

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.2/SR.6

6th meeting of the Second 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)

The sub-amendment deleting the words "and on the residence and means of transport of the head of the consular post" in paragraph 2 was rejected by 30 votes to 15, with 25 abstentions.

The sub-amendment inserting the word "thus" between the word "right" and the word "accorded" in paragraph 3 was rejected by 15 votes to 3, with 49 abstentions.

The sub-amendment re-drafting paragraph 3 to read: "The right thus accorded shall, as far as the residence and means of transport of the head of the consular post are concerned, be exercised in conformity with the usage, law and regulations of the receiving State" was rejected by 18 votes to 2, with 46 abstentions.

44. The CHAIRMAN put to the vote the sub-amendment submitted by the French delegation to delete the words "residence" and in paragraph 2.²

The French sub-amendment was rejected by 39 votes to 11, with 18 abstentions.

45. The CHAIRMAN put to the vote the Greek delegation's sub-amendment adding in paragraph 2 after the words "consular post", the words "when used on official business".

The Greek sub-amendment was adopted by 22 votes to 19, with 25 abstentions.

46. Mr. HEUMAN (France) pointed out that one delegation had not participated in the vote.

47. The CHAIRMAN said that he would put to the vote the revised joint amendment (L.60) as amended by the sub-amendment of the Greek delegation.

48. Mrs. VILLGRATTNER (Austria) moved that the proposal be voted on paragraph by paragraph.

49. Mr. MARESCA (Italy) opposed the motion.

50. Mr. EVANS (United Kingdom) said that the sponsors of the revised joint amendment had established a carefully balanced compromise text, which would lose all meaning if any of its provisions were dropped.

51. Mr. HENAO-HENAO (Colombia) supported the Austrian representative's motion. The Committee would later discuss article 55, and it would be regrettable if it prejudged its decision on that article. For that reason he would vote against paragraph 3.

52. Mr. SIKHE CAMARA (Guinea) also supported the motion.

53. The CHAIRMAN put the Austrian delegation's motion to the vote.

The motion was rejected by 42 votes to 9, with 16 abstentions.

54. The CHAIRMAN put to the vote the revised joint amendment as amended by the Greek delegation's proposal.

² The second French sub-amendment (addition of the words "and regulations" to paragraph 3) was not put to the vote at this stage. Later, the drafting committee approved an amendment affecting the entire text of the draft convention, whereby those words would be added wherever the word "law(s)" occurred.

The amendment (A/CONF.25/C.2/L.60) was adopted by 53 votes to 10, with 9 abstentions.

55. The CHAIRMAN said that, in view of that decision, there was no need to put the Nigerian amendment (L.36) to the vote. The text which the Committee had adopted would constitute article 28.

The meeting rose at 6.45 p.m.

SIXTH MEETING

Friday, 8 March 1963, at 10.50 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)

1. The CHAIRMAN noted that some of the amendments to article 30 related to the question of asylum. Since the subject was before other United Nations bodies, including the International Law Commission, it would be preferable if the Committee refrained as far as possible from discussing the matter. He suggested that, to facilitate discussion, the article might be taken up paragraph by paragraph, despite the fact that some of the amendments tabled related to more than one.¹

2. Mr. WESTRUP (Sweden) stated that although the Swedish Government attached great weight to the sound preparatory work done by the International Law Commission, it had doubts of principle concerning some of the draft articles, beginning with article 30. It would seem that the International Law Commission had at times gone slightly too far in establishing analogies between diplomatic and consular relations, by placing diplomatic and consular missions on the same footing notwithstanding their functional differences. The 1961 Conference had unanimously adopted the principle that privileges and immunities were granted, not for the benefit of the individual, but to ensure that the diplomat, as representative of a State, would be able to exercise his functions effectively. Admittedly, the consul of today might become the diplomat of tomorrow, but, although there were superficial resemblances, the functions of each remained different in principle and that was the essential point that must be borne in mind.

