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under paragraph 1, as approved by the Committee, for authorities of the receiving State to enter consular premises in certain circumstances, it did not necessarily imply that they should have the right of search.

49. Mr. DONOWAKI (Japan) withdrew his delegation's amendment to paragraph 2 (L.46, paragraph 2) in favour of the Greek amendment (L.59, paragraph 2). His delegation maintained its proposal to delete paragraph 3.

50. The CHAIRMAN put to the vote the Greek amendment (A/CONF.25/C.2/L.59, paragraph 2).

The amendment was rejected by 32 votes to 5, with 31 abstentions.

51. After a discussion on procedure in which Mr. SPACIL (Czechoslovakia), Mr. NASCIMENTO e SILVA (Brazil) and Mr. EVANS (United Kingdom) took part, the CHAIRMAN suggested that, to simplify proceedings, he should put to the vote the Nigerian amendment (L.27, paragraph 4). Should that amendment be rejected, the original text as drafted by the International Law Commission would remain, but in any event the Mexican amendment thereto (L.43) would be put to the vote.

It was so agreed.

Paragraph 4 of the Nigerian amendment (A/CONF.25/C.2/L.27) was adopted by 31 votes to 13, with 23 abstentions.

The Mexican amendment (A/CONF.25/C.2/L.43) was rejected by 44 votes to 7, with 17 abstentions.

52. The CHAIRMAN put to the vote the Japanese proposal to delete paragraph 3 (A/CONF.25/C.2/L.46, paragraph 3).

The proposal was rejected by 41 votes to 10, with 15 abstentions.

53. The CHAIRMAN said that the proposal made by the representative of Spain constituted an amendment to the International Law Commission's draft and was not a sub-amendment to the Greek amendment to paragraph 3. He would, therefore, first put the Greek amendment to the vote. Should that amendment be rejected, he would put the Spanish proposal to the vote.

The Greek amendment (A/CONF.25/C.2/L.59, paragraph 4) was adopted by 28 votes to 19, with 19 abstentions.

54. The CHAIRMAN explained in reply to Mr. EVANS (United Kingdom) that, since the Greek amendment had been adopted, the United States (L.2) and Netherlands (L.13) amendments could no longer be considered.

55. The Committee had completed its consideration of paragraphs 2 and 3 of article 30. It remained for it to consider the proposals which had been made for the addition of new paragraphs to that article.

The meeting rose at 6.20 p.m.

TENTH MEETING

Tuesday, 12 March 1963, at 10.40 a.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

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

Article 30 (Inviolability of the consular premises) (continued)

1. The CHAIRMAN invited the Committee first, to take a decision on the new paragraph 3 proposed in the Nigerian amendment (L.27) concerning the inviolability of the consular archives and, subsequently, on the new paragraph 4 proposed in the United Kingdom amendment (L.29) concerning entry into the consular premises by any person entitled to enter by virtue of any contract or other private right.

2. Mr. NWOGU (Nigeria) said that, as sub-paragraph (b) of paragraph 2 of the joint amendment (L.71) had not been adopted, he would withdraw paragraph 3 of his delegation's amendment.

3. Mr. EVANS (United Kingdom) explained that his delegation had wished in the new paragraph 4 proposed in its amendment (L.29) to preserve the rights that any person had by virtue of a contract, such as a lease, or a private right such as a right of way.

4. Mr. LEVI (Yugoslavia) said that amendment would involve the insertion of a clause which might give rise to confusion; he would vote against it.

5. Mr. HARASZTI (Hungary) observed that the convention should be an instrument of international public law and should not therefore include any exception coming under private law. The United Kingdom amendment was not in conformity with the text of the previous paragraphs as already adopted by the Committee, since the Committee had rejected the amendment according to which the authorities of the receiving State would have had the right to enter the consular premises "pursuant to an order of the competent judicial authority". In any case, the proposed provision was of no great practical value, and the Hungarian delegation would vote against it.

6. Mr. EVANS (United Kingdom) thought on the contrary that the case he had mentioned should be regulated by the convention. If a consul were to rent a building, giving the owner the right to enter the premises in order to supervise their maintenance, for example, it should be stated that such a right should be respected.

7. Mr. JESTAEDT (Federal Republic of Germany) said that he shared the opinion of the United Kingdom representative. The Committee had adopted paragraph 1 of article 30, embodying the exceptional case of force majeure, as had the 1961 Vienna Conference on Diplomatic Intercourse and Immunities. In the case of private rights, the Convention should clearly establish to what extent they should be respected, and he failed to see that

such a clause derogated from the recognized principle of the inviolability of the consular premises.

