

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.1/SR.35

35th meeting of the First Committee

Extract from the
Official Records of the United Nations Conference on Consular Relations, vol. I
(Summary records of plenary meetings and of meetings of
the First and Second Committees)

inviolability and immunity; the inviolability of his residence could be said to be part of that personal inviolability. A consul, on the other hand, enjoyed only a limited measure of inviolability. Moreover, the head of a diplomatic mission normally held the rank of ambassador or minister plenipotentiary, whereas the head of a consular post might well be a vice-consul or a consular agent and it would be quite inappropriate to grant inviolability to the residence of a person of that rank.

64. In reply to the arguments put forward by the Spanish representative, he pointed out that the head of consular post carried with him, wherever he went, the limited measure of personal inviolability he enjoyed; he would therefore retain that inviolability in his residence, without it being included in the definition of consular premises. The same argument applied to the inviolability of consular archives. Article 32 laid down that those archives were inviolable "at any time and wherever they may be"; they would therefore retain their inviolability in the consul's residence, even if that residence were not inviolable. He stressed the fact that the proposed broadening of the definition of consular premises would make it more difficult for many governments to ratify the convention.

65. Mr. BINDSCHIEDLER (Switzerland) supported the amendment by Brazil and India, which would usefully clarify the definition by drawing a clear distinction between consular premises properly so called, which enjoyed special protection, and other premises used by the members of the consulate.

66. He was against extending the definition of consular premises in the manner proposed, for the same reasons as the United Kingdom representative. Under customary international law, a consular official enjoyed only limited protection, extended to him solely for the exercise of his functions. In addition, the consular archives were inviolable. Existing international law went no further, however, and the proposed rule was thus an innovation. Of course, the Conference could draw up a new rule, but it should have some good reason for doing so. For his part, he did not believe that the proposed broadening of the definition of consular premises would be a step forward in the development of international law.

67. No valid analogy could be drawn between the head of a consular post and the head of a diplomatic mission. The tasks they performed were entirely different. The head of a diplomatic mission was the official representative of the sending State; since his functions were of a much more delicate nature than those performed by a consular official, it was necessary that inviolability should extend not only to his person but to his residence as well.

68. Experience had shown that the existing rules of international law were sufficient to safeguard the exercise of consular functions and that it was not at all necessary to extend the protection of consular premises to the consul's residence. Of course, the receiving State was always free to extend either unilaterally, or on a basis of reciprocity, a greater measure of inviolability than that required by international law.

69. In recent years, with the expansion of diplomatic missions and consular posts, and with the growth of international organizations, the number of persons enjoying privileges and immunities had greatly increased. Privileges and immunities derogated from the sovereignty of the receiving State and were at variance with the principle of equality before the law; hence they should not be extended without serious grounds and his delegation would oppose the proposed innovation, which might lead to abuses.

70. Mr. DONATO (Lebanon) supported the amendment submitted by Brazil and India. As to the proposals to broaden the definition of consular premises, he noted that the Spanish representative had assumed that only career consular officers in charge of a consular post would be covered. If that view were shared by the sponsors of the proposals he could support them; otherwise, he would have to abstain from voting.

71. Mr. de MENTHON (France) said that, while he favoured the amendment submitted by Brazil and India, he could not support the proposals to broaden the definition. He agreed with the Brazilian representative that adoption of the broader definition would conflict with the Second Committee's decision on article 30 — a decision which had been taken in the light of the definition of consular premises formulated by the International Law Commission, which did not include the residence of the head of post. The proposed broadening of the definition would have the effect of extending to the consul's residence not only inviolability (article 30), but also exemption from taxation (article 31), which would be going much too far. A consul should not be given the same status as an ambassador.

72. Another argument against the broader definition was that, if it were adopted, the head of a consular post would enjoy inviolability and exemption from taxation, whereas the head of the consular section of a diplomatic mission would not. Such a situation would be paradoxical, because the head of such a consular section generally held a higher rank than the head of a consular post.

The meeting rose at 6.5 p.m.

THIRTY-FIFTH MEETING

Thursday, 4 April 1963, at 10.35 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (continued)

Article 1 (Definitions) (continued)

Sub-paragraph (j) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the text of article 1, sub-paragraph (j), as submitted by the drafting committee (A/CONF.25/C.1/L.166).

