

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.2/SR.9

9th 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)

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

International Law Commission, subject only to the Spanish and Austrian amendments.

8. Mr. SPYRIDAKIS (Greece), on behalf of the sponsors of the joint amendment (L.71), withdrew paragraph 4 of the amendment since it had encountered opposition during the discussion.

9. Mr. WALDRON (Ireland) supported the amendments the purpose of which was to restrict the absolute immunity of consular premises by granting immunity only to those parts used exclusively for consular purposes or providing for the right of entry by officials of the receiving State in certain circumstances. The arguments had been very clearly stated and he agreed particularly with those advanced by the representatives of Italy and the United Kingdom. He did not accept the much-repeated contention that progressive codification of international law was consistent with increasing immunity.

10. The CHAIRMAN invited the Committee to vote first on the Philippine oral sub-amendment to the joint amendment, submitted at the previous meeting.

11. Mr. BLANKINSHIP (United States), on a point of order, proposed that a separate vote should be taken on each paragraph and sub-paragraph of the joint amendment.

12. Mr. VRANKEN (Belgium) and Mr. KHOSLA (India) supported that proposal.

13. Mr. HEUMAN (France) proposed that the Committee should first vote on the United States amendment (L.2). In his opinion the amendments should be taken in the order in which they were submitted (rule 42 of the rules of procedure) and not according to the extent to which they differed from the original proposal (rule 41 of the rules of procedure) because in that respect there was little to choose between the joint amendment and the United States amendment.

14. The CHAIRMAN invited the Committee to vote on his ruling, which had been challenged by the representative of France.

The Chairman's ruling on the order of voting was endorsed by 62 votes to 2, with 7 abstentions.

15. The CHAIRMAN invited the Committee to vote on the United States proposal that each paragraph and sub-paragraph of the joint amendment should be voted on separately.

The proposal was approved by 42 votes to 4, with 20 abstentions.

16. The CHAIRMAN invited the Committee to vote on the joint amendment (A/CONF.25/C.2/L.71), paragraph 4 of which had been withdrawn.

Paragraph 1

Paragraph 1 was adopted by 44 votes to 15, with 13 abstentions.

Paragraph 2

The opening lines of paragraph 2 were approved by 48 votes to 11, with 9 abstentions.

Sub-paragraph 2 (a)

17. The CHAIRMAN drew attention to the oral proposal by the representative of the Philippines to insert the words "his designee" after the words "post" in the second line.

The proposal was adopted by 42 votes to 5, with 22 abstentions.

Sub-paragraph 2 (a), as amended, was approved by 45 votes to 10, with 9 abstentions.

Sub-paragraph 2 (b)

18. The CHAIRMAN drew attention to the oral proposal by the representative of Thailand: to delete the words "pursuant to an order of the appropriate judicial authority and" in the first and second lines.

The proposal was rejected by 24 votes to 10, with 35 abstentions.

Sub-paragraph 2 (b) was rejected by 31 votes to 22, with 14 abstentions.

Paragraph 3

Paragraph 3 was approved by 38 votes to 23, with 8 abstentions.

19. The CHAIRMAN invited the Committee to vote on the joint amendment to article 30 (L.71), as modified.

The joint amendment, as modified, was approved by 35 votes to 21, with 11 abstentions.

20. In reply to a question by Mr. MARESCA (Italy), the CHAIRMAN explained that the Nigerian amendment (L.27) concerning inviolability of consular archives was an addition to article 30 and would therefore be dealt with at a later stage together with other proposed additions.

21. Mr. LEVI (Yugoslavia) pointed out that the Spanish amendment (L.24) adding the words "including the residence of the head of the consular post" after the words "consular premises" had not been withdrawn.

22. Mr. HEUMAN (France) remarked that in approving the joint amendment the Committee had implicitly rejected the Spanish amendment. Paragraph 2 of the four-power amendment was a little ambiguous, since it could be taken as allowing the right of entry to the residence of the head of post. He suggested that the paragraph should be submitted to the drafting committee.

23. Mr. PEREZ HERNANDEZ (Spain) accepted the French representative's explanation but suggested that the Spanish amendment should nevertheless be put to the vote.

24. Mr. LEVI (Yugoslavia) agreed with the comment of the French representative concerning the Spanish amendment but also thought that it would be better for the amendment to be voted on. He too had doubts concerning paragraph 2 of the joint amendment, for it had to be remembered that the consul could also perform his consular activities in his residence. He doubted whe-

ther it was really possible to decide what was used "exclusively for the purpose of the work of the consulate".

25. The CHAIRMAN endorsed the comment of the French representative. He explained, in addition, that he could not have put the Spanish amendment to the vote before the joint amendment, and it could not be voted on once the joint amendment had been adopted.

