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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

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

also the diplomatic courier referred to in article 25, paragraph 5. However, the expression " diplomatic agents " in article 30, paragraph 1, did not include couriers. Moreover the expression " waiver of immunity of jurisdiction " in article 30, paragraph 4, did not cover a waiver of the non-liability of a diplomatic agent to arrest or detention under article 27.

7. Mr. TUNKIN (Union of Soviet Socialist Republics) pointed out that article 30, paragraph 1, rightly recognized that the waiver of immunity, like the granting of immunity, was the prerogative of a government. The procedure proposed in the French amendment (L.217) was contrary to international law. If a diplomatic agent announced that he was waiving his own immunity, there was no knowing whether or not he had his government's consent to do so, and it was essential for the receiving State to have official notification from the government concerned.

8. On the other hand, the five-Power amendment (L.283) was acceptable and even necessary. As a member of the International Law Commission he could affirm that it was in complete accordance with what the Commission had had in mind.

9. He agreed that article 30, paragraphs 2 and 3, were not very clear. The International Law Commission had not been entirely satisfied with its draft but had been unable to find more suitable wording. He would support the Polish amendment (L.171), whose intention, as he understood it, was to ensure that a waiver of immunity should be express in civil as well as in criminal proceedings.

10. With regard to the amendments proposed by Libya, Morocco and Tunisia (L.200/Rev.2), he said that the first was a drafting amendment and should, he suggested, be referred to the Drafting Committee. The second went beyond existing practice and could be interpreted as meaning that a diplomat could never in any circumstances claim immunity once he had initiated proceedings. The International Law Commission had rightly limited the scope of the provision to counter-claims directly connected with the principal claim. The third amendment likewise seemed to him of a rather dubious nature, for it implied that the sending State should assume the obligation for the execution of the judgment. The difficulties of securing judgment in foreign courts were well known, and it was entirely unrealistic to lay down such a rule without regard to the means of applying it.

11. Nor did he support the amendment submitted by Ecuador, Colombia, Chile and Guatemala (L.290 and Add.1), because the mode of giving effect to the article should not really be specified in a convention — indeed, it would not be wise to lay down rules on such details, as they might not fit in with the regulations of individual States.

12. Finally, he was also opposed to the amendments submitted by the Holy See (L.292), for it was the kind of provision that gave rise to innumerable legal problems and complications.

13. Mr. MONACO (Italy) said that in principle he was in favour of article 30 as it stood. With regard to paragraphs 2 and 3, however, he believed that a waiver should always be express and he therefore supported the Polish amendment (L.171).

14. There had been a number of proposals to delete paragraph 4, but he would prefer to see it retained, for the distinction in question was part of the doctrine and practice of law.

15. Mgr. CASAROLI (Holy See), introducing his delegation's amendment (L.292), said he would welcome a statement of principle by the Conference showing that it recognized the moral and humanitarian principles which imposed upon the sending State an obligation to ensure justice for persons who had suffered loss or damage through the act of a diplomat. In his opinion, the difficulties and complications referred to by the Soviet representative would be worth facing.

16. Mr. YASSEEN (Iraq) fully supported the Polish amendment (L.171). He was also in favour of the Mexican amendment deleting paragraph 4 (L.179); if it were not adopted he would support the three-Power amendment (L.200/Rev.2) as the closest to it in aim.

17. Mr. CARMONA (Venezuela) said the representative of Mexico had admirably explained the object of his amendment (L.179) at the 28th meeting (para. 41). It was clear that there were two schools of thought on the question of a separate waiver for the execution of judgment: in many countries, including Venezuela, it was inconceivable that if diplomatic immunity had been waived for legal proceedings it was not automatically waived for the execution of judgment. In his opinion it would be better to delete paragraph 4 and leave each country to interpret the article in accordance with its own legislation.

18. With regard to the other amendments, he supported that submitted by Poland (L.171). A waiver of immunity should always be express, except of course in the obvious case where a diplomat instituted proceedings and where immunity was automatically assumed to be waived. That remark would also explain his attitude to the three-Power (L.200/Rev.2). The five-Power amendment (L.283) was based on an excellent principle, but he thought that the replacement of " diplomatic agents " in paragraph 1 by " persons enjoying immunity under article 36 " would prejudge action on article 36 which had not yet been discussed. Regarding the new paragraph proposed by Ecuador, Colombia, Chile and Guatemala (L.290 and Add.1), he said it was difficult to lay down a general rule on procedure in the event of proceedings against a diplomatic agent, since practice varied from country to country. He would support the amendment of the Holy See (L.292) which conformed with his ideas.