2. Mr. MEYER-LINDENBERG (Federal Republic of Germany), replying to a question put at the previous meeting by the Lebanese representative, confirmed that it was the intention of the sponsors of the amendments to sub-paragraph (j) to extend the expression "consular premises" to the residence of a career head of consular post.¹

3. Mr. FUJIYAMA (Japan) said that the intention of Japan in including the residence of the head of consular post under consular premises was to secure for that residence the tax exemption provided in article 31, which was in accordance with international practice. He confirmed that his delegation accepted the Lebanese representative's suggestion.

4. Mr. MIRANDA e SILVA (Brazil) said that the purpose of the amendment submitted by Brazil and India was to ensure that "consular premises" included only those parts of the buildings and land used exclusively for the purposes of the consulate. His delegation was not opposed to the German, Japanese and Nigerian amendments, but it wished to point out that that question had already been decided by the Second Committee.

5. The CHAIRMAN pointed out that the Second Committee had not dealt with the question of buildings and that the decision it had taken did not prejudge the issue so far as the First Committee was concerned.

6. Mr. PAPAS (Greece) supported the joint amendment by Brazil and India but opposed the other amendments for the reasons given by the United Kingdom, Swiss and French representatives.

7. Mr. WU (China) said that he would vote for the amendment submitted by Brazil and India. He was also inclined to support the amendment proposed by the Federal Republic of Germany, Japan and Nigeria: article 5, as adopted by the Committee, had in fact considerably extended consular functions and it was only appropriate that an extension of duties and responsibilities should be accompanied by a corresponding extension of privileges and immunities.

8. Mr. de ERICE y O'SHEA (Spain) noted that the Brazilian representative was not opposed to the residence of the head of post being included in consular premises and consequently sharing their inviolability. Certain bilateral consular conventions already extended the privilege of inviolability to the residence of the consul and, if it adopted the amendments by the Federal Republic of Germany, Japan and Nigeria, the Committee would only be confirming that practice.

9. It had been remarked that recognizing the inviolability of the residence of the head of consular post would, *ipso facto*, confer on it the exemption from taxation provided in article 31. But recognition of inviolability did not necessarily mean tax exemption. The position of career heads of consular post was often difficult and it was important to protect them by giving their residence the same inviolability as consular pre-

misses. However, in order to allay certain fears and to secure unanimous support for the amendments submitted by the three Powers, it could be specified that the inviolability of the residence of the head of consular post, which would result from its inclusion in the definition of "consular premises", did not confer on it the tax exemption provided in article 31.

10. Mr. BOUZIRI (Tunisia) doubted whether the proposals to widen the definition of consular premises were in order. The question had been discussed in the Second Committee, which had come to a negative decision. It was true that the First Committee was not considering the substance of the question, but only a definition of "consular premises"; but the fact remained that the decision it was called upon to take would affect article 30, on which the Second Committee had taken a decision. That article recognized the inviolability of consular premises, but the Second Committee had excluded the residence of the head of consular post. Hence, if the First Committee decided to include the residence of the consul in the definition of "consular premises" it would be going against the Second Committee's decision and article 30, as adopted by that committee, would have to be amended. In those circumstances, he thought that the First Committee would be encroaching on the competence of the Second Committee.

11. The question of tax exemption had been raised as a corollary to inviolability; but the Tunisian delegation considered that it should be discussed in connexion with article 31.

12. The CHAIRMAN reiterated his statement that the discussion would not affect the proceedings of the Second Committee, since it was not concerned with the inviolability of consular premises, but their definition.

13. Mr. TSHIMBALANGA (Congo, Leopoldville) said that he was in favour of including the residence of the head of post under "consular premises". His delegation would therefore vote for the amendments in question, but it asked that a joint text of those amendments, as orally amended by the Lebanese representative, should be put to the vote. His delegation would also vote for the amendment by Brazil and India.

14. Mr. CAMERON (United States of America) agreed with the views expressed at the previous meeting by the United Kingdom representative and those who had supported him. The United States delegation would vote for the International Law Commission's text of sub-paragraph (j), with the amendment by Brazil and India. The question of inviolability of the residence of a head of consular post had been considered and settled by the Second Committee. If the First Committee decided to include the residence of the consul among the consular premises which enjoyed inviolability, either the Second Committee would have to go back on the decision it had taken on article 30, or it would have to be left to the drafting committee to harmonize the definition of consular premises adopted by the First Committee with the intentions of the Second Committee. The Lebanese oral sub-amendment to the three-power

¹ For these amendments, see document A/CONF.25/C.1/L.166, footnote.

amendment added nothing to the draft convention, since article 58, concerning the inviolability of consular premises, applied to the premises of a consulate headed by an honorary consul.