26. Mr. VRANKEN (Belgium) said he had voted for the four-power amendment on the understanding that it excluded the consul's residence.

27. The CHAIRMAN invited the Committee to consider paragraphs 2 and 3 of article 30.

28. Mr. DONOWAKI (Japan), introducing his delegation's amendments (L.46), said that it proposed a simpler version of paragraph 2; the International Law Commission's draft, which was very similar to the corresponding provision in the Convention on Diplomatic Relations, was excessive for consular purposes. He also wished to propose that the paragraph should be transferred from article 30 to article 40.

29. Paragraph 3 was also too far-reaching; it completely exempted consular property, furnishings and vehicles from requisition whereas he felt that they should be subject to reasonable requisition for public improvement or for national defence. He therefore proposed the deletion of the article.

30. Mr. NIETO (Mexico) said that paragraph 2 of the International Law Commission's text did not adequately reflect the extent to which the receiving State must do everything it could to protect consular premises. His delegation therefore proposed (L.43) to replace the words "appropriate steps" by "steps within its power".

31. Mr. LEVI (Yugoslavia) expressed his delegation's preference for the revised text of paragraph 3 proposed by the Netherlands (L.13). It would, however, seem incompatible with the text of paragraph 1 as approved by the Committee to maintain the reference to "search" of consular premises. The extent of the inviolability established under paragraph 1 made it unnecessary to specify that the premises should be immune from search. His delegation therefore proposed the deletion of the word "search" as a sub-amendment to the Netherlands amendment, and if necessary to the United States amendment to paragraph 3 (L.2) or to the original International Law Commission text.

32. Mr. JESTAEDT (Federal Republic of Germany) supported the International Law Commission's text of paragraphs 2 and 3, which had been taken from article 22 of the Vienna Convention on Diplomatic Relations. The reasons given in support of that article were also valid for consular relations.

33. Mr. SPACIL (Czechoslovakia) approved the text of paragraphs 2 and 3 in the International Law Commission's draft. He proposed that the words "subject to the provisions of the foregoing paragraphs" should be deleted from the Nigerian amendments (L.27). If these

sub-amendments were not acceptable to the proposer of the amendments, he would request a separate vote on the deletion of those words from the Nigerian amendments.

34. Mr. NWOGU (Nigeria) said that his delegation could not accept the proposed sub-amendments, since they would remove the only differences between the Nigerian amendments and the original text of the International Law Commission. The inclusion of the reference was desirable so as to ensure that, in any attempt to protect consular premises, the receiving State would enter the premises only in accordance with paragraph 1 as approved by the Committee.

35. Mr. EVANS (United Kingdom) said that the insertion of the reference proposed by Nigeria would be appropriate in view of the text adopted for paragraph 1 of article 30. The Mexican amendment to paragraph 2 (L.43) might, however, be interpreted as going beyond what was appropriate and necessary and his delegation would prefer to retain the original text.

36. He could not agree with the representative of the Federal Republic of Germany that considerations applicable to the corresponding paragraphs of the Vienna Convention on Diplomatic Relations were also valid with regard to paragraphs 2 and 3 of article 30. The Committee had decided not to extend to consular premises the same complete inviolability accorded to the premises of a diplomatic mission under the Vienna Convention. The International Law Commission's text of paragraph 3 must therefore be re-examined in the light of the decision on paragraph 1. Paragraph 3, as drafted, referred to immunity from "any search, requisition, attachment or execution". The reference to "search" might have been appropriate if consular premises had been made completely inviolable, although in that case it might have been considered unnecessary to make such specific provision. It had, however, been decided that the inviolability should be limited, and that in certain circumstances the authorities of the receiving country could enter the consular premises without consent. That right of entry might be invalidated unless the local authorities could also exercise the right of search. In the view of his delegation, therefore, the reference to "search" should be deleted from paragraph 3. In so far as consular premises were inviolable they would not be subject to search.

37. In connexion with "requisition" there should be a clear distinction between temporary requisition when, for example, a State might in case of national emergency requisition property with the intention of returning it subsequently to its rightful owner, and permanent expropriation for purposes of national defence or public utility. Consular premises and property should be immune from the first type of requisition but the second case was quite different: it would not be appropriate to give such protection that a local authority wishing, for example, to construct a railway or road was hindered from doing so because it could not obtain possession of consular premises. Where such permanent expropriation or occupation was necessary the only right of the sending State should be to receive prompt, adequate and effective

indemnity. His delegation was therefore in complete agreement with paragraph 4 of the Greek amendment (L.59).

