

United Nations Conference on Diplomatic Intercourse and Immunities

Vienna, Austria
2 March - 14 April 1961

Document:-
A/CONF.20/C.1/SR.8

8th meeting of the Committee of the Whole

Extract from Volume I of the *Official Records of the United Nations Conference on Diplomatic Intercourse and Immunities (Summary records of the plenary meetings and of the meetings of the Committee of the Whole)*

delegation was agreeable, it might perhaps be better to place the text in the preamble than in an article of the convention.

61. Mr. BAROUNI (Libya) approved article 2 as drafted, and favoured the insertion of the text proposed by Czechoslovakia in a preamble.

62. Mr. CAMERON (United States of America) noted that there had been some discussion on whether the Czechoslovak text should be placed in an article or in a preamble. For the moment, he would have to reserve his position on that question.

63. The CHAIRMAN said he gathered that the Czechoslovak delegation agreed to the insertion of its proposed text in a preamble.

The meeting rose at 12.55 p.m.

EIGHTH MEETING

Thursday, 9 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)

Article 2 (Establishment of diplomatic relations and missions) (continued)

1. The CHAIRMAN said that the one remaining amendment to article 2 (L.15, submitted jointly by Ecuador and Spain) had been withdrawn. He asked if the Committee was prepared to approve article 2 as drafted by the International Law Commission.

2. Mr. LINTON (Israel) stated his delegation's position on article 2. The important role of diplomatic relations in the fulfilment of the purposes of the United Nations had been rightly stressed by the International Law Commission in its commentary (A/3859) on article 2. The modern international community was based on the rules of conduct contained in the Charter of the United Nations and on the radically new concepts which the Charter had introduced into international law and relations. Peaceful co-existence and co-operation among States; prohibition of the use or threat of force in international law and relations; the duty to settle international disputes peacefully; and the principle of non-intervention by one State in the internal and external affairs of another State, were now legal as well as moral principles of the Charter governing the new order of the community of nations. Guided and animated by these principles, his government regarded normal and orderly diplomatic relations between all States as an essential instrument under the Charter for the maintenance of international peace and security, for international coexistence and co-operation, and for the prevention of

international tensions. He would therefore have preferred article 2 to be drafted in a form more in keeping with the spirit of article 1 of the Havana Convention, which was reflected in the Commission's comments.

Article 2 was approved.

Article 3 (Functions of a diplomatic mission)

3. The CHAIRMAN drew attention to the amendments to article 3.¹

4. The changes proposed by Liberia and the Philippines (L.14) affecting the drafting only, he suggested that they should be referred to the drafting committee.

It was so agreed.

5. The CHAIRMAN said that there were no amendments to sub-paragraph (a), and invited comment on the amendments to sub-paragraph (b) (L.13, L.27, L.33 and L.82).

6. Mr. KRISHNA RAO (India) withdrew his delegation's amendment (L.13) in favour of that proposed by Mexico (L.33).

7. Mr. YASSEEN (Iraq) supported the Mexican amendment. Although the additional words were not necessary, being a statement of the obvious, they might psychologically curb a diplomat's zeal in protecting the interests of his State or of its nationals.

8. Mr. BESADA (Cuba) introduced his delegation's amendment (L.82) to sub-paragraph (b). The existing text might leave the way open to possible interference in the affairs of the receiving State, and even give the sending State's mission and members an extraterritorial quality. The Mexican amendment had some merit in that it mentioned international law, but its terms were rather vague.

9. Mr. AGUDELO (Colombia), referring to sub-paragraph (b), said that the protection of interests was sometimes carried to extremes — as countries on the American continent were all too well aware. He would support the proposal that the provisions should be qualified by a reference to international law.

10. Mr. GUNWARDENE (Ceylon) said that, though article 3 was a useful provision, he was uneasy over the wording of two of its sub-paragraphs. In the first place, sub-paragraph (b) was far too broad and should be qualified by some proviso. Secondly, in sub-paragraph (d) the words "by all lawful means" were open to differing interpretations.

