

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.2/SR.7

7th 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)

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).

inviolability, and his delegation could not therefore vote for the amendments of the United States (L.2), Greece (L.59), Nigeria (L.27) and Japan (L.46). If it was desired to respect the rights of the receiving State, paragraph 2 of draft article 55 offered every guarantee. In that sense, his delegation could accept the amendments submitted by Austria (L.26) and Spain (L.24). International law had developed to such a degree that any backward step would cause serious misunderstandings and would, moreover, be contrary to the principles defined in the 1961 Vienna Convention on Diplomatic Relations. His delegation considered that article 30 was the best compromise solution and would vote for it.

7. The CHAIRMAN drew attention to a new amendment to paragraph 1 (A/CONF.25/C.2/L.71) submitted jointly by the delegations of Greece, Japan, Nigeria and the United Kingdom.

8. Mr. DRAKE (South Africa) said that there had been little difference between the separate amendments submitted by the delegations of Nigeria, Japan, Greece and the United Kingdom. The United States had submitted an amendment (L.2) which limited inviolability to those premises used exclusively for the exercise of consular functions. The United Kingdom amendment was on similar lines. His delegation would support the joint text (L.71) for the International Law Commission's draft seemed to him to give an excessively wide application to the principle of inviolability.

9. Mr. ROSZAK (Poland) observed that the United States and the United Kingdom amendments both limited the principle of inviolability. It might be asked which authority would be responsible for deciding what were the premises used exclusively for the exercise of consular functions and those not so used. The socialist countries unanimously respected the principle of inviolability and Poland had concluded with Belgium an agreement leaving it to the head of post himself to decide whether for any reason, such as fire or burglary, the agents of the receiving State could enter the premises. His delegation would support article 30 as drafted by the International Law Commission but would accept the amendments by Spain (L.24) and Austria (L.26).

10. Mr. RODRIGUEZ (Cuba) said that his delegation endorsed article 30 as drafted and would vote against any amendment which would derogate from the principle of inviolability. That principle had already been recognized at the end of the previous century and the Conference should not take a retrograde step. Moreover, cases of force majeure could in no way authorize certain arbitrary acts by the receiving State.

11. Mr. ADDAI (Ghana) said that he supported paragraph 1 of the International Law Commission's draft. He would also accept the Austrian amendment (L.26), which had some practical value.

12. Mr. VRANKEN (Belgium) remarked that legal theory and the practice of the courts in several countries admitted the principle of the inviolability of consular premises. Article 30 was concerned only with the premises; consular officials were dealt with in article 41. If there were any doubts about the definition of the

consular premises, it was for the drafting committee to improve the text. Cases of force majeure were exceptions and should be settled in accordance with common sense and not by the law; such exceptions should not therefore be invoked in order to restrict the principle of inviolability. His delegation would be unable to support the Spanish amendment (L.24), which would extend the enjoyment of inviolability to the residence of the head of post, but it would endorse the Austrian amendment (L.26).

13. Mr. AMLIE (Norway) said that the principle of the inviolability of consular premises should be stated without reservations. That did not mean that the receiving State would not be able to intervene in cases of emergency; but such situations would have to be met with common sense; it was impossible to legislate for emergencies. If goodwill and human decency were lacking in the individual situation, difficulties were bound to arise, regardless of the provisions of the Convention. No such reservations as those proposed had been written into the Convention on Diplomatic Relations. That did not mean, however, that a diplomatic mission would be at liberty to endanger its surroundings by fire or otherwise; it merely meant that the Conference on Diplomatic Intercourse and Immunities had thought it wiser not to include such reservations in the actual convention. He would not vote for any text that contained reservations to the principle of the inviolability of consular premises.

14. Mr. SCHRØDER (Denmark) agreed that it was essential to afford consuls as wide a protection as possible in order that they might exercise their functions; he did not think, however, that the exception of force majeure derogated from the principle of inviolability.

15. Mr. PEREZ HERNANDEZ (Spain) said that it was by no means his delegation's intention to treat diplomatic functions in the same way as consular functions, but it did wish to make it easier for consuls to do their work. The responsibilities of consuls had greatly increased during recent years and their duties were not purely commercial, since they had to look after the interests of their nationals, such as commercial agents and emigrant workers, and trading companies and associations situated in the territory of the receiving State. There was a growing tendency among States to renounce a part of their sovereignty in order to integrate themselves in larger economic groups, and it could not be maintained that the inviolability of the residence of the head of consular post (L.24) would constitute a serious infringement of the rights of the receiving State.

