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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

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[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.

to obtain a settlement from insurance companies if the sending State did not agree to waive the immunity of a diplomat involved in an accident. It did not, however, seem desirable to add further exceptions to those already mentioned in article 29 and it would be preferable to state in the convention that the Conference had been of the opinion that the sending State should waive the diplomatic agent's immunity in such cases.

7. While the USSR amendment (L.176) had the merit of respecting diplomatic dignity, he would have to vote against it since, under the United States Constitution, the defence had the right to require the appearance of witnesses in court. He would vote for article 29 as it stood.

8. Mr. VALLAT (United Kingdom) supported article 29 as drafted. The USSR amendment (L.176) was open to fewer objections than that of Italy (L.195), but would undoubtedly give rise to difficulties of application in common-law countries, for in those countries witnesses were required to appear in court. Besides, the amendment was not very clear. If it meant that the diplomat was under an obligation not to appear, his delegation would be unable to accept it since it would be incompatible with United Kingdom law. If on the other hand it meant simply that the diplomat had the option of submitting his evidence in some manner other than that laid down in the receiving State — and he considered that was the situation — the receiving State would none the less be entitled to interpret the diplomat's objections as a refusal to testify. Hence the United Kingdom delegation would abstain if the amendment was put to the vote.

9. He appreciated the motives behind the revised Netherlands amendment (L.186/Rev.1), since the application of the principle of immunity from jurisdiction in the case of diplomats involved in traffic accidents had very serious repercussions on public opinion. The exceptions provided for in article 29, paragraph 1 (*a*), (*b*) and (*c*), were not, however, of a similar nature to that proposed in the amendment, since a diplomat could very well be involved in a motor-car accident in the performance of his official duties. Hence the United Kingdom delegation considered the Committee might perhaps adopt a resolution inviting the sending State to waive the diplomatic agent's immunity in such cases. That course would meet the ends of justice, and could do no harm to the sending State. He hoped that his suggestion might be found acceptable, since, as things stood, he would be obliged to vote against the amendment.

10. Mr. CASTREN (Finland) said that article 29 was satisfactory as it stood. The various amendments proposed only weakened it, as, for example, the new Netherlands amendment, which did not sufficiently respect the principle of the diplomatic agent's immunity. As the United Kingdom representative had pointed out, the exceptions contained in article 29 were not the same as that suggested by the Netherlands. Moreover, an action for damages in connexion with a traffic accident was often based on a criminal act. If an exception were made to the principle of immunity in such a case, there would be no reason for not doing the same in the case of other offences which might be committed by diplomats. Other means, just as effective, were therefore to be preferred. For example, the sending State could waive the diplomatic agent's immunity pursuant to article 30. Another solution would be to declare persona non grata a diplomat who refused to pay damages. Thirdly, an action could be brought in the sending State, and the Netherlands delegation had itself very rightly proposed in the second of its amendments (L.186) a clause requiring the sending State to designate a competent court. Lastly, the matter could be settled through a system of compulsory insurance.

11. He could not support the amendments of Switzerland (L.215), Italy (L.195) and Venezuela (L.229), for they did not sufficiently respect the principle of immunity. Nor could he support the Spanish amendments (L.221). The Colombian amendment (L.173) was also unacceptable. The USSR amendment (L.176) and the Australian amendment (L.288) were acceptable in principle but hardly necessary.

12. Mr. CARMONA (Venezuela) withdrew his delegation's amendment (L.229), for its adoption would necessitate a change in the criminal law of some countries if they became parties to the convention. He hoped, however, that the Drafting Committee would take into account the principle of the amendment, as well as paragraph 12 of the International Law Commission's commentary on article 29 (A/3859).

13. Mr. TUNKIN (Union of Soviet Socialist Republics) said that, as he had stated before, his delegation was fully prepared to vote for article 29 as it stood. His delegation's amendment (L.176) had only been intended to clarify article 29, paragraph 2, but, since some reservations had been expressed, he would withdraw the amendment.