11. Mr. RUEGGER (Switzerland) agreed with the many representatives who had urged the Committee to be very cautious in amending the International Law Commission's draft. Article 3, sub-paragraphs (a) and (b) and (c) — especially (b) — were a true codification of law. He regretted that the representative of Iraq saw any value in the addition proposed by Mexico. In his delegation's opinion — and Switzerland had long expe-

¹ For the list of amendments to article 3, see fifth meeting, footnote to para. 1.

rience in the matter of protection — it had none. A State asking for protection within the law might be met with delaying action by the receiving State, on the pretext that the legal situation had to be studied. He opposed any addition to sub-paragraph (b), especially since the law concerning the protection of nationals abroad was not yet well defined — indeed, the Institute of International Law was working on the subject.

12. Mr. DIAZ (Mexico) pointed out that his delegation's amendment to sub-paragraph (b) did not really modify the work of the International Law Commission. On the contrary, it expressed an important idea, contained in paragraph 4 of the Commission's commentary to article 3 (A/3859) which should be incorporated in the convention. He agreed with the representative of Switzerland that article 3 was a codification; the Mexican amendment was intended not to alter but to clarify the concept.

13. Mr. TUNKIN (Union of Soviet Socialist Republics) said he was prepared to vote for sub-paragraph (b) as drafted. It was a strictly legal formula and required no addition. The draft articles neither superseded nor abolished the rules of international law relating to the protection of the interests of States and their nationals in the territory of other States. Nor did they touch on particular fields of international law. In sub-paragraph (c) for example (negotiating with the government of the receiving State), negotiation comprised the conclusion of agreements, which fell under specific rules of international law. Those rules were not mentioned, because their application was obvious. Similarly a reference to international law was unnecessary in sub-paragraph (b) and would not add anything legally useful. Nevertheless, some States had reason to wish for a safeguard: they were apprehensive because of their experience with the protection by the sending State of its nationals, which was sometimes carried to extremes. He respected such views, and therefore suggested that the Committee should agree in principle that a safeguard was desirable and refer the various amendments to the drafting committee.

14. Mr. CARMONA (Venezuela) said that the Committee was dealing with one of the most crucial questions of the Conference. Many countries of the American continent had had unfortunate experiences. After years of difficulty, the principle of non-intervention had been established and finally the United Nations set up; but the sovereignty of the smaller and weaker countries was still not fully protected. The International Law Commission was a scientific body and had produced a somewhat academic text. The Conference's task was to relate it to national policy, and with that in mind he strongly supported the Mexican amendment to sub-paragraph (b).

15. Mr. EL-ERIAN (United Arab Republic) said that article 3 was one of the most important of the draft articles. He approved the inclusion of sub-paragraph (e) because, as the Commission stated in paragraph 6 of its commentary, it described one of the functions that had steadily increased in importance as a consequence of the establishment of the United Nations and of modern developments.

16. He was not surprised that sub-paragraph (b) had caused apprehension — not only at the Conference but also within the Commission, in the comments of governments on the provisional draft, and in the Sixth Committee of the General Assembly. Reference had been made to the unfortunate associations of the word "protection". He was apprehensive on technical grounds, and felt that a clear distinction should be made between diplomatic protection in the legal sense, and the duty of diplomatic missions to look after the interests of their nationals. Admittedly some reassurance was given by the second sentence in article 40, paragraph 1. Nevertheless he was in favour of introducing a safeguard into sub-paragraph (b) and proposed that the amendments of Mexico, India and Ceylon should be referred to the drafting committee.

17. Mr. de VAUCELLES (France) said that he had at first been favourably disposed towards the Mexican amendment (L.33), but that he had been much impressed by the arguments of the Swiss representative, and had concluded that the Commission's text, which represented several years' work, should be retained, especially where it expressed a leading principle, as in sub-paragraph (b).

