

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/SR.14

14th 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)

40. Mr. SRESHTHAPUTRA (Thailand) said that, when introducing the joint amendment to paragraph 1 (b) of article 36, his delegation had stated that the obligations imposed by sub-paragraphs (a) and (b) of article 37 were also excessive. His delegation's request for a separate vote on the sub-paragraphs had been rejected and he had therefore voted against the article.

Article 38 (Communication with the authorities of the receiving State)

Article 38 was adopted unanimously.

Article 39 (Consular fees and charges)

Article 39 was adopted unanimously.

Article 40 (Protection of consular officers)

41. Mr. PETRŽELKA (Czechoslovakia) stated that the purpose of the amendment (A/CONF.25/L.21) which his delegation was submitting jointly with the delegation of the Ukrainian SSR was to restore the International Law Commission's draft of the article. The Second Committee had nullified the effect of the text by deleting reference to the obligations incumbent on the receiving State by reason of the official position of consular officers. A consular officer must enjoy greater respect and protection than an ordinary alien. The text before the Conference ignored that necessity and failed to give the consular officer the special protection due to him.

42. Mr. CAMERON (United States of America) recalled that the text of article 40 adopted by the Second Committee had been proposed by his delegation (A/CONF.25/C.2/L.5). That text was, moreover, in conformity with article 29 of the 1961 Convention; a measure granting to consular officers greater special protection than to diplomatic agents was not justifiable.

43. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) thought that article 40 had been drafted in such general terms that it was of no practical value. It was obvious that every State would respect consular officers as they respected all foreigners, but that could not be regarded as a rule of international law. The Conference should lay down legal rules and not adopt mere declarations which imposed no obligations. In effect, article 40 as drafted merely repeated article 6 of the Universal Declaration of Human Rights. His delegation wished to see a definite obligation imposed on the receiving State giving the consular official special protection by reason of his official position.

The joint amendment by Czechoslovakia and the Ukrainian Soviet Socialist Republic (A/CONF.25/L.21) was rejected by 45 votes to 23, with 8 abstentions.

Article 40 was adopted by 63 votes to none, with 13 abstentions.

The meeting rose at 10.50 p.m.

FOURTEENTH PLENARY MEETING

Thursday, 18 April 1963, at 9.30 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) (resumed from the 9th meeting and concluded)

1. The PRESIDENT invited the Conference to resume its debate on article 30 in the text prepared by the drafting committee (A/CONF.25/L.11). In addition to the amendment by the Ukrainian Soviet Socialist Republic to paragraph 4 (A/CONF.25/L.13), an amendment to paragraph 2 (A/CONF.25/L.36) had been submitted jointly by Ceylon, the Federal Republic of Germany, France, Greece, Guinea, Italy, Japan, Liberia, Mali, Nigeria, Saudi Arabia, Tunisia, the United Kingdom and the United States.

2. Mr. MARESCA (Italy), introducing the fourteen-power amendment (A/CONF.25/L.36), said that its object was to reconcile the two different opinions concerning the subject: that of the International Law Commission, which thought that consular premises should enjoy the same inviolability as diplomatic missions, and the view that the inviolability accorded to consular premises might be qualified. The proposed amendment, making entry into consular premises subject to a warrant or a judicial decision and to the authorization of the Minister for Foreign Affairs of the receiving State, offered safeguards which should be sufficient to allay all anxieties.

3. Mr. BARTOŠ (Yugoslavia) said that it was necessary to guarantee the absolute inviolability of consular premises in order to ensure the proper functioning of consulates; no compromise was possible. Moreover, so far as terminology was concerned, comparative lawyers knew that there were all kinds of warrants, not all of which were necessarily issued by the judicial authorities. The safeguard seemed therefore somewhat illusory. He entirely approved the Indian representative's statement at the eighth meeting and would vote against the amendment.

4. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the amendment was not new: it had been submitted before in the same terms in the Second Committee, as a comparison between its text and that of documents A/CONF.25/C.2/L.29 and L.71 would show, and it had been rejected there by 31 votes to 22, with 14 abstentions.

5. Article 30 laid down the principle of the inviolability of consular premises while admitting that in exceptional cases calling for immediate action, the police could enter those premises. But the amendment did not speak of

emergency measures; hence one might infer that it was possible at any time to enter the consular premises on the strength simply of a permit by the authorities of the receiving State — an idea contrary to international practice. His delegation thought that the permission of the head of consular post should be necessary for entry into the consular premises, and it would accordingly vote against the amendment.