14. Mr. GLASER (Romania) appreciated the arguments put forward by the Netherlands representative and recognized that the application of the immunity principle to diplomats involved in traffic accidents might be very unpopular. He considered, however, that the principle should be maintained both in civil and in criminal cases, and found it difficult to understand why the Netherlands amendment (L.186/Rev.1) limited immunity in civil matters only. The consequences would be that, whereas in the receiving State a diplomat who had committed a criminally negligent act would not be prosecuted, he could be sued for damages in the case of a traffic accident. That was tantamount to saying that diplomats could commit as many offences as they liked, provided that they paid damages. He was reminded of the story of the rich Roman patrician who used to slap the faces of passers-by and make his servant pay them the fine immediately.

15. The Netherlands delegation had, of course, submitted its amendment in a completely different spirit, but he would be obliged to vote against it. In any case, the amendment had drawn the Committee's attention to a particularly important question which could certainly be settled within the framework of article 30.

16. Mr. MARESCA (Italy) stressed the true basis of the principle of diplomatic immunity. It should be made clear that the immunity was not final and absolute. Outside his official duties, a diplomat was subject to the civil and criminal law of the receiving State.

17. The original Netherlands amendment had seemed very pertinent. Traffic accidents were becoming more and more frequent, and when diplomats were involved, the protocol offices of receiving States were in a very difficult position. Insurance companies were ready to fulfil their obligations but insisted that their liabilities should be determined by a competent court. Exceptions to the principle of immunity from jurisdiction were intimately bound up with the need to respect the law of the receiving State.

18. The Colombian amendment (L.173) deleting paragraph 1 (*c*) of the article was sound, since that provision could only create confusion. The Swiss amendment (L.215) was likewise sensible. The Australian amendment (L.288) on the other hand was too categorical.

19. In conclusion, he emphasized that it was the diplomatic agent's moral duty to assist the course of justice in the receiving State in all matters not connected with the exercise of his official functions.

20. Mr. BARTOŠ (Yugoslavia) said that he would have been prepared to accept the original Netherlands amendment. The revised amendment, however, conflicted with the rules of procedure in force in most European countries, and his delegation regretted that it would be unable to support it.

21. Mr. GOLEMANOV (Bulgaria) supported article 29 as it stood and said he would be unable to support any of the amendments submitted.

22. Mgr. CASAROLI (Holy See) suggested that, without weakening the principle of immunity from jurisdiction, a provision might be added in article 30, paragraph 1, concerning the sending State's duty to compensate for damage caused by its diplomatic agents.[1]

23. Mr. EL-ERIAN (United Arab Republic) said he had some misgivings about the revised Netherlands amendment. He suggested that the Conference should adopt resolutions which would not have binding force but would constitute recommendations to governments.

24. Mr. AGUDELO (Colombia) explained that his delegation's amendment deleting paragraph 1 (*c*) (L.173) should be read together with its other amendment (L.174) proposing a new article. It could hardly be supposed that his delegation's intention in proposing the deletion of paragraph 1 (*c*) was that a diplomat should be allowed to exercise a liberal or commercial profession; indeed, its other amendment expressly ruled out that possibility.

25. Mr. REINA (Honduras) said that, if a diplomat were able to exercise a liberal or commercial profession, he would be competing with citizens of the receiving State, and his position did not allow him to do that. A person enjoying privileges and immunities could legitimately be expected to confine himself to his diplomatic activities.

[1] See L.292.

26. Mr. DANKWORT (Federal Republic of Germany) supported article 29 as it stood.

27. The CHAIRMAN called on the Committee to vote on the various amendments to article 29, paragraph 1, beginning with the first of the Spanish amendments (L.221).

The amendment was adopted by 31 votes to 13, with 26 abstentions.

At the request of the representative of Belgium, a vote was taken by roll-call on the revised Netherlands amendment (L.186/Rev.1).

Nigeria, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Switzerland, Tunisia, Belgium, Ireland, Italy, Libya, Mexico, Morocco, the Netherlands.

