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“the receiving State is bound” might be thought to strengthen the provision but in his opinion that expression had no more force than the mandatory “shall”.

56. He could not accept the introduction of the phrase “as far as possible”, in the Finnish sub-amendment; it simply served to weaken the original text which placed specific obligations on the receiving State.

57. In the circumstances, therefore, he again appealed to the United States delegation to withdraw its amendment.

58. Mr. SICOTTE (Canada) stated that his delegation would accept the United States amendment as now amended.

59. In so far as the relationship between the two paragraphs of the article was concerned, it was noteworthy that, in the case of paragraph 2, the obligation laid upon the receiving State was much stronger and more definite than in the case of paragraph 1. In order to bring the two into line, he proposed, as a sub-amendment to the United States amendment, that the phrase “where necessary”, in paragraph 2, should be replaced by the phrase “as far as possible”.

60. Mr. CHIN (Republic of Korea) thought the new United States wording for the second sentence of paragraph 1 more acceptable, in that it placed a stronger obligation on the receiving State to facilitate the acquisition of consular office premises, which were indispensable for the exercise of consular functions. The provision in question did not conflict with his country's municipal law nor did it infringe the sovereign rights of the receiving State. His delegation would accordingly support the United States amendment, as modified.

The sub-amendment to the United States amendment submitted by Finland was rejected by 36 votes to 12, with 16 abstentions.

The sub-amendment to the United States amendment submitted by Canada was rejected by 35 votes to 15, with 18 abstentions.

The United States amendment, as modified by the sponsor, was rejected by 35 votes to 21, with 11 abstentions.

Article 29, as adopted by the International Law Commission, was adopted by 68 votes to none, with 2 abstentions.

The meeting rose at 1.10 p.m.

FIFTH MEETING

Thursday, 7 March 1963, at 3.30 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 28 (Use of the national flag and of the state coat-of-arms) (continued)

1. The CHAIRMAN drew attention to a fresh amendment (A/CONF.25/C.2/L.60) submitted jointly by the

delegations of Belgium, Brazil, Czechoslovakia, India, Italy, Liechtenstein, Switzerland, the Ukrainian SSR and the United Kingdom. Except for the amendment by Nigeria (L.36), all the amendments to article 28 that had previously been submitted had been withdrawn.¹ A further amendment (A/CONF.25/C.2/L.48) had been submitted by Spain. He asked the representatives of Nigeria and Spain whether they would agree to withdraw their proposals.

2. Mr. PEREZ HERNANDEZ (Spain) said that, in view of the joint amendment, he would withdraw his delegation's amendment.

3. Mr. SHITTA-BEY (Nigeria), while accepting the essentials of the joint amendment, said he maintained his delegation's opinion that a distinction should be drawn between the consular building and the consul's residence.

4. He wished to modify the amendment previously submitted by his delegation (L.36) to read:

“The consulate shall have the right to fly the national flag and display the coat-of-arms of the sending State on the building occupied by the consulate and at the entrance-door, and, subject to the laws and customs of the receiving State, the flag of the sending State may be flown on the residence and means of transport of the head of the consular post.”

5. The joint amendment did not seem to differ from the original amendment by the United Kingdom. Paragraph 3 of the new text seemed to imply that no right would be granted.

6. Mr. AMLIE (Norway) said that the rights referred to in article 28 were absolute and unconditional. The International Law Commission's draft, which did not contain any reservations to the main principle, had been established after a close study of many conventions, and must be considered to embody the principles of customary international law.

7. The proposed amendments were hardly acceptable. They appeared to establish a right, but in the end no right seemed to exist. He urged the Committee to accept the text as drafted by the International Law Commission.

8. Mr. WALDRON (Ireland) said that he would support either the original United Kingdom proposal (L.40) or the latest proposal by the Nigerian delegation. He did not consider that the new joint amendment was an improvement on the earlier proposals.

9. Mr. SPACIL (Czechoslovakia) said that during the discussion on the joint amendment it had been argued that there was an apparent contradiction between paragraph 1, which spoke of the categorical and absolute right to fly a flag, and paragraph 3, which, on the contrary, implied that the right was limited.

10. As a sponsor of the joint amendment, he explained that there was in fact no contradiction between the two paragraphs, for the third paragraph concerned only the exercise of a right recognized in the first paragraph.

¹ For the list of these amendments, see the summary records of the third meeting (footnote to para. 1).

The right of the sending State to fly its flag could not be denied. Nevertheless, every country had its own customs, which naturally should be respected.

