

# **United Nations Conference on Diplomatic Intercourse and Immunities**

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**21st meeting of the Committee of the Whole**

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sary, to refer to the summary record, his delegation wished to state that the Swedish Government, in relation to any obligation it might incur under article 19, would rely on those commentaries, according to which the obligation to "ensure" accommodation would operate only if the receiving State could not remove the legal obstacles to the acquisition of the premises necessary for a given mission. Where there were practical difficulties, such as a housing shortage, it was only proper that the authorities of the receiving State should do their utmost to help missions in their search for premises; but they would not be under a conventional obligation to "ensure" the acquisition of premises.

48. Mr. WALDRON (Ireland) said that article 19 was too mandatory. The Chinese amendment seemed to tone it down suitably. He had nothing against the Swiss and Venezuelan amendments, but could not accept the Indian proposal.

49. Mr. BESADA RAMOS (Cuba) supported the Venezuelan amendment. Allowance should be made for the situation in different countries. Under Cuban law aliens could not acquire real property in Cuba. However, he considered that the words "facilitate acquisition by the sending State of the premises" in the Venezuelan amendment should be replaced by "help the sending State to obtain premises".

The meeting rose at 6.15 p.m.

## TWENTY-FIRST MEETING

*Monday, 20 March 1961, at 10.45 a.m.*

*Chairman: Mr. LALL (India)*

### **Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4)** *(continued)*

#### *Article 19 (Accommodation)*

1. The CHAIRMAN invited the Committee to continue its debate on article 19 and on the amendments thereto.<sup>1</sup>

2. Mr. HU (China) supported the International Law Commission's draft in principle, but thought the word "ensure" should be replaced by some less imperative verb such as "facilitate" and, further, that the article should expressly mention accommodation for the head of the mission. That was the object of his delegation's amendment (L.122). The Committee could hardly take a decision on article 19, however, so long as the definition of mission premises was not finally settled.

3. Mr. GASIOROWSKI (Poland) thought that the Mexican amendment (L.128) had the serious defect of

<sup>1</sup> For the list of amendments to the article, see 20th meeting, footnote to para. 38. A revised version of the Indian amendment had been circulated (A/CONF.20/C.1/L.160/Rev.1).

entirely reversing the provisions of article 19 and of making a matter of principle out of what the International Law Commission had considered an exception to the general rule. According to the Commission, it was the receiving State's duty to ensure adequate accommodation for the mission only in the exceptional case in which it had not permitted the sending State to acquire such accommodation. The words "without its assistance", in the amendment in question, were particularly dangerous, for they would unfairly impose a heavy burden on countries which, like Poland, had had to set up a housing service to meet the shortage caused by war-time destruction. The Polish Government helped diplomatic missions to obtain a site, and left it to them to build the premises they needed. That equitable procedure might no longer be possible if the Mexican amendment were adopted. The Polish delegation would therefore vote against it. On the other hand, it would vote for the Venezuelan amendment (L.142).

4. Mr. TRAN VAN MINH (Viet-Nam) said that the purpose of his delegation's amendment (L.169) was to reconcile the two diametrically opposed views which had been expressed in the Committee. It took account both of circumstances and conditions in the receiving State, and of the needs of the diplomatic mission of the sending State. While maintaining the obligation imposed by the article as it stood, the amendment made it less absolute. True, the formula used was one which his delegation had criticized during the discussion of article 10 (14th meeting, paras. 20 and 21), but in the case of article 19 it would be difficult to adopt a more precise wording, which would almost certainly be difficult to apply in practice.

5. Mr. KRISHNA RAO (India) said there could be no question of imposing the obligation contained in the article as drafted by the International Law Commission in cases where it conflicted with the legislation of the receiving State or where there was an acute shortage of housing. As several speakers had said, it was therefore desirable to leave greater latitude to the receiving State, and that was the object of his delegation's revised amendment. It took into due account the amendments submitted by the Federation of Malaya, Venezuela and Switzerland, as well as the comments of the representative of Ireland (20th meeting, para. 48) and the sense of the amendments of China and Mexico. The principle expressed in the amendment submitted by Viet-Nam had been accepted during the discussion of article 10.

6. Mr. CARMONA (Venezuela) said he would be prepared to withdraw the first paragraph of his delegation's amendment in favour of the revised Indian amendment if the words "in accordance with its laws" were inserted after the words "on its territory".

7. Mr. KRISHNA RAO (India) accepted that addition.

8. Mr. TUNKIN (Union of Soviet Socialist Republics) said he had no objection to the article as drafted by the International Law Commission. He had, however, intended to vote for the first paragraph of the Venezuelan amendment, but as that had been withdrawn he would vote for the Indian amendment as revised. Nevertheless,

as the second paragraph of the Venezuelan amendment confirmed an existing practice, it would perhaps be advisable to incorporate it in the revised Indian amendment.

