

# **United Nations Conference on Consular Relations**

Vienna, Austria  
4 March – 22 April 1963

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**A/CONF.25/SR.9**

**9<sup>th</sup> meeting of the Plenary**

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)*

relations. His delegation considered, however, that the Second Committee had gone too far by introducing the provision relating to crimes of violence. It seemed to be couched in objective terms, but it could lead to abuses, since it offered a local authority an easy pretext for entering consular premises in cases where inviolability was particularly important. For those reasons, he supported the French motion for a separate vote, but he could not support the Indian motion, which might lead to removal of all the limitations stated in paragraph 2.

39. Mr. TSHIMBALANGA (Congo, Leopoldville) supported the French motion for division, but opposed the Indian motion.

40. Mr. SICOTTE (Canada) said that he had not been convinced by the argument that cases of *force majeure* could not be dealt with by means of a provision in the convention. Nor could he agree with the argument put forward in the Second Committee that the problem of lack of co-operation in the event of fire would not arise in practice. He knew of at least one case of a fire in a building housing privileged premises in which the foreign authority concerned had not given the firemen full facilities to protect life and property. For those reasons, he opposed the motion for division.

41. Miss ROESAD (Indonesia) opposed both motions for division. Article 30, as approved by the Second Committee, adequately safeguarded the principle of inviolability of consular premises. Emergencies such as fire should be covered; the authorities of the receiving State should not be mere onlookers in such cases; they should be able to give their assistance and could only do so if they were allowed to enter the premises as provided in paragraph 2.

42. Mr. KONSTANTINOV (Bulgaria) moved the closure of the debate on the motions for a division.

43. Mr. KRISHNA RAO (India) opposed the motion for closure.

44. Mr. MONACO (Italy), objected that it was necessary for any meeting to have a full discussion on substance before it could take a decision on a motion for division of a text.

45. Mr. BOUZIRI (Tunisia) supported the Italian representative.

46. The PRESIDENT put to the vote the Bulgarian motion for closure.

*The motion was rejected by 46 votes to 14, with 13 abstentions.*

47. Mr. CAMERON (United States of America) moved the adjournment of the meeting.

*The motion was carried by 62 votes to 7, with 1 abstention.*

The meeting rose at 1.10 p.m.

## NINTH PLENARY MEETING

*Tuesday, 16 April 1963, at 10.30 a.m.*

*President: Mr. VEROSTA (Austria)*

### Consideration of the question of consular relations in accordance with resolution 1685 (XVI) adopted by the General Assembly on 18 December 1961 (*continued*)

[Agenda item 10]

#### DRAFT CONVENTION

##### *Article 30*

(Inviolability of the consular premises) (*continued*)

1. The PRESIDENT invited the Conference to continue its consideration of article 30 in the text drawn up by the drafting committee (A/CONF.25/L.11).

2. Mr. EVANS (United Kingdom) said that two motions had been submitted for the division of paragraph 2 of article 30. Those motions raised a very important question of principle. The evident purpose of the sponsors of those motions was to eliminate the second sentence of paragraph 2 adopted by the Second Committee and to restore the International Law Commission's text which the Second Committee had found unacceptable without the restrictions on the principle of inviolability of consular premises laid down in that sentence. The deletion of the second sentence of paragraph 2 would have the effect of laying down an absolute rule with respect to the inviolability of consular premises which would not be in accordance with the existing rules of customary international law. As a consequence many States might be unable to sign or ratify the convention.

3. In the Second Committee, the United Kingdom delegation, together with other delegations, had proposed an amendment (A/CONF.25/C.2/L.71) to paragraph 2 that would allow the authorities of the receiving State, in the absence of the consent of the head of the consular post or of the diplomatic mission of the sending State, to enter the consular premises with the consent of the Minister for Foreign Affairs of the receiving State or some other agreed minister. That part of the joint amendment had been rejected and the text adopted by the Second Committee constituted a compromise which the United Kingdom delegation was prepared to accept.

4. The United Kingdom remained opposed to the principle of absolute inviolability and it recognized that account should be taken of the exceptional cases mentioned in the second sentence of paragraph 2 which constituted a necessary limitation to the principle of inviolability laid down in paragraph 1. The deletion of that sentence would be equivalent to conferring on consular premises the same privileges as those enjoyed by diplomatic missions, and that was unacceptable to the United Kingdom. His delegation was consequently opposed to a separate vote on the sentence. If, however, the motion for division was carried and the second sentence of paragraph 2 eliminated, the United Kingdom

delegation would ask for a separate vote on the first two paragraphs of article 30, and would vote against them.