18. The question of due regard for international law in the exercise of diplomatic functions and the enjoyment of diplomatic privileges was clearly going to be raised in connexion with many of the draft articles. He therefore felt that perhaps the most appropriate place for a provision concerning it was the preamble, where it could be stated that the convention should be construed in conformity with international law.

19. Mr. LINARES (Guatemala) supported the Mexican amendment (L.33) for the reasons given by other representatives.

20. Mr. MAMELI (Italy) said that none of the various amendments to sub-paragraph (b) added anything useful, and agreed with the Swiss representative that article 3 should remain as drafted by the Commission. He did not consider the preamble should be discussed at that stage.

21. Mr. TAKAHASHI (Japan) supported the Mexican amendment.

22. Mr. BOUZIRI (Tunisia) said that his delegation was much perturbed, both at the proposal to introduce a reference to the rules of international law in sub-paragraph (b), and at the presence of the words "by all lawful means" in the Commission's sub-paragraph (d). The whole codification was obviously subject to national and international law, and such provisos were not only unnecessary, but also dangerous. He suggested that they should be referred to the drafting committee which should be asked to work out a harmonious and consistent text.

23. Mr. WESTRUP (Sweden) repeated his question whether the word "nationals" used in sub-paragraph (b) covered bodies corporate. (See summary record of second meeting, para. 28.)

24. Mr. STAVROPOULOS, Legal Counsel, representative of the Secretary-General, said that no one but the Commission itself was authorized to give an authentic interpretation of the draft. He had studied its records and had been unable to find any trace of a discussion on whether "nationals" included bodies corporate. The members of the Commission had probably thought it obviously did. That interpretation would conform to the general usage of the term "nationals" in international law.

25. Mr. VALLAT (United Kingdom) said that, of the amendments proposed to article 3, that of Mexico had alone withstood debate. The others would not improve sub-paragraph (b). It could be argued that the Mexican amendment was unnecessary, because the whole convention should be read as subject to international law. However, the protection of the interests of the sending State and of its nationals was a special diplomatic function differing from others, and, having regard to the fears expressed by certain delegations, his delegation would vote in favour of the amendment. The reference to international law was sufficient, for breach of the domestic law of the receiving State was also breach of international law. Article 40, paragraph 1, obliged all diplomatic officers to respect the laws and regulations of the receiving State.

26. Mr. CAMERON (United States of America) said that the discussion had shown that all delegations agreed with the proposition that the text was intended to be carried out consistently with the principles of international law. His delegation found the Commission's text acceptable, but in view of the arguments which had been put forward it would support the Mexican amendment.

27. Mr. KRISHNA RAO (India) noted with satisfaction the general support of the Mexican amendment which had the same intention as the Indian amendment (L.13). He drew particular attention to the word "must" in paragraph 4 of the Commission's commentary to article 3: "The functions mentioned in sub-paragraph (b) must be carried out in conformity with the rules of international law." It was significant that the Commission had felt the need to make that comment only on article 3 (b).

28. The recognition of a principle by customary law was no argument against stating it in the articles. Thus the well-established principle of non-interference in the internal affairs of the receiving State was specifically laid down in article 40, paragraph 1. In fact, of course, the Mexican amendment covered more than that principle, since many other rules of international law were relevant: for example, the rule concerning the exhaustion of local remedies, to which reference was made in commentary 4; and the rule that a diplomatic mission should not, in carrying out its functions of protection, deal with local officials otherwise than through the Ministry of Foreign Affairs of the receiving State.

29. Mr. JEZEK (Czechoslovakia) also stressed the importance of article 3. The function of protecting in the receiving State the interests of the sending State and its nationals was subject to certain limitations of inter-

national law, and also to the limitations laid down by the receiving State. He suggested that the Committee should approve the principle contained in the Mexican amendment, and instruct the drafting committee to prepare a suitable form of words.