9. Mr. de SOUZA LEO (Brazil) said that the provisions of article 19 did not in any way compel the receiving State to allow the sending State to acquire the premises necessary for its mission; it was open to the receiving State to ensure adequate accommodation for the mission "in some other way". His delegation thought it would be wise to preserve that latter obligation, though the Venezuelan amendment was an improvement on the original in that it called on the receiving State to "assist" diplomatic missions to obtain suitable accommodation, including, where necessary, accommodation for the members of the mission.

10. Mr. TRAN VAN MINH (Viet-Nam), Mr. HU (China), Mr. MARISCAL (Mexico), Mr. AMAN (Switzerland) and Mr. SUFFIAN (Federation of Malaya) withdrew the amendments submitted by their respective delegations in favour of the revised Indian amendment.

11. Mr. CAMERON (United States of America) asked for further information on the exact meaning to be attached to the word "facilitate", which he found rather disturbing. The International Law Commission's text seemed to him best, and his delegation did not think it would be able to support the Indian amendment.

12. Mr. de VAUCELLES (France) hoped that the Indian delegation would agree to the addition of a clause on the lines of the second paragraph of the Venezuelan amendment, as the USSR representative had suggested.

13. Mr. de ROMREE (Belgium) also supported the USSR suggestion.

14. Mr. YASSEEN (Iraq) suggested that the useful word "adequate", which appeared in the original draft, might with advantage be added in the Indian amendment.

15. Mr. CARMONA (Venezuela) and Mr. de SOUZA LEO (Brazil) agreed with the views expressed by the preceding speakers.

16. Mr. KEVIN (Australia) said he assumed that the word "acquisition" also covered the leasing of premises.

17. Mr. KRISHNA RAO (India), in reply to some of the remarks made, said that in his opinion the word "necessary" was sufficiently precise and that it would not be advisable to add the word "adequate". He would have no objection to the addition of a clause on the lines of the second paragraph of the Venezuelan amendment.

18. Mr. AMLIE (Norway) said he was prepared to vote for the Indian amendment as revised. He was rather doubtful as to the advisability of adding the second paragraph of the Venezuelan amendment, and asked that a separate vote be taken on that clause. The Norwegian delegation would vote against the clause.

19. Mr. CAMERON (United States of America) thought it would suffice to substitute the word "allow" for "facilitate"; if that were done his delegation would vote in favour of the Indian amendment.

20. Mr. TRAN VAN MINH (Viet-Nam), Mr. PINTO de LEMOS (Portugal) and Mr. TAKAHASHI (Japan) agreed with the Norwegian representative's view.

21. Mr. DASKALOV (Bulgaria) drew the Norwegian delegation's attention to the fact that the second paragraph of the Venezuelan amendment did not impose any binding obligation, since it included the phrase "where necessary". He was prepared to vote for the Indian amendment, as revised, and for the addition of the second paragraph of the Venezuelan amendment.

22. Mr. KRISHNA RAO (India) said it was impossible to substitute "allow" for "facilitate", since the revised amendment submitted by his delegation was an agreed text worked out with the sponsors of other amendments.

*The revised Indian amendment (L.160/Rev.1), as amended by the addition of the words "in accordance with its laws", was adopted by 64 votes to 1, with 4 abstentions.*

*The second paragraph of the Venezuelan amendment (L.142) was adopted by 36 votes to 14, with 21 abstentions.*

*Article 19 as a whole, as so amended, was adopted by 63 votes to 1, with 6 abstentions.*

*Article 20 (Inviolability of the mission premises)*

23. The CHAIRMAN invited debate on article 20 and the amendments thereto.<sup>2</sup>

24. Mr. WALDRON (Ireland) said that the additional paragraph proposed jointly by his delegation and that of Japan, in referring to exceptional circumstances of emergency, was not too sweeping in scope. He drew attention to the difficulties that might arise should the head of mission be absent from his post and therefore not in a position to give his consent to measures "essential for the protection of life and property", as for instance in the case of a fire in a building near the mission's premises.

25. Mr. HU (China) said that the article dealt with a difficult and delicate problem. The second sentence of paragraph 1 would appear to be at once too general and too stringent and might not be acceptable to national parliaments. Accordingly, the Chinese delegation proposed its deletion. The first sentence, which correctly stated a recognized principle, should be supplemented by a reference to furnishings, in which event, as was proposed in his delegation's amendment, paragraph 3 could be omitted.