3. The immunities of embassies and embassy staff derived from the ancient rule of international law: *ne impediatur legatio*, but the exclusive privileges thus conferred were such as to impinge to some extent on the

¹ The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.2; Netherlands, A/CONF.25/C.2/L.13; Spain, A/CONF.25/C.2/L.24; Austria, A/CONF.25/C.2/L.26; Nigeria, A/CONF.25/C.2/L.27; United Kingdom, A/CONF.25/C.2/L.29; Mexico, A/CONF.25/C.2/L.43; Japan, A/CONF.25/C.2/L.46; Greece, A/CONF.25/C.2/L.59; Greece, Japan, Nigeria and the United Kingdom, A/CONF.25/C.2/L.71.

sovereignty of the receiving State or at any rate on the freedom of action of its authorities. The Swedish Government had grave doubts as to the advisability of extending categorical rules of the kind to bodies whose functions did not require the same absolute autonomy as embassies. He was aware that bilateral consular agreements varied on that point, but recent agreements concluded by Sweden included *force majeure* rules in the articles on the inviolability of the consular premises, similar to those advocated in a number of the amendments before the Committee. It had been for very special reasons, and out of respect for a fundamental principle of diplomatic relations, that such rules had not been incorporated in the 1961 Convention to cover the specific cases of fire or crime. His government considered that the categorical formulae thus adopted in that convention constituted the limit to what was acceptable in respect of diplomatic functions and would find great difficulty in agreeing to similar standards for consular functions.

4. The Swedish Government would therefore support the *force majeure* clauses proposed in the United States, Nigerian, United Kingdom and Japanese amendments, and would reserve its position with regard to the most appropriate among those and the remaining amendments before the Committee.

5. Mr. ANGHEL (Romania) said his delegation attached great importance to the principle of the inviolability of consular premises and deemed the International Law Commission justified in the text it had proposed. In general, the amendments before the Committee fell into two opposing groups: those advocating extension and those proposing restriction of inviolability. Among the first group, his delegation would be able to support the amendments put forward by Austria and Spain, as well as the United States proposal that the designee of the head of post might give consent to entry. On the other hand, the amendments tabled by Japan, Nigeria, United Kingdom, Greece and Mexico were not acceptable since they tended to place restrictions on inviolability, strict observance of which was essential for the exercise of consular functions. Any provision that would infringe that right would have the effect of preventing normal functioning of the consulate and would open the way to nullifying other immunities essential to its task.

6. It was noteworthy that most of the consular conventions cited in the commentary to the article, as well as the Convention regarding consular agents signed at Havana in 1928² and the 1961 Convention on Diplomatic Relations, recognized the principle in question without restriction. His delegation deemed that the inviolability of the consular premises was as important for the exercise of consular functions as was the inviolability of the diplomatic mission premises for the exercise of diplomatic functions. The possibility of entry by virtue of any contract or other private right envisaged under the United Kingdom and Greek amendments was a matter that could be regulated by the terms of the lease or otherwise, but a provision of that kind should

not be incorporated in a convention on consular relations, for it was essential to rule out the possibility of abuse.

7. The Romanian delegation was of the opinion that the original draft as amended by Austria and Spain was to be preferred.

8. Mr. SPYRIDAKIS (Greece) said that the Greek Government was of the opinion that the consular mission was entirely different from the diplomatic mission and hence it was unable to accept article 30 as drafted by the International Law Commission. For that reason, the Greek delegation proposed that the whole article should be replaced by the text submitted in its amendment (L.59). In so far as paragraph 1 was concerned, similar amendments had been submitted by Japan and Nigeria. In the circumstances, therefore, his delegation would be glad to support those amendments, as well as those proposed by Austria and Spain.