30. Mr. BARTOŠ (Yugoslavia) said that all diplomatic functions must be exercised in accordance with the rules of international law. However, there was nothing against the Mexican addition (L.33), which would allay the fears left behind by past controversies. In some cases, a receiving State had prevented a diplomatic mission from carrying out its protective function. In others a mission had abused that function and interfered in the internal affairs of the receiving State. The Mexican amendment expressed an idea contained in commentary 4, and in adopting it the Committee would not be departing from the Commission's views. His delegation would therefore support it.

31. Mr. RIPHAGEN (Netherlands) said that some speakers had confused the limits within which international law allowed claims against the State — State responsibility at international law — with the functions of a diplomatic mission. It was part of a diplomatic mission's functions to protect the interests of the sending State and of its nationals regardless of the rules of State responsibility. A diplomat was often called upon to put forward the views and protect the interests of the sending State in humanitarian and other matters in which no claim could lie.

32. Mr. BESADA RAMOS (Cuba) said that his delegation had submitted its amendment (L.82) because of its concern at the sweeping statement of the right of protection in sub-paragraph (b). The diplomatic function of protection had been abused in Cuba: for example, a foreign diplomatic mission accredited to Cuba had recently placed notices on premises claiming that they and the persons in them were protected by it. The Cuban delegation was therefore particularly interested in ensuring that the limits of the right of protection were most precisely drawn in sub-paragraph (b). It would not press its own amendment, but supported the suggestion that the Committee should approve the principle of the Mexican amendment.

33. Mr. USTOR (Hungary) said that to a lawyer it was clear that the functions specified in sub-paragraph (b) were exercisable only in accordance with the rules of international law. However, the desire expressed by several delegations for a safeguard against abuse was quite understandable, because there had been a long history, not yet closed, of infringements by powerful countries of the rights of smaller ones on the pretext of the protection of nationals. His delegation therefore considered it advisable, *ex abundante cautela*, to state in sub-paragraph (b) that the right of protection had clear-cut limits and that any infringement of them was contrary to international law.

34. The CHAIRMAN said that the Committee had before it only two amendments to sub-paragraph (b), that submitted by Mexico (L.33) and that of Ceylon (L.27). The discussion had shown a preponderant feeling

in favour of the Mexican amendment, and the subject now appeared ripe for the drafting committee. If there were no objection, he suggested that the Committee should approve sub-paragraph (b) with the addition of a proviso on the lines of the Mexican amendment, and request the drafting committee to take into account the wording of the amendment submitted by Ceylon.

It was so agreed.

35. The CHAIRMAN invited comments on the new sub-paragraph proposed by Spain (L.30) concerning the exercise of consular functions by a diplomatic mission.

36. Mr. ROMANOV (Union of Soviet Socialist Republics) said that his delegation doubted the value of the proposed addition. Under a practice of long standing, embassies had consular sections, and in the Soviet Union no special agreement was required for the exercise of consular functions by an embassy. If the Spanish delegation's amendment meant that the receiving State was entitled to object to the existence of a consular section in an embassy, his delegation would vote against it. Such a provision would greatly complicate relations which had been established for a long time and would, for example, enable the receiving State to object to the granting of visas by the consular section of an embassy, thus interfering in one of the embassy's day-to-day functions.

37. Mr. CARMONA (Venezuela) said that under a Venezuelan law of 1876, diplomatic could not be combined with consular functions. Venezuela could not accept the exercise of consular functions by a diplomatic officer. If, therefore, the Spanish delegation's amendment were accepted, his delegation would have to make an express reservation.

38. Mr. de SILVA (Brazil) said that it was not advisable to include a provision along the lines proposed by Spain. A consular section of an embassy operated as a consulate, not as a part of the embassy. Indeed, some countries insisted on granting an *exequatur* as a consular official to the secretary of the embassy in charge of the consular section. Not infrequently, in cases where diplomatic relations between two countries were severed, their consular relations remained unaffected and the consulates and consular sections of embassies continued to operate.