16. Mr. NASCIMENTO e SILVA (Brazil) thanked the Chairman for having invited Mr. Žourek to address the Committee; that had made it possible to dissipate some doubts that had arisen concerning the International Law Commission's text of article 30. Examination of the various amendments had led him to the conclusion that they constituted an innovation as compared with previous conventions. The inviolability of consular premises had already been recognized in article 18 of the 1928 Havana Convention, which had been ratified by thirteen States.

17. It would be preferable to maintain article 30 as drafted and if necessary accept amendments that did not bear on the substance as, for instance, that of Austria (L.26). Both the United Kingdom amendment (L.29) and that of the United States (L.2) contained the word "exclusively". The Brazilian delegation had submitted a similar amendment to article 1 in the drafting committee, where the matter could be decided.

18. Cases of force majeure could not be regulated by a mere text. If a fire were to break out on a public holiday, for instance, when the consular premises would be deserted, consent to enter the premises could be presumed; that was a matter of common sense. If all sorts of restrictions were permitted, the final result would be two conventions (that of 1961 and that of 1963) which would be mutually contradictory. The result might be that in case of fire the agents of the receiving State would have the right to enter the premises of an embassy, but not those of a consulate.

19. Lastly, asylum in diplomatic missions had been recognized by Latin American countries, in various conventions, but a consulate was not authorized to grant asylum. The introduction of the notion of right of asylum would, he feared, raise grave difficulties.

20. Mr. SAYED MOHAMMED HOSNI (Kuwait) considered that the Conference should concern itself with the inviolability of consular premises and not with restrictions to that principle. He shared the view expressed by the United Kingdom representative that the principle of the inviolability of consular premises was far from being a recognized practice in a number of States. He urged the retention of the phrase "consular premises shall be inviolable"; his delegation preferred the principle to be clearly stated, since any doubt on the subject would be tantamount, not only to limiting that principle, but even to eliminating it completely. The delegations of Cuba, Belgium, Norway and Brazil had energetically supported that principle, and it would be a backward step to institute restrictions on inviolability. The points raised by the United States amendment (L.2) should be settled by the drafting committee. He did not agree with the insertion of a clause authorizing access to consular premises in an emergency, and shared the view that that was a matter of common sense.

21. Mr. MORGAN (Liberia) said that it seemed quite normal that there should be access to consular premises in cases of force majeure. He would therefore prefer the International Law Commission's text to be maintained.

22. Mr. MARESCA (Italy) considered that the principle of inviolability related essentially to the archives and that it would be going too far to provide for absolute inviolability. From a legal point of view, he did not consider the complete assimilation of consular and diplomatic officials possible. However that might be, the original text seemed to him to provide a useful working basis.

23. Mr. DAS GUPTA (India) thought that the International Law Commission's text was sufficiently well balanced and should be acceptable to all. Paragraph 6 of the commentary on article 17 was very clear: "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." There was thus a real difference between diplomatic and consular functions. The International Law Commission had therefore been perfectly justified in going as far as possible in its text on the subject of inviolability. As the Italian representative had pointed out, the main point was the inviolability of the archives, which implied the inviolability of consular premises. He shared the Norwegian representative's view that access to buildings in cases of force majeure was more or less implicitly authorized in all such cases. As the French representative had pointed out, consular officers could not by reason of the nature of their functions claim inviolability in the same way as diplomats. The International Law Commission had, moreover, already established a difference, since in the first sentence of its text it was stipulated that "The consular premises shall be inviolable", whereas the second sentence provided that "the agents of the receiving State may not enter them". It would be advisable to retain the International Law Commission's original wording.

24. Mrs. VILLGRATTNER (Austria) said that her delegation, in common with those of Norway, Brazil and other countries, was of the opinion that inviolability was indispensable. In cases of emergency such as those mentioned, the question did not arise where Austria was concerned, since fire and ambulance services were not controlled by the State. No clause restricting the principle of inviolability should be inserted into the text.

25. Mr. HEUMAN (France) thought there were four possible solutions. The Committee could adopt the principle of absolute and general inviolability as applying to consular premises and the residence of the head of the consular post; in other words, it would reject the four-power amendment (L.71) and adopt the original text together with the Spanish amendment (L.24) which provided a wording similar to that of the 1961 Vienna Convention and also that of the 1928 Havana Convention; or it could qualify the principle of absolute inviolability by applying it to consular premises but not to the residence of the consul; that was the wise solution adopted by the International Law Commission for which the French delegation would vote. In that case, article 30 as drafted by the Commission would then be maintained with the addition of the Austrian amendment (L.26). Again, the Committee could also decide on general but relative inviolability by voting for the four-power amendment (L.71) and for the Spanish amendment (L.24), which was a less dignified formula. Or lastly, if it voted for the four-power amendment (L.71) it would grant inviolability which was neither absolute nor general.

