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8th meeting of the Second Committee

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the First and Second Committees)

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.

reignty of States laid down in the Charter. The amendment would legalize the violation of every immunity, and it would therefore be useless to speak of inviolability. Furthermore, it would be illogical if the inviolability conferred on the residence of diplomatic agents under article 30 of the 1961 Convention were to be withheld from the consular premises, which were more important than a residence. In his view, article 30 as drafted would safeguard the interests of small States, in particular those which had recently obtained their independence. For those reasons, the Soviet Union could not accept the joint amendment (L.71). It would support the amendments of Austria (L.26) and Spain (L.24).

10. Mr. SRESHTHAPUTRA (Thailand) said that his delegation's attitude towards the joint amendment (L.71) was determined by the constitution of his country under which the powers of the legislature and of the judicial and the executive authorities were completely separate. The principle of the separation of powers was inviolable. His government had on several occasions communicated its views on the desirability of a uniform standard of laws and practices in the consular field, which should be applied to all States, strong or weak, developed or under-developed. It would therefore be difficult for his government to accept sub-paragraph (b) of paragraph 2, which coupled the judicial and executive authorities, because the executive branch could have nothing to do with the judicial order. If that sub-paragraph were adopted, his country might be unable to ratify the convention. Moreover, the procedure for obtaining authorization to enter the consular premises would probably be lengthy and finally might serve no useful purpose as the result of possible changes in the meantime in the situation that warranted entry into the consular premises by the authorities of the receiving State. He therefore proposed to delete the words "pursuant to an order of the appropriate judicial authority and" in paragraph 2 (b), and to delete also paragraph 4, which seemed superfluous.

11. Mr. BLANKINSHIP (United States of America) said that two trends seemed to be taking shape in the Committee. Some members, like the representative of Norway, wished to retain the International Law Commission's text, in other words to uphold the principle of inviolability without restriction; others wished to enumerate certain exceptions. The United States position lay between those two extremes.

12. Since the submission of his amendment (L.2), minor modifications, which were acceptable to his delegation, had been proposed by the Federal Republic of Germany (sixth meeting, para. 28) and Argentina (seventh meeting, para. 4).

13. With regard to the joint amendment (L.71), his delegation was opposed to any further restrictions of the principle of inviolability, for they would make the text unacceptable to many countries.

14. The United States amendment, as amended by the Federal Republic of Germany and Argentina, stated accurately and concisely a generally recognized practice that seemed to approximate to the opinions expressed, among others, by the Norwegian and Soviet Union

representatives; further, since it referred to inviolability, it was compatible with the text of the International Law Commission. The amendment should also satisfy the representatives of Norway, Czechoslovakia and the Soviet Union, who had recognized that, in case of fire, consent to enter the consular premises was presumed. It should also be acceptable to the parliaments of many countries, since it confirmed the practices in force.

15. Mr. ANGHEL (Romania) said that the four solutions proposed by the French representative showed two opposite trends: one towards safeguarding the inviolability of the consular premises, the other towards restricting that highly important privilege. He thought that the joint amendment would introduce so many exceptions that the rule laid down would be without substance and the principle of inviolability would become the exception. It would be very easy for the authorities of the receiving State to imagine that a fire had been started, or an offence committed, on the consular premises. In that event, the receiving State could readily provide an explanation to justify the fact of having entered the consular premises. Under the terms of the amendment, no consulate would have any safeguard in respect of inviolability of its premises, or even of its archives. He shared the views already expressed that the amendment would be a retrograde step so far as consular relations were concerned. Its adoption would not be in keeping with the trend towards the progressive development of international law in the field of consular relations and immunities. His delegation emphasized the importance of the principle of inviolability for the maintenance of good consular relations and thought it preferable to retain the original text of article 30.

16. Mr. EVANS (United Kingdom) explained that the joint amendment (L.71) was intended to take the place of the amendments in documents L.27, L.29, L.46 and L.59, in so far as they referred to article 30, paragraph 1.

17. The joint amendment changed only paragraph 1 of the amendment (L.27) submitted by Nigeria, and not paragraph 2, on the right of asylum, or paragraph 3 on the inviolability of archives, a principle that had long been accepted in international practice. The inviolability of archives was, moreover, expressly provided for in article 32 of the International Law Commission's draft articles and he saw no objection to the Committee writing that principle into article 30.