39. Mr. BARTOŠ (Yugoslavia) said that the topic of consular intercourse and immunities was totally separate from the Conference's task. The International Law Commission had considered it at several sessions and had submitted a first draft to governments for their comments (A/4425). It was true that since 1919 the practice of setting up consular sections in embassies had become general; but many receiving States required the head of a consular section to be provided with letters patent as a consul and to obtain an *exequatur*. Most countries were prepared to tolerate the performance of some, but not all consular functions, in the premises of diplomatic missions. If the Conference dealt with consular relations, it would be exceeding its terms of reference and compromise the Commission's work. His

delegation would therefore oppose the Spanish delegation's amendment without expressing any views on the substance.

40. Mr. de ERICE y O'SHEA (Spain) said that the purpose of his delegation's amendment was to enable countries like Spain, which were short of staff and foreign exchange, to combine their diplomatic and consular services. The draft articles on consular intercourse and immunities prepared by the International Law Commission provided for the performance of diplomatic acts by consuls. It was therefore very appropriate that an instrument on diplomatic intercourse and immunities should provide likewise for the exercise of consular functions by diplomatic missions.

41. The protection of nationals abroad meant, more often than not, looking after the interests of workers; the issue of passports and other documents, which was a consular function, was an essential feature of that protection. It was therefore not inappropriate for a diplomatic mission to be entrusted with consular functions.

42. Certain countries required the head of the consular section of an embassy to obtain an *exequatur* to act as a consul. A great many countries, however, did not, and by not objecting to the performance of consular functions by an embassy, thereby tacitly permitted it. The Spanish delegation had therefore provided in its new paragraph that diplomatic missions could perform consular functions "if the receiving State does not expressly object thereto", rather than refer to the granting of an *exequatur*.

43. The proposal would obviate the need for a consular convention whenever it was desired to set up a consular section in an embassy.

44. The Venezuelan representative's reservation was already contained in the Spanish amendment, because the provision in the Venezuelan law of 1876 constituted an express objection.

45. He saw no merit in the argument that the practice of consular sections of embassies was well established. It was precisely the purpose of the Conference to embody the existing practice.

46. Mr. DIARRA (Mali) said that the new States, which were short of experienced staff, needed to combine their diplomatic and consular services. For that reason his delegation would support the Spanish delegation's proposal.

47. Mr. NGO-DINH-LUYEN (Viet-Nam) supported that view. The Committee should consider sympathetically the difficulties of young States whose restricted interests and means did not always justify the creation of separate consulates. The fact that many diplomatic missions already exercised consular functions should be no obstacle to acceptance of the Spanish amendment. On the contrary, there would be an advantage in stating the principle explicitly. The text proposed by Spain gave those States which did not allow the combination of diplomatic and consular functions the right to object. It had also been argued that the Conference was not competent in the matter because the International

Law Commission was considering consular intercourse and immunities. A future conference on consular intercourse might say in its turn, however, that the matter, which touched on diplomatic functions and had not been settled by the Conference on Diplomatic Intercourse and Immunities, was outside its competence. His delegation would support the Spanish amendment.

48. Mr. BARTOŠ (Yugoslavia), opposing the amendment, said that he had not intended to deny the rights of small or less-developed countries. In many cases heads of mission in fact also performed consular functions; but when they did so they had to observe the separate rules which governed those functions. There was no need to divide embassies and consulates and their staffs, but their responsibilities and the rules governing them should be clearly differentiated. If that was not done, a diplomatic official might, for example, be accused of violating diplomatic rules by making contact in the performance of his consular functions with the local authorities of the receiving country. If he followed the diplomatic rules he might be unable to perform those functions. Particular consideration should be given to the question in connexion with the protection of nationals.

49. Mr. da SILVA (Brazil) said he was not opposed to the performance of consular functions by a diplomatic mission. Almost all the embassies and legations of Brazil had a consular section. The representative of Yugoslavia had pointed out the difficulty of including a reference to the practice in article 3. The two sets of functions should be clearly separated. In particular, it should be recognized that diplomatic protection and consular assistance were two quite different matters. His delegation would vote against the Spanish amendment.