15. The United States delegation had no objection to the residence of a head of post being exempt from taxation, but it would prefer that the words proposed in the amendments by the Federal Republic of Germany, Japan and Nigeria should not be added to sub-paragraph (j), since tax exemption was an entirely separate question which could be dealt with in a relevant article of the draft convention.

16. Mr. JAYANAMA (Thailand) said that the position of a consular official differed from that of a diplomatic agent and for that reason the International Law Commission had thought that the residence of the head of post should not be included in the definition of consular premises in the same way as it had included the residence of the head of mission in the definition of the premises of the diplomatic mission. His delegation would therefore vote against the amendments by the Federal Republic of Germany, Japan and Nigeria and would support sub-paragraph (j) as drafted by the International Law Commission and amended by Brazil and India.

17. Mr. BREWER (Liberia) supported the amendments submitted by the three Powers, which added a necessary clarification to the definition of consular premises.

18. Mr. OMOLULU (Nigeria) said that the Conference had everything to gain by applying to consular law the rules laid down in the Convention on Diplomatic Relations, particularly where the inviolability of the residence of the head of consular post was concerned. The amendments in question were of great interest to the smaller countries whose consuls often had more important functions than their diplomatic agents. He accepted the Lebanese sub-amendment.

19. Mr. DRAKE (South Africa) supported the statements made at the previous meeting by the representatives of the United Kingdom, Switzerland and France and the United States representative's statement at the present meeting. It was not justifiable to extend the inviolability of consular premises to include the residence of the head of consular post: to do so would be to go beyond the rules of customary international law. His delegation would vote against the amendments to that effect but in favour of the amendment by Brazil and India.

20. Mr. de MENTHON (France) said that he fully endorsed the lucid and convincing statement of the representative of Tunisia on the effects of the Committee's decision on the articles already approved by the Second Committee. If the First Committee were to approve the amendments submitted by the three countries it would be acting in opposition to an unequivocal decision made by the Second Committee, and it would then be necessary to draw the Second Committee's attention to the need to review article 50.

21. Mr. BOUZIRI (Tunisia) agreed with the Chairman and said that he would not press his point with regard

to procedure. He would vote in favour of the amendment by Brazil and India and against the amendments by the Federal Republic of Germany, Japan and Nigeria.

22. Mr. DADZIE (Ghana) supported the Chairman's decision. The First Committee was under no obligation to follow the decisions of the Second Committee. The two committees had equal status, and it was for the plenary conference to reconcile the texts.

23. Mr. LEE (Canada) agreed with the observations made by the representatives of France, Tunisia, the United Kingdom and the United States. Adoption of the amendments proposed by the three countries would result in a serious situation for most receiving States, for they would then be obliged to extend inviolability to the residences of hundreds of consuls and that would go far beyond international practice.

24. Mr. DONATO (Lebanon) said that the amendment in question was not incompatible with articles 30 and 58 as adopted by the Second Committee, since it was merely a question of extending inviolability to the residences of career consular heads of post, not of honorary heads of post.

25. Mr. N'DIAYE (Mali) entirely agreed with the Chairman. With regard to the doubts expressed by the representative of Spain, the matter of the inviolability of the residence of the head of post could always be settled by bilateral convention as indicated in paragraph 9 of the commentary on article 30. For that reason he would vote in favour of the International Law Commission's text as amended by Brazil and India.

26. Mr. USTOR (Hungary) observed that if the First Committee approved definitions that were different from the ones on which the Second Committee had based its decisions on certain articles, the drafting committee would have to reconcile the texts of those articles with the definitions adopted.

27. The CHAIRMAN said that the drafting committee was concerned with matters of terminology. The question whether it would be necessary to reconcile the texts of the different articles would be decided by the Conference in plenary.

28. Mr. RABASA (Mexico) entirely agreed with the Chairman. If the Second Committee made a decision with respect to the substance of any question, that would in no way prevent the First Committee from dealing with the same matter in connexion with the definitions. From a strictly legal point of view, the two committees had the same status and could make contradictory decisions. The final decision would lie with the Conference in plenary. From the practical point of view it was unlikely that the votes would give different results, for the same governments were represented in both committees. The Mexican delegation's position was quite definitive and would be the same in both committees.