11. Mrs. VILLGRATTNER (Austria) said that she shared the opinion of the Norwegian representative concerning article 28 as drafted by the International Law Commission. Although she preferred the Commission's original text, paragraphs 1 and 2 of the joint amendment were acceptable to her delegation, but paragraph 3 was not. Moreover, for persons in foreign territory the national flag was the surest means of identifying the building of their consulate; from that point of view also, the right to fly a flag could not be restricted.

12. Mr. DAS GUPTA (India) explained that paragraph 3 in no way affected the right in question. He failed to grasp why the Nigerian representative wished to establish a distinction between the consulate building and the residence and means of transport of the head of post.

13. Mr. NALL (Israel) said that article 28 actually contained two propositions: first, it spoke of the right to fly the flag and to use a coat-of-arms on the consular building, and then of the right to fly a flag on the residence and means of transport of the consul. The first right seemed to be generally recognized in international practice, as was proved by the many bilateral conventions signed between 1947 and 1958. As to the second right, most of the conventions contained no restriction; some provided that the flag might be flown on certain holidays or ceremonial occasions. On the other hand, in general, the conventions in question did not contain any provision concerning the use of the flag on the residence and means of transport of the head of post. The reply to the argument advanced by some representatives who regarded the provision under discussion as an additional protection for the consul in certain circumstances was that the protection of consuls was covered by article 40.

14. The right to fly the flag on the consular building should be granted, but no such right could be justified in the case of the residence of the head of post. With regard to the means of transport, the right to fly a flag should be reserved exclusively for the head of post when he was personally occupying the motor-car.

15. If the joint amendment — in particular paragraph 3 — were modified, he might be able to support it.

16. Mr. DI MOTTOLA (Costa Rica) said that the rights of the sending State should be specified and, also, that the practices and customs of the receiving State should be respected. He would accordingly vote for the joint amendment.

17. Mr. HEUMAN (France) said that he too would vote for the joint amendment. Nevertheless, he had two comments to make. In the first place, he shared the doubts of the representative of Israel with regard to the addition of a reference to residence, which was not mentioned in the original draft of article 28. Secondly, he could not see that article 30 granted inviolability

to the consul's residence. Besides, in defining "consular premises", article 1(j) did not mention the consul's residence. It was therefore wrong to grant the right to fly a flag on premises which did not enjoy inviolability.

18. He would propose a sub-amendment to the joint amendment whereby the words "residence and", in paragraph 2 would be deleted and the word "law" in paragraph 3 would be replaced by the words "laws and regulations". He asked that the paragraphs be put to the vote separately.

19. Mr. MARESCA (Italy), replying to those representatives who had argued that the joint amendment first laid down a principle and then negated that principle, explained that a distinction had to be drawn between a right and the exercise of that right. Paragraph 3, far from conflicting with paragraphs 1 and 2, was in fact their essential complement. Although the sending State had its rights, the receiving State for its part had the duty to assure the respect of the emblem. The three paragraphs could not therefore be considered separately.

20. Mr. HENAO-HENAO (Colombia) said that article 55 of the International Law Commission's draft contained the same ideas as those set out in the joint amendment; he would therefore propose that paragraph 3 should refer only to usage and he would not press for the adoption of paragraph 3 as a whole.

21. Mr. JESTAEDT (Federal Republic of Germany) said that he would have voted for the original draft of article 28; the joint amendment was, however, acceptable, at least so far as paragraphs 1 and 2 were concerned. He had some reservations concerning paragraph 3, since he would prefer all reference to the usage of the receiving State to be omitted. The Conference was expected to draft new rules; if those rules conflicted with any national law, that law would have to be brought into line with international law.

22. Mr. EVANS (United Kingdom) said that the joint amendment differed in some respects from the text he had originally submitted (L.40). In agreement with other delegations, his delegation had wished to submit a text acceptable to the majority. Clearly, the new text would not be completely acceptable to all, but it was a compromise.

23. With regard to paragraph 3, some representatives seemed to think that it would impair the principle laid down in paragraph 1. In fact, paragraph 3 related only to the application of the right, the existence of which was not in dispute. The drafting committee might perhaps prepare a text which would take account of the misgivings expressed by some delegations.

24. The French representative had suggested the inclusion of the word "regulations". That term had appeared in the United Kingdom's earlier amendment (L.40), but he thought that only a drafting point was involved, for in English the word "law" covered both laws and regulations.

25. In reply to the comments of the Colombian representative, who had drawn attention to article 55, which the Committee would discuss later, he said that

since it was necessary to have a reference to "practice" or "usage" in paragraph 3, it seemed convenient to add references to laws and regulations for the sake of completeness, although paragraph 2 might then overlap with article 55.