50. Mr. MAMELI (Italy) agreed with the representative of Yugoslavia. If the Spanish amendment were to stand, however, he would propose that the phrase "if the receiving State does not expressly object thereto" should be replaced by a provision requiring the sending State to ask for the receiving State's consent.

51. Mr. GLASER (Romania) pointed out that the object of article 3, as shown by its introductory phrase, was to define diplomatic, not consular functions. That was clearly expressed in each of the sub-paragraphs, and in none was there any question of allowing the receiving State to object, because they were dealing with the exercise of a diplomatic function. Only in subparagraph (b), dealing with the protection of the interests of the sending State and of its nationals, was there any possibility of the overlapping of diplomatic and consular functions and the question had not been raised in that connexion. The introduction of the concept that the receiving State might "expressly object" or of the alternative suggested by the representative of Italy, that the sending State should ask for consent, would be inappropriate in an article which defined the functions of a diplomatic mission.

52. The Conference was not competent to discuss consular functions, which would probably be the subject

of a later conference. If the delegation of Spain pressed its proposal, Romania would vote against it.

53. Mr. WALDRON (Ireland) supported the amendment. He was not convinced by the argument that a reference to consular functions would interfere with the preparation of a subsequent convention concerning them. His government would find it helpful if consular functions were specifically mentioned among the functions of a modern diplomatic mission.

54. Mr. NGO-DINH-LUYEN (Viet-Nam) agreed that the functions, activities and immunities of consular officials differed from those of diplomatic agents and that it might be difficult to determine how to treat a diplomat who was performing consular functions. It was, however, the practice in many countries to combine these functions. The amendment proposed by Spain required the tacit consent of the receiving State, which granted the *exequatur* with full knowledge of the case and its particular problems. A slight re-drafting of the Spanish amendment might make it more generally acceptable.

55. Mr. BOLLINI SHAW (Argentina) supported the amendment. The purpose of the Conference was to codify customary international law. It was surely not unnecessary to include a reference to a practice merely because it was already customary. Diplomatic missions often, in fact, exercised consular functions, mostly without previous agreement; the practice was therefore tacitly admitted in general. There was no need to define consular functions in article 3. As had been pointed out, there would be a separate conference to discuss consular intercourse and immunities; but that should not prevent the current conference from adding a provision stating that diplomatic missions might perform consular functions if the receiving State did not expressly object.

56. Mr. LINTON (Israel) said that it was important particularly for the small and poorer countries that the instrument being prepared should make provision for the performance of consular functions by the consular sections of embassies. That generally accepted practice should be recognized, and he would therefore support the Spanish delegation's amendment.

57. Mr. DJOYOADISURYO (Indonesia) considered that the inclusion of the proposed provision would be premature. His delegation had no definite instructions on the point and would abstain from voting.

58. Mr. TALJAARD (Union of South Africa) said that the diplomatic missions of a considerable number of countries in fact exercised consular functions. There should not be too fine a legal distinction between diplomatic and consular functions, which overlapped in many cases. Consular missions were sometimes appointed by the head of the diplomatic mission, and were always subordinate to him in law. The South African delegation would therefore support the Spanish amendment.

59. Mr. ROMANOV (Union of Soviet Socialist Republics) noted the general agreement that a diplomatic mission had an established right to exercise consular functions. The Spanish proposal, however, was to pro-

vide that a diplomatic mission might perform consular functions "if the receiving State does not expressly object thereto." It was true that consular sections of embassies had been exercising consular functions for many years without objection; but to write into the convention, as a rule of law, that the receiving State might object would be inadvisable. It would endanger the position of those small States which could not maintain separate consular and diplomatic missions; and it would not strengthen relations between States. If a small country met with an objection, it would find itself in a very difficult position. Consular functions were closely linked with the protection of nationals in the receiving State, and that important function should not be prejudiced by exposing it to objection by the receiving State. The International Law Commission had considered a proposal very similar to that made by Spain, but had not felt that it should be included. The Soviet Union had a consular section in each of its diplomatic missions abroad, and so did not object to the practice; but it did not wish to create unnecessary official barriers. His delegation therefore suggested that the Spanish amendment should not be pressed or else that the phrase "if the receiving State does not expressly object thereto" should be dropped. If the amendment were maintained as it stood, his delegation would oppose it.