5. Mr. CAMERON (United States of America) agreed with the remarks of the United Kingdom representative. The United States delegation would oppose any motion for the division of paragraph 2 of article 30, but if the second sentence of paragraph 2 were voted on separately, it would vote for the retention of that sentence.

6. Mr. BOUZIRI (Tunisia) thought that article 30 was one of the most important articles of the future convention since it laid down the principle of the inviolability of the consular premises. The first sentence of paragraph 2 reaffirmed that principle. Paragraph 3 went even further since it imposed on the receiving State the obligation to ensure the security and peace of the consular post. Finally, paragraph 4 protected the premises and property of the consular post against any form of requisition and provided that steps should be taken not to impede the performance of consular functions in case of expropriation. Although the inviolability of consular archives and documents was absolute, that of the consular premises admitted certain exceptions which were stated in the second sentence of paragraph 2. The fears which had been expressed concerning the possible abuse of those exceptional cases did not seem justified. It was hardly likely that the authorities of the receiving State would start a fire or provoke a disaster in order to be able to enter the consular premises. The second exceptional case referred to in paragraph 2 — namely, where a crime of violence to person or property had been or was about to be committed — was perfectly justified, although the drafting of that part of the text left much to be desired. It would indeed be difficult to decide if the grounds given by the authorities of the receiving State were reasonable. Nevertheless the principle should be maintained. His delegation thought that the second sentence of paragraph 2 should be retained despite the abuses to which the application of its provisions might possibly give rise.

7. He could not accept the Ukrainian amendment (A/CONF.25/L.13) to paragraph 4 of article 30. That amendment would delete the second sentence of paragraph 4 which answered an essential need. It was true that the reference in the paragraph to national defence was not very happy; it would have been better to avoid it and to keep the idea of peace in mind. On the other hand, the case of public utility, which was also mentioned in the paragraph, was very important and should be given due emphasis.

8. With regard to the motions for division, the Tunisian delegation would have been glad to help certain delegations, but it regarded article 30 as constituting a whole and would therefore vote against the motions for division and for the text of article 30 as drawn up by the drafting committee.

9. Mr. ANGHEL (Romania) said that the inviolability of consular premises was an essential principle for the performance of consular functions, which was unequivocally recognized in the International Law

Commission's draft, but the text before the Conference seemed inadequate in that respect. Paragraph 2, in particular, opened the door to abuses and rendered the inviolability of consular premises illusory and thus the work of the consulate might be impeded, for, if the authorities of the receiving State were empowered to decide whether or no there was reasonable cause for entering the consular premises, they could enter the premises at any time, on the ground that an offence had been, was being or was about to be committed. Further, under paragraph 3, the receiving State might be exempted from the duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any impairment of the dignity of the consular post, owing to the proviso that such duty was subject to the provisions of paragraph 2. The International Law Commission's solution was wiser and better balanced.

10. Moreover, paragraph 4 referred to the payment of compensation and thereby touched upon the question of nationalization, the importance of which for the developing countries was patent. To substitute the new paragraph 4 for the provisions of the International Law Commission's draft of paragraph 3 would be to take a step backwards.

11. The Romanian delegation considered that every provision should be made to safeguard the inviolability of the consular premises, a principle recognized in international law and an essential factor for the performance of consular functions. His delegation would support any proposal aimed at strengthening the inviolability of the consular premises, and also the French and Indian motions for division. He was also grateful to the Byelorussian delegation for having proposed the restoration of the International Law Commission's text.

12. Mr. KEITA (Mali) thought that the principle of the inviolability of the consular premises should be clearly laid down in the convention as it was a prerogative indispensable for the performance of consular functions. But it seemed to be seriously impaired by certain provisions of article 30. His delegation accordingly approved the French motion for division and would vote against the final phrase of paragraph 2, beginning with the words "or if the authorities of the receiving State". It would abstain from voting on the Indian proposal.

13. Mr. BANGOURA (Guinea) said he was in favour of the motions for division submitted by France and India and would vote against the second sentence of paragraph 2.

14. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he was categorically opposed to the insertion in paragraph 2 of provisions which threatened to lead, under various pretexts, to the violation of consular premises. The need to guarantee the absolute inviolability of consular premises was already recognized in the law of many States and was embodied in a large number of bilateral agreements. The United States itself was a party to conventions containing a clause on the absolute inviolability of consular premises, though at the moment it was supporting the introduction of restrictions on that

guarantee. The United Kingdom representative had stated that his country was party to no bilateral agreement stipulating the absolute inviolability of consular premises; but rules should not be based on exceptions, and should follow the practice of the majority. All previous drafts concerning that point had laid down the principle of absolute inviolability. Notwithstanding arguments similar to those put forward by certain delegations during the present conference, the 1961 Conference had made no restrictions on inviolability in the Convention on Diplomatic Relations. No distinctions of a practical nature should be drawn between diplomatic missions and consular services at least in so far as that particular prerogative was concerned. The dangers mentioned as justifying the rejection of the principle of total inviolability were highly exaggerated and too rare to require the insertion of a special clause in the convention. To assume the consent of the head of a consular post in the case of fire or other disaster might lead to abuses and acts of provocation. With regard to the end of the second sentence of paragraph 2, the French representative was right in asking what was to be understood by a crime of violence to property. Generally speaking, the final provisions of paragraph 2 might lead to arbitrary decisions on the part of the local police and a simple presumption would be sufficient to authorize the violation of consular premises. The delegation of the Soviet Union therefore supported the motions for division.

15. The Ukrainian amendment was perfectly logical and solidly supported by relevant arguments; and he would therefore vote for it.

16. Mr. CAMERON (United States of America), exercising his right of reply, noted that the representative of the Soviet Union had referred to the writings of Charles Cheney Hyde and to certain older treaties of the United States in an effort to prove that the United States position on article 30 was contrary to its own policy on the matter of inviolability of consular premises. He wished to make it clear that that was inaccurate and gave a wrong impression. The treaties cited by the USSR representatives had not been signed within the past few years. To the contrary, he would quote from a number of bilateral treaties concluded by the United States since 1950 which contained provisions recognizing a right of entry pursuant to appropriate writ or process or with the consent of the Minister for Foreign Affairs and which assumed such consent in the event of fire or other disaster or if grave crime were being committed. He read out provisions from treaties concluded with Ireland in 1950, the United Kingdom in 1951, Ethiopia in 1951, Iran in 1955 and Muscat in 1958.

17. Mr. PAPAS (Greece) said that his delegation had been one of the sponsors of the amendment to article 30 submitted in the Second Committee from which the text under consideration had emerged. To reassure delegations who were apprehensive of the provisions of paragraph 2, he would point out that the guarantees provided in paragraph 3 were sufficient to compensate for the restrictions in paragraph 2. Consequently the Greek delegation remained in favour of the text submitted by

the drafting committee and it would therefore oppose the motions for division and the Ukrainian amendment to paragraph 4.

18. Mr. KRISHNA RAO (India) said that his delegation did not oppose the principle that the authorities of the receiving State could enter the consular premises in case of fire or other disaster, and recalled that that principle had been implicitly recognized when the situation of diplomatic missions in similar circumstances had been discussed. He queried, however, if it was advisable to retain the wording of the draft before the Conference. The entire issue turned on the principle which had been followed in the 1932 Harvard draft which safeguarded the inviolability provided that the premises were used solely for consular purposes. The text under discussion did not deal with the question in its entirety from that angle and might give rise to abuses, since the local authorities could easily find a pretext for entering the consular premises if they so desired. Furthermore, the words "reasonable cause" were very vague, as was the expression "crime of violence to person or property". Precise wording was necessary in such cases.

19. He could not support the amendment by the Ukrainian SSR, because he considered that paragraph 4 was a distinct improvement on the International Law Commission's draft. His only regret was that it had not been thought proper to retain the idea that the premises should be immune from search.

20. Mr. BILGE (Turkey) considered that a State was granted privileges for precise reasons and under well-defined conditions. It was not necessary for the inviolability of consular premises to be made absolute, as in the case of diplomatic premises. Article 30 as submitted by the drafting committee offered sufficient guarantees for the performance of consular functions, and was in conformity with the evolution of international law. The Turkish delegation was therefore in favour of retaining the entire text as it stood, and would oppose any motion for division.

21. Mr. PUREVJAL (Mongolia) considered the International Law Commission's draft entirely satisfactory and in keeping with international practice. To enable consular functions to be carried out, inviolability of the consular premises must be absolute. The amendments made by the Second Committee had scarcely improved the original text, and paragraph 2 was not acceptable because it nullified the inviolability and left room for abuses on the part of the receiving State. His delegation would therefore support the motion for division. Paragraph 4 should confirm the application of the principle of inviolability as provided by the International Law Commission in paragraph 3 of its draft article, and he would vote for the Ukrainian amendment.