26. Mr. SPYRIDAKIS (Greece) said that he would be prepared to support the joint amendment, though he considered that at the end of paragraph 2 the words "when used on official business" should be added.

27. Mr. CAMARA (Guinea) noted that the difference of opinion between delegations related to the right to fly the national flag on the residence and on means of transport. As a compromise, his delegation wished to submit a number of sub-amendments to the joint amendment (L.60).

28. In paragraph 1, the word "consulate" should be substituted for "sending State". In the same paragraph the words "in the receiving State" should be deleted, and the words "this article" replaced by "the following paragraph".

29. In paragraph 2, the word "respectively" should be added after the words "entrance door". The last part of paragraph 2 beginning with "and on the residence" finishing with "consular post" should be deleted.

30. Paragraph 3 should be re-drafted to read: "The right thus accorded shall, as far as the residence and means of transport of the head of consular post are concerned, be exercised in conformity with the usage, law and regulations of the receiving State."

31. Mr. KANEMATSU (Japan) said that the wording of the joint amendment might give rise to doubt, since its paragraph 3 seemed to qualify in some respect the principle stated in paragraph 1. The sponsors of the amendment could no doubt find a clearer wording which would remove the anxiety felt by some delegations on that point. He therefore suggested that the words "in conformity with the law" might be replaced by a phrase signifying not the legal but the moral obligation to respect the laws of the receiving State.

32. Mr. LEVI (Yugoslavia) suggested that no further amendments should be submitted and that article 28 should be put to the vote.

33. The CHAIRMAN pointed out that the Committee had already spent two meetings in considering article 28 and should endeavour to settle the problem without further delay.

34. Mr. KHLESTOV (Union of Soviet Socialist Republics) suggested that the sponsors of the joint amendment should amend their text in agreement with the representative of Guinea. Meanwhile, the Committee could discuss other articles.

35. The CHAIRMAN suggested that the meeting be suspended to enable delegations to re-draft the joint amendment.

The meeting was suspended at 5.20 p.m. and resumed at 5.40 p.m.

36. Mr. EVANS (United Kingdom) said that, after consultation, the sponsors of the joint amendment, who had been joined by the Spanish representative, had decided to amend their text so that paragraph 3 would read: "In the exercise of the right accorded by this article, regard shall be had to the laws, regulations and usage of the receiving State."

37. Mr. SHITTA-BEY (Nigeria) said that he saw hardly any difference between the two versions of the joint amendment. Before a consulate made use of the right to fly the flag, it should always take account of the laws, regulations and usage of the receiving State. Nevertheless, the revised text perhaps introduced a new feature in regard to the right to fly the national flag on the residence of the head of post.

38. Mr. BENOUNA (Morocco) thought that the Committee should revert to the article as drafted by the International Law Commission. The right to fly the flag upon the building could not be denied, but in the case of the residence confusion and complications might arise. The word "residence" should therefore be deleted. With regard to means of transport, it should be stipulated that the right to fly the flag "was subject to the law, regulations and usage of the receiving State".

39. Mr. CAMARA (Guinea) said that the revised joint amendment did not answer the problem, and he would therefore maintain the sub-amendments he had submitted orally.

40. Mr. SPYRIDAKIS (Greece) moved the closure of debate under rule 26 of the rules of procedure.

41. The CHAIRMAN suggested that the Committee should vote on the amendments and sub-amendments submitted by the delegations of Guinea, France, Greece and Nigeria, and on the ten-power amendment. He invited the Committee first to vote on the sub-amendments submitted by the delegation of Guinea.

42. Mr. HEUMAN (France) requested that the sub-amendments submitted by the delegation of Guinea should be put to the vote separately.

43. The CHAIRMAN put to the vote the Guinea sub-amendments to the joint amendment (A/CONF.25/C.2/L.60).

The sub-amendment substituting the word "consulate" for the words "sending State" in paragraph 1 was rejected by 32 votes to 19, with 21 abstentions.

The sub-amendment deleting the words "in the receiving State" in paragraph 1 was rejected by 30 votes to 1, with 31 abstentions.

The sub-amendment substituting the words "the following paragraphs" for "this article" in paragraph 1 was rejected by 23 votes to 5, with 38 abstentions.

The sub-amendment deleting the words "peut être" in paragraph 2 was rejected by 11 votes to 7, with 48 abstentions.

The sub-amendment inserting the word "respectively" after the words "entrance door" in paragraph 2, was rejected by 13 votes to 6, with 50 abstentions.