9. Mr. PEREZ HERNANDEZ (Spain) introduced his delegation's amendment (L.24) and said the underlying purpose was to extend inviolability to cover the residence of the head of the consular post. He was gratified at the support already expressed. Unlike the ordinary private or public employee, the consular official was obliged to use his residence as a place of work in the exercise of his consular functions — for example, for receiving officials of the local authorities to which he was accredited, as well as colleagues and compatriots. Secondly, the fact that, at its previous meeting, the Committee had approved the rule that the consul should have the right to fly the national flag on his residence automatically conferred inviolability upon the premises.

10. He would like to make it plain that there was no question of extending inviolability to the residence of the honorary consul. Under the provisions of articles 57 and 58, that was entirely ruled out.

11. Mr. BLANKINSHIP (United States of America) pointed out that two basic changes were involved in the text proposed by his delegation for paragraph 1 (L.2). In the first place, that text laid down that inviolability should extend only to premises used exclusively for the exercise of consular functions and on that point paragraph 2 of the International Law Commission's commentary appeared to be in agreement in principle. The second new provision was designed to waive consent to entry in the case of fire or other disaster requiring prompt protective action. The United States took the view that entry in the case of fire should not depend on the consent of the head of post, since the public welfare was at stake and delay occasioned by his absence might have intolerable consequences. The government might, for example, be held responsible for damages caused by outbreak of fire in the consular premises — a by no means academic consideration, since in New York City alone only two of sixty-eight consular offices were located in detached buildings used solely by them. It was accordingly a matter of general interest to protect not only the consular but adjoining premises. Moreover, under paragraph 2 of the article, the receiving

² League of Nations, *Treaty Series*, vol. CLV, 1934-1935, No. 3582.

State was in duty bound to protect consular premises from intrusion or damage and a literal interpretation of paragraph 1 might prevent the police from taking appropriate steps for that purpose. He noted that a concurrent principle appeared in other amendments before the Committee — namely, that protection provided by the receiving State be extended by assuming that the head of post granted authority to enter in certain circumstances.

12. Mr. DONOWAKI (Japan) introduced his delegation's amendment (L.46) to paragraph 1. The Japanese delegation at the 1961 Conference had sponsored an amendment for placing some reasonable restrictions on the inviolability of diplomatic missions. The argument then advanced that inclusion of exceptions to the traditional rule of inviolability established by international law might lead to abuse had been sufficiently convincing for Japan not to press its proposal. The question under consideration, however, was entirely different. Consular privileges, unlike diplomatic privileges, were still in a nebulous state, precisely because of the many and varying bilateral agreements governing them. The Conference, in adopting an article embodying some reasonable exceptions without restricting established rights, would be creating a new rule of international law.

13. Perusal of various bilateral conventions had led him to the conclusion that inviolability of the consular premises was invariably subject to the right of the receiving State to enter those premises in cases of emergency or fire; in addition, many of them made provision for the entry of an official of the receiving State provided that he produced the appropriate writ. Unless similar safeguards were embodied in the draft convention, many embarrassing situations might arise and adoption of the International Law Commission draft would be tantamount to establishing the inviolability of the consular premises on the same footing as for diplomatic premises — a sudden change for which his delegation saw no reasonable grounds at that stage.

14. His delegation would be able to support the Nigerian proposal on similar lines, as well as the amendments submitted by Austria and Spain.

15. Mrs. VILLGRATTNER (Austria) said that the Austrian amendment had been submitted for purely practical reasons. It could happen that in the case of an emergency, the consul might not be available; hence it would be advisable to provide for an alternative possibility for gaining consent for entry to the consular premises, through the diplomatic mission. The Austrian delegation reserved its position on the other amendments before the Committee.

16. Mr. LEVI (Yugoslavia) said that his delegation would like to see a clause in paragraph 1 providing for absolute inviolability of the consular premises. The alternative formula for "consular premises" used in the United States and United Kingdom amendments was simply a drafting change and was to be preferred as being more precise. His delegation could also accept the clause on consent by the designee of the head of post, in the United States amendment, and the clause

providing for consent by the head of the diplomatic mission, proposed by Austria, as well as the Spanish amendment to extend inviolability to the residence of the head of post. It could not agree to the other amendments making exceptions to the rule.