8. Mr. KHOSLA (India) said that he could not vote for the United Kingdom amendment. Restrictions had already been imposed on the principle of inviolability as formulated by the International Law Commission. The Committee had already rejected the right of any person to enter consular premises even if provided with an order of the courts; he could not see how an owner of the building could enter the consular premises without the consul's consent and without such an order.

9. The CHAIRMAN put to the vote new paragraph 4 of the United Kingdom amendment (A/CONF.25/C.2/L.29).

The proposal was rejected by 31 votes to 22, with 15 abstentions.

10. Mr. SPYRIDAKIS (Greece) said that, as indicated in paragraph 3 of his delegation's amendment (L.59), it was advisable to state explicitly in the text of the draft convention that consulates could not grant the right of asylum. The modern trend in international law was against it, because to recognize the right of asylum would be to restrict the sovereignty of the receiving State. In diplomatic missions asylum was sometimes granted in exceptional circumstances or as a result of special treaties; but that was very rarely the case in consular treaties. The Greek amendment was in line with current usage and international law.

11. The fact that the matter had not been discussed at the 1961 Vienna Conference did not mean that discussion of it should be avoided at the current conference, which was of an entirely different character. There was general agreement that the right of asylum in consulates could not be granted. A vote on the subject would be an important contribution to the development of international law, and would stress the impossibility of granting such asylum instead of restricting it to circumstances which, as the representative of Spain had pointed out, might cause misunderstanding.

12. Mr. HEUMAN (France) remarked that if it were laid down in the convention on consular relations that there was no recognition of the right of asylum it might be deduced *a contrario* that, since the 1961 Vienna Convention made no reference to it, that text implicitly admitted that such a right existed. His delegation was, of course, opposed to the right of asylum, but it considered that no reference to it should be made in the draft convention and it could not accept the Greek amendment.

13. Mr. ALVARADO GARAYCOA (Ecuador) said that the question of the right of asylum should not be included in chapter II of the draft convention.

14. Mr. VRANKEN (Belgium) said that he shared the French representative's opinion that it would be dangerous to introduce a provision making any conference whatsoever to the right of asylum, which was not recognized by any country represented at the Conference.

15. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that the question was a very complicated one which should be considered on another occasion. The Committee should not take up a position different from that of the International Law Commission and of the 1961 Vienna Conference.

16. Mr. KAMEL (United Arab Republic) said that it would be worth while adding to article 30 a special paragraph on the right of asylum. The new paragraph 5 proposed by the United Kingdom (L.29) appeared to provide a satisfactory solution.

17. Mr. DE CASTRO (Philippines) said that he also would prefer that the question of the right of asylum be dealt with in another convention, since the International Law Commission was considering it. His delegation could not vote for the new paragraph 5 in the amendment of the United Kingdom (L.29), the amendments of Nigeria (L.27, part 2), or Japan (L.46, part 4), but would vote for the Greek amendment (L.59, part 3). The last-named text referred to the right of asylum in general and did not refer solely, as did the United Kingdom amendment, to "fugitives from justice".

18. Mr. HENAO-HENAO (Colombia) endorsed the views of the representatives of Brazil (7th meeting), Ecuador and the Philippines. The right of asylum should in no case be granted on consular premises and it would be dangerous to raise the question by taking a decision one way or the other. No convention concluded between the Latin American States recognized the right of asylum on consular premises, although for humanitarian reasons Colombia allowed political refugees to be given asylum on diplomatic premises. His view was that the Committee should not be called upon to take a decision on the right of asylum.

19. Mr. WALDRON (Ireland) said that he would vote against all amendments that mentioned the right of asylum. He felt there would be a clear and possibly unanswerable case of *a contrario* with regard to the 1961 Convention if such amendments were adopted. He therefore agreed with the remarks made by the representatives of France and Belgium.

20. Mr. PEREZ-CHIRIBOGA (Venezuela) and Mr. ZEILINGER (Costa Rica) associated themselves with the statements of the representatives of Ecuador and Colombia.

21. Mr. VAZ PINTO (Portugal) said he was convinced that no risk would be incurred by the inclusion of a reference to the right of asylum. No country represented at the conference recognized the right of asylum on consular premises, but it would be better to specify in the text of the draft convention that such a right was not recognized.