22. Mr. PLANG (Cambodia) agreed that the International Law Commission's draft was completely satisfactory, since the inviolability of the consular premises should be absolute. His delegation would vote against the second sentence in paragraph 2, because the first sentence provided the receiving State with sufficient

safeguards. He would vote for the motion for division submitted by India and for the Ukrainian amendment to paragraph 4.

23. Mr. EVANS (United Kingdom) moved the adjournment of the debate on article 30 under rule 25 of the rules of procedure. There were obviously two trends of opinion in the Conference, and delegations would need time to consult with a view to reaching a compromise solution. The United Kingdom delegation thought it could provide the Secretariat with a text for circulation before the next meeting. The difficulty presented by paragraph 4 would be easier to solve when a formula had been found for paragraph 2.

*It was so decided.*

*Article 8 (formerly article 7) (Exercise of consular functions on behalf of a third State) (resumed from the 5th meeting and concluded)*

24. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that in connexion with article 8 the drafting committee had acted on the proposal of the representatives of Belgium and Italy, who had suggested that it should be stated that it was the consular post of the sending State and not the sending State itself which could exercise consular functions in the receiving State on behalf of a third State.

25. Mr. PETRŽELKA (Czechoslovakia) pointed out that a State could have several posts in the receiving State, and thought it advisable to say "a consular post" instead of "the consular post".

26. Mr. KRISHNA RAO (India) said that the drafting committee's text did not exclude the possibility of several consular posts but, if the representative of Czechoslovakia so wished, the drafting committee could reconsider that point.

27. Mr. PETRŽELKA (Czechoslovakia) said there was no need to change the drafting committee's text, provided there was a reference to his interpretation in the summary record.

*Article 22 (Appointment of nationals of the receiving State as consular officers) (resumed from the 7th meeting and concluded)*

28. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that the representative of Tunisia had proposed altering the heading to include nationals of a third State, as mentioned in paragraph 3 of article 22. The drafting committee had acted on that suggestion and had headed the article "Nationality of consular officers".

*Article 25 (Termination of the functions of a member of a consular post) (resumed from the 7th meeting and concluded)*

29. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that the proposals of the representative of Chile at the seventh plenary meeting had been acted upon. The drafting committee had changed sub-paragraphs (b) and (c) to read:

"(b) On withdrawal of the exequatur;

"(c) On notification by the receiving State to the sending State that the receiving State had ceased to consider him as a member of the consular staff".

The text was clearer, and he thanked the Chilean representative for his suggestion.

30. The PRESIDENT put to the vote article 25, as amended by the drafting committee.

*Article 25 was adopted by 76 votes to none, with 1 abstention.*

#### *Article 31*

(Exemption from taxation of consular premises)

31. Mr. MEYER-LINDENBERG (Federal Republic of Germany) introduced the joint amendment by his delegation and the delegation of Japan (A/CONF.25/L.24) and said that his delegation had joined the Japanese and Nigerian delegations in submitting a joint amendment to the First Committee for the inclusion of the residence of a career consular head of post in the definition under sub-paragraph (j) of article 1. The amendment had not been adopted and his delegation had abstained from reverting to the matter in the plenary. Nevertheless, it considered that the residence of the head of a consular post should come under the exemption from taxation: one State should not tax another State, since that would affect the principle of the sovereign equality of States. For that reason his delegation and the Japanese delegation had decided to submit the joint amendment.

32. Mr. de MENTHON (France) explained that his delegation was against inserting a reference to residence in article 30 or in article 1, but saw no objection to including it in article 21, because that formula was in keeping with his country's practice.

*The amendment of the Federal Republic of Germany and Japan (A/CONF.25/L.24) was adopted by 64 votes to none, with 14 abstentions.*

*Article 31, as amended, was adopted by 74 votes to none, with 5 abstentions.*

#### *Article 32*

(Inviolability of the consular archives and documents)

33. Mr. HABIBUR RAHMAN (Pakistan) said that his delegation was in favour of the inviolability of consular archives and documents. Nevertheless, the words "wherever they may be" in article 32 lacked precision. It should be clearly stated that such documents were situated in a suitable place, for instance the consular premises, the means of transport of the consulate or the consular bag. He would ask the chairman of the drafting committee to enlighten him on those words, which seemed to lack precision.

34. Mr. KRISHNA RAO (India) said that, as chairman of the drafting committee, he could not give any opinion on the matter, but as representative of India he agreed with the representative of Pakistan that the words "wherever they may be" called for a reservation.