38. With regard to "attachment or execution" it was true that the 1961 Convention contained similar provisions. As had already been pointed out, however, diplomatic premises enjoyed complete inviolability whereas consular premises had not the same immunity from national jurisdiction. The properties referred to in paragraph 3 were covered by other provisions of international law concerning the immunity of the property of a foreign State from the jurisdiction of a national court, which would apply, irrespective of the provisions of the present Conference, to protect the legitimate interests of the sending State. But the reference to immunity from attachment or execution in paragraph 3 of article 30 went far beyond those provisions.

39. Paragraph 5 of the International Law Commission's commentary on article 30 stated: "If the consulate uses leased premises, measures of execution which would involve a breach of the rule of inviolability confirmed by this article must not be resorted to against the owner of the premises." A landlord might, for example, possess very valuable property and furnishings and have creditors to whom he owed large sums of money, yet because he had been fortunate enough to let his property as consular premises he would be immune from any attachment or execution in the receiving State. His delegation therefore strongly advocated the deletion of any reference to attachment or execution in paragraph 3, leaving the matter to be dealt with by the normal rules of international law concerning the immunity of a foreign State in respect of property belonging to it.

40. His delegation supported the Japanese proposal (L.46) to delete the existing text of paragraph 3 and at the same time accepted the Greek amendment (L.59, paragraph 4) which contained more precise and appropriate provisions.

41. Mr. HENAO-HENAO (Colombia) suggested that the Spanish-speaking members of the drafting committee should examine the Spanish text of paragraph 2 which did not give an adequate translation of the English text.

42. The CHAIRMAN said that if the Committee approved paragraph 2 the suggestion of the Colombian representative would be referred to the drafting committee for due consideration.

43. Mr. SPYRIDAKIS (Greece) said that his delegation had submitted amendments (L.59) to article 30, with particular reference to paragraphs 2 and 3 which had been taken *mutatis mutandis* from article 22 of the 1961 Convention, because it did not feel that the immunities and protection granted to diplomatic missions must be extended to the same degree to consular missions. The provisions of paragraph 2 as drafted by the International Law Commission seemed to go too far, and his delegation had therefore suggested that it should simply be provided that the receiving State should take "all appropriate steps to ensure the protection of the consular premises".

44. His delegation had put forward the proposal in paragraph 4 of its amendment because more precise and detailed provisions with regard to requisition and expropriation were desirable. The amendment provided that if expropriation or occupation was necessary for purposes of national defence or public utility, all necessary steps should be taken to avoid impeding the performance of consular functions, and that a prompt, adequate and effective indemnity should be paid to the sending State. The proposed text was in accordance with the domestic legislation of many countries and would obviate any misunderstanding, while contributing to the satisfactory interpretation of international law.

45. Mr. BLANKINSHIP (United States of America) said that his delegation would prefer the deletion of paragraph 3. Should the paragraph not be deleted, however, it wished its amendment (L.2, paragraph 2) to be taken up. The International Law Commission had failed to consider the possible legal consequences of paragraph 3 as it stood. The United States amendment introduced several changes. It provided specifically that the furnishings and property which were to be immune should be on the consular premises and should belong to the sending State; reference to means of transport had been deleted. Means of transport were often the private property of consular officers and thus properly subject to attachment.

46. Mr. PEREZ HERNANDEZ (Spain) supported the suggestion by the representative of Colombia that the Spanish text of paragraph 2 should be considered by the drafting committee.

47. He had listened with interest to the comments of the representative of Greece on paragraph 3. Although not in full agreement with the Greek amendments, he proposed that paragraphs 2 and 3 of article 30 should be retained as drafted by the International Law Commission and that at the end of paragraph 3 a sentence should be added, based on the last paragraph of the Greek amendment, to the effect that if expropriation or occupation was necessary for purposes of national defence or public utility, all necessary steps should be taken to avoid impeding the performance of consular functions and a prompt, adequate and effective indemnity paid to the sending State. He proposed further that paragraph 3 of the Greek amendment (L.59) should become paragraph 4 of article 30.

48. Mr. MARESCA (Italy) said that paragraphs 1 and 2 of article 30 referred to completely different situations: paragraph 1 concerned the inviolability, with certain limitations, of consular premises but paragraph 2 was concerned with the duty of the receiving State to protect the consular premises. In his view a reference in paragraph 2 to paragraph 1 would weaken the text, and he would therefore oppose the Nigerian amendment. He felt that the deletion of the reference in paragraph 2 to the special duty of the receiving State would also weaken the text. He therefore favoured the retention of paragraph 2 as drafted by the International Law Commission. He opposed the deletion of the reference to search in paragraph 3; although it would be possible

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