6. Mr. USTOR (Hungary) said that there were many theoretical and practical arguments in favour of the absolute inviolability of consular premises. The consular service formed part of the sending State's government services, and any disturbance of that service would constitute a violation of that State's sovereignty. The amendment departed from the rules proposed in, for example, the Harvard draft and the Bustamente Code. It was vague: it did not even stipulate that there should be serious grounds to justify an intrusion by the authorities of the receiving State. His delegation could not support the amendment, for its effect would be to curtail dangerously the inviolability of consular premises.

7. Mr. de MENTHON (France) said that he would support the joint amendment as a conciliatory gesture and as an effort to avoid the division of the Conference into two opposing groups. While the amendment was not entirely satisfactory in substance, at least it diminished the serious risks involved in the text of paragraph 2 of article 36 as drafted. The condition that the prior authorization of the Minister for Foreign Affairs was required constituted an important safeguard. If the amendment was not adopted, the French delegation would insist on its request for a separate vote on the final phrase of paragraph 2.

8. Mr. KHRISHNA RAO (India) said that the sponsors of the amendment had merely re-submitted a proposal already rejected by the Second Committee. The Convention on Diplomatic Relations contained no clause relating to action to be taken in the event of a fire. If such a clause appeared in the convention on consular relations, it might be argued that the authorities of the receiving State could not enter the premises of a diplomatic mission in case of fire — a thesis not admitted by modern international law.

9. The question of a warrant had been discussed by the International Law Commission. It was an exceptional case which could not serve as a basis for a general rule. Provisions like those in the joint amendment might be in their place in bilateral agreements, but should not appear in a general multilateral convention. His delegation would vote against the amendment.

10. Mr. BINDSCHIEDLER (Switzerland) agreed with the opinions expressed by the Yugoslav and Indian representatives: the amendment was unsatisfactory in form and in substance. It was an attempt to legislate for exceptional circumstances — emergency cases — of which it was impossible to draw up a complete list. If rules were made only for certain cases, it could be argued *a contrario* that the provision did not apply in the cases which were not specified. It would be better to leave such cases to be governed by general and customary

international law; that had been the course followed by the Conference on Diplomatic Intercourse and Immunities when confronted with the same problem. The best solution would be to retain paragraph 2 of article 30 as it stood, without the final phrase.

11. Mr. SPACIL (Czechoslovakia) said that, while he recognized the good intentions of the sponsors of the amendment, he was bound to note that there were two opposed schools of thought in the Conference concerning the question at issue. It was indispensable that article 30 should lay down the principle of the inviolability of the consular premises, so that the consular post should not find itself at the mercy of the police and judicial authorities of the receiving State. According to traditional international law, consular premises enjoyed full inviolability, as was exemplified in the "Florence case" (1887).¹ In his opinion it was impossible to set up a different regime for diplomatic and for consular premises, for in some cases consular sections were established within diplomatic missions. The provisions of the amendment could be used arbitrarily by the receiving State for purposes of provocation. Relations between States were unfortunately not always friendly, and it was precisely during periods of tension that it was useful to have a legal document which avoided all risk of misunderstanding. Accordingly, he could not vote for the joint amendment.

12. Mr. VAZ PINTO (Portugal) thought that the amendment was a satisfactory compromise. Modern customary international law did not recognize the inviolability of consular premises as absolute. Total inviolability seemed neither necessary nor desirable. It could lead to abuses more serious than those which might result from qualified inviolability. The formula was admittedly not perfect, but it was better than the original text, and his delegation would therefore vote for the amendment.

13. Mr. OSIECKI (Poland), opposing the amendment, drew attention to two points. Firstly, the amendment could hardly be regarded as a compromise; it went further than the drafting committee's text in that it did not stipulate that a serious crime must have been committed before the authorities of the receiving State could enter the consular premises. Nor did it specify whether the warrant in question should be issued by the legal or by some other authorities; hence the clause might be open to divergent interpretations. Secondly, since it provided that both the judicial authorities and the Minister for Foreign Affairs of the receiving State had to concur in the action, the proposed clause offered only a specious safeguard, for it was not easy to see how the Minister for Foreign Affairs could withhold his consent.

14. Mr. DE CASTRO (Philippines) said that, while he preferred the drafting committee's text, he was prepared to accept the proposed compromise, which seemed to him to take account of the rights of both States. He thought that the requirement of judicial authorization together with the consent of the Minister

¹ See *Journal du droit international privé*, vol. 15, pp. 53-57.

for Foreign Affairs of the receiving State constituted an adequate safeguard for the sending State. It was in the interests of all that the amendment should be adopted.