26. Mr. SRESHTHAPUTRA (Thailand) said that his delegation had been willing to accept the separate amendments submitted by Greece, Japan, Nigeria and the United Kingdom. But on glancing at the joint amendment (L.71) which had just been circulated he thought that his delegation would have difficulty in accepting paragraph 2, sub-paragraph (b), of that amendment. He therefore reserved the right to revert to that point at a later stage.

27. Mr. NWOGU (Nigeria) said that the sponsors of the four-power amendment (L.71) had tried to specify some of the circumstances in which access to premises could be authorized; he himself did not believe that there was in fact so much danger of abuse.

28. Mr. JESTAEDT (Federal Republic of Germany) moved the closure of the discussion.

The motion was rejected by 28 votes to 24, with 13 abstentions.

29. Mr. SPYRIDAKIS (Greece) explained that, with a view to facilitating the Committee's work and to enable an improvement in the wording of article 30, he had adopted a compromise solution and had agreed to join the sponsors of the four-power amendment (L.71), which largely conformed to his point of view. The only point on which his government was not in agreement was the extensive protection given to consular missions by paragraph 1 of the new amendment, which he would nevertheless support.

30. Mr. KHLESTOV (Union of Soviet Socialist Republics) proposed that discussion on that point be adjourned until the following meeting.

It was so agreed.

The meeting rose at 6 p.m.

EIGHTH MEETING

Monday, 11 March 1963, at 10.50 a.m.

Chairman: Mr. KAMEL (United Arab Republic)

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 resume its consideration of article 30 and the amendments thereto.¹

2. Mr. MÜNGER (San Marino) said that his delegation supported the retention of article 30 as drafted by the International Law Commission, as amended by the Spanish proposal (L.24), which would provide a text similar to the corresponding article of the 1961 Vienna Convention on Diplomatic Relations.

3. Mr. DE CASTRO (Philippines) said that he wished to submit an oral sub-amendment to the joint amendment (L.71) which would take into account what appeared to be a valuable suggestion in the United States amendment (L.2). He proposed to insert in sub-paragraph (a) of paragraph 2 of the joint amendment the words "his designee" after the words "head of the consular post".

¹ For the list of amendments submitted to article 30, see the summary record of the sixth meeting, footnote to para. 1. A further amendment (A/CONF.25/C.2/L.71), sponsored by Greece, Japan, Nigeria and the United Kingdom, had been submitted at the seventh meeting.

4. Paragraph 4 of the joint amendment appeared to

be superfluous, for the sending State would normally be expected to request an explanation through the diplomatic channel if it was not convinced of the validity of the reasons given by the receiving State for entry into the consular premises.

5. Mr. VAZ PINTO (Portugal), said that the principle of inviolability of the consular premises was not generally admitted in customary law, which recognized only inviolability of the archives. The adoption of that principle would amount, not to a codification of customary law, but to a derogation from it. There was no need to modify the existing rules. Moreover, the 1961 Convention could not be cited in support of a principle. The diplomatic service and the consular service were not similar in every respect, as was shown by the fact that the United Nations had deemed it necessary to draw up two different conventions. From the practical point of view, there was a risk that, if paragraph 1 of the International Law Commission's draft were adopted, it would not meet with the approval of a large number of countries. His delegations was therefore unable to support paragraph 1 of the original text and would vote for the joint amendment (L.71).

6. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the inviolability of consular premises was the fundamental principle which enabled consuls to exercise their functions normally. Some of the amendments submitted would, however, derogate from that principle.

7. Taking first of all the amendments of a legal character, particularly those of the United Kingdom (L.29) and Japan (L.46), he said that the legislation of many countries laid down the principle of the inviolability of the consular premises. As the representative of Cuba had pointed out, that principle had been frequently confirmed by treaty. It was included in all the treaties signed by the Soviet Union, in article 18 of the Convention regarding consular agents, signed at Havana on 20 February 1928, and in many bilateral agreements concluded, for example, by the United States. In practice therefore the majority of States recognized the principle of the inviolability of consular premises and it would conflict with the many bilateral agreements to include in the new convention an article allowing any derogation from that principle. Many States would be unable to accept such a convention.

8. As to the practical aspect of the question, the representatives of Brazil and Norway had refuted the arguments of force majeure at the previous meeting. There was further the United Nations Headquarters Agreement, concluded in 1947 between the United Nations and the United States, under which the premises of missions accredited to the Organization were inviolable.² The case of fire mentioned was mainly hypothetical and, in fact, occurred only rarely; that argument was artificial.

9. Paragraph 2 of the joint amendment seemed to derogate from the principle of the respect for the sove-

² Agreement regarding the Headquarters of the United Nations, signed at Lake Success on 26 June 1947: United Nations, *Treaty Series*, vol. 11, p. 26.