22. Mr. EVANS (United Kingdom) said that, although he understood the opinions expressed by the representatives of France, Belgium and Ireland, under international law the situation was different with regard to diplomatic missions and consulates. The International Court of Justice recognized a limited right of asylum on the premises of diplomatic missions. In 1961, the Vienna

Conference had decided not to refer to the question, but there was no recognized right of asylum on consular premises and it would be advisable for the text of the draft convention to say so plainly. If his text of a new paragraph 5 (L.29) were not accepted, his delegation would vote for the Greek amendment (L.59, part 3).

23. Mr. MARESCA (Italy) said that in ignoring the right of asylum the 1961 Vienna Conference had followed a wise course. All delegations were opposed to the right of asylum on consular premises, but there would be some advantage in expressly stating that view in the convention.

24. Mr. PEREZ HERNANDEZ (Spain) remarked that every country recognizing the right of asylum on diplomatic premises had continued to apply that principle despite the silence of the 1961 Vienna Convention on the point. As to consular premises, however, a new paragraph added to article 30 might usefully indicate that such a right was not recognized. His delegation would vote for the Greek amendment, which did not refer to "fugitives from justice".

25. The CHAIRMAN noted that there were no representatives who supported recognition of the right of asylum on consular premises. The Committee should decide whether a provision in that sense should be embodied in the text of the convention.

26. Mr. SPYRIDAKIS (Greece) said that, in view of the risk that would be run if the Committee were to take a negative position in the matter, he could not accept the Chairman's proposal.

27. Mr. von NUMERS (Finland) asked who had instructed the International Law Commission to undertake a study of the right of asylum and what was its purpose.

28. The CHAIRMAN said that the study would be undertaken under General Assembly resolution 1400 (XIV).

29. Mr. von NUMERS (Finland) said that under those conditions it would be premature for the Committee to take a decision on the point.

30. Mr. SPACIL (Czechoslovakia) supported the Chairman's proposal for an immediate vote. He did not believe that the Committee should concern itself with the question of the right of asylum.

31. Mr. VRANKEN (Belgium) also said that he was in favour of an immediate vote. The Conference had been convened under General Assembly resolution 1685 (XVI) for the purpose of drawing up a convention, but it was no part of its duties to discuss the right of asylum, which would be the subject of a special convention.

32. Mr. ANGHEL (Romania) proposed that, under rule 31 of the rules of procedure, the Committee should decide by vote whether it was competent to consider the question of the right of asylum.

33. Mr. KANEMATSU (Japan) opposed the Romanian representative's proposal, which would not give representatives an opportunity to consider the various amendments. He shared the Greek representative's views.

34. Mr. NALL (Israel) said that he believed he was right in understanding that, of the two proposed amendments, that of Greece (L.59, part 3) would have very considerable political repercussions, whereas that of the United Kingdom (L.29) would apply only to persons endeavouring to evade justice. He was therefore of the opinion that the political aspect of the matter should be left to the International Law Commission and that the Committee should confine itself to considering the other aspects.

35. Mr. EVANS (United Kingdom) said that the Romanian representative's proposal seemed entirely acceptable to him, and he asked the Japanese and Greek representatives not to maintain their opposition to it.

36. The CHAIRMAN put to the vote the Romanian representative's proposal, which was purely procedural and was to the effect that the Committee should proceed to vote on the question whether or not it should consider the question of the insertion in article 30 of a provision concerning the right of asylum.

The proposal was adopted by 66 votes to none, with 3 abstentions.

37. The CHAIRMAN said that he would accordingly put to the vote the question whether the Committee should consider including a provision concerning the right of asylum.

By 46 votes to 19 with 4 abstentions, the Committee decided not to consider the question of the insertion of a provision concerning the right of asylum.

38. The CHAIRMAN put to the vote article 30 as a whole as amended.

Article 30, as amended, was adopted by 42 votes to 16, with 12 abstentions.

39. Mr. MARESCA (Italy) said that he wished to draw the drafting committee's attention to the fact that the word "occupation" in the new paragraph 4 of article 30 seemed to him to be ambiguous.

40. Mr. HEUMAN (France) said he wished to point out that it was clear from the text and the preceding discussion that the consul's residence was outside the scope of article 30.

Article 31 (Exemption from taxation of consular premises)

41. The CHAIRMAN invited the Committee to consider article 31 and the amendments relating to it.¹

42. Mr. BLANKINSHIP (United States of America), introducing his delegation's amendment (L.33/Rev.1) to article 31, said that his delegation shared the International Law Commission's desire to see consular premises exempted from taxation but feared that the Commission's text did not comply with the require-

¹ The following amendments had been submitted: United Kingdom, A/CONF.25/C.2/L.30; South Africa, A/CONF.25/C.2/L.31; Belgium, A/CONF.25/C.2/L.32; United States of America, A/CONF.25/C.2/L.33/Rev.1; Italy, A/CONF.25/C.2/L.37.

ments of the laws in force in certain States of the United States. The United States delegation had tried, however, to keep as close as possible to the International Law Commission's text.