Against: Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Senegal, Spain, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Argentina, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Ceylon, Congo (Leopoldville), Czechoslovakia, Denmark, El Salvador, Federation of Malaya, Finland, France, Ghana, Honduras, Hungary, India, Iraq, Japan, Korea, Liberia.

Abstaining: Saudi Arabia, Thailand, Turkey, Union of South Africa, United Arab Republic, Venezuela, Viet-Nam, Yugoslavia, Australia, Austria, Brazil, Burma, Cambodia, Chile, China, Colombia, Ecuador, Ethiopia, Federal Republic of Germany, Guatemala, Holy See, Indonesia, Iran, Israel, Liechtenstein.

The amendment was rejected by 37 votes to 9, with 25 abstentions.

The Swiss amendment (L.215) was rejected by 38 votes to 4, with 28 abstentions.

The Australian amendment (L.288) was adopted by 17 votes to 11, with 39 abstentions.

28. Mr. MARESCA (Italy) stated that his delegation would not press for a vote on its amendment (L.195), as long as its spirit was respected and as long as the diplomat's moral duty to assist the course of justice in the receiving State was recognized.

29. The CHAIRMAN called on the Committee to vote on paragraph 2 of article 29. The second, fourth and fifth of the Spanish delegation's amendments (L.221) having been withdrawn, he put to the vote the third of that delegation's amendments.

The amendment was rejected by 40 votes to 5, with 12 abstentions.

Article 29 as a whole, as amended, was adopted by 60 votes to none, with 9 abstentions.[2]

30. Mr. VALLAT (United Kingdom) explained that he had had to vote against the Australian amendment, because he had not had time to weigh its implications.

[2] At its 27th meeting (paras. 15 and 16), it had been agreed that the Colombian amendment to article 24 (L.173) would be discussed later, together with the Colombian proposal for a new article (L.174).

For the same reason he had abstained in the vote on article 29 as a whole.

31. Mr. MATINE-DAFTARY (Iran) said he had voted against the Netherlands amendment because the exception it envisaged was not justified.

32. Mr. DONOWAKI (Japan) said that while not objecting to the principle contained in the Australian amendment, he had voted against it because he believed that the principle was either self-evident from the text of the article alone, or that it should also be reflected in article 29, paragraph 1 (*a*) and (*b*). His delegation hoped that the Drafting Committee would consider the latter possibility.

33. Mr. BARNES (Liberia) said he had abstained in the vote on article 29 as a whole because he had not been able to obtain, before the vote, the necessary explanations on the voting procedure.

34. Mr. CAMERON (United States of America) said he had had to vote against the Netherlands amendment because, in his country, the application of its provisions would raise a delicate problem in the relations between the States and the federal government.

Article 30 (Waiver of immunity)

35. The CHAIRMAN invited debate on article 30 and the amendments thereto.[1] He recalled that the United States delegation had withdrawn its amendment (L.261) at the 27th meeting (para. 12).

36. Mr. de VAUCELLES (France), introducing his delegation's amendment (L.217) to article 30, paragraph 1, said his delegation was in complete agreement with the principle stated in paragraph 1 of the commentary that the diplomatic agent's immunity from jurisdiction was accorded by reason of his function, which meant in the interest of the sending State. Consequently, the decision to waive his immunity should be taken by that State. Article 30, paragraph 3, provided, however, that in civil or administrative proceedings, the waiver could be implied, particularly if the diplomatic agent appeared as defendant without claiming immunity. He would not, of course, appear before the courts of the receiving State unless he had been authorized to do so by his government; yet the act constituting a waiver would be the agent's act and not the State's. Similarly, in the case of an express waiver it sometimes happened that the actual waiver was the act of the agent himself. The provision proposed by the French delegation for article 30, paragraph 1, reflected the actual situation more closely than did the International Law Commission's draft. However, as some delegations had expressed the fear that the French proposal might be interpreted as an infringement of the well-established principle of international law which was laid down in paragraph 1 and with which France was of course in complete agreement, his delegation would not press its amendment to the vote.