19. Mr. CAMERON (United States of America) said he would comment on only three of the amendments. The four-Power amendment (L.290 and Add.1) had no place in a multilateral treaty, and he hoped that its sponsors would agree to withdraw it. The amendment of the Holy See (L.292) caused him grave concern, for it imposed an obligation on the sending State without establishing its liability or its responsibility for com-

pensating of individuals suffering damage. It also failed to provide a process whereby the responsibility for the injury or the amount of damages could be determined in uncertain cases. He could understand the reasons prompting the amendment, but his government could not accept an obligation in such conditions. He therefore opposed the amendment. The five-Power amendment (L.283) was acceptable in intent but omitted some important words used in article 30. He proposed that the words " diplomatic agents and " should be inserted before " persons ".

20. Mr. de ROMREE (Belgium) said that the amendment of the Holy See had given rise to some confusion: he thought that its intention was that the sending State should take steps to see that fair compensation for damage was provided — not that the State should itself provide compensation.

21. Mr. BARTOŠ (Yugoslavia) said that the five-Power amendment would be useful in that it re-drafted article 30, paragraph 1, in more specific terms, though it would be better if it spoke of " diplomatic agents and other persons enjoying immunity ".

22. He supported the amendment submitted by the Holy See (L.292) as representing a progressive development of international law. The amendment did not make the sending State itself liable to pay damages: it merely set forth that State's duty to provide the claimant with some means of obtaining redress. It was only just and proper that the sending State, which in fact shielded its diplomatic agent, should in return ensure that the injured party was not left without any remedy.

23. In regard to civil and administrative proceedings, he favoured the system which would permit an implied waiver and therefore could not support the Polish amendment (L.171).

24. He supported the three-Power amendment to paragraph 4 (L.200/Rev.2). The amendment had the merit of setting forth the duty of the sending State to seek with the receiving State some suitable means of enforcing execution of the judgment, while maitaining the distinction between the waiver of immunity in respect of proceedings and that in respect of execution.

25. He could not support the amendments deleting paragraph 4 altogether. From the point of view of legal theory, it might be logical to say that the waiver of immunity from jurisdiction in respect of proceedings should imply a similar waiver in respect of execution of the judgment. There were, however, political considerations involved in the distinction usually drawn in that regard. Moreover, there were cases where it was desirable that a judgment should be given so as to establish the facts but where the State concerned would not wish necessarily to permit measures of execution against its diplomatic agent.

26. Lastly, he could not support the four-Power amendment (L.290 and Add.1), adding a new paragraph on the procedure to be followed. Without the sponsors intending it, the proposed provision could serve to exert moral pressure on the sending State to waive immunity. For that reason, it was desirable to follow the existing practice, which did not permit any proceedings before immunity had in fact been waived.

27. Mr. MELO LECAROS (Chile), speaking on behalf of the sponsors, agreed to insert in the five-Power amendment (L.283), before the words " persons enjoying immunity ", the words " diplomatic agents and other ", as suggested by the United States and Yugoslav representatives.

28. Mr. REGALA (Philippines) said that the bulk of legal opinion and the majority of court decisions in the United States of America, England and the countries of the continent of Europe agreed that immunity could not be waived by a diplomatic agent without the consent of the government of the sending State. As far as court cases were concerned, that principle was even more firmly established on the continent than in England and the United States of America. It was a generally accepted principle of international law that the action of a diplomatic agent in submitting to the jurisdiction of a court was not material and that the consent of the sending State was necessary for the purpose of waiving immunity.

29. For those reasons, he believed that the waiver of immunity could never be implied but should always be express and therefore supported the Polish amendment (L.171).

30. He also supported the amendments deleting paragraph 4.

31. Mr. GLASER (Romania) supported the idea expressed in the five-Power amendment (L.283), on the understanding that the Drafting Committee would settle the final wording.