The sub-amendment deleting the words "and on the residence and means of transport of the head of the consular post" in paragraph 2 was rejected by 30 votes to 15, with 25 abstentions.

The sub-amendment inserting the word "thus" between the word "right" and the word "accorded" in paragraph 3 was rejected by 15 votes to 3, with 49 abstentions.

The sub-amendment re-drafting paragraph 3 to read: "The right thus accorded shall, as far as the residence and means of transport of the head of the consular post are concerned, be exercised in conformity with the usage, law and regulations of the receiving State" was rejected by 18 votes to 2, with 46 abstentions.

44. The CHAIRMAN put to the vote the sub-amendment submitted by the French delegation to delete the words "residence" and in paragraph 2.²

The French sub-amendment was rejected by 39 votes to 11, with 18 abstentions.

45. The CHAIRMAN put to the vote the Greek delegation's sub-amendment adding in paragraph 2 after the words "consular post", the words "when used on official business".

The Greek sub-amendment was adopted by 22 votes to 19, with 25 abstentions.

46. Mr. HEUMAN (France) pointed out that one delegation had not participated in the vote.

47. The CHAIRMAN said that he would put to the vote the revised joint amendment (L.60) as amended by the sub-amendment of the Greek delegation.

48. Mrs. VILLGRATTNER (Austria) moved that the proposal be voted on paragraph by paragraph.

49. Mr. MARESCA (Italy) opposed the motion.

50. Mr. EVANS (United Kingdom) said that the sponsors of the revised joint amendment had established a carefully balanced compromise text, which would lose all meaning if any of its provisions were dropped.

51. Mr. HENAO-HENAO (Colombia) supported the Austrian representative's motion. The Committee would later discuss article 55, and it would be regrettable if it prejudged its decision on that article. For that reason he would vote against paragraph 3.

52. Mr. SIKHE CAMARA (Guinea) also supported the motion.

53. The CHAIRMAN put the Austrian delegation's motion to the vote.

The motion was rejected by 42 votes to 9, with 16 abstentions.

54. The CHAIRMAN put to the vote the revised joint amendment as amended by the Greek delegation's proposal.

² The second French sub-amendment (addition of the words "and regulations" to paragraph 3) was not put to the vote at this stage. Later, the drafting committee approved an amendment affecting the entire text of the draft convention, whereby those words would be added wherever the word "law(s)" occurred.

The amendment (A/CONF.25/C.2/L.60) was adopted by 53 votes to 10, with 9 abstentions.

55. The CHAIRMAN said that, in view of that decision, there was no need to put the Nigerian amendment (L.36) to the vote. The text which the Committee had adopted would constitute article 28.

The meeting rose at 6.45 p.m.

SIXTH MEETING

Friday, 8 March 1963, at 10.50 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)

1. The CHAIRMAN noted that some of the amendments to article 30 related to the question of asylum. Since the subject was before other United Nations bodies, including the International Law Commission, it would be preferable if the Committee refrained as far as possible from discussing the matter. He suggested that, to facilitate discussion, the article might be taken up paragraph by paragraph, despite the fact that some of the amendments tabled related to more than one.¹

2. Mr. WESTRUP (Sweden) stated that although the Swedish Government attached great weight to the sound preparatory work done by the International Law Commission, it had doubts of principle concerning some of the draft articles, beginning with article 30. It would seem that the International Law Commission had at times gone slightly too far in establishing analogies between diplomatic and consular relations, by placing diplomatic and consular missions on the same footing notwithstanding their functional differences. The 1961 Conference had unanimously adopted the principle that privileges and immunities were granted, not for the benefit of the individual, but to ensure that the diplomat, as representative of a State, would be able to exercise his functions effectively. Admittedly, the consul of today might become the diplomat of tomorrow, but, although there were superficial resemblances, the functions of each remained different in principle and that was the essential point that must be borne in mind.

3. The immunities of embassies and embassy staff derived from the ancient rule of international law: *ne impediatur legatio*, but the exclusive privileges thus conferred were such as to impinge to some extent on the

¹ The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.2; Netherlands, A/CONF.25/C.2/L.13; Spain, A/CONF.25/C.2/L.24; Austria, A/CONF.25/C.2/L.26; Nigeria, A/CONF.25/C.2/L.27; United Kingdom, A/CONF.25/C.2/L.29; Mexico, A/CONF.25/C.2/L.43; Japan, A/CONF.25/C.2/L.46; Greece, A/CONF.25/C.2/L.59; Greece, Japan, Nigeria and the United Kingdom, A/CONF.25/C.2/L.71.