60. Mr. AGUDELO (Colombia) said he had himself been in charge of consular functions as first secretary of the Colombian embassy at Berne. When he had applied to the Swiss Federal Political Department for an *exequatur*, the Chief of Protocol had asked him whether he wished to hold diplomatic or consular rank, for only in the latter case could he have an *exequatur*. He had preferred to retain his diplomatic status and had not been granted an *exequatur*, but of course had continued to carry out his consular functions. He could therefore support the Spanish proposal.

61. Mr. FERNANDES (Portugal) suggested that a reference to the performance of consular acts rather than consular functions might prove more acceptable to certain delegations.

The meeting rose at 6.45 p.m.

NINTH MEETING

Friday, 10 March 1961, at 10.30 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 3 (Functions of a diplomatic mission) (continued)

1. The CHAIRMAN invited the Committee to continue its debate on article 3 of the International Law Commis-

sion's draft (A/CONF.20/4), in particular on the new sub-paragraph proposed by Spain (A/CONF.20/C.1/L.30) concerning the exercise of consular functions by a diplomatic mission.

2. Mr. AMLIE (Norway) recognized the orthodox distinction between diplomatic and consular functions, but noted that diplomatic missions to a large degree in fact performed consular functions. The Conference ought to sanction expressly that practice in the convention it was to draw up. Norway would accordingly vote in favour of the principle of the Spanish amendment.

3. Mr. BARNES (Liberia) said that, at the fourteenth session of the General Assembly of the United Nations, his delegation with others had submitted a draft resolution calling for the convocation in 1963 of a conference to consider both diplomatic and consular intercourse and immunities at the same time. The proposal had not been adopted, but in practice a tendency to abolish the existing distinction between diplomatic and consular staff could be observed. In Liberia, for example, a first or second secretary could perform the functions of a consul. That practice was fully justified by the fact that the functions of diplomatic and consular officers were sometimes of the same kind, as was shown by the functions mentioned in article 3 (b). Moreover, as the representative of Mali had said at the eighth meeting (para. 46), States which had recently become independent found it difficult to employ separate diplomatic and consular staffs. Lastly, since article 19 of the draft prepared by the International Law Commission on consular intercourse and immunities (A/4425) expressly provided that a consul could perform diplomatic functions in certain cases, there appeared to be no reason why the converse should not be possible. For all those reasons, Liberia would vote in favour of the Spanish delegation's amendment.

4. U SOE TIN (Burma) said he could rebut the three arguments advanced against the Spanish amendment. First, although the Conference was admittedly concerned with diplomatic functions only, it would certainly not be going beyond its terms of reference by recognizing that diplomatic staff could perform consular functions. Secondly, the fact that the law of certain countries did not allow the combination of diplomatic and consular functions was not a decisive argument, for the amendment specified that consular functions could be performed "if the receiving State does not expressly object thereto." Thirdly, some speakers considered the additional sub-paragraph unnecessary because the existence of consular sections within diplomatic missions was already recognized in fact. Yet, precisely because the object of the convention was to codify existing practice, the proposed sub-paragraph was necessary.

5. For reasons of economy, Burma entrusted consular functions to its diplomatic staff, after obtaining the agreement of the receiving State where appropriate. It would therefore vote in favour of the Spanish amendment, or at least in favour of the principle.

6. Mr. TUNKIN (Union of Soviet Socialist Republics) said that in all States diplomatic missions performed