43. In the United States, as in other States, taxes were levied essentially on property and not on persons. Hence, the United States delegation had considered it necessary that the article should refer to "consular premises" and not to "the head of post . . . in respect of the consular premises". That was the object of its amendment, which did not appear incompatible with the amendment of the United Kingdom (L.30) or those of South Africa (L.31), Belgium (L.32) or Italy (L.37), since the phrase "acting for the sending State" in the United States amendment met the objections raised by the representatives of those countries.

44. The CHAIRMAN noted that a number of amendments were very similar and asked the sponsors to meet and establish, if possible, a joint text.

45. Mr. VRANKEN (Belgium) announced that the Belgian and Italian delegations had agreed on a joint text to take the place of their amendments (L.32 and L.37). The joint amendment read: "The sending State and any authorized person acting on its behalf . . ."

46. Mr. LEE (Canada) said that he was in favour of the United States proposal on the understanding, however, that the words "used exclusively for consular purposes" did not apply to the residence of the head of post.

47. Mr. ANGHEL (Romania) considered that article 31, as drafted by the International Law Commission, was satisfactory. In Romania, the principle of tax exemption was recognized both in municipal law and in bilateral conventions. Hence, he would vote for the draft article, while prepared to accept some amendments of form.

48. He did not object to the amendments by the United Kingdom (L.30) and by South Africa (L.31), nor to the joint amendment by Italy and Belgium, which were purely drafting matters. The United States amendment (L.33/Rev.1) did not seem to him to be very clear and included certain superfluous matters. The words "used exclusively for consular purposes" were not essential, and the words "situated in the territory of the receiving State" were superfluous. The United States amendment referred to the "legal or equitable" owner, which, to his mind, was not quite clear; it would be useful if the representative of the United States would explain what it meant.

49. Mr. JESTAEDT (Federal Republic of Germany) thought that the existing wording of article 31 which reproduced the provisions of the 1961 Convention, should be maintained. It should, however, be understood that tax exemption also applied to acquisitions and transfers of property.

50. Mr. HEUMAN (France) said that the International Law Commission's draft was satisfactory to him, but he was prepared to study the amendments submitted.

51. The United States amendment contained four innovations as compared with the original text. First, the addition of the phrase "used exclusively for consular purposes" did not seem to him entirely necessary, although he did not object to it. Similarly, the words "situated in the territory of the receiving State" seemed to him unnecessary, since consular premises were, by definition, situated in the territory of the receiving State. Then, the United States amendment adopted the idea expressed in the joint amendment by Italy and Belgium, an idea that the French delegation was prepared to accept; nevertheless it would have preferred reference to be made to the "head of post" rather than to "any person", as proposed in the United Kingdom amendment (L.30). Lastly, the phrase "legal or equitable" seemed to him to be lacking in clarity; the term was peculiar to English and United States law. Like the German representative, he considered that exemption should also apply to acquisitions and transfers of property.

52. Mr. DRAKE (South Africa), explaining his delegation's amendment (L.31), said that he thought it preferable to specify that for the purpose of the articles under discussion the exemption should attach to the residence as well as to the office of the consul. The United States proposal seemed to him generally acceptable, provided that the words "used exclusively for consular purposes" and the word "equitable" were deleted. He had no objection to the Belgian and Italian amendment and shared the opinion of the German representative that exemption should apply to acquisitions of property.

53. Mr. EVANS (United Kingdom) said that the underlying principle of the article was to prevent the taxation of governments by governments. It should therefore be limited to those cases in which taxes were paid out of the funds of the sending State. The taxation of individual members of the consulate should be dealt with separately in article 48. For those reasons his delegation proposed that article 31 should be amended to apply only where consular premises were owned or leased by the sending State or by any person on behalf of the sending State. The Italian amendment (L.37) was based on the same idea, but was expressed more vaguely; that did not seem to him desirable. His delegation considered the South African amendment (L.32) to be generally acceptable. It could approve the United States amendment (L.33/Rev.1), subject to the substitution of the words "any person acting for" for the words "the head of post acting for". On the other hand, it would not agree to the scope of article 31 being extended to cover the residences of consuls.