37. The French delegation wished to make a further comment on article 30. The purpose of the article was to give maximum protection to the diplomatic staff. That was why it did not specify that the sending State was under a duty to waive diplomatic immunity in certain circumstances. Actually, however, the multilateral conventions which governed relations between international organizations and the host State provided that the head of the organization should in certain circumstances waive the immunity of its officials. Admittedly, diplomatic agents and international officials wete not exactly comparable, and therefore his delegation had not submitted a proposal on that point; but it drew the Committee's attention to the contradictions which might arise if the Conference adopted provisions on immunities which differed too widely from those of the headquarters agreements of the international organizations.

38. The French delegation supported the amendment submitted by the Holy See (L.292). Having voted against the Netherlands amendment to article 29 (L.186/Rev.1), it would be happy if the provision proposed by the Holy See could be inserted in article 30.

39. Mr. MELO LECAROS (Chile), introducing the amendment submitted jointly by Belgium, Brazil, Chile, Colombia and Spain (L.283), said that, in addition to diplomatic agents, other persons, who were enumerated in article 36, were entitled to the benefit of diplomatic privileges and immunities. Article 30, paragraph 1, should be amended accordingly.

40. Mr. de ERICE y O'SHEA (Spain) withdrew the first of his delegation's amendments (L.267) in order to co-sponsor the amendment submitted by Mexico and Chile (L.179 and Add.1), which had the same purpose. He likewise withdrew the second amendment in order to co-sponsor that submitted by Ecuador and three other delegations (L.290 and Add.1).

41. Mr. MARISCAL (Mexico) said that the purpose of article 30 was to soften the rule on immunity from jurisdiction. However, in both criminal and civil proceedings, the waiving of that immunity would be meaningless unless it automatically denoted the waiver of immunity in respect of the execution of the judgment, for otherwise the parties would not be on an equal footing. The Mexican and Chilean delegations consequently proposed (L.179) the deletion of article 30, paragraph 4, which provided for a separate waiver in respect of the execution of the judgment.

42. The Mexican delegation would vote for the amendment (L.283) submitted by Chile and other delegations.

43. Mr. SINACEUR BENLARBI (Morocco), introducing the amendments (L.200 and Rev.1 and 2) which his delegation had submitted jointly with those of Libya and Tunisia, said that the first was self-explanatory. The second was a purely drafting amendment. The third of the amendments, however, related to substance. The difficulties raised by article 30, paragraph 4, could, of course, be removed by deleting that paragraph, but his dele-

[1] The following amendments had been submitted: Poland, A/CONF.20/C.1/L.171; Mexico, A/CONF.20/C.1/L.179 and Add. 1; Libya, Morocco and Tunisia, A/CONF.20/C.1/L.200 and Rev.1 and 2; France, A/CONF.20/C.1/L.217; Venezuela, A/CONF.20/C.1/L.230 and Add.1; United States of America, A/CONF.20/C.1/L.261 (withdrawn); Spain, A/CONF.20/C.1/L.267 and Add.1; Belgium, Brazil, Chile, Colombia and Spain, A/CONF.20/C.1/L.283; Ecuador, A/CONF.20/C.1/L.290 and Add.1; Holy See, A/CONF.20/C.1/L.292.

gation preferred to supplement it in the way proposed in the amendment. The paragraph as drafted by the International Law Commission provided that a separate waiver must be made in respect of the execution of the judgment. If the judgment was favourable to the diplomatic agent, the waiver obviously caused no difficulty; but if the diplomatic agent lost the case, it was conceivable that he might not waive his immunity a second time. In that event the other party might proceed against the receiving State. That was why the sponsors of the amendment had thought it necessary to provide that, if there was no waiver of immunity in respect of the execution of the judgment, the sending State should be obliged to consult with the receiving State on suitable means of enforcing the judgment.