15. Mr. DADZIE (Ghana) said that he would be unable to support the joint amendment even as a compromise, as it could constitute a dangerous precedent. According to the amendment, a mere warrant for the arrest of a member of the consular staff would enable the authorities of the receiving State to enter the consular premises. The principle of the inviolability of the consular premises would thus be frustrated. While his delegation agreed that the authorities of the receiving State might enter the consular premises in the event of a serious crime, it could not admit that they could enter every time a warrant had been issued, and it would therefore vote against the amendment.

16. Mr. EVANS (United Kingdom) said that his delegation had been prepared to accept paragraph 2 of article 30 as drawn up by the Second Committee, but it had appeared from the debate at previous plenary meetings that a different approach would be more generally acceptable. For that reason the United Kingdom had become a sponsor of the amendment, which constituted, in its opinion, a compromise text offering sufficient guarantees both for the receiving and for the sending State, while taking account of the necessary difference between the qualified inviolability of consular premises and the absolute inviolability of the premises of diplomatic missions.

17. Mr. MOUSSAVI (Iran) said that he continued to support a qualified inviolability for consular premises and would accordingly vote for the amendment.

18. The PRESIDENT put to the vote the joint amendment (A/CONF.25/L.36) to paragraph 2 of article 30.

The result of the vote was 40 in favour and 24 against, with 11 abstentions.

The amendment was not adopted, having failed to obtain the required two-thirds majority.

19. Mr. ALVARADO GARAICOA (Ecuador) explained that he had voted for the joint amendment because it provided that the authorities of the receiving State could not enter the consular premises except with the authorization of the Minister for Foreign Affairs of the receiving State, a stipulation which constituted the best safeguard for the sending State.

20. Mr. TSHIMBALANGA (Congo, Leopoldville) said that he had abstained from voting because the amendment did not refer to the case of a crime of violence mentioned in the last phrase of paragraph 2. He hoped that that phrase would be put to the vote separately.

21. Mr. SRESHTHAPUTRA (Thailand) said that although, in the Second Committee, he had opposed the idea of linking the judicial authority and the executive authority in the article, he had nevertheless voted for the joint amendment because he regarded it as a compromise.

22. Mr. AMLIE (Norway) said that his country, in principle, supported the absolute inviolability of consular premises. He had, however, abstained in the vote on the amendment because it expressly stated that the authorization to enter the consular premises should be given by the Minister for Foreign Affairs in person.

23. Mr. de ERICE y O'SHEA (Spain) asked whether the Ukrainian delegation's amendment (A/CONF.25/L.13) affected only the first sentence of paragraph 4, or whether it was intended to involve the deletion of the second sentence of that paragraph. In the first case, the Spanish delegation would vote for the amendment; in the other case, it would vote against it, as his delegation thought it dangerous to delete the provision relating to expropriation.

24. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that his delegation's amendment, which reproduced textually paragraph 3 of the International Law Commission's draft of article 30, would replace paragraph 4 of the article as prepared by the drafting committee.

25. Mr. EVANS (United Kingdom) said that the Ukrainian amendment went far beyond current rules of international law in according total immunity to consular premises. Moreover, immunity from search was incompatible with the provisions of paragraph 2 of article 30, for, inasmuch as in certain circumstances the authorities of the receiving State could enter the consular premises, they must, subject to the inviolability of the consular archives, be permitted to search the premises for the purposes for which they had entered. Requisition, which was a temporary measure, should not be confused with expropriation, which was permanent deprivation. In principle, consular premises should not be requisitioned, but expropriation was necessary in certain cases — for example, for reasons of public utility — in such cases, however, provision should be made for the payment of compensation. With regard to attachment and execution, it should be remembered that a consulate might be installed in rented and furnished premises which should only be protected in so far as the interests of the sending State were involved. In view of all those considerations, he could not accept the Ukrainian amendment.

26. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic), referring to the critical remarks concerning his delegation's amendment, said that, in order to make it more easily acceptable, he would agree to add to it the second sentence of paragraph 4.

27. Mr. BOUZIRI (Tunisia) said that the second sentence of paragraph 4 could not follow on from the text proposed in the Ukrainian amendment. That amendment made no mention of the purposes of national defence or public utility, which were referred to in the second sentence of the paragraph.

28. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) agreed and suggested that a reference to the purposes of national defence or public utility might be introduced in the second sentence, which might begin: "if expropriation is necessary for purposes of national defence or public utility, all possible steps . . ."

29. Mr. AMLIE (Norway) suggested that the second sentence of paragraph 4 might be incorporated into the Ukrainian amendment in the following form: "Expropriation may only be carried out for purposes of national defence or public utility", and then a third sentence would be added, beginning: "In such a case, all possible steps . . ."

30. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) accepted the Norwegian representative's suggestion.

31. Mr. TÜREL (Turkey) proposed that the Ukrainian amendment, as amended by the Norwegian representative, should be referred to the drafting committee.

32. Mr. BARTOŠ (Yugoslavia) asked that the Ukrainian amendment as amended by Norway should be circulated in writing.

33. The PRESIDENT suggested that the Ukrainian and Norwegian representatives should confer with a view to preparing a joint amendment.

34. Mr. KRISHNA RAO (India) moved the suspension of the meeting.

The motion was carried by 52 votes to 6, with 16 abstentions.

The meeting was suspended at 11.30 a.m. and resumed at 11.55 a.m.

35. The PRESIDENT called upon the sponsors to introduce the new joint amendment by Ghana, Norway and the Ukrainian Soviet Socialist Republic (A/CONF.25/L.13/Rev.1).

36. Mr. DADZIE (Ghana) explained that he had intended to make only a drafting change in the Ukrainian amendment but, after discussing the point with the representatives of the Ukrainian SSR and Norway during the recess, he had agreed to join the sponsors of the new joint amendment. The wording was by no means perfect; if necessary, the drafting committee could doubtless prepare a final version.

37. Mr. CAMERON (United States of America) said that, for the reasons already explained by the representative of the United Kingdom, his delegation would not be able to vote for the proposed new draft of paragraph 4 of article 30.

38. The PRESIDENT put to the vote the joint amendment submitted by the delegations of Ghana, Norway and the Ukrainian Soviet Socialist Republic.

The result of the vote was 35 in favour and 31 against, with 14 abstentions.

The amendment (A/CONF./25/L.13/Rev.1) was not adopted, having failed to obtain the required two-thirds majority.

39. The PRESIDENT invited the Conference to proceed to the vote on article 30.

40. Mr. de MENTHON (France) requested a separate vote on the last phrase in paragraph 2, "or if the authorities of the receiving State have reasonable cause to believe that a crime of violence to person or property

has been or is being or is about to be committed within the consular premises".

41. Mr. DEJANY (Saudi Arabia) opposed the motion.

42. Mr. ALVARADO GARAICOA (Ecuador) and Mr. SILVEIRA-BARRIOS (Venezuela) supported the motion.

43. Mr. EVANS (United Kingdom) said that for the reasons explained earlier by his delegation he would oppose the motion. His delegation would also oppose a separate vote on the beginning of the second sentence in paragraph 2. If either of the two motions were carried, and if any part of paragraph 2 of article 30 as it stood were deleted, the United Kingdom delegation would request a separate vote on the whole of paragraphs 1 and 2, because in that case they would both be unacceptable to the United Kingdom.

44. The PRESIDENT put to the vote the French delegation's motion for a separate vote on the last phrase in paragraph 2.

The motion was carried by 56 votes to 21, with 5 abstentions.

45. The PRESIDENT put to the vote the retention of the last phrase in paragraph 2 as cited by the representative of France.

At the request of the representative of Indonesia, a vote was taken by roll-call.

Libya, having been drawn by lot by the President, was called upon to vote first.

In favour: Libya, New Zealand, Nigeria, Philippines, Portugal, San Marino, Saudi Arabia, Sierra Leone, South Africa, Syria, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Canada, Federation of Malaya, Greece, Indonesia, Iran, Ireland, Japan, Liberia.

Against: Liechtenstein, Mali, Mexico, Mongolia, Morocco, Netherlands Norway, Panama, Peru, Poland, Romania, Spain, Sweden, Switzerland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Venezuela, Yugoslavia, Albania, Algeria, Argentina, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Chile, Colombia, Congo (Brazzaville), Congo (Leopoldville), Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Finland, France, Ghana, Guinea, Holy See, Hungary, India, Laos, Lebanon.

Abstaining: Luxembourg, Pakistan, United Arab Republic, Uruguay, Republic of Viet-Nam, Austria, China, El Salvador, Ethiopia, Federal Republic of Germany, Israel, Italy, Republic of Korea.