17. Mr. HARASZTI (Hungary) deplored some of the amendments that had been tabled; the International Law Commission's draft provided the greatest measure of security for the consulate and laid down the conditions essential to its effective functioning. The difference between the functions of diplomatic and consular missions should not be exaggerated; the same degree of protection should be ensured for both. He was well aware that a number of States did not accept the rule embodied in the article in their consular conventions. It was not the task of the Conference merely to codify, but also progressively to develop universally accepted international law.

18. His delegation was not in favour of those amendments providing for entry in case of fire or disaster; trust should be placed in the consular officials to take all the precautionary measures needed against fire. The introduction of exceptions of that kind would create dangers greater by far than those they were designed to avoid.

19. He unreservedly endorsed the Chairman's views concerning the right of asylum.

20. Mr. ALVARADO GARAI COA (Ecuador) remarked that international law recognized the principle of the inviolability of the consular premises but not that of the immunity of the consular official save in the exercise of his functions within his office. He accordingly agreed that in that respect there was a difference between diplomatic and consular law. His delegation would support the Greek amendment but would like to have greater stress laid on authorization by the Minister for Foreign Affairs of the receiving State. That could be achieved by adding the words "in all cases" after the word "with", in the fifth line of paragraph 1.

21. Since consuls also acted as commercial agents of their governments they did not enjoy the invariably immune status of diplomatic officials. Paragraph 3 of the Greek amendment which prescribed perfectly the limitation of the consular functions was important in that respect.

22. He was of the opinion that entry by the police on consular premises must be allowed in cases of crime.

23. Mr. SPACIL (Czechoslovakia) observed that the main argument of those delegations that had submitted restrictive amendments was that the functions of consular and diplomatic missions were essentially different. That was incontestable, but there was one common factor, namely, both the consul and the diplomatic agent represented their States, and their immunities and privileges were based on that fact. It was accordingly irrational to maintain that the consul should not enjoy the same degree of inviolability as the diplomatic agent. Since these immunities admittedly infringed to some extent the sovereignty of the receiving State, it was

illogical to grant them with one hand and restrict them with the other. Accordingly, his delegation could not accept any amendment designed to restrict inviolability.

24. There was seemingly general agreement in the Committee on consent to entry by the designee of the head of post. Presumably, any consulate official on the spot would represent the head and he could accordingly accept that addition. In regard to the further exceptions proposed, a realistic view should be taken. Some person in a position to contact an official with authority to act was invariably on duty in a consulate. The argument that it might be impossible to find any person with authority was thus invalid. In drafting the Convention, every effort should be made to preclude any possible pretext for provocation on the part of the receiving State, such as might be given by the inclusion of exceptional clauses of the kind. The case of consular premises situated within a large building was a special case and presumably the head of post, in deference to his obligations towards the other tenants, might give blanket consent to entry in particular circumstances.

25. The Japanese amendment was in accordance with his delegation's views and was therefore acceptable; the same applied to the Austrian amendment. He too associated himself with the Chairman's views on right of asylum. In conclusion, he stated that his delegation attached great importance to the article and could in no case agree to any restriction of the inviolability of the consular premises. It would therefore support paragraph 1 of the original draft.

26. Mr. SICOTTE (Canada) said that the discussion on paragraph 1 of article 30 had concentrated on the need to set precise limits for applying the principle of the inviolability of consular premises. Canada accepted the principle but was also aware that there might be exceptional circumstances where the receiving State's responsibility for protecting human life and property necessitated special measures. Failure to fight a fire, for example, in a mission occupying part of a large building in the centre of a town could result in serious loss of life and property.

27. Efforts had been made in the International Law Commission and elsewhere to solve the difficulty by defining the application of the principle in case of public danger. He urged the Committee to accept the idea that in case of exceptional public emergency the receiving State should not be prevented from taking the necessary action; in that spirit he supported the United States amendment. It should of course be understood that consulates would not raise obstacles to legitimate action in case of genuine public danger.