32. He supported the Polish amendment (L.171), which was based on sound legal grounds. A waiver, like any other act by which a right was renounced, could not be given an extensive interpretation. A renunciation should be construed restrictively, and consequently the waiver of immunity in respect of proceedings could not be held to imply a similar waiver in respect of execution.

33. The diplomatic agent could not waive his immunity either in criminal or in civil proceedings because the immunity did not vest in him. The sending State alone could renounce a right which was established both in its interest and in that of the receiving State, which was equally interested in the maintenance of diplomatic immunity, without which diplomatic relations would not be possible.

34. A further argument in favour of the Polish amendment was the need to respect the sovereignty of States. To disregard diplomatic immunity was to infringe the sovereignty of a foreign State. It was therefore proper to require an express waiver as a condition for proceedings of any kind against a diplomat.

35. He could not support the proposal for a new paragraph (L.290 and Add.1), which would reverse the existing practice in the matter. If the defendant could prove that he was a diplomatic agent, the proceedings should be stopped. In accordance with the established doctrine and practice, only if an express waiver had been given by the sending State could proceedings be instituted against a diplomatic agent.

36. The amendment of the Holy See (L.292) introduced an entirely novel concept which raised many difficult legal problems. The proposal was not clear regarding the extent of the responsibility to be assumed by the sending State. Did that State have a duty to obtain for the claimant a fair compensation and, in the event of failure, was it answerable for the acts of its agent ? The difficult questions raised by the amendment deserved study but it was premature to raise them in the Conference.

37. Lastly, he opposed the proposals to delete paragraph 4. In law, a waiver should be construed strictly and should therefore be limited in scope to actual proceedings; a separate and express waiver was necessary for the purpose of measures of execution. Moreover, from the political point of view, measures of execution might be much more difficult to accept than the mere submission of a case to a court. By way of analogy, he drew attention to the difficulties inherent in the execution of foreign judgments, arising from the need to respect the sovereignty of the State where the judgment was to be executed.

38. Mr. BOUZIRI (Tunisia), in reply to the Soviet representative, pointed out that the object of the second of the three-Power amendments (L.200/Rev.2) was simply to debar the diplomatic agent from pleading immunity to counter-claims in proceedings which the agent had himself initiated.

39. The third of the three-Power amendments was based on the same considerations as the proposals to delete paragraph 4, but kept the distinction between a waiver of immunity in respect of proceedings and a waiver of immunity in respect of measures of execution. If immunity was waived for the purpose of the proceedings, it did not seem fair that the diplomatic agent should be able to avail himself of a favourable judgment but plead immunity to prevent execution if the judgment went against him. For that reason, it was proposed in the amendment that the sending State should consult with the receiving State on suitable means of enforcing the judgment.

40. Mr. VALLAT (United Kingdom) said that the amendment of the Holy See (L.292) would, if adopted, involve serious legal and constitutional difficulties for many governments. He felt certain that there was widespread support for the intention underlying the amendment, but had doubts regarding its form. He therefore urged the representative of the Holy See to withdraw the amendment and consider instead means of placing on record the Committee's view that it was desirable, in cases where immunity was relied upon, that some remedy should be available for the injured party.

41. Mgr. CASAROLI (Holy See) agreed to the course suggested by the United Kingdom representative.[1]

42. The CHAIRMAN said that the three-Power amendments to paragraphs 2 and 3 (L.200/Rev.2) would not be put to the vote, but would be referred to the Drafting Committee, since they did not seek to amend the substance of the article.

The five-Power amendment to article 30, paragraph 1 (L.283), as further amended (see para. 27 above), was adopted by 65 votes to 1, with 1 abstention.

The Polish amendment to paragraph 2 (L.171) was adopted by 42 votes to 9, with 12 abstentions.

The Polish amendment to paragraph 3 (L.171) was adopted by 43 votes to 11, with 15 abstentions.

The proposal for the deletion of paragraph 4 (L.179 and Add.1, L.230 and Add.1) was rejected by 42 votes to 13, with 13 abstentions.

The three-Power amendment to paragraph 4 (L.200/Rev.2) was rejected by 25 votes to 23, with 20 abstentions.

The four-Power amendment (L.290 and Add.1) was rejected by 34 votes to 16, with 20 abstentions.