The result of the vote was 24 in favour and 46 against, with 13 abstentions.

The phrase in question was rejected.

46. Mr. KRISHNA RAO (India) said that his delegation requested a separate vote on the words "The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action" in paragraph 2.

47. Mr. BOUZIRI (Tunisia) opposed the Indian delegation's motion. To prevent the authorities of the receiving State from taking prompt protective action in case of fire, for instance, was unthinkable.

48. Mr. KRISHNA RAO (India) said that his delegation had no intention of denying to the authorities of the receiving State the right to take prompt protective action in case of need: that right was recognized by customary international law. Moreover, the Convention on Diplomatic Relations contained no provision to that effect, and the insertion of such a clause in the convention on consular relations might lead some States, arguing *a contrario*, to deny to the authorities of the receiving State that right in the case of a diplomatic mission.

49. Mr. BOUZIRI (Tunisia) said that that was the personal interpretation of the representative of India, with which other delegations did not seem to agree. The sentence in question should be maintained. If a mistake had been made in 1961, in drawing up the Convention on Diplomatic Relations, there was no point in repeating the mistake in the convention on consular relations.

50. Mr. SPACIL (Czechoslovakia) supported the Indian delegation's motion.

51. Mr. AMLIE (Norway) likewise supported the motion. He agreed with the representative of India that the insertion of a special clause on the subject would be unnecessary or even harmful.

52. Mr. TSHIMBALANGA (Congo, Leopoldville) opposed the Indian motion.

The Indian motion for a separate vote on the last phrase in paragraph 2 of article 30 was defeated by 46 votes to 33, with 4 abstentions.

53. Mr. EVANS (United Kingdom) requested a separate vote on paragraphs 1 and 2 together. The result of deleting the last phrase in paragraph 2 was that the consular premises would be treated in the same way as those of a diplomatic mission, a proposition which he considered unacceptable.

54. Mr. BARTOŠ (Yugoslavia) opposed the United Kingdom motion. To take a separate vote would amount to going back on a decision taken by a clear majority of the Conference a few moments previously.

55. Mr. ALVARADO GARAICOA (Ecuador) agreed with the representative of Yugoslavia.

56. Mr. KEVIN (Australia) supported the United Kingdom motion.

57. Mr. PAPAS (Greece) also supported the United Kingdom representative; as a result of the deletions, paragraph 2 placed consular premises on the same footing as an embassy building. Those representatives who did not support the paragraph should be given an opportunity of indicating their opposition to it.

The United Kingdom motion for a separate vote on paragraphs 1 and 2 was defeated by 49 votes to 14, with 18 abstentions.

Article 30 as a whole, as amended, was adopted by 57 votes to 6, with 16 abstentions.

58. Mr. WESTRUP (Sweden), explaining his delegation's vote, said that it had endorsed the French motion and the Ukrainian amendment. His delegation wished to make it clear that in its view consultates did not enjoy the absolute inviolability accorded to embassies under customary law. In voting, it had wished to ensure that certain provisions of article 30 brought out that principle, without at the same time reducing too greatly the inviolability accorded to consular premises.

59. Mr. NIETO (Mexico) said that he had abstained from voting on article 30 because paragraph 4 contained provisions infringing the sovereign rights of the receiving State.

60. Mr. ALVARADO GARAICOA (Ecuador) said that he had voted for the French delegation's motion for a separate vote since in the Second Committee's text the last part of paragraph 2 contained ideas that were both vague and dangerous: for instance, the word "authorities" was far too vague.

61. Mr. AMLIE (Norway) explained that he had abstained from the vote on the article as a whole because he could not accept paragraph 4, particularly the second sentence concerning expropriation.

62. Mr. BINDSCHEDLER (Switzerland) said that he had voted for the French and Indian motions. His Government would interpret article 30 of the future convention as recognizing the principle that cases of necessity would continue to be governed by general and customary international law.

63. Mr. NASCIMENTO e SILVA (Brazil) said that he would have preferred the omission of the sentence "The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action", in view of the opinion that it might give rise to misinterpretations in the case of the Vienna Convention on Diplomatic Relations, which contained no analogous provision. It was the understanding of the Brazilian delegation, however, that in case of *force majeure* the receiving State could take any necessary action in the event of fire in a diplomatic mission.

64. Mr. DEJANY (Saudi Arabia) said that he had abstained in the vote on article 30 because in the case of consulates his country did not recognize the extent of the inviolability implied in particular by paragraph 2 of the article, which went far beyond established practice.

65. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that his delegation had voted for the adoption of the article, although some of its provisions were unsatisfactory, in particular paragraph 4, which in some cases admitted exceptions to the principle of the immunity of the property of the consular post. Similarly, the last sentence of paragraph 2 to some extent conflicted with the principle of the inviolability of the consular premises.

66. Mr. BARTOŠ (Yugoslavia) said that he had voted for the joint amendment submitted by the delegations of Ghana, Norway and the Ukrainian Soviet Socialist Republic, the rejection of which he regretted. He had also voted for the French delegation's motion. His delegation regretted the rejection of the Indian motion, which it had supported. In the case of *force majeure*, the rule of reason should be applied and it was superfluous to insert an express provision to that effect in a convention of universal scope.

67. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that he shared the Brazilian representative's views.

68. Mr. SPACIL (Czechoslovakia) said that his delegation had voted for article 30 as a whole. In general, despite the unsatisfactory nature of the second sentence of paragraph 2, the text provided the essential safeguards for the performance of consular functions. Moreover, paragraph 4 made no reference to the immunity of the consul in respect of judicial decisions. Those matters would continue to be governed by customary international law, as was mentioned in the last paragraph of the preamble.

69. Mr. DE CASTRO (Philippines) said that he had voted against article 30 as a whole because his delegation found it difficult to accept the idea that consulates and diplomatic missions should enjoy identical immunities.

70. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he had voted for the joint amendment submitted by the delegations of Ghana, Norway and the Ukrainian Soviet Socialist Republic; he had also supported the French and Indian motions for the deletion of parts of paragraph 2. He regretted that the Conference had decided to maintain the second sentence of paragraph 2, which his delegation regarded as unacceptable.

71. Mr. HONG (Cambodia) said that he had abstained from the vote on the article as a whole because the second sentence of paragraph 2 was not acceptable for the reasons which his delegation had already given (ninth plenary meeting).

72. Mr. TÜREL (Turkey) said that he had abstained from the vote on the article because of the unsatisfactory drafting of paragraph 2. His delegation had not, however, wished to cast a negative vote because, taken as a whole, the provision granted consular premises only a qualified and not a total inviolability.

73. Mr. ENDEMANN (South Africa) explained that he had voted against article 30 as a whole because, as now drafted, paragraph 2 went beyond the degree of inviolability that customary international law recognized in respect of consular posts.

The meeting rose at 1.5 p.m.

FIFTEENTH PLENARY MEETING

Thursday, 18 April 1963, at 3.10 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 41

(Personal inviolability of consular officers)

1. The PRESIDENT drew attention to the amendments to article 41 submitted by the delegations of Belgium (A/CONF.25/L.35) and Tunisia (A/CONF.25/L.39).

2. Mr. VRANKEN (Belgium) said that his delegation had proposed replacing the words "grave crime" by the words "grave offence" for four reasons. First, the provision should be as general as possible, so as to accommodate different systems of municipal law. Secondly, there had been no discussion of the point in the Second Committee, although it had been raised in a joint amendment (A/CONF.25/C.2/L.168/Rev.1). Thirdly, the word "offence" was more widely used in consular conventions. Lastly, the report of the International Law Commission on its thirteenth session, and the debate in the Commission, showed that the majority had been in favour of the word "offence" rather than "crime".

3. Mr. BOUZIRI (Tunisia) said that his delegation had submitted its amendment mainly in order to fill a serious gap in the text adopted by the Second Committee, which did not cover the case of a consul caught *in flagrante delicto*. Paragraph I(a) of the Tunisian amendment, which consisted in deleting the word "grave", was not substantive; it merely removed a subjective element. A crime was always a serious and reprehensible action, and it should not be necessary to judge whether it was "grave" or not.

4. Paragraph I(b) of the amendment had been included because it was absolutely inadmissible that a consular officer caught *in flagrante delicto* should not be subject to immediate arrest. Moreover, it was inadvisable, in a codifying convention, to leave cases of *flagrante delicto* to customary international law. The Tunisian amendment provided the safeguard that consular officers could not be held in custody for more than 48 hours except by virtue of a decision by the competent judicial authority. Furthermore, it provided that the offence must be one punishable by imprisonment for a term of at least five years, in order to prevent arbitrary arrest or detention for less serious crimes.

5. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said he would vote in favour of the Belgian and Tunisian amendments. Adoption of article 41, paragraph 1, without the Tunisian amendment would mean that a consular officer who committed a grave