28. Mr. JESTAEDT (Federal Republic of Germany) supported the United States amendment because it was based on sound principles and conformed with practice under national and international law. He proposed, however, as a sub-amendment, that the following phrase from the end of paragraph 1 of the United Kingdom amendment should be added to the end of the first paragraph of the United States amendment: "or if there is reasonable cause to believe that a crime of violence to

person or property is being or is about to be or has been committed there". Consular premises must be fully protected by receiving States and police should have the right to make arrests if necessary, even on consular premises. He also thought that the words "consular premises" in the International Law Commission's draft were better than the words "premises used exclusively for the exercise of consular functions" in the United States draft, since the latter might be difficult to interpret. He supported the Austrian amendment and in particular the Spanish amendment.

29. Mr. BLANKINSHIP (United States) accepted the amendment by the representative of the Federal Republic of Germany.

30. Mr. DAS GUPTA (India) observed that the proposed amendments to paragraph 1 raised two questions: the limitation of the inviolability of consulates, and the right of asylum. It was generally recognized that the principle of inviolability really applied to consular archives, with the inviolability of premises as a corollary. In that respect there would seem to be little difference between consular premises and premises used by diplomatic missions, for both were premises in which foreign missions carried out their functions. It was true that diplomatic and consular functions differed, but they also overlapped: diplomats were often required to perform consular duties and the reverse was also true. It followed, therefore, that the inviolability of consular archives or correspondence was as important as that of diplomatic archives or correspondence. It was important that the proposed convention should reflect not only the traditional idea of immunity, but also recent trends in law. Even in 1898 the Institute of International Law had recognized the inviolability of consular premises; and consular immunities had greatly increased since then and would undoubtedly go on increasing. It was true that if the receiving State had an obligation to provide adequate protection for consular premises it should not be prevented from taking the necessary action in such cases as fire. The representative of Czechoslovakia, however, had rightly drawn attention to the possibility of abuse or provocation. He thought therefore that paragraph 1 as drafted by the International Law Commission was satisfactory. If, however, the United States amendment could be accepted as an amplification without the fear that it might lead to abuse, he was prepared to accept it.

31. The second question, the right of asylum, should not be discussed at the present time. It was not provided for in the Vienna Convention on Diplomatic Relations and a provision that consulates could not offer asylum might imply that diplomatic premises could offer asylum. It would be better to say nothing.

32. Mr. HEUMAN (France) said that he was surprised that one of the principal arguments in the discussion was the supposition that the International Law Commission had placed consular rights on the same footing as diplomatic rights. That was inexact for although draft article 30 bore a superficial resemblance to article 22 of the Vienna Convention, there was a

fundamental difference. In accordance with the relevant definitions, diplomatic premises included the residence of the head of mission, whereas consular premises were those used for official purposes. In addition the diplomat enjoyed total personal inviolability, whereas under draft article 41 it was possible for a consul to be arrested. There was in fact a close connexion between draft articles 30 and 41, for if the consul's residence were inviolable, how could he be arrested?

33. The International Law Commission had been consistent and explicit: the consul was to be given only partial inviolability. He therefore hoped that paragraph 1 would be retained essentially as drafted, although he would be prepared to accept improvements such as those contained in the Austrian amendment and in the first part of the United States amendment relating to the definition of consular premises and the inclusion of the head of posts's designee. The amendments concerning entry in case of fire or other disaster seemed valueless since the fact of establishing a consulate in a large building occupied by other offices was a tacit acceptance of restricted inviolability.

34. He agreed with the Chairman's wise suggestion that the question of asylum was outside the Committee's field of discussion.

35. Mr. EVANS (United Kingdom) said he was glad to see that Greece, Japan and Nigeria had proposed amendments similar to the United Kingdom amendment to paragraph 1. He hoped that it would be possible to produce a combined text.