35. The PRESIDENT suggested that that reservation should be mentioned in the summary record.

36. Mr. HABIBUR RAHMAN (Pakistan) said that in that case he would vote for article 32 on condition that the words "wherever they may be" implied an appropriate place such as the consular premises, the means of transport of the consulate or the consular bag, but that they had no wider meaning.

37. Mr. BILGE (Turkey) agreed with the representative of Pakistan, whose comments he considered entirely justified, and asked that his statement be recorded.

*Article 32 was adopted by 72 votes to none, with 2 abstentions.*

38. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) explained that he had voted for article 32 as drafted and could not endorse the interpretation given to the words "wherever they may be" by the representatives of Pakistan and Turkey.

39. Mr. DE CASTRO (Philippines) and Mr. SALLEH bin ABAS (Federation of Malaya) said that they had voted for article 32 with the same reservations as the representative of Pakistan.

40. Mr. ENDEMANN (South Africa) and Mr. MOUSSAVI (Iran) said that they had abstained from voting on article 32 because of the lack of precision in that article, to which the representative of Pakistan had drawn attention.

The meeting rose at 1.15 p.m.

#### TENTH PLENARY MEETING

*Tuesday, 16 April 1963, at 3.30 p.m.*

*President: Mr. VEROSTA (Austria)*

#### Consideration of the question of consular relations in accordance with resolution 1685 (XVI) adopted by the General Assembly on 18 December 1961 (*continued*)

[Agenda item 10]

#### DRAFT CONVENTION

##### *Article 34 (Freedom of movement)*

1. The PRESIDENT invited the Conference to continue its discussion of the draft convention (A/CONF.25/L.11) and noted that article 33 (renumbered 27 A) had already been adopted by the Conference. No amendments had been submitted to article 34.

*Article 34 was adopted unanimously.*

##### *Article 35 (Freedom of communication)*

2. The PRESIDENT drew attention to the amendments to paragraph 5 submitted by the Philippines (A/CONF.25/L.29) and Denmark (A/CONF.25/L.31).

3. Mr. SCHRØDER (Denmark), introducing his delegation's amendment, pointed out that the original text of the article drafted by the International Law Commission had not contained any restrictive condition concerning consular couriers who were nationals of the receiving State or permanent residents thereof. The restriction had been introduced by the Second Committee. His delegation recognized the right of the receiving State to determine the extent to which its nationals could serve a foreign State; it also recognized the receiving State's concern to ensure that a foreigner permanently resident in its territory was not more favourably treated than a national. But his delegation could not accept the provisions of paragraph 5. The restriction which had been introduced was of little practical importance in the case of regular consular couriers, who were generally nationals of the sending State and resided in their own country. But it also applied, by virtue of paragraph 6, to consular couriers *ad hoc* and, for those couriers, the consequences of the restriction would be very serious. In particular, an honorary consul of the sending State who happened to be a permanent resident of the receiving State would not be able to carry mail to and from his own consular post without the consent of the receiving State.

4. There was another practical reason for introducing a saving clause regarding permanent residents in the receiving State who were also nationals of the sending State: on concluding a visit to their home country, such persons were often asked by the Ministry for Foreign Affairs to carry a consular bag to their place of residence in the receiving State. In such cases there was hardly time to obtain the consent of the receiving State and certainly no time for the receiving State to give the necessary orders to its responsible authorities before the arrival of the consular courier *ad hoc*, who usually travelled by air.

5. It was for those practical reasons that his delegation had introduced its amendment exempting nationals of the sending State from the condition imposed on permanent residents of the receiving State by the second sentence of paragraph 5.

6. Mr. DE CASTRO (Philippines) said he would not press his proposal (A/CONF.25/L.29) to delete the last sentence of paragraph 5; he asked, instead, that a separate vote should be taken on that sentence.

7. His delegation had no objection to the personal inviolability of the consular courier within the receiving State, because it involved no danger of abuse. But where the consular bag was carried across state frontiers, he thought the granting of personal inviolability to the courier was fraught with danger; it opened the door to abuses which might impair friendly relations between States.

8. A distinction should be made between the consular bag itself and the person who carried it. The deletion of the last sentence of paragraph 5 would not affect the safeguards provided in paragraph 3 for the bag itself. Moreover, paragraph 3 also provided safeguards against abuse of the bag, which must not contain anything other than official correspondence, and could be opened if there was reasonable cause to suspect that it did. With