Article 30, as amended, was adopted as a whole by 60 votes to none, with 8 abstentions.

Article 25 (Freedom of communication) *(resumed from the 26th meeting)*

43. The CHAIRMAN invited the Committee to continue its debate on article 25 and the amendments thereto.[2]

44. Mr. VALLAT (United Kingdom) expressed his delegation's appreciation of the time allowed by the adjournment for consultations. Although it had not proved possible to work out a generally acceptable provision concerning the use of radio transmitters by diplomatic missions, he hoped that his delegation's amendment (L.291) would find favour at least with the majority of members. To allay the fears which had been expressed the amendment stipulated that the mission should use its own radio transmitter strictly for the purpose of telegraphic communication with the government and other missions and consulates of the sending State. The use of the radio transmitter for propaganda purposes would be excluded by that limitation and by the fact that telegraphic communication was entirely unsuited to the dissemination of propaganda, for which voice transmission was necessary. The fear had also been expressed that radio transmission might take place in secret, leaving the receiving State with no reasonable means of dealing with any abuse or interference. Accordingly, the amendment provided that the existence of radio transmitters should be notified by the mission to the receiving State which, on the basis of that information, could take up with the diplomatic mission or with the government of the sending State any problems that might arise. Although the United Kingdom Government agreed that the receiving State should be informed of the existence of radio transmitters, it believed that their use was an essential means of communication and in

[1] A resolution on this subject was later adopted by the Conference (A/CONF.20/10/Add.1, resolution II).

[2] For particulars of the amendments submitted earlier, see 26th meeting, footnote to para. 1. Since then, further amendments had been submitted: France and Switzerland, L.286; United Kingdom, L.291; Ghana, L.294. The sponsors of the six-Power amendment (L.264) had agreed to the replacement of the words " after making proper arrangements " by " after obtaining authorization " (24th meeting, paras. 53 and 54.)

consequence its amendment did not go so far as to stipulate that the permission of the receiving State should be sought. It had, however, added a proviso that nothing in article 25 should be construed as prejudicing the application of the international conventions and regulations on telecommunications, although it would have preferred not to include the proviso.

45. Mr. OJEDA (Mexico) said that his delegation would vote for the amendment of which it had become a co-sponsor (L.264) [1] and would oppose the United Kingdom amendment. The discussion had shown that there were serious and well-founded fears in regard to the use of radio transmitters by diplomatic missions. Although no one denied a diplomat's right to drive a car, he always had to comply with the receiving State's regulations concerning licences and qualifications for driving. To give the sending State the unrestricted right to use radio transmitters would not only be contrary to the present practice in many countries but would introduce a cause for dissension into the future convention.

46. Mr. KRISHNA RAO (India), in reply to remarks made by the representative of France (25th meeting, paras. 18 and 19), said that the expectation was that the convention would be carried out in good faith. No government of a receiving State would send its officials into a diplomatic mission to search for a radio transmitter. Even the less-developed countries possessed adequate instruments for the detection of transmitters.

47. During the earlier discussion on article 25 the United Kingdom delegation had questioned his interpretation of the relevant international regulations governing telecommunications (25th meeting, para. 53). In reply, he would point out that the International Law Commission itself in paragraph 2 of its commentary on article 25 (A/3859) had said that if a mission wished to make use of its own wireless transmitter " it must, in accordance with the international conventions on telecommunications, apply to the receiving State for special permission." His government would be extremely reluctant to accept a provision in the convention on diplomatic intercourse and immunities only to provoke a controversy on the interpretation of the international telecommunication conventions and have to resort to the procedure for the settlement of disputes in that regard.

48. It had been argued that the " full facilities " which under article 23 should be accorded by the receiving State for the performance of the mission's functions included the facility of setting up a radio transmitter. The International Law Commission's opinion which he had just quoted, and which had not been challenged during the discussion, meant that facilities should not be accorded if they were incompatible with international rules and regulations. The six-Power amendment (L.264) merely transferred the International Law Commission's commentary to the text of the draft article.