54. Mr. DOHERTY (Sierra Leone) said that he accepted the general principle stated in article 31. He approved of the United Kingdom amendment (L.30), and had no objection to the South African amendment (L.31).

55. Mr. ZABIGAILLO (Ukrainian Soviet Socialist Republic) considered the International Law Commission's draft of article 31 to be acceptable. The United States amendment (L.33/Rev.1) was not satisfactory,

since it imposed unjustified restrictions. The term “exclusively” lacked precision; furthermore, the notion of “equitable” was badly defined and liable to give rise to mistaken interpretations.

56. After having heard the United Kingdom representative’s explanations, the delegation of the Ukrainian Soviet Socialist Republic considered the United Kingdom amendment (L.30) to be acceptable. It also accepted the joint Belgian and Italian amendment.

The meeting rose at 1 p.m.

ELEVENTH MEETING

Tuesday, 12 March 1963, at 3.20 p.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

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

Article 31 (Exemption from taxation of consular premises) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of paragraph 1 of article 31 and the amendments thereto.¹

2. Mr. SHRESHTHAPUTRA (Thailand) said that some of the terms used in the United States amendment (L.33/Rev.1) were unfamiliar to his delegation, owing to the differences in their legal systems, and differed from the general terms used in the Vienna Convention on Diplomatic Relations. Although it had no objection in principle to the United States amendment, it would therefore prefer the United Kingdom amendment (L.30).

3. Mr. von NUMERS (Finland) asked whether the term “person” in the United Kingdom amendment was intended to mean both a natural and a juristic person. If so, the drafting committee might consider how to make the meaning clear.

4. In commenting on the United States amendment, the United Kingdom representative had said that he did not consider that the consular residence was included in the consular premises “used exclusively for consular purposes”. It would be difficult in a case, for example, where a sending State purchased a building for use as consular premises on one floor and as the consular residence on another floor, to assess the amount of exemption from taxation.

5. Mr. BLANKINSHIP (United States of America) said that the main purpose of his delegation in presenting its amendment (L.33/Rev.1) to paragraph 1 of article 31 had been to enable a federal government, such as that of the United States, not only to assume its obligations as a receiving State but to carry them out effectively. In the United States the state laws on real property taxes were interpreted very strictly. An attempt had

therefore been made to draft a text suitable for inclusion in an international instrument but which would nevertheless override local laws and thus allow a more liberal interpretation of the law, as desired by the Federal Government, and still give adequate protection to consular representatives in the United States. It had, however, become clear from the discussion that the proposed wording was not entirely acceptable.

6. He would concede that, as had been suggested, the words “used exclusively for consular purposes” were unnecessary and that the point might well be covered by article 1 (Definitions). In drafting the amendment it had been thought that the inclusion of that phrase in article 31 would serve a double purpose and help to shorten the part dealing with honorary consuls.

7. The words “and situated in the territory of the receiving State” had been included so as to leave no possible grounds for challenge. It had, however, been argued that the meaning was implicit and his delegation would be willing to drop those words from the amendment.

8. The words “legal or equitable” had been included because there was in the United States law on real property a difference between the legal and the equitable owner, for example, in the case of a person buying a property on a bank loan. He accepted the fact, however, that the notion was not found in many legal systems and his delegation would agree to withdraw the words.

9. The main difference between the revised United States text and the International Law Commission draft was that the former referred to “consular premises” and the latter to “the sending State and the head of post”; his delegation maintained that part of the amendment, while accepting the United Kingdom sub-amendment. The revised text proposed by the United States delegation would therefore read:

“Consular premises of which the sending State or any person acting on behalf of the sending State is the owner or lessee, shall be exempt from all national, regional or municipal dues or taxes whatsoever, other than such as represent payment for specific services rendered.”

10. The United States delegation also supported the views expressed by the representatives of France and the Federal Republic of Germany in regard to specific exemption from stamp duty, registration fees and all property transfer taxes.

11. Mr. HEUMAN (France) said that his delegation would vote for the revised United States text of paragraph 1. He suggested that it should be noted in the record that the unanimous view of the meeting was that paragraph 1 of article 31 should be interpreted as including exemption from property transfer taxes.

It was so agreed.

12. Mr. MARESCA (Italy) said that in its amendment (L.37) his delegation had desired to prevent any possibility of confusion. The text of paragraph 1 as drafted by the International Law Commission might be interpreted as meaning that the head of post should enjoy exemption from taxation on his private residence,

¹ For a list of the amendments, see summary record of the tenth meeting, footnote to para. 42.