36. In his opinion, the International Law Commission's draft went far beyond existing international law and practice, for its object seemed to be to assimilate the status of consulates to that of diplomatic missions: indeed the wording of paragraph 1 was identical with that of paragraph 1 of article 22 of the Vienna Convention on Diplomatic Relations. But consuls and consulates had never been regarded in international law and practice as having the same status, immunity and inviolability as diplomats and diplomatic missions. The point made by the representative of India was covered by paragraph 1 of article 17 which provided that the head of a consular post might be authorized to perform diplomatic acts where the sending State had no diplomatic mission; and paragraph 6 of the International Law Commission's commentary on that article stated that the "performance of diplomatic acts, even if repeated, in no way affects the legal status of the head of a consular post and does not confer upon him any right to diplomatic privileges and immunities". The same principle should apply to the inviolability of premises and any proposal to assimilate consuls and consulates with diplomats and diplomatic premises should be viewed with the greatest caution. It should be constantly borne in mind that a convention would be of little value unless it was widely accepted and ratified, and the granting of new privileges and immunities for consular officials and premises might seriously prejudice the chances of ratification. Immunity from jurisdiction and inviolability was of great importance, for parliaments were very jealous of any extension of such privileges and unless they could

be satisfied that the privileges and immunities in the convention were based on existing law and practice, or were necessary for the purpose of duties, it would be hard to persuade governments to ratify the convention.

37. Admittedly, a comprehensive convention on consular relations could not be simply a codification of existing international law and practice, which were far less developed for consular than for diplomatic status. The International Law Commission had rightly thought it necessary, therefore, to include certain provisions in the nature of progressive development of international law. Any proposals for new laws would, however, have to be examined very critically and with great caution to ensure the widest acceptance of the Convention.

38. Under existing international law and practice consular premises had very limited inviolability but effect had been given to the principle embodied in article 40 (Special protection and respect due to consular officials) by the device of providing that consular premises should not be entered by local authorities or agents of the receiving State except on the authority of the receiving State's Minister for Foreign Affairs, who could ensure that the rights of entry to maintain order were exercised with due regard to the rightful interests of the sending State. That was the extent to which international law and practice had hitherto recognized the inviolability of consular premises, and it was clear that the International Law Commission's draft of paragraph 1 went far beyond those limits.

39. The first part of the United Kingdom amendment to paragraph 1 was designed to ensure that where consulates occupied buildings used for other purposes or where consular offices were also used for other purposes, inviolability should only be extended to the premises or parts of premises used exclusively for the consulate's work. The same object could be achieved by amending the definition of consular premises in article 1, and either method would be satisfactory to him.

40. The second sentence of the United Kingdom amendment to paragraph 1 was designed firstly to incorporate what the United Kingdom considered should be the principles of limited inviolability for consular premises; and secondly to provide for the right of entry by local authorities in certain circumstances, which had been fully described by other representatives.

41. The United Kingdom amendment also proposed two additional paragraphs. Paragraph 4 was a provision guarding private rights. Paragraph 5 concerned the question of asylum. He was aware of the decision of the 1961 Vienna Conference concerning asylum but he recalled that the International Court had recognized a limited right of asylum in diplomatic premises under international law. As far as he was aware no such right was recognized for consular premises and he felt that the position should be made clear in the Convention.

42. Mr. NWOGU (Nigeria) said that the Nigerian amendment to paragraph 1 (L.27) was based on three considerations. The first was to ensure that the receiving State could carry out its obligations under paragraph 2 to protect consular premises, by having a limited right

of entry. The provision that premises could be entered with the consent of the Minister or Secretary of State for Foreign Affairs was a safeguard against abuse of the right. It had been pointed out during discussions that there was no comparable clause in the Vienna Convention on Diplomatic Relations, but the fact that diplomatic missions were often far away from the administrative headquarters of receiving States and had large staffs made it easier for them to protect themselves than for consulates which usually had a very small staff. A further safeguard was the proposed additional paragraph on the inviolability of consular archives.