26. His delegation was not in principle opposed to the Mexican and Irish-Japanese amendments, but in the last resort it would support the International Law Com-

<sup>2</sup> The following amendments had been submitted: Federation of Malaya, A/CONF.20/C.1/L.114; China, A/CONF.20/C.1/L.123; Mexico, A/CONF.20/C.1/L.129; Ukrainian SSR, A/CONF.20/C.1/L.132; Japan, A/CONF.20/C.1/L.146; India, A/CONF.20/C.1/L.161; Ireland and Japan, A/CONF.20/C.1/L.163; Spain, A/CONF.20/C.1/L.168.

mission's draft, which was the outcome of years of thought and on which the Conference could not hope to improve in the space of a few weeks.

27. Mr. MERON (Israel) said that meticulous observance of the principle of inviolability was a necessary condition for the performance of diplomatic functions. However, the interests of the receiving State should also be given adequate attention. The Mexican, Irish-Japanese and Spanish amendments concerned the rights of the receiving State in the event of public danger on the premises of the mission — danger not only to the mission but to the lives or property of nationals of the receiving State — and also when, for urgent public work plans, the receiving State needed the land on which the premises of the mission were situated. In the first case the receiving State should be allowed to remove the danger; and in the second the sending State should co-operate in every way in the implementation of the public works plan. His delegation thought it would be well to mention those principles which, though self-evident, would constitute a desirable guide to relations between the sending State and the receiving State. That was of particular importance when the receiving State was small and the sending State a great Power. The Mexican amendment stressed the positive element of agreement and co-operation, which was preferable to providing for any exception to the principle of inviolability — an exception which could be abused. He supported the principle in the first part of the Mexican amendment, but suggested that it should mention not only the head of the mission but also all its members, and should state that the co-operation was to be directed towards the elimination of the danger.

28. Regarding the second part of the Mexican amendment, that relating to public works, his delegation would have liked the element of agreement, referred to in relation to the period for the vacation of the premises, to be extended also to the actual principle of vacating the premises. The matters raised by the proposed amendments could also be dealt with, not by amending article 20, but by appropriately recording the understanding of the Committee that article 20 was subject to the special duty of the sending State to co-operate with the receiving State in such cases.

29. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) considered that article 20, paragraph 3, did not fully specify what was covered by the inviolability. The intention was, apparently, to provide an exhaustive list. In order to avoid interpretations prejudicial to the general principle of inviolability, it would be preferable to adopt the wording of the amendment submitted by his delegation.

30. For the sake of the uniformity of terminology, the terms used in articles 28 and 43 should also be used in article 20.

31. The changes proposed by the Spanish delegation in its amendment were similar to those proposed by the Ukrainian SSR, but the Spanish text was perhaps narrower in scope, and he hoped that Spain would support his delegation's amendment.

32. Mr. de ERICE y O'SHEA (Spain) agreed that the Ukrainian amendment enlarged the scope of article 20, paragraph 3, more than did the Spanish amendment, and withdrew paragraph 3 (a) of his delegation's amendment in favour of the Ukrainian amendment — though, from the drafting point of view, it might be better if that amendment related to paragraph 1. The Spanish delegation also withdrew paragraphs 1 and 2 of its amendment, the latter in favour of the new paragraph 4 proposed by the Mexican delegation, but maintained paragraph 3 (b).

33. Mr. TAKAHASHI (Japan), introducing his delegation's amendment (L.146), explained that its object was to include, in article 20, the principle stated by the International Law Commission in paragraph 5 of its commentary (A/3859) concerning the service of a writ through the post. The purpose of the joint Irish-Japanese amendment (L.163) was the same as that of the Mexican and Spanish amendments. The Japanese Government had stated the principle in its comments on the Commission's 1957 draft (A/3859, annex). He hoped that the Committee would adopt the principle leaving the form to be settled by the Drafting Committee.

34. Mr. DASKALOV (Bulgaria) said that the inviolability of the mission premises was one of the most important principles of international law. It was based on the principle of the sovereign equality of States. The International Law Commission had therefore been right in not providing for any exceptions, which would be contrary to international law, open the door to abuses and be fraught with serious consequences. Accordingly, his delegation supported article 20 as it stood and could not accept any amendments other than those designed to make the text clearer, such as those proposed by the Federation of Malaya and by the Ukrainian SSR.

35. Mr. WESTRUP (Sweden) said that respect of the principle of the inviolability of the mission premises laid down in article 20 was a *sine qua non* for the establishment of good diplomatic relations among States. The Commission had stated in its commentaries that, to fulfil its special obligation of protecting the premises of the mission, the receiving State had to take special measures over and above those it took to discharge its general duty of ensuring order. The apparent tendency to whittle down, in certain circumstances, the scope of the principle of the inviolability of mission premises was a matter of concern to his delegation, since it attached the greatest importance to that principle. His government flatly refused to recognize that tendency as compatible with international law. He recalled that, in general, the inviolability of the premises of foreign missions had in the past been respected to a remarkable degree, even in the most difficult circumstances. If the government of the receiving State could not quieten popular demonstrations and keep under control the propaganda which inspired them, it should be fully answerable for any damage.