44. Mr. GASIOROWSKI (Poland), introducing his delegation's amendments (L.171), said they were the logical consequence of the fundamental principle on which the draft was based, namely that diplomatic immunities were established not for the diplomatic agent's benefit but by reason of the function which he exercised, and hence for the sending State's benefit. The International Law Commission had been illogical in laying down in article 30, paragraph 2, that in criminal proceedings there must always be an express waiver, and then stipulating in paragraph 3 that in civil proceedings an agent could waive his immunity from jurisdiction by implication. In the Polish view, the waiver of immunity should in all cases be express.

45. Mr. PONCE MIRANDA (Ecuador), introducing his delegation's amendment (L.290) submitted jointly with other delegations, said that its purpose was to lay down the procedure to be followed with regard to the waiving of diplomatic immunity. It was desirable that the Ministry of Foreign Affairs of the receiving State should inform the court whether or not there had been a waiver of immunity. Besides, the intervention of the Ministry of Foreign Affairs would check possible abuses and avoid impunity in certain cases. That procedure did not affect the system of diplomatic immunities as such in any way.

The meeting rose at 1.5 p.m.

TWENTY-NINTH MEETING

Friday, 24 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

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

Article 30 (Waiver of immunity) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 30 and the amendments thereto.[1]

2. Mr. MERON (Israel) said that he shared the concern that had been universally voiced lest the claiming of diplomatic immunity should have the effect of preventing an injured party from obtaining the compensation to which he was entitled by law. He thought it desirable that the immunity should be waived in such cases and that the Conference should express the wish that States should waive immunity wherever possible. The idea might perhaps be incorporated in the preamble to the future convention in the spirit in which it was stated in the preamble to the Havana Convention of 1928 concerning diplomatic officers " . . . acknowledging also that it would seem desirable that either the officer himself or the State represented by him renounce diplomatic immunity whenever touching upon a civil action entirely alien to the fulfilment of his mission." If such a waiver were impossible, the sending State had an obligation to co-operate with the receiving State in ensuring reparation of the damage. It was the practice of the Government of Israel to espouse, through the diplomatic channel, the claims of persons injured through the action of persons enjoying diplomatic immunity. A useful proposal had been made by the Government of the United Kingdom in its comments of 1959 on article 40 of the draft: " . . . it would be beneficial if it were to be accepted that States should use their utmost endeavours to secure that disputes which involve persons entitled to immunity from suit and legal process, and in which it is decided that immunity shall not be waived, are settled by agreement between the parties " (A/4164, annex).

3. Turning to the amendments proposed to article 30, he expressed support for the amendment submitted by Poland to paragraph 2 (L.171). With respect to an implied waiver, he said there would be no certainty that it had been authorized by the sending State. Such certainty would be greater with respect to an express waiver. Diplomatic immunities were intended to benefit the sending State, and any misunderstanding over the waiving of immunity could only cause embarrassment.

4. He was opposed to the several proposals for the deletion of paragraph 4 which provided for separate waivers of immunity from jurisdiction in respect of civil or administrative proceedings and in regard to the execution of the judgment. That distinction was accepted by long-standing tradition in many countries; and it was unlikely that a diplomatic agent would fail to respect the judgment of a court once the initial waiver had been made. Moreover, the execution of a judgment against a diplomat was a delicate matter and if not handled carefully could lead to international incidents.

5. The amendment to paragraph 1 proposed jointly by Belgium, Brazil, Chile, Colombia and Spain (L.283) was an improvement, for it removed any possible doubt left by article 36 concerning the waiver of the diplomatic immunities of persons other than diplomatic agents.

6. Mr. KIRSCHSCHLAEGER (Austria) drew attention to a question of terminology that might be examined by the Drafting Committee. As he understood it, a waiver of immunity under article 30 was intended to apply to articles 27 (Personal inviolability) and 29 (Immunity from jurisdiction); it would be logical for it to include

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[1] For the list of the amendments, see 28th meeting, footnote to para. 35.