions.

57. In the light of that commentary, he suggested that paragraph 1 should be re-drafted to read:

" The diplomatic agent shall enjoy immunity from the jurisdiction of the receiving State. Nevertheless, he shall not enjoy immunity from its civil and administrative jurisdiction in the case of:

(*a*) . . . (remainder unchanged) "

58. The CHAIRMAN said that, if there were no objections, he would take it that the Committee agreed to refer that suggestion to the Drafting Committee.

It was so agreed.

59. Mr. PECHOTA (Czechoslovakia) supported article 29, with the useful Soviet Union amendment (L.176). He drew attention in that connexion to the corresponding provision in the International Law Commission's draft on consular intercourse and immunities (A/4425). Article 42, paragraph 2, of that draft stated that the authority requiring the evidence of a consular official " shall take all reasonable steps to avoid interference with the performance of his official duties and shall, where possible and permissible, arrange for the taking of such testimony at his residence or office ".

60. His delegation would vote in favour of article 29, paragraph 1, on the understanding that any premises used as the residence of the head of the mission were deemed to constitute property held on behalf of the sending State for the purposes of the mission, and that therefore actions relating to such property were excluded from the jurisdiction of the courts of the receiving State. He pointed out that, under article 28, paragraph 1, as adopted earlier in the meeting, the private residence of a diplomatic agent enjoyed the same inviolability and protection as the mission's premises.

61. The Netherlands amendment adding a further exception to those already set forth was unacceptable. If an exception were to be allowed in regard to actions for damages relating to traffic accidents, there was no reason why further exceptions should not be allowed in respect of claims for damages relating to other types of accident. There were other remedies available to the claimant in a cause of that sort. The accepted doctrine, as stated by Sir Cecil Hurst, was that the first step of a claimant against a diplomatic agent should be to apply to the agent concerned or, if need be, to the head of the foreign diplomatic mission to which he belonged. If those steps were unsuccessful, the claimant should apply to the Ministry for Foreign Affairs of the receiving State, which would communicate with the head of the mission. That ministry could, if necessary, pursue the matter further by bringing it before the government of the sending State itself, and even ask for the removal of the diplomatic agent concerned.

62. Sir Cecil Hurst concluded that " If satisfaction cannot be obtained by other means, it is open to the claimant to institute proceedings in the courts of the diplomatic agent's own country." [1]

63. Mr. USTOR (Hungary) said that in his delegation's opinion the diplomatic agent should have complete immunity from criminal jurisdiction, and immunity from civil jurisdiction subject only to the exceptions

[1] *The Collected Papers of Sir Cecil Hurst*, 1950, pp. 264-5; originally published in *Recueil des Cours*, Académie de Droit international de la Haye, 1926, II. p. 210.

set forth in article 29, paragraph 1 (*a*), (*b*) and (*c*). He opposed all attempts to restrict those immunitues, and therefore could not support the Italian amendment or the first Netherlands amendment. The difficulties mentioned by the Netherlands representative could be overcome by means of a system of compulsory insurance. In Hungary, a person could not obtain a driving licene without taking out a third-party-risk insurance with a company which accepted the jurisdiction of the Hungarian courts. Such a system would cover practically all cases, and there was no need to provide an exception to the immunity rule in order to meet the extremely rare cases which were not so covered.

64. He supported the Soviet Union amendment which would make it easier to obtain evidence from a diplomatic agent. He also supported the first Spanish amendment and found great merit in the second Netherlands amendment.

65. Mr. MONACO (Italy) said that as he had explained before, his delegation's amendment was based on the idea expressed by the International Law Commission in paragraph 9 of its commentary on article 29. It was clear that the Commission had not intended that the diplomatic agent should be completely exempt from the duty to give evidence. Provided that the idea expressed in the commentary were embodied in article 29 in some form, his delegation would not insist on the form of its amendment.

The meeting rose at 6.25 p.m.

TWENTY-EIGHTH MEETING

Friday, 24 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 29 (Immunity from jurisdiction) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 29 and the amendments thereto.[1]

2. Mr. RIPHAGEN (Netherlands) introduced his delegation's revised amendment (L.186/Rev.1) and replied to comments on the original amendment.

3. As the Yugoslav representative had rightly said (27th meeting, para. 29), it was very difficult to strike a balance between opposing interests, and accordingly the International Law Commission had provided for various exceptions to the rule of immunity from jurisdiction. The Soviet Union representative had said that the diplomat was not relieved of civil liability for his actions, and that the victim of an accident could seek redress through the normal channels (27th meeting, para. 26). The Czechoslovak representative had said (27th meeting, para. 61) that it was open to the victim to apply to the diplomat or to the head of mission direct, and also to the Ministry for Foreign Affairs, which could declare the diplomat concerned persona non grata. It was, however, questionable whether those forms of redress were of any real benefit to the victim, and, besides, the suggested procedure might create an incident beween the two States concerned. Moreover, the circumstances attending a road traffic accident were often in dispute and should be established by an impartial judge. Under the fifth of the Spanish amendments (L.221) any action brought in the courts of the receiving State against a diplomat accredited to that State should be referred to the courts of the sending State. In order to be able to deal with the case, however, the courts of the receiving State would first have to establish jurisdiction, and the courts of the sending State for their part could do no more than refer the case back to the competent authorities of the receiving State.

4. The representatives of Switzerland and Sweden had mentioned compulsory insurance to cover traffic accidents (27th meeting, paras. 32 and 54). But surely an insurance company would hardly be prepared to cover the risk of a claim against its client without having the right to dispute the facts. In some cases, however, the victim could probably sue the insurance company itself in the courts of the receiving State, and those courts would then be responsible for determining the circumstances of the accident. In such a case there would be no necessity to bring an action against the diplomat himself.

5. That was the solution offered by the revised Netherlands amendment, which took account of the criticisms expressed concerning the original amendment. While conceding that the drafting would be improved, his delegation attached great importance to the principle of the revised amendment. In many countries, public opinion strongly resented immunity in the case of road traffic accidents, and it was hardly admissible that a person injured by the act of a diplomat or of a member of his family should have no effective redress. Nor was it easy to see how a judicial determination of the circumstances of the accident and of the amount of the damages could hamper the diplomatic mission's work. Moreover, the Netherlands amendment did not in any way infringe the principle of the diplomatic agent's immunity from measures of execution. The scope of the principle of diplomatic inviolability had been greatly exaggerated, particularly in the case of persons who did not themselves exercise diplomatic functions (administrative and technical staff, or members of the diplomat's family), and the Committee would be well advised not to extend the fiction of exterritoriality too far.

6. Mr. CAMERON (United States of America) approved the principle contained in the revised Netherlands amendment. In the United States it was often difficult

[1] For the list of the amendments originally submitted to article 29, see 27th meeting, footnote to para. 13. Since then the following amendments had been withdrawn: L.156, L.178, L.210 and L.260, as well as the record of the Spanish delegation's amendments (L.221); and the first of the Netherlands amendments (L.186) had been superseded by L.186/Rev.1.