49. The United Kingdom amendment appeared reasonable at first glance, but closer inspection showed it to be without substance. Although it referred to the international conventions and regulations on telecommunications, it made no mention of the receiving State's consent, which was the main basis of the six-Power amendment. It provided merely that the transmitter's existence should be notified to the receiving State as a *fait accompli*. The inclusion of the reference to the international conventions and regulations meant perhaps that the United Kingdom delegation had changed its earlier opinion that they did not apply to the radio transmitters of diplomatic missions. The representative of Ghana had shown conclusively that they did apply to such transmitters (26th meeting, para. 11). The acceptance of that view necessitated support of the six-Power amendment.

50. Mr. MATINE-DAFTARY (Iran) asked whether the reference in the United Kingdom amendment to international conventions and regulations on telecommunications meant that the receiving State could suspend the use of a radio transmitter if it found there had been abuse. He also asked which provision of the telecommunications conventions the representative of India had in mind.

51. Mr. KRISHNA RAO (India) said that the provision under which the receiving State's consent had to be sought was article 18, section 1, of the Radio Regulations, Geneva 1959.[2]

52. Mr. HAASTRUP (Nigeria) said that although a diplomatic mission had the right to install a wireless transmitter it should respect the receiving State's authority by informing it of its intention to install such a transmitter and letting it decide whether to allow the transmitter to be operated. The question had political as well as technical aspects, particularly in young countries where the situation was not completely stable and where the diplomatic mission of a country which did not entirely support the party in power might have the opportunity of interfering in the internal affairs of the receiving State. The receiving State had to reserve the right to revoke its consent to the operation of a transmitter if it later found any misuse of the transmitter. That point would appear to be covered by the six-Power amendment as it contained a reference to the laws of the receiving country. If the United Kingdom amendment was not revised to provide that there should be prior notification to the receiving State, and to include either a reference to the domestic laws of the receiving State or to its right to revoke consent if there should be abuse, his delegation would support the six-Power amendment.

53. Mr. CAMERON (United States of America) supported the United Kingdom amendment and in consequence withdrew that part of his own delegation's amendments which referred to the provisions of the applicable postal and telecommunications conventions (L.154, para. 1 (*a*), as amended at the 25th meeting, para. 21).

54. His delegation maintained its second and eighth amendments to article 25 (L.154, paras. 1 (*b*) and 6).

[1] In addition to Argentina, India, Indonesia and the United Arab Republic, Mexico and Venezuela had become sponsors of the amendment.

[2] Published by the International Telecommunication Union, Geneva, 1959.

55. It would, however, withdraw its third amendment (L.154, para. 1 (*c*)). In addition, having withdrawn its fourth amendment (L.154, para. 2) it would support the first of the amendments submitted jointly by France and Switzerland (L.286). Although the United States amendment in question related to paragraph 2 of article 25 while the French-Swiss amendment related to paragraph 3, the latter amendment did in fact incorporate the United States view that official correspondence meant all correspondence relating to the mission and its functions. His delegation withdrew its fifth amendment (L.154, para. 3) in favour of that submitted by the United Arab Republic (L.151/Rev.2) which offered a reasonable compromise between the United States view and the other views expressed in that connexion. Lastly, he announced the withdrawal of his delegation's seventh amendment (L.154, para. 5).

56. Mr. KEVIN (Australia) reintroduced as his own delegation's amendment that just withdrawn by the United States defining official correspondance to mean all correspondence relating to the mission and its functions (L.154, para. 2). It was important that there should be a definition of official correspondence, which was not always carried in diplomatic bags. The amendment by France and Switzerland (L.286), in favour of which the United States amendment had been withdrawn, referred only to diplomatic documents or articles contained in the diplomatic bag and only in that connexion were they defined as being " of an official nature necessary for the performance of the functions of the mission ".

57. Mr. BOUZIRI (Tunisia) supported the six-Power amendment (L.264) and opposed the United Kingdom amendment regarding the use of radio transmitters, which omitted the essential stipulation that the receiving State's consent was required.

58. Mr. BINDSCHEDLER (Switzerland) said that his delegation maintained the first of its amendments (L.158, para. 1) to delete the words " and consulates " in paragraph 1 of article 25 for the reasons he had explained earlier (25th meeting, para. 46). The convention dealt with diplomatic intercourse and immunities and was not the appropriate place for a reference to consulates, which should be dealt with in the convention on consular intercourse and immunities being prepared by the International Law Commission. The United Kingdom amendment (L.291) also included a reference to " consulates " and he could not support it unless that word was deleted. He thought, however, that a clear and simple provision along the lines of paragraph 2 of the International Law Commission commentary would be the most satisfactory solution.