29. The CHAIRMAN invited the Committee to vote on the amendments submitted by the Federal Republic of Germany, Japan and Nigeria with the

Lebanese sub-amendment to add the word "career" before the words "head of post".

The amendments were not adopted, 29 votes being cast in favour and 29 against, with 6 abstentions.

30. The CHAIRMAN put to the vote the amendment submitted by India and Brazil.

The amendment was adopted by 53 votes to none, with 5 abstentions.

Sub-paragraph (j), as amended, was adopted by 57 votes to none, with 7 abstentions.

31. Mr. RUDA (Argentina) explained that his delegation had voted against the amendments submitted by the Federal Republic of Germany, Japan and Nigeria for reasons of terminology which were quite unrelated to the question of the inviolability of the residence of the head of consular post. He pointed out that the criterion for the definition of "consular premises" appeared in the phrase "used for the purposes of the consulate" at the end of the sentence. It was therefore a question of ascertaining in each case whether the residence of the head of consular post was used for the purposes of the consulate. The difference in the case of the residence of a head of diplomatic mission was that it was always used for the purposes of the mission.

32. Mr. SILVEIRA-BARRIOS (Venezuela) stated that he had voted against the amendments by the Federal Republic of Germany, Japan and Nigeria because the extension of inviolability to the residence of the head of consular post was contrary both to his country's national legislation and to the generally accepted principles of consular law.

Sub-paragraph (k)

33. Mr. PAPAS (Greece) proposed that the provisions of sub-paragraph (k) should be extended to include sums of money by adding to the text the words "sums of money and safes".

34. Mr. KRISHNA RAO (India) remarked that sums of money could not be regarded as "archives".

35. Mr. PAPAS (Greece) withdrew his amendment.

Sub-paragraph (k) was approved.

Sub-paragraph (f)

36. The CHAIRMAN recalled that the two-thirds majority rule for the reconsideration of proposals had been waived in the case of the Netherlands amendment to sub-paragraph (f).²

37. Mr. van SANTEN (Netherlands) explained that he had submitted his amendment (A/CONF.25/C.1/L.167) so that persons who were in the service of a member of a consular post and who were employees of the sending State would be covered by the Convention.

38. Mr. EVANS (United Kingdom) considered that the Committee should exercise great caution in regard

² See the summary record of the thirty-fourth meeting, para. 54.

to any change in the definition contained in sub-paragraph (f). The approval by both committees of a number of fundamental provisions had been based on the principle that the definitions in article 1 would be maintained in substance. It was clear from a study of sub-paragraphs (h) and (i) of the International Law Commission draft that the category of persons the Netherlands representative had in view was covered by the definition of "member of the private staff" in sub-paragraph (i) of the International Law Commission draft. The consequence of the Netherlands amendment would be to include that category of persons among members of service staff, which might have an effect on the other articles of the Convention, the full extent of which it would be difficult to assess. It might be wiser to request the drafting committee to consider the matter from the point of view of the possible repercussions on the substance of the Convention and draft a text which would be compatible with the decisions taken by the two committees. He suggested that the Netherlands delegation might withdraw its amendment.

39. Mr. KRISHNA RAO (India) agreed with the United Kingdom representative that it would be preferable to refer the question to the drafting committee.

40. The CHAIRMAN asked whether the Netherlands delegation accepted the suggestion made by the United Kingdom representative.

41. Mr. van SANTEN (Netherlands) agreed with the procedure proposed, but considered that his amendment should be maintained. Indeed, the question had arisen precisely because the International Law Commission's draft which dealt with that category of persons in sub-paragraph (i) had been changed. The remarks of the United Kingdom representative demonstrated even more clearly the difference of opinion in the Committee on the interpretation of sub-paragraph (f).

42. The CHAIRMAN said that the Netherlands amendment would be referred to the drafting committee.

Paragraph 2

Paragraph 2 of the text of article 1 submitted by the drafting committee (A/CONF.25/C.1/L.166) was adopted.

43. The CHAIRMAN said that the drafting committee was to prepare a draft optional protocol concerning acquisition of nationality, which would be submitted direct to the Conference in plenary.³ The draft of the Final Act would be prepared by the Secretariat and considered in plenary.³

Completion of the Committee's work

44. After the customary congratulations and expressions of thanks, the CHAIRMAN declared that the Committee had concluded its work.

The meeting rose at 1.5 p.m.

³ See the summary record of the twenty-second plenary meeting.