18. The joint amendment only modified the first paragraph of the United Kingdom amendment (L.29). The same applied to the amendments submitted by Japan (L.46) and Greece (L.59). Paragraph 1 of the joint amendment (L.71) stated the general principle of inviolability and paragraph 2 restricted its application to premises used exclusively for the work of a consulate. The drafting committee might perhaps consider the advisability of transferring the word "exclusively" to the definition of consular premises as given in article 1. Contrary to what several delegations seemed to fear, paragraph 2 (b) gave no arbitrary powers to agents of the receiving State. The right to enter consular premises could be exercised only under an order issued by the

competent judicial authority subject to the authorization of the Minister for Foreign Affairs or another agreed minister. The provision concerning another agreed minister was taken from the 1961 Vienna Convention (articles 13, 17 and 19). In addition to the Secretary of State for Foreign Affairs the United Kingdom had a Secretary of State for Commonwealth Relations. The provision in question was applicable only by agreement between the sending and the receiving State.

19. The sponsors of the joint amendment had provided for cases of force majeure in paragraph 3, because they considered that exception important and desired its inclusion in the Convention. Paragraph 4 had appeared in the amendment submitted by the Greek delegation (L.59) and provided a safeguard for the sending State, to which the receiving State must send a written explanation of the reasons for its action without undue delay.

20. The United Kingdom delegation had no objection to the Committee voting on those paragraphs separately.

21. The four-power proposal established a satisfactory balance between the interests of the sending State and those of the receiving State. In his opinion the inviolability proposed for consular premises in article 30 by the International Law Commission was too far-reaching. There was no rule in international law conferring the same inviolability on consular premises as on diplomatic premises. The United Kingdom had concluded no bilateral agreement which included an absolute inviolability clause for consular premises. Should some States wish to include such a clause in bilateral agreements, no provision in the Convention would prevent them.

22. If the views of the Soviet Union representative were accepted, a system of absolute inviolability would be imposed on countries that were opposed to it. Article 30 proposed by the International Law Commission constituted an innovation in international law, and would have the effect of granting consulates the same status as diplomatic missions. Mr. Žourek and the Hungarian representative had expressed the opinion that absolute inviolability of consular premises was indispensable for the exercise of consular functions, but, in his opinion, the receiving State had the right to take the measures necessary for the maintenance of public order and its safety. Hence, should the Conference introduce into the Convention the principle of complete and absolute inviolability of consular premises, some States would hesitate to establish consular relations.

23. He considered that the joint amendment (L.71) took into account both the interests of the sending and of the receiving State and urged the Committee to adopt it.

24. Mr. SPACIL (Czechoslovakia) thought that article 30, as drafted by the International Law Commission, should be maintained. The adoption of that article would enable consuls to carry out their functions under the best conditions. By authorizing the agents of the receiving State to enter consular premises under an order issued by the judicial authority and with the consent of the Minister for Foreign Affairs, the joint amendment would establish a system different from that applicable to diplomatic premises.

25. The sponsors of the amendment had not provided for the contingency of consular services being installed in a diplomatic building and thus enjoying total inviolability. Paragraph 3 of that amendment began "The consent of the head of the consular post may, however, be presumed in the case of fire..."; that clause was unnecessary, since no difficulty had ever arisen in case of fire or other disaster. If it was desired to legislate for all possibilities it would be necessary to provide for urgent repairs and other cases which were not covered by a multilateral convention. The same applied to offences which constituted specific cases. Should an offence be committed or be liable to be committed on consular premises, the receiving State had extensive means for making its interests respected; it could close the consulate, withdraw the exequatur, or declare a member of the consulate *persona non grata*. Hence, it was above all the interests of the receiving State that had to be protected. Those arguments had already been advanced in the International Law Commission, which had finally adopted the draft of article 30. During the Commission's twelfth session (530th meeting) Sir Gerald Fitzmaurice himself had recognized that there were valid arguments for an absolute inviolability of consular premises, since foreign official activities were exercised therein as on the premises of diplomatic missions. Granted that the object of the convention was to establish general rules, it should be recognized that specific cases could be met by bilateral agreements, should States so desire. The Czechoslovak delegation was therefore in favour of article 30 as drafted and was opposed to the joint amendment.

26. Baron van BOETZELAER (Netherlands) said that, in his view, the exceptions for force majeure provided in the joint amendment (L.71), and in the United States amendment (L.2), were not liable to lead to abuses by the receiving State. His delegation would be prepared to vote for the first of those proposals, but it preferred that of the United States.

27. Mr. DONOWAKI (Japan) said that the explanation supplied by the United Kingdom representative was entirely satisfactory. In his opinion, inviolability could be only relative. Diplomatic and consular missions were different, in that the latter did not enter into diplomatic negotiations with the central government of the receiving State, and were more commonly situated in the provincial towns of the receiving State. If the privilege of absolute inviolability were extended to all consulates — the number of which was constantly increasing — the authorities of the receiving State would be confronted with heavy responsibilities. He therefore urged the adoption of the joint amendment of which his delegation was one of the sponsors.