36. Mr. MARISCAL (Mexico) agreed that his delegation's amendment should be modified as indicated by the representatives of Israel, Spain and Japan. The

main point was that the principle behind the new paragraph 4 proposed by Mexico should be observed.

37. Mr. TUNKIN (Union of Soviet Socialist Republics) stressed the importance of the inviolability of mission premises for the cause of peace and the maintenance of good relations among States. The International Law Commission had studied that question at length and had wisely decided not to provide for any exceptions to the principle. That decision was, moreover, based on established practice and on the existing state of international law. It was also in line with existing international conventions, particularly with the Havana Convention of 1928, the laws of many countries and the 1959 resolution of the Institute of International Law. Some amendments submitted to article 20 — for example, the joint Irish-Japanese amendment and the Mexican amendment — reintroduced proposals that had been rejected by the Commission. The practical course of international relations showed the potential danger of the proposed exceptions to the principle of the inviolability of the mission premises.

38. The Indian amendment, dealing with the right of the owner to enter the premises leased to the mission, seemed unnecessary, for such cases could easily be settled by agreement between the mission and the owner. The same applied to the Japanese amendment; the Soviet Union was not opposed to that amendment, but article 20, paragraph 1, as it stood should meet the case.

39. To justify their views, the sponsors of the amendments limiting the scope of the principle of inviolability stated that, if exceptions were not laid down, abuses would arise. Abuses in the exercise of a right were, of course, always possible. But the danger of allowing the receiving State to judge whether exceptional circumstances permitted it to enter the mission premises without the consent of the head of the mission was still more serious, for it could affect the international relations. The Soviet delegation therefore supported article 20 as it stood, though its wording might be improved by the adoption of the amendments submitted by the Ukrainian SSR and the Federation of Malaya, and would vote against all other amendments to article 20.

40. Mr. AMLIE (Norway) said that the inviolability of the mission premises was a fundamental principle of international law and was essential for the maintenance of normal relations among States. The receiving State should take all measures necessary for ensuring respect for that principle and, if it failed in that obligation, it was responsible for the consequences. His delegation therefore unreservedly approved the principle stated in article 20 and hoped that all States would respect it. Its wording might perhaps be improved by the Ukrainian amendment, which was perfectly reasonable. On the other hand, in the light of the commentary of the International Law Commission, his delegation considered it preferable not to introduce into the convention a provision such as that proposed by Japan, in view of the difficulty of finding a satisfactory formula. The new paragraph proposed in the joint Irish-Japanese amendment conflicted with the principle of inviolability, and

his delegation would be unable to support it. It would therefore vote in favour of article 20 as it stood, subject to possible drafting improvements.

41. Mr. BOLLINI SHAW (Argentina) said his delegation was opposed to any exceptions to the principle of the inviolability of mission premises and believed it would be dangerous to introduce them into the convention. The joint Irish-Japanese amendment was at variance with that principle and was all the more dangerous in that it left it entirely to the receiving State to decide what circumstances were exceptional and therefore justified its intervention. It was precisely in cases of public danger that it was most necessary to ensure the inviolability of the mission premises. The Argentine delegation would therefore vote against that amendment, but would support what remained of the Spanish amendment, as well as the Ukrainian amendment, both of which widened the scope of article 20. His delegation approved the idea behind the Japanese amendment but, if it were to be interpreted as permitting the service of a writ through the post, it would vote against the amendment.

The meeting rose at 1.10 p.m.

## TWENTY-SECOND MEETING

Monday, 20 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

### Consideration of the draft articles on diplomatic intercourse and immunities adopted by the International Law Commission at its tenth session (A/CONF.20/4) (continued)

1. The CHAIRMAN invited the Committee to continue its debate on article 20 and the amendments thereto.<sup>1</sup>
2. Mr. KIRCHSCHLAEGER (Austria) stressed the importance of article 20, which embodied a basic principle of the convention and an essential condition for the functioning of the mission. Although the classic concept of extritoriality belonged to the past, the premises of the mission must be regarded as sacrosanct and protected by the receiving State by every means within its power. His government was most anxious that the principle of inviolability of the mission premises should be clearly formulated in the convention; it would therefore support the article as drafted by the International Law Commission, which represented a satisfactory balance of interests.
3. Mr. de ERICE y O'SHEA (Spain), recalling that his delegation had withdrawn all but paragraph 3 (b) of its amendment (L.168), said that it could not support any amendment to the draft which might be construed as infringing the principle of inviolability. The draft might be clarified, but not restricted. On that ground his delega-

<sup>1</sup> For the list of the amendments submitted to article 20, see twenty-first meeting, footnote to para. 23.