59. He withdrew his delegation's third, fourth and fifth amendments (L.158, paras. 3 and 4 and L.158/Add.1) in favour of the corresponding amendments sponsored jointly by France and Switzerland (L.286).

60. Mr. VALLAT (United Kingdom) said he had no wish to argue in favour of the inclusion of a reference to consulates in article 25, paragraph 1, and suggested that a separate vote should be taken on the words " and consulates ".

61. Mr. de ERICE y O'SHEA (Spain) and Mr. BAYONA (Colombia) supported the six-Power amendment (L.264).

62. Mr. SUFFIAN (Federation of Malaya) noted that no objection had been made to his delegation's amendment (L.152) which had been introduced to emphasize both that the diplomatic bag should bear visible external marks of its character and that it should contain only diplomatic documents or articles intended for official use. He suggested that it should be referred to the Drafting Committee.

63. Mr. TUNKIN (Union of Soviet Socialist Republics) stressed that both inviolability and freedom of transport should be provided for the diplomatic bag. If either of those conditions was not fulfilled, the value of the diplomatic bag as a means of free communication for the sending State would be greatly diminished, if not destroyed. The amendment proposed by the United Arab Republic (L.151/Rev.2) provided that, if the receiving State had serious grounds for suspicion, the sending State might be required to withdraw the diplomatic bag. The granting of such discretionary power to the receiving State took away the guarantee of freedom of transport for the diplomatic bag and might at any moment be used to block the channel of communication for genuine or invented motives. The draft already provided the receiving State with adequate means to prevent the misuse of the diplomatic bag. It could make representations or use the other means provided; it could even in cases of serious abuse declare the diplomatic agent involved persona non grata. He firmly believed that the inviolability of the diplomatic bag should be maintained so that it would remain a genuine means of free communication and there was no possibility of its being opened or of that channel of communication being blocked.

64. A close examination of the first amendment submitted by France and Switzerland (L.286, para. 1) suggested that it might mean that the diplomatic bag enjoyed inviolability only if its contents were in keeping with the specifications laid down in the amendment. In theory, of course, inviolability was based on the contents of the diplomatic bag. The International Law Commission had, however, tried to avoid the kind of misinterpretation to which the amendment seemed to be open by avoiding a direct link between the definition of the contents of the bag and the statement that the bag was inviolable. Article 25, paragraph 3, provided that the diplomatic bag should not be opened or detained, while paragraph 4 provided that it should only contain diplomatic documents or articles intended for official use. If one of those provisions was infringed, the necessary action could be taken, although there was no direct link. Paragraphs 3 and 4 as they stood were therefore preferable to the terms of the amendment.

65. The Swiss proposal that the reference to consulates in article 25, paragraph 1, should be omitted would, if accepted, leave open the question whether the diplomatic mission could communicate with the sending State's consulates, or might even be interpreted as meaning that the diplomatic mission had no right to such commu-

nication. Everyone knew that the practice existed, and it was correctly reflected in the existing text of paragraph 1.

66. Undue importance seemed to have been attached to the question of the use of radio transmitters by diplomatic missions. The Committee should not adopt a provision which might be interpreted as meaning that the use of radio transmitters was an extraordinary or dangerous means of communication which should be dealt with in a special manner. If some embassies were allowed to use radio transmitters while others were not, it would lead to great practical difficulties and to a deterioration of relations between States. It might be deduced from the six-Power amendment (L.264) that the receiving State had an unrestricted right to allow or to forbid the use of radio transmitters by diplomatic missions. That went further than was necessary to allay the fears that had been expressed and yet was not adequate to cover the cases which the delegations particularly concerned had in mind. Although he found the United Kingdom amendment (L.291) acceptable, he realized that some delegations had objections. He therefore suggested that further efforts should be made to work out a provision along the lines of the International Law Commission's commentary, which might prove acceptable to the majority.

67. Mr. JEZEK (Czechoslovakia) withdrew his amendment (L.162) in order to facilitate the Committee's work.

68. The CHAIRMAN said he would put to the vote the amendments to article 25, paragraph 1.

At the request of the representative of the United Kingdom a vote was taken by roll-call on the amendment sponsored by Argentina, India, Indonesia, Mexico, the United Arab Republic and Venezuela (L.264).