43. He would be glad to consult with the representatives of Greece, Japan, the United Kingdom and the United States with a view to producing a combined text.

44. Mr. DE CASTRO (Philippines) said that the principle of inviolability of premises was not absolute under international law. For practical reasons it was subject to exceptions, as the United Kingdom representative had lucidly explained. The important thing, in his delegation's view, was that the exceptions should be of a practical nature. He was in favour of the proposal concerning presumed consent in the event of fire or crime. In any event, the inviolability of the premises was restricted by the fact that the principle of extra-territoriality was no longer recognized. He could not, however, agree to the proposals concerning entry in execution of a writ or process, which would not constitute an emergency; there would be time to secure consent or to settle the matter through the diplomatic channel. He supported the amendments proposed by Austria, Spain and the United States of America. He also supported the United Kingdom amendment and agreed that it should be combined with similar amendments submitted by other countries.

The meeting rose at 12.55 p.m.

SEVENTH MEETING

Friday, 8 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 30 (Inviolability of the consular premises) (continued)

1. The CHAIRMAN invited the Committee to continue its debate on article 30 and the amendments thereto.¹ He had invited Mr. Žourek, who had been the International Law Commission's special rapporteur for the draft articles on consular relations, to explain to the Committee the circumstances which had led the Commission to submit the text of article 30 to the Conference.

¹ For the list of amendments submitted to article 30, see the summary record of the sixth meeting, footnote to para. 1.

2. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, said that in preparing draft article 30 the International Law Commission had had to take account of the close relationship between diplomatic and consular functions. On more than one point it had concluded that, in order to be able to exercise their functions, the consul or the consulate should enjoy the same privileges and immunities as a diplomatic agent. It had considered the question of restricting the inviolability of the consular premises, and the majority of the members had opposed such a measure. The Commission had then examined the practice of States—i.e., the relevant conventions concluded, such as the 1928 Convention regarding consular agents, signed at Havana, article 18 of which allowed no exceptions to the rule of inviolability. Some members of the Commission had pointed out that recent agreements admitted certain exceptions—for example, in the case of the enforcement of a judgement. But the Commission had wished to bear in mind the interests of both the sending State and the receiving State and had taken the view that the most serious threat of abuse might arise from the receiving State, which disposed of more direct material means than the sending State. Paragraphs 2 and 3 of draft article 55 defined what offices should not be deemed to form part of the consular premises and thus provided a guarantee for the receiving State.²

3. When the International Law Commission had considered the comments of governments, it had already been informed of the findings of the Vienna Conference on Diplomatic Intercourse and Immunities, and it had thought it necessary to maintain the principle of inviolability for consuls whose needs were the same as those of diplomatic agents. With regard to archives and personal documents, it had not wished to leave the way open to any controversy by establishing a distinction. The rules, however, applied only to career consuls and not to honorary consuls or consuls carrying on an additional gainful occupation.

4. Mr. AJA ESPIL (Argentina) thought that the draft article and the United States amendment thereto (L.2) were very similar. He proposed a sub-amendment to the second sentence of paragraph 1 of the United States amendment, namely, the insertion of the word "express" before the word "consent" in order to make it quite clear that, if the receiving State's agents had to enter the consular premises, they could do so only with the prior consent of the head of post. Subject to that reservation, the Argentine delegation would support the United States amendment.

5. Mr. SALLEH bin ABAS (Federation of Malaya) said that he would support the principle of inviolability, provided that it was relative. It was essential that the receiving State's agents should be allowed to enter the consular premises in cases of emergency or force majeure.

6. Mr. KONSTANTINOV (Bulgaria) said that there could be no question of fixing limits to the principle of

² For the discussion of this question in the International Law Commission, see the summary records of the 530th, 545th and 571st meetings (twelfth session) and of the 595th meeting (thirteenth session).