28. Mr. NWOGU (Nigeria) pointed out that consulates were called upon to deal with regional and local authorities subordinate to the government to which diplomatic missions were accredited: diplomatic and consular functions were not therefore comparable. Some degree of inviolability of premises was indispensable for the exercise of consular functions, and the safeguards provided by the joint amendment (L.71), of which the Nigerian delegation was one of the sponsors, were

adequate. It should also be noted that article 32 provided for absolute inviolability of archives and consular documents; that safeguard was more important for the satisfactory performance of consular functions than inviolability of premises.

29. Mr. MARESCA (Italy) also drew attention to the importance of article 32 under which archives and documents were inviolable at all times and wherever they might be. Article 30 might perhaps include a clause whereby the authorities of the receiving State would be placed under an absolute obligation to respect the archives and documents if they should feel themselves obliged to enter consular premises for any reason whatsoever.

30. Mr. LEVI (Yugoslavia) submitted an oral sub-amendment for the addition at the beginning of the Austrian amendment (L.26) of the words "his designee" and of the words "or his designee" after the words "head of post" in paragraph 1 of article 30. The arguments put forward by the various delegations that had proposed restrictions on the principle of inviolability were not convincing. There was no case for making a distinction between the inviolability of diplomatic and consular premises.

31. Mr. SALLEH bin ABAS (Federation of Malaya) said that the main purpose of the convention should be to protect the interests of the receiving State. Inviolability could be granted only so far as was required for the exercise of consular functions. He supported paragraph 1 and sub-paragraph (a) of paragraph 2 of the joint amendment (L.71), but he had difficulty in accepting sub-paragraph 2 (g), as he feared that by authorizing the agents of the receiving State to enter consular premises for the purpose of preserving public order, an excuse would be given for misuse on the part of the receiving State. Paragraph 3 was acceptable, but he was against paragraph 4. He was prepared to vote for paragraph 1 of the United States amendment (L.2) and asked that the Committee should vote separately on the various amendments under consideration.

The meeting rose at 1 p.m.

NINTH MEETING

Monday, 11 March 1963, at 3.25 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 discussion of article 30 and the amendments thereto.¹

¹ For the amendments submitted to article 30, see the summary records of the sixth meeting (footnote to para. 1) and the seventh meeting (footnote to para. 1).

2. Mr. OCHIRBAL (Mongolia) said that article 30 was one of the most vital articles in the draft convention. The lengthy discussion showed that the importance of the inviolability of consular premises was fully recognized and that there was wide support for the adoption of the International Law Commission's draft of paragraph 1. Consular and diplomatic functions were essentially the same and any differences would be shown in other articles. But even differences did not justify a distinction between consular and diplomatic inviolability. Other articles, such as article 40 (Special protection and respect due to consular officials), recognized the immunity of consular officials to the extent necessary for their functions, and it would be illogical not to provide the same immunity for consular premises.

3. There was no reason to include any provision for asylum, or for fire or other accidents; the Conference was concerned with establishing general principles and rights and not with particular cases. He was opposed to any limitation of inviolability, whether in the present draft convention or in any other agreements between governments. He would support the Austrian amendment (L.26), the Spanish amendment (L.24) and the amendment proposed by the Yugoslav representative at the previous meeting (para. 30) because they did not call for any such limitation.

4. Mr. TÔN THẬT ÂN (Republic of Viet-Nam) proposed that the amendments to the International Law Commission's draft should be put to the vote, each paragraph being taken separately.

5. Mr. TILAKARATNA (Ceylon) supported that proposal.

6. Mr. WASZCZUK (Poland) pointed out that paragraph 8 of the commentary on article 30 contained a list of conventions in which the principle of the inviolability of consular premises was recognized. Some of the very countries sponsoring the four-power amendment (L.71) had signed bilateral conventions recognizing the inviolability of consular premises and of the residence of the head of the consular post. He supported the Spanish proposal to include the residence of the head of the consular post (L.24) because it conformed to article 22 of the Convention on Diplomatic Relations. He was, however, opposed to the joint amendment, which was retrogressive and against the spirit of article 13 of the Charter under which the General Assembly was required to take the necessary steps to encourage the progressive development of international law and its codification. In case of fire, the head of post would obviously give his consent to the entry of firemen, but to include such an eventuality in the convention would weaken the principle of inviolability of consular premises. The United States representative had suggested that the principle could endanger the security of the receiving State. The real danger, however, lay in the application of an article such as that proposed in the joint amendment, which would open the door to possible abuse by the police of the receiving State and might cause tension between the two countries concerned.

7. He would vote for article 30 as drafted by the