The Federation of Malaya, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Federation of Malaya, Ghana, Guatemala, Holy See, Honduras, India, Indonesia, Iraq, Ireland, Italy, Korea, Liberia, Libya, Mexico, Morocco, Nigeria, Pakistan, Peru, Philippines, Portugal, Saudi Arabia, Senegal, Spain, Tunisia, Turkey, Union of South Africa, United Arab Republic, Venezuela, Viet-Nam, Yugoslavia, Argentina, Brazil, Burma, Cambodia, Ceylon, Chile, Colombia, Congo (Leopoldville), Dominican Republic, Ecuador and Ethiopia.

Against: France, Federal Republic of Germany, Hungary, Israel, Netherlands, Poland, Romania, Sweden, Switzerland, Ukrainian SSR, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Albania, Austria, Belgium, Bulgaria, Byelorusian SSR, Canada, Czechoslovakia.

Abstaining: Finland, Iran, Japan, Liechtenstein, Norway, Thailand, Australia, China, Denmark.

The amendment was adopted by 41 votes to 20, with 9 abstentions.[1]

[1] As a consequence of this vote the United Kingdom amendment (L.291) and Switzerland's amendment (L.158, para. 2) relating to the same subject were not put to the vote.

69. The CHAIRMAN put to the vote the amendment by the United States of America (L.154, para. 1 (*b*)).

The amendment was rejected by 19 votes to 19, with 28 abstentions.

70. The CHAIRMAN put to the vote the amendment of Switzerland (L.158, para. 1).

The amendment was rejected by 57 votes to 3, with 7 abstentions.

71. The CHAIRMAN put to the vote the amendment to paragraph 2 submitted originally and then withdrawn by the United States of America (L.154, para. 2) and since reintroduced by Australia (see para. 56 above).

The amendment was adopted by 22 votes to 18, with 28 abstentions.

72. The CHAIRMAN said that the Committee would next proceed to vote on the amendments to article 25, paragraphs 3 and 4. Two of those amendments, submitted by the United Arab Republic (L.151/Rev.2) and Ghana (L.294) respectively, were similar in purpose, although the latter referred to paragraph 3 and the former proposed a new paragraph. The Committee also had before it the amendment submitted by France and Switzerland (L.286, para. 1) replacing paragraphs 3 and 4.

73. Mr. de VAUCELLES (France) thought that the various amendments should be voted on in the order of the paragraphs to which they related, and suggested that the vote should begin with the amendment submitted by France and Switzerland relating to paragraphs 3 and 4.

74. Mr. EL-ERIAN (United Arab Republic) withdrew his delegation's amendment (L.151/Rev.2) in favour of that submitted by Ghana, which should be voted upon first as it referred to paragraph 3.

75. Mr. VALLAT (United Kingdom) said that he preferred the amendment originally proposed by the United Arab Republic and now withdrawn (L.151/Rev.2) to that of Ghana (L.294). His delegation therefore wished to reintroduce the former amendment (L.151/Rev.2) as an addition to paragraph 3.

76. After a procedural discussion in which Mr. CAMERON (United States of America), Mr. EL-ERIAN (United Arab Republic) and Mr. DADZIE (Ghana) took part, Mr. YASSEEN (Iraq) said that the amendment of Ghana was farthest removed from the original text of paragraph 3. It would permit the rejection of a diplomatic bag in the case of reasonable suspicion of misuse, whereas the other amendment would only permit such rejection in an exceptional case where there were serious grounds for suspicion.

77. The CHAIRMAN put to the vote the amendment submitted by Ghana (L.294).

The amendment was rejected by 43 votes to 8, with 14 abstentions.

78. The CHAIRMAN put to the vote the amendment originally submitted by the United Arab Republic (L.151/Rev.2) and reintroduced by the United Kingdom as an addition to paragraph 3.

The amendment was rejected by 37 votes to 22, with 6 abstentions.

79. The CHAIRMAN put to the vote the amendment submitted by France and Switzerland replacing paragraphs 3 and 4 by a single paragraph (L.286, para. 1).

The amendment was rejected by 24 votes to 24, with 15 abstentions.

80. The CHAIRMAN said that the Committee had before it four amendments to paragraph 5, sponsored respectively by Mexico (L.131, para. 2), France and Switzerland (L.286, para. 2), Chile and Liberia (L.133) and the United States of America (L.154, para. 6).

81. Mr. OJEDA (Mexico) withdrew his amendment.

82. The CHAIRMAN put to the vote the amendment submitted by France and Switzerland for an alternative formulation of paragraph 5.

The amendment was adopted by 33 votes to 22, with 10 abstentions.

83. Mr. MELO LECAROS (Chile), speaking on behalf of the two sponsors, said that the amendment sponsored by Chile and Liberia (L.133) was intended to confer inviolability on the diplomatic courier *ad hoc* and on the diplomatic bag carried by such a courier. It was not intended to apply to the personal baggage of the courier. As a matter of drafting, he pointed out that the term " accredited " used in his amendment should be replaced by " designated ".

84. Subject to these explanations, the CHAIRMAN put to the vote the amendment proposed by Chile and Liberia.

The amendment was adopted by 53 votes to 3, with 10 abstentions.

85. The CHAIRMAN said that the Committee had before it an amendment by the United States (L.154, para. 6) which would have the effect of specifying that the diplomatic courier would enjoy the same inviolability as a member of the administrative and technical staff of the mission.

86. Mr. TUNKIN (Union of Soviet Socialist Republics) said that the Committee had already adopted an amendment (L.286, para. 2) which defined the extent to which the diplomatic courier enjoyed personal inviolability. It was therefore not necessary to vote on the United States amendment.

87. Mr. CAMERON (United States of America) recalled that it had been expressly understood when the amendment of France and Switzerland (L.286, para, 2) had been voted upon that the United States amendment (L.154, para. 6) would be voted upon later.

88. The CHAIRMAN put the United States amendment to the vote.

The amendment was rejected by 36 votes to 8, with 17 abstentions.

89. The CHAIRMAN said that the Committee had before it an amendment submitted by France and Switzerland (L.286, para. 3) adding a new paragraph to cover the case where the diplomatic bag was entrusted to the captain of a commercial aircraft.

90. Mr. TUNKIN (Union of Soviet Socialist Republics) said that probably the question was covered by the adoption of the amendment on diplomatic couriers *ad hoc* (L.133).

91. Mr. BINDSCHEDLER (Switzerland) pointed out that the amendment of France and Switzerland (L.286, para. 3) did not purport to turn the captain of the aircraft into a courier, and urged that a vote be taken on the amendment.

92. After a discussion in which Mr. de VAUCELLES (France), Mr. VALLAT (United Kingdom) and Mr. BAYONA (Colombia) took part, the CHAIRMAN asked the Committee to decide whether a vote should be taken on the amendment.

The Committee decided by 48 votes to 7, with 7 abstentions, that the amendment should be put to the vote.

93. The CHAIRMAN put the amendment (L.286, para. 3) to the vote.

The amendment was adopted by 34 votes to 20, with 8 abstentions.

94. The CHAIRMAN put to the vote article 25 as a whole, as amended.

Article 25 as a whole, as amended, was adopted by 50 votes to 12, with 3 abstentions, subject to drafting changes.

95. Mr. WESTRUP (Sweden) said that he had voted against the proposal relating to diplomatic couriers *ad hoc* and a number of other amendments, not because he was against then im substance but because he felt that the details mentioned in them were already covered by the original text, thus making the amendments unnecessary.

96. Mr. VALLAT (United Kingdom) said that he had voted against article 25 as amended because the adoption of the amendment relating to wireless transmitters made paragraph 1 unacceptable to his delegation.

97. Mr. TUNKIN (Union of Soviet Socialist Republics) said that he had voted against article 25 as a whole because a number of amendments had been adopted which weakened the provision prepared by the International Law Commission. He hoped that further efforts would be made to improve the text so as to make it acceptable to all the delegations when article 25 was considered by the Conference in plenary meeting.

98. Mr. de VAUCELLES (France) said that he had voted against article 25 as a whole for reasons similar to those given by the Soviet Union representative, but the amendments to which he objected were not the same as those criticized by that representative.

The meeting rose at 7.45 p.m.